

Climate change and the rental sector: Mapping the legislative and policy context:

Local government



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SUSTAINING RENTAL LIFE SERIES NOTE

The Briefing Paper series of the '**Rental housing, climate change and adaptive capacity: a case study of Newcastle NSW**' project seeks to provide readers with access to current research on rental sector adaptation to climate change. Briefing Papers produced by the project team are working documents that provide a forum on theoretical, methodological and practical issues related to climate change adaption in rental housing. The project is funded by the National Climate change Adaptation Facility (NCCARF) for 2012. The publication as a 'Briefing Paper' does not preclude subsequent publication in scholarly journals, books or reports. Unless otherwise stated, 'Rental housing, climate change and adaptive capacity' publications are presented as contributions to debate and discussion and represent our developing thinking about the research. We are hoping that they may facilitate feedback from readers, researchers, renters and housing managers.

Briefing Papers are available in electronic format and may be downloaded from the Sustaining Rental Life website:

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INTRODUCTION

This briefing paper is one of a series that supports our research project on climate change and the rental sector, focusing on the Newcastle and Lake Macquarie areas of New South Wales.

The research project takes an asset-based approach (see Briefing Papers 1 and 2) to identify the skills and capacities of tenants to contribute to climate change adaptation and sustainability.

The project also examines those conditions which either enable, or act as barriers to, adaptation and sustainability in the rental sector. In addition to obtaining advice on these issues during interviews and focus groups, we examine in Briefing Papers 5-8 the wider context of legislation and policy at all levels of government.

Briefing Papers 5, 6 and 7 provide an overview of Commonwealth, State or local government's policy and legislative role, focusing on:

- ecologically sustainable development (ESD)
- response to climate change
- land use planning
- affordable and sustainable rental housing
- sustainability of services such as water, energy and transport
- incentives to encourage sustainable housing, communities and households.

These Briefing Papers canvas policy, regulation and programs which are likely to affect the capacities of tenants, landlords or property managers to

engage in sustainable practices and to adapt to climate change.

This Briefing Paper is the third in the set of four on this topic, and provides an overview of role of local government, particularly in Newcastle and Lake Macquarie in New South Wales, which are our two study areas.

Commonwealth and State Government legislative and policy roles are discussed in Briefing Papers 5 and 6 respectively.

Briefing Paper 8 analyzes the implications of this legislative and political context for the capacity of tenants, landlords and property managers to adapt to climate change.

ROLE OF LOCAL GOVERNMENT

1. Legislative provisions for local government

The Australian Constitution makes no explicit mention of local government (Hyder Consulting 2011), and the powers and responsibilities of councils in NSW derive mainly from the NSW *Local Government Act 1993*¹.

However councils are independent corporate bodies, and the NSW Minister for Local Government and Department of Local Government do not have the authority to direct councils' day-to-day decision-making in areas such as planning, resource allocation or enforcement decisions (DLG undated).

¹ The current Commonwealth Government has proposed that the issue of constitutional recognition of local government be referred to a Parliamentary Committee to assess whether a referendum on the issue is likely to be successful (Karvelas 2012).

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Some key Council responsibilities under State law include:

- council social or community plans (NSW *Local Government Act 1993*)
- development affecting waterways (NSW *Rivers & Foreshores Improvement Act 1948* (Department of Planning))
- development applications and consents (NSW *Environmental Planning and Assessment Act 1979* (NSW Department of Planning))
- greywater reuse (NSW *Local Government Act 1993* (Department of Local Government and NSW Health))
- land use/environmental planning (NSW *Environmental Planning and Assessment Act 1979* (Department of Planning))
- pollution (NSW *Protection of the Environment Operations Act 1997* (Department of Environment and Conservation (Environment Protection Agency))
- rates and charges (NSW *Local Government Act 1993*)
- rainwater tanks (NSW *Code of Practice for Plumbing and Drainage Regulation* (Department of Energy, Utilities and Sustainability))
- rezoning of land (NSW *Environmental Planning and Assessment Act 1979* (Department of Planning))
- roads (NSW *Roads Act 1993* (Roads and Traffic Authority, Department of Lands, Department of Local Government))
- stormwater drainage (development consent for private

land) (NSW *Environmental Planning and Assessment Act 1979* (Department of Planning))

- subdivision of land (NSW *Environmental Planning and Assessment Act 1979* (Department of Planning))
- waste management (NSW *Environmental Planning and Assessment Act 1979* (Department of Environment and Conservation))
- water supply (NSW *Water Supply Authorities Act 1987* (Department of Planning, Department of Environment and Conservation, Department of Lands, Department of Local Government)) (adapted from DLG undated).

2. Local Government and ESD

The responsibilities of local government for ecologically sustainable development (ESD) are described in general terms in the 1992 'Intergovernmental Agreement on the Environment' (see Briefing Paper 5). The Agreement states that:

- local government has a responsibility for the development and implementation of locally relevant and applicable environmental policies within its jurisdiction in co-operation with other levels of Government and the local community.
- local government units have an interest in the environment of their localities and in the environments to which they are linked (DSEWPC 2010).

The Agreement was endorsed by the Australian Local Government

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Association but did not bind Councils to observe its terms. However the NSW Land and Environment Court has stated that “a proper exercise of the powers of local government authorities would mean that they would apply the ESD policy unless there were cogent reasons to depart from it” (Biscoe 2007).

The NSW *Local Government Act* (1993) states that ecologically sustainable development requires the effective integration of economic and environmental considerations in planning (LGSA undated-a, s.402).

A Council’s charter as set out in the Local Government Act includes:

- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development
- to have regard to the long term and cumulative effects of its decisions
- to engage in long-term strategic planning on behalf of the local community
- to exercise its functions in a manner that is consistent with and promotes social justice principles of equity, access, participation and rights (Local Government Act 1993).

Examples of local government sustainability activities include environmental monitoring (see for example under ‘Water’ below), more robust waste recycling systems such as the Waste and Sustainability

Improvement Payment program (Hyder Consulting 2011), and engagement of local community groups in environmental projects (see for example LMCC 2011a; NCC 2012b). Activities related to sustainable planning and development, and responses to climate change, are discussed below.

In the areas under study in our project, the principles of ESD are referred to in the Newcastle Local Environment Plan (LEP) (2003 (updated June 2011)) and the Newcastle City Centre LEP (2008). The Newcastle LEP aims for “community wellbeing developed in a socially and environmentally responsible manner” which reflects one of the objectives of the Community Strategic Plan: a caring and inclusive community (NCC 2011b). The LEP also aims for increased use of public transport and housing in locations which improves access to employment.

The Newcastle Community Strategic Plan, *Newcastle 2030* (NCC 2011b) specifically refers to the pillars of ESD: the precautionary principle, inter-generational equity (and social justice for current generations), conservation of biodiversity and including environmental costs in pricing mechanisms (the polluter pays principle) (NCC 2011b).

The Lake Macquarie LEP (2004 (updated July 2012)) has as its overarching objective “the development of land in accordance with the principles of ecologically sustainable development”.

These local land use plans are discussed further below.

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City of Lake Macquarie Environmental Sustainability Action Plan

In addition to incorporating ESD into its Local Environment Plan, Lake Macquarie City Council has developed an Environmental Sustainability Action Plan. This Plan (LMCC 2011b) incorporates sustainability actions identified in the range of Council strategic planning documents. It is based on the principles of the *Community Plan 2008-2018* (LMCC 2012a), which makes reference to equity and environmental sustainability not only at the local level but at regional and global levels. The aims of the Community Plan are:

- to provide integrated environmental management, strategic planning, services and waste management to enhance and sustain the natural, social, cultural and built environment and contribute to an equitable regional and global ecological footprint
- to advocate for and develop opportunities that will ensure all residents have equal opportunity to participate in the economic and social life of the community
- to maintain and develop a sustainable road and drainage network and facilitate continual improvement of the city's transport network
- that the city's economy prospers, with managed growth that enhances the quality of life, while balancing employment and environmental aims (LMCC 2012a).

3. ESD resources for councils

Until 2011 councils could apply to the Urban Sustainability Support Alliance (USSA) for:

- seed funding, to assist councils to develop local sustainability plans in partnership with their local community
- major project grants, for projects addressing sustainability issues in an integrated manner
- the Urban Waterways Initiative, for projects looking to enhance sustainability in the priority urban catchments (NSW Environmental Trust 2010).

USSA was coordinated by the Local Government and Shires Associations of NSW and funded by the NSW Environmental Trust. This funding finished in 2011, and the Alliance is no longer functioning. However it has produced a number of publications for councils:

- Sustainability Tool Selector: A Guide for Local Government
- Barriers and Drivers to Sustainability in Local Government
- Local Government Sustainability: Professional Development Needs.

The Local Government and Shires Association (LGSA) now offers resources to councils based on knowledge gained from USSA, and including:

- subscriptions to sustainability news
- events and training
- a list of sustainability resources

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- case studies on current sustainability projects (LGSA undated-a).

4. Local government and climate change

A recent statement by the NSW Office of Environment and Heritage on working with other governments “recognises the principal role that Local Government has in responding to climate change impacts” (NSW OEH 2012).

Examples of initiatives by local councils to reduce greenhouse gas emissions include:

- Newcastle City Council’s 20% reduction in greenhouse gas emissions below projected 2008 levels, achieved through a range of community programs, including the *Climate Cam* program
- Melbourne City Council’s reduction in its emissions by 41% between 1996/97 and 2006/07
- Ku-ring-gai Council’s development of a climate change adaptation tool which ranks climate change risk on a local scale, such as local storm events (Pillora 2010).

However council responses to climate change have focused mainly on rising sea levels and flood protection (discussed later in this paper) Management of the coastal zone and flooding has devolved largely to councils through their land use planning responsibilities, and in line with other ESD initiatives commenced at Commonwealth and State levels² (see

² Despite agreement between Commonwealth and State Governments in 2003 to a ‘Cooperative Approach

discussion under ‘Funding of local government’ below and in Briefing Paper 8).

The Lake Macquarie Environmental Sustainability Action Plan (discussed above) includes a target of “[n]o net increase in exposure of Council and the community to risks from climate change” (LMCC 2011b); it too is largely focused on preparing for sea level rise and on flood planning and prevention, including security of infrastructure (LMCC 2011b Section 8 Climate Change Adaptation). The Plan does however outline responses including risk assessments and planning for more frequent storms and bushfire, and a public awareness campaign on risks of heat stress (NCCARF undated).

Newcastle City Council’s strategies for climate change adaptation are contained with its Community Strategic Plan, *Newcastle 2030*, with an emphasis on communication and community awareness. The Community Plan aims to:

- develop and communicate a clear understanding of environmental and climate change risks
- engage the community in risk management processes and ensure transparency in communicating decisions on risk treatment options
- ensure that all actions, decisions and policy response to climate change remains current and reflects capacity, community

to Integrated Coastal Zone Management’ (ICZM), it has been noted that “governance arrangements for the Australian coastal zone have been characterised as complex, highly fragmented, and, at times, inconsistent” (De Sousa et al. 2010).

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expectations and changes in environmental and climate change information (NCC 2011b, Objective 2.3).

Local government planning for flood and sea level rise in the Newcastle and Lake Macquarie areas is discussed in the following sections.

5. Flood management

Overview

Tenants represent a substantial proportion of residents in low-lying areas of Newcastle (45-50% of residents in Carrington and Wickham/Maryville for example). Flood management plans which call into question the future viability of these suburbs, or call for widespread retrofitting of flood refuges to existing housing stock, or raising of houses, have particular significance for the housing security of these groups.

Under the NSW Government Flood Policy (DEH 2011), the management of flood liable land is the responsibility of local government. The State Government subsidises flood mitigation works to alleviate existing problems and provides specialist technical advice to assist councils in the discharge of their floodplain management responsibilities (WMAwater 2011a).

Newcastle City-Wide Floodplain Risk Management Study and Plan

The Newcastle City Council's draft Floodplain Risk Management Plan (BMT WBM 2012) is based on the NSW Government's 2005 *Flood Plain Development Manual*. It provides guidelines for management of flood prone lands and education of the

community their exposure and responses to flood risks.

It includes a scheme to encourage residents to provide a flood refuge, high enough to be free from flooding and which would not collapse during extreme floods. The first stage of the draft Management Plan, a '5 Year Plan', aims for 200 new flood-free refuges to be provided on a voluntary basis by property owners.

The Plan suggests that encouragement and incentives for landowners to construct refuges could relate to "certification" of the refuge. A certification scheme for 'flash flood free' refuges could be linked to the S149 notification process, meaning that if the notification indicates the property has a flood risk, then it should also indicate whether it has a valid flash flood free refuge. The current Newcastle Flood DCP requires an on-site flood refuge where there is a present risk to life.

The draft Plan also proposes a 'shared refuge' scheme similar to "Neighbourhood Watch" whereby properties that have flood free refuge are identified by a window/letterbox sticker or plaque. This could most readily occur in newer developments providing the refuge is accessible from the street.

The Plan recommends that occupants of business, government and residential premises have private flash flood emergency response plans which where practical have evacuation as the preferred initial response.

Some councils already have a subsidy scheme for owners to raise houses to ensure that floor levels are above flood

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levels. Fairfield City Council in the Sydney region operates a house raising scheme which pays up to \$81,000 to residential property owners whose houses are low enough to qualify. Owners can then choose to invest this subsidy into raising the house, or to demolish and rebuild the house at a higher floor level.

The Newcastle Risk Management Plan suggests that in Newcastle, where many houses suitable for raising are located within low-lying suburbs, the long term viability and management of these suburbs needs to be addressed first. With streets currently at a level of about 1m AHD, some Newcastle suburbs will become unlivable with a sea level rise of a metre or so.

A rescue plan for these suburbs would require broadscale filling, which would involve (compulsory) acquisition of many hundreds of properties at great cost. However the draft Plan suggests that voluntary purchase by local government of flood-prone properties could be economically feasible when the potential for damage due to future climate change was taken into account.

The alternative would be to abandon these suburbs allowing them to revert back to swampland, which would result in an economic loss in excess of \$1 billion of existing property value. The Plan recommends that development controls take this into account within the next 10 years.

Other strategies canvassed in the Plan include changes to building materials to reduce damage during flood, which could be undertaken by building owners during renovations “at a relatively

marginal additional cost”. Australian Building Codes are now being modified to make greater provision for flood resilience, especially in the light of the 2010 Brisbane floods.

The Plan notes that other planning instruments and strategies which have the potential to change land use, such as the Lower Hunter Regional strategy, the Newcastle City LEP and other city revitalisation strategies, will also need to take into account the findings of the Risk Management Plan.

Lake Macquarie Flood Studies

To develop its Flood Risk Management Plan, Lake Macquarie City Council commissioned two studies:

- a Waterway Flood Study to determine the nature and extent of the flood problem (WMAwater 2011b)
- a Waterway Flood Risk Management Study to evaluate management options for the floodplain, for both existing and proposed development (WMAwater 2011a).

The studies used the methods required by the NSW Floodplain Development Manual (DEH 2011) and the August 2010 Flood Risk Management Guide (DECCW 2010).

Modelling used predicted sea level rises of 0.4m by the year 2050 and 0.9 metres by the year 2100, based on predictions of the Intergovernmental Panel on Climate Change (IPCC) and the CSIRO Technical Review for Australia. The predicted SLRs, at the time of the studies, formed part of the NSW State Government guidelines, but

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the State Government stated in September 2012 that councils were no longer required to adopt these figures (Higgins 2012) (see section on 'Sea Level Notifications' below, and Briefing Paper 6).

Modelling in the Lake Macquarie flood studies showed significant areas of inundation of residential and commercial properties by the year 2100.

Lake Macquarie City Council response to Flood Studies

The Council's review of the studies (LMCC 2012b) included consultation with residents, community groups, business, and industry. The outcomes of this consultation are to be incorporated into a final *Lake Macquarie Flood Study* and *Lake Macquarie Waterway Risk Management Study and Plan*.

Council has stated that it is working to develop long-term land-use planning and development controls in vulnerable areas (LMCC 2011c). Measures already in use for new developments include minimum floor height requirements, set-backs from the foreshore, adaptable building design, and avoiding intensifying development in low-lying areas:

All properties around the lake foreshore below 3 metres AHD have the potential to be affected, although local factors will be considered in each case (LMCC 2011c).

The Council's policy statement notes that any major changes will involve community collaboration in the development of local Area Adaptation

Plans, before being decided by Council (LMCC 2011c).

Sea Level notifications (S149(5))

As noted in Briefing Paper 6, in September 2012 the NSW State Government responded to pressure from residents about the effect of predicted sea level rises on property values, and withdrew the requirement that sea level rises modelled by the IPCC and CSIRO be used by councils in their flood management plans (Higgins 2012).

Earlier, in July 2012, a NSW Council had already overturned a key part of its coastal management strategy, the issuing of sea level rise notifications attached to Planning Certificates.

S149 Planning Certificates are legal documents issued by Council under the provisions of Section 149 of the Environmental Planning and Assessment Act 1979. Under NSW conveyancing regulations, every contract for the sale of land must have a Section 149 certificate attached to it by the vendor (NCC 2012a). The basic Section 149(2) certificate contains notifications including applicable planning controls, zoning, and complying development on the land. However the full Section 149(2 plus 5) Certificate contains additional notifications about such matters as risk assessment studies, geotechnical reports, and drainage (NCC 2012a).

The Gosford City Council had previously required these notifications to include the exposure of a property to predicted sea level rise in the next 100 years. In deciding not to proceed with the SLR notifications, the Council responded to

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pressure from residents, who claimed that the notifications “had sent property values plummeting and had seen a huge rise in insurance premiums” (Collins 2012).

6. Climate change resources for councils

Climate Change Action Pack

The Climate Change Action Pack developed for the Local Government Association of NSW and the Shires Association of NSW aims to enhance local government understanding of the impact of climate change and assist councils to mitigate and adapt to climate change (NSW OEH 2012).

The Action Pack includes templates and guidelines for developing a climate change action plan, technical references, risk assessment tools and case studies of other councils (LGSA undated-b).

City of Lake Macquarie Sea Level Rise Assessment Tool

The eShorance tool was developed for Lake Macquarie City Council with financial assistance from the NSW Government’s Estuary Management Grants program (LMCC 2010).

It is intended for use by all managers of estuarine shores, to help them understand how the local shoreline may respond to rising sea levels. eShorance estimates the shift in the shoreline from inundation (flooding of the land) and possible erosion (movement of sediment).

(See also guides produced by the Victorian Department of Sustainability and Environment 2012)

7. Funding of local government

As noted above, many of the climate change responses by government and the implementation of ESD objectives have devolved to the local government level, particularly in the area of land use planning. Funding for these responsibilities has been a recurring issue.

Funding from the Federal Government occurs through the *Federal Local Government (Financial Assistance) Act 1995*, and State-based Local Government Grants Commissions. General Purpose Grants to councils under this Act have no requirements on how they are to be spent, but allocations by the State Commissions must comply with the following principles:

- ensure that each council is able to function at a standard not lower than the average standard of other councils
- the policies of individual councils in terms of expenditure and revenue efforts will not affect the grant determination
- the minimum grant for a council is to be not less than the amount to which it would be entitled if 30 per cent of the total amount were allocated on a per capita basis
- other relevant grant support is to be taken into account
- to be allocated by councils in a way which recognises the needs of Aboriginal peoples and Torres Strait Islanders
- for four years after councils are amalgamated, the grant should be the same as the total provided to

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the former bodies (Hyder Consulting 2011: 21).

A 1974 Commonwealth referendum to allow the Australian Government to directly fund local government rather than having to pass the funds through state and territory governments, was defeated (Hyder Consulting 2011). However there is some Federal government funding of councils through direct grants (Hyder Consulting 2011: 19).

Most of the revenue received by councils comes from rates payments by land-owners (especially in cities), sales of goods and services (such as payments for licenses and permits, development contributions, user charges for water and sewerage services, parking, libraries, and other community facilities), and government grants (Ernst and Young 2012).

In 2006 an 'Inter-Governmental Agreement Establishing Principles Guiding Inter-Governmental Relations on Local Government Matters' was developed between the Australian Government, all State and Territory Governments, and the Australian Local Government Association³. It noted that local government "is responsible for more than just roads, rates and rubbish. It plays a critical role in town planning, health and environmental protection, the provision of water and sanitation

services ...as well as the provision of health services and cultural, leisure and sporting facilities. The adequacy of resources available to local government is significantly impacted by cost shifting onto local government" (Australian Government et al. 2006).

The purpose of the Intergovernmental Agreement was to ensure that "when a responsibility is devolved to local government, local government is consulted and the financial and other impacts on local government are taken into account" (Australian Government et al. 2006).

However a 2012 review of local government infrastructure funding noted that there are significant restrictions on income for councils in NSW, where the *Local Government Act 1993* allows the Minister for Local Government to set a limit on the percentage increase in total general income that councils can raise from rates (Ernst and Young 2012: 20; see also McKay and Rauscher 2005).

Shortfalls in local government funding have been noted in several areas including environmental sustainability (McKay and Rauscher 2005), infrastructure (Ernst and Young 2012) and public health services such as environmental monitoring and waste management (NPHP 2002). The funding issues discussed in the example below are canvassed further in Briefing Paper 8.

Infrastructure funding for local councils

In Australia, all three tiers of government share responsibility for publicly provided infrastructure. Local government is required to maintain a

³ The Australian Local Government Association is a federation of state and territory local government associations representing 560 councils. ALGA's President is on the Council of Australian Governments (COAG). The ALGA Board consists of two representatives from each of the member associations and two from the ACT Government (ALGA 2012).

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minimum quantity and quality of infrastructure to fulfil its legislative mandate to local communities (Ernst and Young 2012).

A recent review of local government infrastructure funding noted

[A] range of challenges ... continue to make it extremely hard for councils to meet their obligations to the community. First among these is that more and more is being taken on by the sector, both on its own accord or passed down from other tiers of government. As a result, the infrastructure obligations of most councils continue to grow.

The evidence suggests that there is not enough engagement with local government during the early stages of significant [infrastructure] projects or policy changes. Long-term planning by the sector is unnecessarily complicated by late or partial disclosure of actions which are material to their prioritisation of projects and ultimately their financial position (Ernst and Young 2012).

This report recommended that Federal and state governments commit to completing 'local government impact statements' to support new policy proposals and projects, where there is likely to be a direct cost impact upon local government (Ernst and Young 2012).

It also recommended that the Federal Government consider establishing a financing authority to assist local government in attracting investment:

[T]he mismatch between the relative amount of taxation revenue collected

by local government and its responsibilities to provide services and infrastructure to the community means that it is entirely appropriate for a portion of taxation revenues to be passed down to councils by the Australian, state and territory governments (Ernst and Young 2012: 22).

The review proposed a demonstration project be marketed to private investors, such as a 'waste-to-energy' project, and noted that irrigation projects already underway in Tasmania would be a useful precedent.

The NSW Government has established a Local Infrastructure Renewal Scheme (LIRS) which provides councils with a subsidy towards interest costs to make it affordable for them to take out major bank loans to fund their projects:

This investment in debt funding has been proven to be far less expensive than paying for the long-term recurring maintenance requirements of deteriorating assets (DPC 2012).

LOCAL GOVERNMENT LAND USE PLANNING

8. Overview

Briefing Paper 6 sets out the relationship between planning instruments under the NSW *Environmental Planning and Assessment Act 1979*. These instruments include State Environmental Planning Policies (SEPPs) (prepared by the State Government) and Local Environment Plans (LEPs) (prepared by local councils with some financial assistance from the Government's Planning Reform Fund (DoPI 2011b)).

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An LEP builds on local Community Plans developed by councils, and is generally required to comply with any provisions of State Environmental Planning Policies. LEPs in turn are used by the Council to prepare Development Control Plans against which applications for any development are assessed⁴.

9. Newcastle local government planning

Newcastle Community Strategic Plan

The Newcastle Community Strategic Plan *Newcastle 2030* (NCC 2011b) is the framework for development of planning instruments such as the two local LEPs and the Council's Development Control Plans.

It sets out general objectives for city planning and the environment which are reflected in the current LEPs (see following section), including:

- connectivity through transport and pedestrian networks
- protected and enhanced environment
- vibrant and activated public spaces
- caring and inclusive community
- liveable and distinctive built environment
- smart and innovative city
- open and collaborative leadership (NCC 2011b)

This Strategy is supported by other more specific strategies and plans such

as the *Newcastle City Environment Management Plan* (NCC 2003), *Biodiversity Strategy* (NCC 2006), and *Carbon and Water Management Action Plan* (NCC 2011a).

Newcastle Local Environment Plan 2003

The Newcastle LEP (2003 (updated June 2011)) has the following aims to support sustainability:

- protection of natural and cultural heritage, and the identity and image of the City
- conservation of the natural and built resources of the City and apply the principles of ecologically sustainable development (ESD)
- community wellbeing developed in a socially and environmentally responsible manner
- a diverse and compatible mix of land uses, increased use of public transport and reduced private motor-vehicle dependency
- a diversity of housing types in locations that improve access to employment opportunities, public transport, community and commercial facilities (2003 (updated June 2011)).

Newcastle City Centre Local Environment Plan 2003

In addition to the Newcastle LEP, there is an LEP for Newcastle City Centre (2008), which aims:

- to promote the economic revitalisation of the Newcastle city centre

⁴ Note: SEPPs will be superceded by 'Planning Policies' in the proposed new NSW planning system and LEPs by new 'Local Land Use Plans'. DCPs will be replaced by development guidelines incorporated directly into Local Land Use Plans (refer Briefing Paper 6).

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- to strengthen the regional position of the Newcastle city centre
- to protect the positive characteristics of the city centre, and the quality of life of its local population
- to promote employment, residential, recreational and tourism opportunities within the city centre
- to facilitate the development of building design excellence appropriate to a regional city
- to encourage responsible management, development and conservation of natural and man-made resources
- to protect and enhance the environmentally sensitive areas and natural and cultural heritage
- to help create a mixed use place, with activity during the day and throughout the evening, so the Newcastle city centre is safe, attractive, inclusive and efficient.

This LEP requires development approval to take account of ESD principles including:

- greenhouse gas reduction
- embodied energy in materials and building processes
- building design and orientation
- passive solar design and day lighting
- natural ventilation
- energy efficiency and energy conservation
- water conservation and reuse
- waste minimisation and recycling
- reduction of car dependence
- potential for adaptive reuse (2008).

The LEP does not refer to inter-generational or intra-generational equity under ESD objectives; however in a separate section under the aim of improving “the quality of life and wellbeing of the people of the City of Newcastle” (2003 (updated June 2011)), the LEP states that development should:

- maximise positive social impacts and eliminate or minimise potentially detrimental social impacts
- promote inclusiveness in the provision of access to accommodation, facilities or services (2003 (updated June 2011)).

The LEP also includes provisions for:

- development within the coastal zone in accordance with the NSW Coastal Policy
- development below mean high water mark
- development on flood prone land
- bush fire hazard reduction.

Newcastle City Council Affordable Housing Strategy

In its 2005 *Affordable Housing Strategy* (NCC 2005) Newcastle City Council noted some of the issues for councils in providing affordable housing:

Without more clarity, certainty and legislative protection for Councils on how planning mechanisms can be utilised to deliver affordable housing any action to offer incentives to or place levies or additional requirements on developers is fraught with the potential for legal action (NCC 2005).

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The Council noted that no developer to date had taken advantage of the Council's floor space bonuses to encourage social affordable housing in the City West area (NCC 2005).

The State Government's Affordable Rental Housing SEPP released in 2009 was revised in 2011 to take account of feedback that it needed to work more closely with councils and local communities in promoting affordable housing. It committed to working with councils to develop 'Local Affordable Housing Choice Strategies', which will be implemented through Local Environment Plans (LEPs) (DoPI 2011a) (see Briefing Paper 6 for details).

The impact of the current proposed new NSW planning system (see Briefing Paper 6) on these affordable housing strategies is not yet known.

10. Lake Macquarie local government planning

Lake Macquarie Local Environment Plan 2004

The *Lake Macquarie Local Environment Plan* (2004 (updated July 2012)) is based on the city's *Lifestyle 2020* land use strategy (Lake Macquarie City Council 2009) with its core values of sustainability, equity, efficiency and liveability.

The aims described in the *Lifestyle 2020* strategy are to:

- provide the community with realistic expectations while retaining flexibility for land use decision making

- reinforce and strengthen centres in providing commercial and community services
- provide employment and economic opportunities consistent with the City's natural, locational and community resources
- guide the development of urban communities that are compact, distinct and diverse and include a range of housing types and activities
- achieve a strong sense of positive community identity
- develop an attractive urban setting which reflects the physical and natural environment, and visual character
- manage the City's natural environment so that its ecological functions and biological diversity are conserved and enhanced
- manage the City's heritage and economic resources in a way that protects their value and enhances the City's character
- integrate land use with the efficient provision of public and private movement systems (Lake Macquarie City Council 2009).

A update, *Lifestyle 2030*, is under development for land use planning, urban design and development up to 2030.

LOCAL GOVERNMENT SERVICES

11. Waste Management

The NSW *Local Government Act (1993)* states that the functions of local government include "the provision, management or operation of waste removal, treatment and disposal

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services and facilities” (Hyder Consulting 2011: 27).

The cost of domestic waste management services is to be recovered by a charge separate from land rates, which, like rate increases, is capped by the State Minister for Local Government (Hyder Consulting 2011: 27). All but one of the 152 NSW local governments provides a kerbside garbage collection, 83% also offer recyclables services to residents, and 42% offer a green waste collection (Hyder Consulting 2011: 34).

The NSW Environment Protection Authority⁵ issues waste and sustainability improvement standards to be met by councils. The NSW Waste and Sustainability Improvement Payment (WaSIP) program is a \$256 million program that will run from 2009–2010 to 2015–2016. To be eligible to receive a WaSIP councils are required to commit to meeting WaSIP Standards, which are progressively updated in consultation with local government and Shires Associations.

Ongoing requirements include reporting to the Department of Environment, Climate Change and Water (DECCW) each year under the *National Environment Protection (Used Packaging Materials) Measure*, and providing tonnage data on collected dry recyclables and garden organics and residual domestic waste (Hyder Consulting 2011: 31-32).

⁵ The NSW EPA is an independent authority responsible for leading business and the community to improve their environmental performance and for managing waste to deliver a healthy environment. The EPA uses education, partnerships, licensing and approvals, audit, and enforcement and economic mechanisms, to achieve better environmental outcomes (NSW EPA 2012).

Local government also has a role in litter management, including litter prevention (behavioural change), litter collection and enforcement of local laws on littering (Hyder Consulting 2011: 26).

Waste water (sewerage) services and stormwater drainage in the Newcastle and Lake Macquarie areas are provided by State-owned corporation Hunter Water (see Briefing Paper 6).

12. Transport and pedestrian networks

Public transport is underpinned by local planning decisions at all levels of government (ALGA 2006). State-owned corporations or corporations contracted to the State operate public transport systems (see Briefing Paper 6), but councils own and maintain public transport infrastructure such as bus shelters and interchanges, and maintain local roads. They also fund local area traffic management and bicycle paths (ALGA 2010).

Funding can be provided to a council by the State Government to assist bicycle and pedestrian works, via a Memorandum of Understanding with the NSW Roads and Maritime Services. The MoU includes an agreed management procedure to be followed for all council projects funded by the RTA.

The MOU applies to projects funded under:

- Road Safety Programs
- Cyclist Programs
- Pedestrian and Urban Amenity Programs
- Regional Road Programs REPAIR Programs (RTA 2009).

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Cycling networks

The Australian Bicycle Council's⁶ *National Cycling Strategy* (2011) proposes activities which are largely the responsibility of councils, including:

- develop and implement programs that target road safety and people's perception of the safety of cycling
- ensure that all council land use planning and infrastructure strategy documents take into account active transport needs
- when developing local area cycling action plans, take into account the state and territory plans together with community aspirations, priorities and available resources
- develop end-of-trip facilities, including considering the introduction of regulations, such as planning policies and building standards, to mandate the provision of facilities
- develop local on-road and off-road cycling networks to key destinations in both urban and rural areas that are consistent with national standards
- work with employers to develop cyclist-friendly workplace facilities and projects
- have marketing and education programs that promote the benefits of cycling and encourage people to cycle for short personal trips (Australian Bicycle Council 2011).

⁶ The Australian Bicycle Council is funded by Austroads (the association of Australian and New Zealand road transport and traffic authorities) and the Commonwealth Government (Australian Bicycle Council 2012).

The Australian Bicycle Council's survey of 305 councils in 2011 concluded that:

- councils responding to the survey spent more than \$72 million on bicycle-related programs in 2009-10
- survey participants reported receiving \$26m from Australian government and \$26 m from State governments
- more than two thirds of responding councils either have a bicycle strategy or are working towards one
- there has been a significant increase in the proportion of councils undertaking cycling counts from 12% in 2007 to 21% in 2011
- as at June 2010, councils responding to the survey reported having constructed 11,704km of cycling infrastructure. When their cycle networks are complete the infrastructure will measure 17,842km (Australian Bicycle Council 2011).

Pedestrian networks

Together with the State Government, all local councils in NSW have a responsibility to provide safe, convenient and connected pedestrian routes which will encourage people to walk rather than use their cars (RTA 2002).

NSW Roads and Maritime Services offers financial assistance to local councils to help them develop pedestrian network plans through Pedestrian Access and Mobility Plans (PAMPs) and to help finance the construction of local road crossing

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facilities (DoTRMS 2012). See Briefing Paper 6 for more detail on PAMPS and on Bike Plans.

13. Water

The main responsibility of local government in the Hunter region for water is in monitoring waterways quality, as part of its role in public health and in environmental protection.

The NSW Waterwatch and Lake Macquarie Adopt-a-SQID (Stormwater Quality Improvement Device) programs provide community education and monitoring for waterways, SQIDs, foreshore, and estuary environments. The program is funded by Lake Macquarie City Council and is supported by NSW Landcare, NSW Office of the Environment and Heritage (OEH), and Eraring Energy.

Newcastle City Council conducts a 'Spring Water Bug Survey' with community assistance to assess the health of 150 kilometres of natural waterways in the Newcastle area (NCC 2012b).

Drinking water in the Newcastle and Lake Macquarie areas is monitored by state-owned corporation Hunter Water (see Briefing Paper 6).

14. Electricity

In 1993, under the *Electricity (Amendment) Act* county councils which had responsibility for electricity supply were dissolved and Shortland County Council in the Hunter region was replaced by a state-owned corporation, Orion Energy. In 1996, the Orion Energy merged with Sydney Electricity

to become EnergyAustralia, now Ausgrid (IEEE 2007).

Ausgrid is the distribution network operator for the Hunter, Central Coast and Sydney areas. Its environmental goals include:

- meet the requirements of environmental laws, policies
- consider the environmental consequences of business decisions
- act prudently where environmental risks are uncertain
- use resources more efficiently minimise waste generation and water usage;
- minimise Ausgrid's energy use, and support customers in reducing the greenhouse impact from their use of energy
- comply with Commonwealth and State renewable energy, energy efficiency and greenhouse gas reduction schemes while supporting a national approach to reducing the impact of climate change (Ausgrid 2012a).

While the NSW Department of Planning conducts most environmental assessments of electricity network proposals (see Briefing Paper 6), a limited number of proposals under the *Environmental Planning and Assessment Act 1979* are assessed by local councils (Ausgrid 2012b).

LOCAL GOVERNMENT INCENTIVE PROGRAMS

15. Incentives for landlords

Sustainable Building Advisory Service, Newcastle

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The City of Newcastle, in partnership with Archicentre, offers a free green building advisory service to provide residents with environmental advice at the initial design stage of residential developments. The Sustainable Building Advisory Service (SBAS) is available to all Newcastle residents considering home improvements, changes and construction (NCC 2012c).

16. Incentives for communities

Incentives for recycling

The RecyclingNearYou website (www.recyclingnearyou.com.au) is an Australia-wide joint initiative of Sensis (an online directory provider) and the not-for-profit organisation PlanetArk to provide householders with local information about recycling and drop-off locations for recyclable goods. The website relies on councils providing accurate up to date information on services (Hyder Consulting 2011).

Randwick City Council in Sydney has partnered with community organisation GreenMoney to trial a recycling rewards program involving up to 10,000 households (Randwick City Council 2012). Rewards for recycling can be redeemed at local shops (GreenMoney 2012).

Lake Macquarie City Council Sustainable Neighbourhoods Program

Lake Macquarie Council's Sustainable Neighbourhoods Program (LMCC 2011d) provides support to communities to reduce their ecological footprint, protect the natural environment, and increase community wellbeing and pride in their local area.

Council assists with development of Sustainable Neighbourhood Action Plans, community engagement, grant applications, and promotion of activities (LMCC 2011d).

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