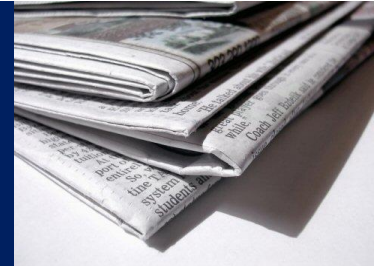




## Unapproved Sites



Edition: 20<sup>th</sup> January 2012

I have recently been shocked about the lack of knowledge in our industry concerning the outcomes of unapproved buildings.

In Australia, the two most important factors associated with property are:

- A) Ownership
- B) Usage

Plenty is written and spoken about in relation to the ownership of property. Very little is considered outside the legal fraternity as important in relation to usage. The laws of New South Wales and other states are established to define and regulate the use of your property.

Under the Environmental Planning and Assessment Act 1979 (EPAA), the development of Environmental Planning Policies is regulated. The State government can outline Environmental Planning Policies. Local councils produce what is known as a Local Environmental Planning Policy, more commonly referred to as a L.E.P. The council also produces a document under this called a District Control Plan (D.C.P.).

All of these policies are amalgamated and are referred to as zoning. Each lot in New South Wales is therefore allotted a zoning, which ultimately defines what that property can be used for.

This is often important for developers who want to redevelop the land. To ensure a return on investment, a developer will want to know what the land can be used for. For example, a developer wants to ensure he can build a strata complex where he can sell the apartments for profit, before he buys the block of land to build the complex.

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This is also important for people who are buying businesses or leasing businesses. No business in New South Wales can be conducted without a development approval. When doing a due diligence on a lease or a business for a client, the first thing Leverage would do is to check that the premises that they are buying will permit the business they wish to run.

There are a number of people in New South Wales who have converted garages to granny flats. These granny flats are not development approved and are being leased out to tenants.

What happens if the council find out about these non-approved sites? The powers of each local council under the EPAA are clear!

- Under section 121B of the EPAA, the local council can issue a notice to a land holder requiring them to rectify the DA approved site. That is, it is a 21 day notice requiring them to stop using the site without development approval.
- After the 21 days has expired, the local council under the EPAA can effectively seek orders to close down the use of that premises.
- The local council can also seek fines up to a million dollars.

If you are a serious real estate or business agent, you need to be well aware of the zoning of each of the properties you are selling or leasing. All of this information is contained in the section 149 Certificate under the Environmental Planning and Assessment Act 1979. Before you sell or lease, your office should have a section 149 to review before proceeding.

***Cheers,  
Bailey Compton  
and the team at ACP/Leverage!***



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