

Existing Use Rights

Can I continue to operate my business under the new LEP?

*Our Place...
Our Future*

This fact sheet has been prepared to assist landowners or business operators potentially affected by land zoning changes in the draft Lithgow Local Environmental Plan (LEP) 2013 to understand how those zoning changes may affect the continued operation of their business or use of their land. This fact sheet will also provide an explanation of the term "existing use rights", and provide a general overview of its application under the new LEP.

What are 'Existing Use Rights'?

A land use that has lawfully commenced with consent may become a prohibited use due to changes in planning legislation; such as the changes that may occur under a new LEP. This land use is then said to operate under "Existing Use Rights" and is known as an existing use.

Where this occurs, the Environmental Planning and Assessment Act 1979 (the Act) and Environmental Planning and Assessment Regulations 2000 allow previous land use rights to continue to operate on the land.

How do I know if a land use is permissible or prohibited?

You can check whether a land use will be permissible in the new zone under draft Lithgow LEP 2013 by:

1. First establishing what the zoning of your land is under the draft Lithgow LEP 2013, by referring to the land zoning maps available on line at www.lithgow.com/lep. Referring to Part 2 of the draft Lithgow LEP 2013 which lists the land uses that are permitted without consent, permitted with consent or are prohibited within a particular zone; or
2. Referring to the **Land Use Matrix** which is a tool used to develop the land use tables referred to above. The land use matrix is available on line at www.lithgow.com/lep.

Why may my land use now be prohibited?

It is important to understand that the Draft Lithgow LEP 2013, may propose to make a previously permissible land use prohibited in a new zone. This is due to a number of reasons, including the introduction of new land use zones and definitions under the standard instrument and further

review of appropriate uses for certain zones in order to meet desired objectives and to retain and develop character and amenity.

The approach adopted by Council in the formulation of the land use tables under the draft Lithgow LEP 2013, is to allow land use to be regulated to ensure that only development compatible with both the existing and future desired character of the zone are able to be considered by Council. Those uses that are not considered appropriate in a particular zone may therefore be prohibited under the new LEP.

Am I allowed to continue my use?

As long as you are operating a lawful existing use, you can continue to operate without the need for further approval to be obtained from Council, provided that the nature of the use remains the same as that which existed prior to the new LEP coming into force.

If you are conducting an existing use on a property, and wish to undertake any of the following, prior development consent from Council will be required.

1. Any alteration or extension to, or rebuilding of, a building or work; or
2. Any enlargement, expansion or intensification of the use.

Note: However, an existing use must not be changed unless that change:

- a. involves only alterations or additions that are minor in nature;
- b. does not involve an increase of more than 10% in the floor space of the premises associated with the existing use;
- c. does not involve the rebuilding of the premises associated with the existing use; and
- d. does not involve a significant intensification of that existing use.

Can existing use rights lapse?

Yes. If an existing use on affected land ceases for more than 12 months, it is considered that the existing use may have been abandoned, and the existing use rights may no longer apply.

What should you do if you intend to rely on existing use rights?

You do not need to do anything to secure an existing use. However, you should be aware that evidence may be needed to demonstrate the existence of an existing use if issues of compliance arise, you wish to expand the use, or you are required to prove that the existing use right has not been abandoned. Documentation may include:

- The development consent (if consent was required) or evidence that shows that the land use was lawfully occurring at the time the new LEP came into force,
- Records of activity relating to land that relies on existing/continuing use rights, such as receipts relating to operations on the affected property and written records of activities undertaken on, or in relation to, the affected property.

Note: While Council Staff can assist where possible, the onus of establishing existing use rights or demonstrating that the existing use has not been abandoned is on the applicant. Applicants may need to seek their own legal or planning advice with regard to establishing existing use rights.

For information

Further information on this or any other aspect of Draft LEP 2013 can be obtained:

- Online at www.lithgow.com/lep/; or
- By contacting a Council Planner on 0263549906 or 0263549920; or
- Emailing lep@lithgow.nsw.gov.au

Please note: this document has been prepared to assist you in understanding the Draft Lithgow LEP 2013 and should not be relied on in preparing a formal submission. Any submission should be based on the formal exhibition material and documents exhibited at Council's Administration Centre, town libraries or online at www.lithgow.com/lep/.