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# G Development assessment pathways used by local government

## G.1 New South Wales

The *Environmental Planning and Assessment Act* provides the legislative basis for consent decisions by local councils, joint regional planning panels and, in limited circumstances, the Minister for Planning. A range of development types are identified under Part 4 of the Act.

### Exempt development

A proposed development is 'exempt development' if it will have only a minimal impact on the environment (for example small fences, barbecues and pergolas) and is classified as exempt development in a local or State planning instrument. Councils may also list exempt development in a development control plan. Neither a development consent nor a construction certificate is required for exempt development.

### Complying development

Complying development provisions apply to classes of development that meet specified predetermined development standards specified in a local environment plan (LEP), state environmental planning policy (SEPP) or in a development control plan. Such proposals are typically routine in nature and their impact on the environment must be predictable and minor. The NSW Housing Code (introduced in February 2009) provided for residential developments such as: detached single and double storey dwelling houses; home extensions and renovations; and other ancillary development, such as swimming pools on lots of 450m<sup>2</sup> or greater to be treated as complying development. To carry out a complying development, a complying development certificate may be obtained from an accredited certifier or the local council certifier. No public consultation or construction certificate is required for complying development.

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## **Merit assessment**

Development may be listed as ‘development with consent’ in LEPs or SEPPs. A development application with a ‘statement of environmental effects’ must be lodged with the local council or in limited circumstances, with the Department of Planning. Notification requirements exist for merit assessment applications. Applications are assessed against the provisions of s79C of the Act. Consent may be issued by the council, a joint regional planning panel or the Minister for Planning. A construction certificate must be obtained from a private or council certifier prior to construction commencing.

## **Integrated development**

Some merit assessment proposals require development consent from the council or Minister as well as a permit or licence from a State government agency. In these cases, the council or Department of Planning and Infrastructure refers the application to the necessary agency so that an integrated assessment of the proposal occurs. The agency provides ‘general terms of approval’ which are included in the development consent conditions.

## **Designated development**

Some merit assessment proposals are classed as ‘designated development’ because of a high potential for adverse impacts due to scale, nature or location near sensitive environmental areas, such as wetlands. An ‘environmental impact statement’ must be lodged with the development application and the application must be advertised. Objectors to the proposal have merit appeal rights to the Land and Environment Court.

## **Prohibited development**

Council's local plans list the types of development that are prohibited in each land use zone. If the planning provisions do not allow a kind of development, council may consider changing the zoning on the site to permit the development. If the prohibited zoning provisions are not changed, the local council cannot approve development on the site. Applicants can lodge an application for a merit assessment at the same time as they request council to change the rezoning.

## **G.2 Victoria**

Part 4 of the *Planning and Environment Act 1987* established a system of local planning schemes that set out how land may be used and developed. For each zone, local planning schemes set the uses of land which may be commenced without

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needing a planning permit (including most single residential dwellings), uses which may be commenced only if authorised by a permit, and prohibited uses.

The Act provided for a ‘one size fits all’ process to be applied to all permit applications, regardless of the scale, complexity or significance of the proposal. While the Act allows for different steps in the permit process such as for notification and referral to apply or not apply to an application, most applications followed the same process (DPCD 2009).

### **G.3 Queensland**

Introduction of new planning legislation in 2009-10 meant development applications lodged prior to 18 December 2009 were assessed under the *Integrated Planning Act 1997* and applications lodged on or after 18 December 2009 were assessed under the *Sustainable Planning Act (SPA) 2009*.

#### **Exempt development**

Exempt development requires no application or need to comply with Codes or other requirements of the local plan. The *Sustainable Planning Regulation 2009* identifies exempt development including houses, attached houses (duplexes — up to two units) and Class 10 buildings unless covered by an overlay within a local plan. Exempt developments also include demolition work, certain temporary buildings and excavation work.

#### **Prohibited development**

A development application or request for compliance assessment can not be made if the development is a prohibited development. Detailed requirements for when certain developments (such as clearing native vegetation or operational works in wild river areas) are prohibited are listed in the *Sustainable Planning Act 2009*.

#### **Self-assessable development**

Certain types of projects do not need a development application but must comply with specified rules, including applicable codes. These projects are referred to as ‘self-assessable’. Whether a project is self-assessable depends on the zone and whether the property is subject to other codes or restrictions. Self-assessable developments must comply with any applicable codes under relevant legislation or planning schemes.

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## Compliance assessment

Introduced under the *Sustainable Planning Act (SPA) 2009*, compliance assessment is required for: one into two lot subdivisions whether in Residential or Industrial Areas and complying with applicable criteria, plan sealing applications and work/technical documents identified within development approval conditions as requiring compliance assessment (similar to schedule 12 applications under the Integrated Planning Act). Deemed approval provisions apply if councils fail to comply within a 20 day timeframe.

### Assessable development — Code and Impact

Development projects are ‘assessable’ and need a development application if they involve: building work (except where only requiring code assessment against the *Building Act 1975*), operational work for filling or excavation or in relation to a Heritage Place, reconfiguring a lot (subdivision) or a material change of use (rezoning), unless identified as being exempt, self assessable, compliance assessment or prohibited.

Assessable projects can be either **code or impact** assessed depending on the zone and whether the property is subject to other Codes or restrictions. **Code assessable** developments do not require public notification and deemed approval provisions apply if councils fail to comply with timeframes.

**Impact assessable** developments require public notification, provide for third party appeals and involve: generally appropriate developments where adverse impacts are considered to be at acceptable levels and generally inappropriate development not specifically envisaged by local planning schemes. Deemed refusal provisions apply if councils fail to comply with timeframes.

## G.4 Western Australia

In Western Australia, local planning schemes determine approval requirements for specific developments (other than subdivisions which are assessed by the WAPC). These requirements vary between councils. In general, permissible uses of land are set out in zoning tables which list a range of use classes against a range of zones, with each use class given a designation against each of the zones to indicate permissibility within the particular zone:

**'P'** — permitted by the local planning scheme providing it complies with the relevant standards and requirements applicable under the scheme

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**'D'** — not permitted unless the local council has exercised discretion by granting approval

**'A'** — not permitted unless the local council exercised its discretion by granting planning approval after giving special notice in accordance with the regulations

**'X'** — not permitted by the local planning scheme.

Assessment of development applications varies with the type of application and is subject to specified exemptions contained within individual planning schemes and public consultation requirements. If there is an operative region scheme, the application may be passed to the WAPC for approval.

## **G.5 South Australia**

The *Development Act 1993* and *Development Regulations 2008* detail the processes for making and assessing development applications and issuing development approvals.

### **Exempt development**

Matters listed in Development Regulations as exempt development do not require development assessment, consent or approval. They include (within certain limits) small sheds, pergolas and fences.

### **Merit assessment**

Development of a kind not listed as either complying or non-complying in the Development Plan for a council area or in the Development Regulations 2008 is subject to a merit assessment by the relevant authority. Such applications are assessed against all of the relevant policies in the Local Development Plan.

### **Complying development**

Provides for a tick-box assessment against a set of criteria. Planning consent is granted if the proposal is listed as complying in either the Development Plan or Development Regulations 2008, is in a zone where complying development applies and meets all the required standards for that type of complying development. Complying developments are exempt from public notification and third party appeal rights.

### **Non-complying development**

Developments not encouraged in a certain zone will generally be listed as a non-complying form of development for that zone. The applicant must show reason why

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the proposal should be supported. Even if the Development Assessment Panel supports the proposal, concurrence must still be granted by the State Government. Non-complying forms of development generally involve broader advertising and notification requirements and are subject to appeal rights.

## **G.6 Tasmania**

Assessment of applications under local planning schemes is governed by the *Land Use Planning and Approvals Act 1993*. The Act sets out the requirements for use or development in accordance with the following development categories:

### **Exempt**

Permit not required for use or development for a range of proposals including certain sheds, decks and fences.

### **No Permit Required**

No permit required to commence or carry out a use or development if: it is an exempt use or development; or the applicable table of use provides that no permit is required for the use; and it does not rely on a performance criteria to meet an applicable standard; and it is not discretionary or prohibited under any other provision of the planning scheme.

### **Permitted Use**

A use or development must be granted a permit if: the applicable table of use provides that the use is Permitted; it does not rely on a performance criteria to meet an applicable standard; or any other provision of this planning scheme provides that it is permitted.

### **Discretionary Use**

A use or development may be granted a permit if: the applicable table of use provides that the use is Discretionary; or it relies on a performance criteria to meet an applicable standard; or it is discretionary under any other provision of the planning scheme

### **Prohibited Use**

A use or development must not be granted a permit if: the applicable table of use provides that the use is Prohibited; or it cannot comply with an applicable standard; or it is prohibited under any other provision of the planning scheme; or it is on land which is not zoned.

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## **G.7 ACT**

ACTPLA's development assessment processes are explicitly based on the architecture of the Development Assessment Forum's Leading Practice Model. Other than exempt and prohibited developments, proposals are streamed into one of three categories: code, merit and impact.

### **Exempt**

Developments not requiring planning approval include single dwellings, carports, sheds, decks and fences and pergolas that meet specified requirements.

### **Code assessment**

Code track applies to simpler developments that meet all the relevant rules in the Territory Plan. With the increase in development types that are considered exempt, there are few developments considered in this track.

### **Merit assessment**

Applies to those applications that do not meet all the rules set out in the relevant code, but which can still be assessed on their merits against the relevant rules and criteria, for example large multi unit residential developments, an indoor recreational facility in a commercial zone, apartments in commercial zone, etc. Assessments under the merit track require public notification to fully assess their impact, but are not subject to an environmental impact assessment. Most developments fall into this track including applications to vary a lease.

### **Impact assessment**

Is used for those development applications that are considered against the Territory Plan. They require an Environmental Impact Statement (unless exempted by the Minister) and undergo the broadest level of assessment compared to the Merit track applications. These applications must be publicly notified and referred to specified agencies for comment.

### **Prohibited**

Developments listed under the relevant table of the Territory Plan or a development by an entity other than the Territory or a Territory authority in a future urban area, unless the structure plan for the area states otherwise.

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## **G.8 Northern Territory**

The Northern Territory Planning Scheme provides instruction, guidelines and assessment criteria to assist the consent authority in assessing development applications. Proposed developments are assessed in relation to the relevant zoning and are deemed to be either prohibited, permitted or discretionary.

### **Exceptions**

Unless specified, other than for subdivision or consolidation or by virtue of an Interim Development Control Order, the planning scheme does not prevent the use or development of land that is not zoned or a range of activities such as the erection of sign, certain sheds and temporary structures.

### **Prohibited Use**

Use is not permitted in the relevant zone.

### **Permitted Use**

Permitted uses do not require approval by the consent authority provided they comply with the relevant clauses contained in the planning scheme (which require verification by a registered certifier).

### **Discretionary Use**

Consent authority required to assess the proposal against the relevant clauses in the planning scheme.