

Understanding Northern Beaches Council's proposed new LEP

Interview with Leigh McGaghey, *B.L.Arch, Grad Cert EfS*

Leigh is part of NBC's Environment Strategic Reference Group and represents both Canopy Keepers and Pittwater Natural Heritage Association [PNHA]

What's the difference between the LEP and DCP – and what do they do?

So, first of all, the acronym LEP stands for Local Environment Plan and DCP stands for Development Control Plan. The key thing to know about this is that all councils in New South Wales are required by state government legislation to write a local environment plan; whether councils have DCPs is up to them, but most of them do have them. So, the key difference is the LEP is a legal requirement of all councils and they're held to account by their LEP. It's like a contract between state government, local council, and the rate payers.

It's got two main tasks. One of the key ones is to set out the zoning for different land use. So that's how you can go and have a look at a land use map, which is an appendix in the LEP. And you can see what your land is zoned for - ie residential, commercial, industrial, etc.

The other key thing it sets out is what it calls enabling clauses. These might talk about, for example, built density, controls on parking, hours of use for commercial business - all sorts of things. In other words, it goes into each of those land use zonings and describes what can happen on them. Once it's described those things it will reference a DCP, a Development Control Plan. So, if you want to know how high you can build your house, the overall indicator of what's acceptable for a given zone area will be referenced in the LEP but you'd have to go to the DCP to find what that height is in actual numbers.

Unfortunately, DCPs, are not legally binding instruments. So, council can wiggle their way out of following them. And furthermore, residents, developers, whoever, can challenge them in court and argue that the DCP doesn't apply to them.

Why is it important that residents keep track of the LEP?

Because they can influence them. The LEP is required by law to be written as a draft and then is released for public input. So, we get to read it and have about three months to respond. This is not so with the DCPs - the council can do what they like with them. So, the LEP is really the only safe way that people who own land in a council area can interact with the controls, and ultimately this helps determine the character of an area.

The LEP will also reference strategic plans such as their environment plan, their bush land management plan and their social engagement plan, which might be all about sporting and libraries and stuff like that. It covers everything. It will primarily focus on what's allowed development and what's not allowed. So, each of those zonings have a set of rules to them, and each of the zone will spell out what you're allowed to do on that block of land and what you're not allowed to do. And that's, that's sort of the 'go to' thing you need to know up front.

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And why is it important to understand this now?

As we know, the New South Wales state government forced amalgamation across a lot of councils - and Northern Beaches Council formed from three councils. Now, NBC is required by law to create its own local environment plan, as opposed to juggling the three that it inherited – Pittwater, Manly, Warringah. So, it's got to produce one big plan. And it's particularly important for residents in Pittwater to keep track of this process, because we had a very good LEP that actually reflected and understood the environment, the demographic, the society, the culture of Pittwater. Now NBC is attempting to harmonize all that across the entire peninsula, from Palm Beach to Manly, taking into account there's all these different sort of land uses. We've got commerce, we've got industry, we've got all sorts of stuff going on. So, it's important for residents everywhere to understand that that ultimately means there is going to be a compromise on some of the controls that we probably took for granted, under the Pittwater LEP.

The thing that caused the succession of Pittwater in the very first place was that this area was regarded as subsidizing the other areas, simply because of their high land rates, but weren't getting the same sort of care and support. So, it's the same argument being rolled out again. And NBC has the unenviable task of trying to harmonize all expectations across the entire area.

What kind of compromises might we see?

Every council operates under the state government housing strategy and all areas of Greater Sydney have been identified as having to fulfill their quota of providing extra housing into 2030. So, the new LEP has to acknowledge that and will re-zone areas to make different types of housing available. So, this is why we're getting the prospect of medium density in some of our villages. So, the village of Mona Vale, Newport and Avalon are earmarked for medium density housing, whereas they weren't that full. They were low density, plus mixed commercial use. So, a lot of people are arguing that the character of the villages will be lost if we have this medium density enforced upon the villages. So, this is all determined and set out at the LEP level, and it becomes law once it's passed. And it is hard to challenge.

That's why during this draft period, when the council puts out the draft, it behooves everyone who's got an interest to try and understand what we might be losing in our areas and to write in and state their case as to why they do or don't agree. That's why it's important.

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Is there any way of preventing Pittwater from becoming more like Manly?

Yes. There is scope within the new LEP, that we're yet to see, to recognize the unique character of all these areas. And in their initial discussion paper they acknowledge this but the proof will be in the pudding when the draft LEP comes out. We'll find out then how they're actually planning to treat these areas differently. And either retain the character that currently exists and the protections for the environment or change it. And that's what we've got to look out for. The council is obliged by law to then respond to all inputs from the public.

When should we look out for the draft?

It's been delayed into 2023. There should be three months of community exhibition, allowing for anyone to give feedback.

What issues are Canopy Keepers concerned about?

Primarily the bigger picture is the impact to all type of environments. And the thing to remember here is the LEP is an umbrella document, an enabling document if you like. So, it gives force to strategic plans that the council writes. When they write the LEP, they don't necessarily go into a whole lot of detail about precisely how trees are going to be protected and all that stuff. They will reference their other policies like their tree protection policy and these other policies that they haven't moved on yet. The tree canopy policy and the urban bushland policy. So, what the LEP will do will reference those different strategic policies. It's a bit all over the place - and until you actually read those you don't know what it is they are proposing specifically.

But ultimately the LEP may create a force of law to allow more impacts on our existing environment.

Are there any trends we are currently seeing in the environment that we could object to or ask for in the draft?

Yes. We're seeing bigger developments, with much deeper excavations. They're disturbing the whole fabric of the ecology. Previously, under the Pittwater LEP, these would probably not have been approved - because they're out of character. They were too bulky, too big and they weren't sympathetic with the character of the street and their neighbouring dwellings. If the draft LEP goes the way people are implying, there'll be consent for that level of development, with not a whole lot of oversight to stop that level of development going ahead.

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What sort of controls can residents ask for that will put a restraint on these large developments that wipe out the natural environment across entire blocks?

Setbacks from the boundary line is a big one. That is how close to the street the front facade of your building is. So, primarily one would want to see setbacks that allow the planting and maturity of a tall tree and presently, because of the overriding and conflicting legislation under the Rural Fire Service, which allows you to move trees within 10 meters of your house...you can see the problem. If you've got a house, that's got a setback nine meters from the boundary and someone sticks a tree in there, anyone else that owner or a subsequent owner is present under the law allowed to remove that tree because it's still within that 10 metre gap, under the fire service legislation. So, there's conflicts there with this other state legislation, which makes it very challenging.

Other controls concern building mass and heights and the footprint - or exactly how much of the land it covers. In planning speak, what you usually talk about is the ratio of that leftover space, how much of it is hardscape and how much is softscape. So, they're the real metrics. And they're the things that are usually described in the development control plans.

I would want to see a strengthening of the language, which makes it mandatory and compulsory for the metrics set out in the development control plans to be followed. I would want to see it mandatory for the tree canopy plan and the biodiversity plan to be observed and to be law.

So how do we keep track of this, including when the draft is released?

The best way to keep informed is to register with NBC's, Have Your Say, to register your name and email. And so, when any of these documents are put out for public consultation, you will get an email advising them of that. So that's the key thing. Obviously, also follow our Canopy Keepers website and our socials, and we'll alert people to when these documents are out, what they can provide more detail about and what they can do to interact with it.