

Land Use and Development

If you want to do building work on your property or change the legal use of your land you may need to obtain development consent from your local council first.

WHAT IS A DEVELOPMENT CONSENT?

A development consent is a form of authority that must be obtained, usually from the local council, before undertaking activities such as:

- building a house
- major home extension
- subdividing land
- demolishing a building
- using a building as a shop, office or factory.

Environmental planning instruments and procedures for development consents are covered by the *Environmental Planning and Assessment Act 1979* (NSW).

Development usually requires the consent of council, however consent may be granted by a private assessor called an 'accredited certifier', where it is a 'complying development'. To find out whether a development needs or has consent contact your local council.

ZONING

Councils control development by zoning land for various purposes including residential, commercial and industrial purposes. Within each zone, councils have detailed requirements (eg, maximum building height) which are set out in zoning plans called local environmental plans and in documents called development control plans.

Zoning and development controls will determine whether a proposal requires consent. Staff at your local council can tell you how a certain property is zoned and the development controls which are likely to apply to development proposals in your area.

To access current environmental planning instruments, including the local environmental plan which covers your area, go to www.legislation.nsw.gov.au

Click on the Browse A-Z in Force button. Scroll down until you find Environmental Planning Instruments in Force (this includes Principal State Planning Policies and Regional and Local Plans). Click on the relevant letter of the alphabet, for example, click on 'B' to find 'Baulkham Hills Local Environmental plan'.

Note: these are text only documents and do not include maps. Maps can be viewed at your local council.

INPUT FROM NEARBY LANDOWNERS

For most types of development applications, it is up to the council whether nearby landowners will be notified or not. Notification of affected landowners and advertising in local newspapers is mandatory for applications for 'designated developments' – those developments which have the potential for significant environmental damage like heavy industry and development in sensitive areas.

Objections

Anyone can make objections or submissions to a council about a development application, whether they have been notified or not. People can object to a neighbour's proposed land use or building on various grounds. For example, if the proposed development:

- does not consent with council requirements
- contravenes a private right of an adjoining owner (see below)
- may cause noise, air pollution, or damage to their land during construction
- may cause traffic and parking problems
- is out of character with the area

- is too tall
- is likely to block the sun or obstruct the view
- is too close to the boundary.

RESTRICTIONS IMPOSED BY COVENANTS AND EASEMENTS

A proposed development may contravene a private right of an adjoining property owner. These rights, which usually take the form of easements and covenants, are recorded on the certificate of title of the land.

An example of a covenant is an agreement between a number of landowners in a street not to build above a certain height. This kind of covenant is called a 'restrictive covenant'.

Some properties have covenants to ensure open access to light. Such covenants provide protection against a neighbour erecting a building that could block sunlight.

There is also usually an implied or explicit agreement between owners of terrace houses to maintain shared supporting walls. This is called a 'cross-easement for support'. It may or may not be recorded on the certificate of title.

If an easement or covenant is infringed, a person may go to court to seek compensation or an order to stop the offending activity.

WHAT COUNCIL MUST CONSIDER IN A DEVELOPMENT APPLICATION

Section 79C of the *Environmental Planning and Assessment Act* sets out factors which a local council must take into consideration when deciding whether or not to grant development consent. These factors include:

- the provisions of environmental planning instruments (such as local and state environmental plans)
- the likely environmental, social and economic activities of the development
- any objections or submission made about the proposed development
- the public interest.

You can also voice your objections to a proposed development application in your area by writing to a member of parliament. Local members can represent the interest of residents. You may also contact the minister responsible for regulation of building developments (eg, Minister for Infrastructure and Planning).

MAJOR PROJECT APPROVALS

Late in 2005, the NSW Government amended the *Environmental Planning and Assessment Act 1979* by introducing a new Part 3A to deal with major projects and critical infrastructure. The Minister is the consent authority for all major projects and critical infrastructure.

Major projects are developments that, in the opinion of the Minister, are of State or regional environmental planning significance. Major projects are usually developments, government infrastructure proposals, specified projects on State significant sites or activities which have significant environmental and social impacts, such as hospitals, large-scale mining and extractive industry, sensitive coastal developments, industrial projects and construction projects.

Once a development or activity is declared by the Minister, or identified in the Major Projects SEPP as a major project, Parts 4 and 5 of the *Environmental Planning and Assessment Act 1979* no longer apply to the project, nor do the provisions of Local Environmental Plans (LEPs) or Regional Environmental Plans (REPs). Part 3A also sets out different environmental assessment requirements for major projects.

APPEALS

If you are unhappy with a local council's decision concerning a development application, you can only appeal against the merits of a decision if the development is a designated development. Otherwise, objectors' rights to challenge development consents in the Land and Environment Court are limited to cases where the council fails to follow legal procedures. For instance, you could challenge a consent if it was issued for a development that was prohibited in the area.

If you believe that the development consent raises a serious legal issue or poses a serious threat to the environment or to the public, you can consult a community legal centre, the Environmental Defender's Office.

APPROACHING THE COURT

If a neighbour continues to use land without council approval, and the council does not take action to prevent the illegal use, anyone can approach the court to obtain an injunction to stop the activity (section 123 of *Environmental Planning and Assessment Act*).

CONDITIONS OF CONSENT

Development consent is often issued subject to a number of conditions regulating how the land is used or how the building is to be constructed. For example, a local council may issue development consent on the condition that construction work is only undertaken during certain hours. Other conditions could relate to the colour of the exterior walls, noise, drainage or landscaping.

If these conditions are not observed and a resident is being inconvenienced by the development work, it is best to talk to the neighbour about complying with the conditions. If this is not successful, they can take a complaint to the council and request that action be taken to enforce compliance. Action may also be taken in the Land and Environment Court to enforce conditions of development consent.