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战略规划 - Strategic Planning

Local Environmental Plan (LEP) - 地方环境计划

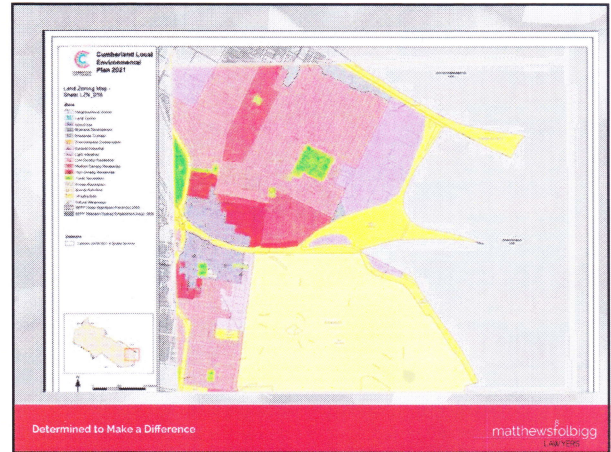
- 城市规划的核心文案
- 制定土地使用区域 (Land Use Zones) - "Euclidean Zoning" 欧几里得式分区 - 将土地用途划分为特定的地理区域, 并规定了密度标准, 限制了在每个类型的区域内允许进行的开发活动及规模

Cumberland Local Environmental Plan 2021

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Cumberland Local Environmental Plan 2021

Current version: 26 April 2023 to date (succeeded 22 July 2021 at 11:31)

Land Use Zone 3 - Zone R2

Zone R2 Low Density Residential

1 Objectives of zone

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage residential development that maintains the amenity of the surrounding area.
- To ensure that non-residential land uses are located in a setting that minimises impacts on the amenity of a low-density residential environment.

2 Permitted without consent

Home occupations

3 Permitted with consent

Hot and breakfast accommodation; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Early education and care facilities; Educational establishments; Emergency services facilities; Environmental protection works; Exhibition homes; Exhibition villages; Flood mitigation works; Group homes; Health consulting rooms; Home businesses; Home industries; Hospitals; Hostels; Neighbourhood shops; Oyster aquaculture; Pond-based aquaculture; Public administration buildings; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Respite day care centres; Roads; Seniors housing; Semi-detached dwellings; Tank-based aquaculture; Water recycling facilities;

4 Prohibited

Any development not specified in item 2 or 3

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Cumberland Local Environmental Plan 2021

Current version: 26 April 2023 to date (succeeded 27 July 2021 at 11:10)

Zone 5A General Industrial

1 Objectives of zone

- To provide a range of industrial, warehouse, logistics and related land uses.
- To ensure the efficient and viable use of land for industrial uses.
- To minimise any adverse effects of industry on other land uses.
- To encourage employment opportunities.
- To enable limited non-industrial land uses that provide facilities and services to meet the needs of businesses and workers.

2 Permitted without consent

Nil

3 Permitted with consent

Centre-based child care facilities; Depots; Food and drink premises; Freight transport facilities; Garden centres; General industries; Goods sheds and repair premises; Hardware and building supplies; Industrial retail outlets; Industrial training facilities; Kiosks; Landscaping material supplies; Light industries; Local fuel depots; Local distribution premises; Markets; Neighbourhood shops; Outdoor aquatic; Plant nurseries; Rural vegetable; School-based child care; Take away food and drink premises; Tank-based aquaculture; Timber yards; Warehouse or distribution centres; Any other development not specified in item 2 or 3

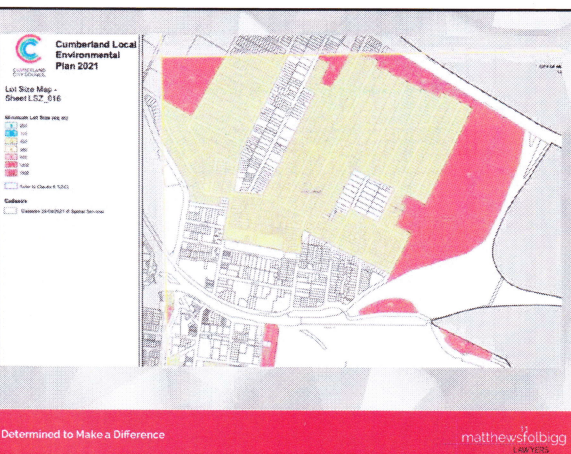
4 Prohibited

Agriculture; Air transport facilities; Airstrips; Announcement centres; Animal husbandry or training establishments; Boat launching ramps; Boat sheds; Camping grounds; Car parks; Caravan parks; Crematoriums; Child and senior living facilities; Commercial premises; Commercial centres; Crematorium; Early education and care facilities; Early centres facilities; Educational establishments; Entertainment facilities; Environmental facilities; Exhibition homes; Exhibition villages; Creative industries; Farm buildings; Firearm; Function centres; Health services facilities; Heavy industrial storage establishments; Hospitals; Highway service centres; Home businesses; Home occupations; Home occupations (retail services); Industries; Information and education facilities; Offices; Marine; Meeting pens; Meetings; Open air meeting; Recreation facilities (camp); Regulated clubs; Research stations; Residential accommodation; Retail and premises; Rural industries; Rural and water accommodation; Veterinary hospitals; Water recreation structures; Water supply systems; Wharf or loading facilities

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Local Environmental Plan

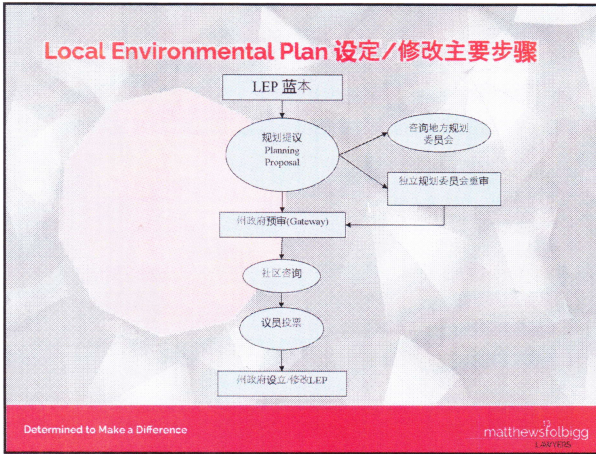
LEP决定:

- 是否允许DA提倡的土地用途
- 如果规划的区域内禁止该土地用途 - 项目不可进行, 除非
 - 满足文物保护的需求
 - 州环境规划政策允许该用途
- 开发和密度标准, 例如高度限制, 土地大小限制等
 - 不符合标准 - 项目不可进行, 除非
 - DA包含了"Clause 4.6 Variation Request" (违标请求) 并满足某些LEP里制定的特定条件
 - 符合州环境规划政策中更低的标准

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Development Control Plan (DCP)

Development Control Plan (发展控制计划) - 设立更详细的规划标准
例如：

- 建筑之间的距离
- 托儿所排放噪音标准
- 房子外观标准
- 停车位的数量
- 向民众咨询对DA或Planning Proposal意见的方式

DCP大多由地方政府，通过咨询过民意后通过议员投票采纳
但是州政府有权对其进行修改

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2. Objectives and Controls

2.1 Setbacks

Objectives

- O1. Ensure that the bulk and scale of new dwelling housing and alterations and additions to existing dwelling houses maintains the established bulk, scale and existing streetscape character.
- O2. Provide sufficient separation between dwelling housing/buildings to allow for privacy, sunlight access and a sense of openness between buildings/landscaping.
- O3. Provide spatial separation between dwelling houses to minimise overshadowing of the proposed development and manage potential privacy issues on surrounding residences and their private open space.

Control

C1. Setbacks shall be provided in accordance with Table 1 and measured in accordance with Figure 1 and Figure 2.

Setback	Minimum 6m
Front Setback (primary frontage) Dwelling house shall align with the street. Balconies, verandas, awnings may protrude by a maximum of 0.6m.	Minimum 6m
Side Setback	Minimum 0.6m
Side Setback (party lot line) Minimum 0.6m of walls across the first floor side boundaries shall be 10m behind any verandas or eaves or other architectural features. Subterranean or eaves shall be a minimum width of 1m.	Minimum 0.6m
Rear Setback	Minimum 6m
Corner Dwelling House Setback Maximum 2m setbacks of less than 2m may be considered, subject to justification and merit assessment. A corner dwelling house shall address both streets through appropriate design. Where a new building is located on a corner, the main frontage shall be setback on the side of existing subdivision and streetscape patterns.	Minimum 6m, with variance to be verified, a minimum 0.6m from property boundary.
Secondary Frontage Setback (where identified in secondary street)	Minimum 6m, with variance to be verified, a minimum 0.6m from property boundary.

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那些机构负责审理DA? 取决于DA类别, 包括

1. 普通DA - 通常由地方政府公务员或地方规划委员会(Local Planning Panel) 审批
2. Integrated Development - 在地方政府申请发展许可的同时也向其他政府部门申请相关许可
通常由市政府公务员或地方规划委员会和相关政府部门同时审批
3. Crown Development - 国家提议发展项目 - 通常由地方政府公务员或区域规划委员会和规划部长审批
4. State Significant Development - 州重点发展项目 - 通常由州政府设立的独立规划委员会 (Independent Planning Commission) 或规划部长审批

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4. 会 Designated Development - 特指开发项目 - 通常由地方规划委员 (Local Planning Panel) 或地区规划委员会 (Regional/District Planning Panel) 审批。现有45类项目可能被视为特指开发项目
例如：

- 飞机设施 (Aircraft Facility)
- 酿酒厂 (Brewery)
- 煤矿 (Coal Mine)
- 污水处理厂 (Waste Water Treatment Plant)
- 猪圈 (Pig Farm)
- 废物处理设施或工程 (Waste Management Facility or Works)

- 如果相关项目属于开发项目的类别并满足一定条件 (例如规模较大或坐落于环境敏感地区) 就会被视为特指开发项目
- 特指开发项目的DA申请人需要提供一份叫“环境影响评估报告” (Environmental Impact Statement), 有更长的居民咨询期, 和更长的审核时间。

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5. Regionally Significant Development - 区域重点开发项目

- 由区域规划委员会审理
- 现有9类别的区域重点开发项目, 例如
 - 投资资本价值超过三千万元的项目
 - Council或国家提倡超过五百万元的项目
 - 投资超过5百万的私人基建项目, 例如机场, 铁路, 学校, 废物处理设施, 通信设施
 - 某些特指开发项目 - 一定规模的废物处理设施, 开采业设施, 码头
- 悉尼地区被划为5个区域 - 东南西北中
- Cumberland属于“悉尼中部城市规划委员会”管辖

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什么是地方规划委员会(Local Planning Panel)/地区规划委员会 (Regional/District Planning Panel) ?

由地方政府所设立的，独立规划审批机构——管辖一个Council

成员有4人：

- 一位有法律或政府行政背景的主席——通常为律师、退休法官、前环境法法官
- 两名专家成员——通常为资深城市规划师 (Town Planner)、建筑设计师 (Architect)、都市设计师 (Urban Designer)
- 一名社区代表 (不可以是议员，开发商或地产中介)

职权包括：

- 为地方政府提供战略规划建议
- 审批指定开发项目
- 审批某些敏感普通DA (例如DA申请人是政府官员/议员，超过10名反对者，开发项目超出相关规划标准多于10%)

必须公开决策

Cumberland Local Planning Panel

由州政府设立，独立规划审批机构——管辖多个Council

成员有5人：

- 三名规划部长委任代表，必须有规划、建筑、交通、工程、法律等专家背景
- 两名由州Council委任的社区代表，其中一人必须有规划、建筑、交通、工程、法律等专家背景
- 主席由规划部长任命
- 开发商和地产中介没有成为成员资格

职权包括：

- 审批区域重点开发项目

必须公开决策

Sydney Central City Planning Panel

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DA审核基本程序

1. 申请人通过Planning Portal 网站提交申请
2. 审核机构决定DA是否符合基本要求——如不符合基本要求 (例如在申请表上没有填写必填信息、申请的项目描述不清) 的可以直接回绝
3. 通知受影响居民，接纳居民意见
4. 通知其他政府部门，接纳意见或指令 (如需)
5. 专家评估 (例如城市规划师、环境专家、土木工程和交通工程师)
6. 城市规划师向审核机构提供专家评估结果、居民意见等相关考虑因素的报告
7. 审核机构决定是否颁发开发许可，和许可的条件

- 具体程序取决于当地政府政策
- 如果审核机构是Council，评估通常由公务员或第三方专家进行
- 除了决定是否接受申请人提出的规划协议 (Planning Agreement) 外，Council议员不直接参与审核过程

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Development Application

评估DA的考虑因素

4.15. Evaluation of previous s 79C

(1) Matters for consideration—general In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application—

(a) the provisions of—

- (i) any environmental planning instrument, and
- (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
- (iii) any development control plan, and
- (iv) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and
- (v) the regulations (to the extent that they prescribe matters for the purposes of this paragraph).

(2) (Repealed)

(3) This section applies to the extent to which the development application relates to—

- (i) the likely impact of the development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality,
- (ii) the desirability of the site for the development,
- (iii) any opposition made in accordance with this Act or the regulations,
- (iv) the public interest.

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评估DA的考虑因素

- 评估DA的考虑因素
- Likely impact of development—开发项目可能带来的经济、社会和自然及人造环境的影响
- 这些潜在影响必须需要有证据支持的

Zhang v Canterbury City Council

- 申请人在Canterbury有一家成人娱乐场所，在当地以营业多年，和靠近于一个非常安静的巷子，但是巷子的另一头有个教堂
- 该场所曾经得到过开发许可，但是许可过期，申请人向Council申请续期DA
- 续期申请被Council拒绝，理由是教堂距离教堂不足200米，超过了DA中设置的标准，申请人向法院申请续期
- 第一法庭驳回申请，环境法院裁定该场所位置不符合标准，但是没有证据证明该场所的位置对社会有负面影响，另外，该DA不符合标准，但是该场所不违反DA中标准所需达到的目的
- 第二法庭向Council申请到新西兰最高法院，最高法院裁定环境法院的决策有错，相关标准必须是决定是否颁发许可的考虑因素
- 第三法庭向DA重新审查环境法院的决策，环境法院还是保留了最初的决策，颁发许可
- 第四法庭向一多年后，开发许可再次过期，续期的DA又被Council拒绝，教堂一名牧师出庭作证，称该娱乐场所的噪音给他和邻居造成了噪音，即便如此，法官还是批了这个DA，法官对此案子的评论是

Although the premises do not comply with those requirements, in the circumstances of the present case—particularly in the absence of any specific incident that might cause us to draw an adverse conclusion as to public interest in public places with the church—I should not be persuaded by that provision to refuse a reason for refusal.

- 虽然相关标准是审核DA的，但是即使不符合标准，审核机构仍可以在考虑过相关证据后颁发许可，确凿的证据才有说服力

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公共利益—Public Interest

New Century Development Pty Limited v Brookham Hill Shire Council [2005] NSWLEC 134

- 申请的项目是一个二期伊丽莎白镇的新镇
- Council收到来自532个居民，总共1,181个来信，其中只有11页是支持该项目的，其余全是反对
- 法院颁发许可，并给出了以下评价：

70) *the consent authority must not blindly accept the subjective fears and concerns expressed in the public submissions. While such fears must be taken into consideration, there must be evidence that can objectively assessed before a finding can be made of an adverse effect upon the amenity of the area (Dixon at [53]), in Dixon, the survey completed on 30/1 that whilst the court is clearly entitled to have regard to the views of residents of the area, those views will be considered fairly, of less weight if there is no objective, specific, concrete, observable likely consequence of the establishment of the proposed use*

62.4.4 or concern without rational or justified foundation is not a matter which, by itself, can be considered as an amenity or social impact pursuant to s 79C(1) of the EP&A Act (Newson v Byron Shire Council, NSWLEC, McCullum J, 6 September 1993, unreported, Jaratua v Forestry Commission of New South Wales (1996) 71 LGR 79 at 93 per Henman J; Perre Properties Pty Ltd v Ashfield Municipal Council (2000) 110 LGR 64 343 at 350 per Cowdroy J). Where there is no evidence to support a rational fear it will be irrelevant that members of the community may have modified their behaviour arising from such an unjustified fear (Dixon at [53]).

65) *It follows that in forming an opinion on the probable impact of a proposed development on the amenity of an area, tangible or otherwise, a court should prefer views from residents which are based upon objective, concrete, likely effects of the proposed development. This is consistent with the statement of Mason P in Fairfield City Council v Liu at [12] that: "the demonstrable social effect of a particular use is relevant under s 79C(1)(b) [now section 79C]" (see also Dixon at [45]).*

- 审核机构不能盲目接受居民主题的担忧，虽然这些担忧仍值得申请人考虑，但是必须要有客观的证据支持。在客观的证据、精确、客观、可信的证据支持情况下，居民的意见不会给申请人带来不利的影响
- 反之，在决定被提的拟开发项目是否会给周边带来不利的影响时，法院会青睐居民所提供的客观、确凿的证据

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Development Application

审批结果：

1. 颁发发展许可。一般许可都会有附带条件，例如工程必须按照获批的图纸进行，缴纳发展税，施工时间等
2. 颁发延迟开始许可——发展许可可在满足设定的条件后才生效
3. 申请被拒——审批机构必须提供申请被拒的理由
4. “视为被拒”。DA若没有在州政府规定的时间内完成审核，DA就会视为被拒。DA视为被拒不影响审批机构继续审核该DA的权利，但是申请人有权在立即向环境法院申请备案。

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Review and Appeal – 翻案和申诉

- 如果申请人对审批的结果不满，申请人可以要求审批DA的机构要求内部翻案 (Internal Review)
- 如果DA被拒，视为被拒，或申请人对原审批机构的决策有其他不满，申请人也可以向环境法院申请翻案
- 如果DA关于一个“指定开发项目”，DA的反对者有权向环境法院申请翻案。这类别的翻案申请通常需要在决策公布后的28天内提交
- 环境法院在翻案时，会取缔原来的审批机构并重新审核该DA – “Hearing De Novo” = 重新执行原审批机构的职能并可接纳新的证据
- 任何人都可以申请法院对DA审批机构的决策进行司法复审 (judicial review)，但是复审的理由局限于原审批机构犯的法律上的错误

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Review and Appeal

环境法院翻案常规流程

1. 各方提交一份叫“事实与争议陈述书”的文件 (Statement of Facts and Contentions)
2. 法院强制要求各方参加和解会议 (Conciliation Conference)
 - 和解会议由法院的委员 (Commissioner) 主持，(委员通常是受过专门培训过的专家，例如工程师、建筑师、城市规划师等)
 - DA的反对者一般会被邀请在会上发表讲话 (一般限制为6名反对者)
 - 反对者发言后，各方会在法院官员的指引和监督下私下进行和解会谈
3. 如果和解成功，法院会依照各方达成的协议去处理案件
4. 如果和解失败，法院会指定庭审日期，双方需在庭审日期前提交相关的证据
5. 通常证据会包含双方专家证人的联合报告
6. 被告方 (审理机构) 会通知反对者庭审日期，在庭审之前把反对者的书面证据递给法院和申请人，并告知法院和申请人哪些反对者会在庭审做口证
7. 庭审当天，法官/委员通常会亲自去开发项目的现场走访，并在现场传召反对者给口证。走访完现场后，庭审会在法院里进行。
8. 法院庭审间，通常双方的专家证人会被同时传召，接受双方律师的交叉盘问 (Hot Tubbing)
9. 法院决策-法院翻案的决策会取缔原审批机构的决策，成为该DA审批的最终决策



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Thank you
Questions?

The information contained within this presentation and associated material is general in nature and should not be relied upon. If you require specific advice on a particular matter, we recommend that you contact Matthews Folbigg Lawyers to discuss your individual circumstances. The contents of this presentation and associated materials do not represent legal advice.

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Thank You!

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