

Information Sheet No. 1-4

Overview of the performance based development assessment process

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What is performance based assessment?

The assessment of composting facility *development applications* is undertaken in accordance with the provisions of the Environmental Planning and Assessment Act (1979).

Composting facility development proposals will fall into a number of possible categories under this Act, and may be:

- Local development (refer s. 76A ss. 4);
- Advertised development (refer s. 79A);
- Integrated development (refer s. 90-93B).
- Designated development (refer s. 77A-79 and Schedule 3 of EP&A Regulation, 2000).
- State significant development (refer s. 88-89A).

These different categories result in different assessment processes, particularly related to different levels of public advertising and appeal rights.

However, they also affect which level of government has the decision-making responsibility and the degree of scrutiny and review by other State Government authorities such as the Environment Protection Authority (Inner Sydney Waste Board, 2000).

In general, almost all commercial composting developments require a development application be prepared and *development consent* be obtained before any developments can proceed.

In some cases, composting developments may contravene a local *environmental planning instrument* (e.g. a *local environmental plan, LEP*).

A LEP is a legally binding policy document which sets out a strategic planning framework for a part of, or for an entire local council area. These documents are made under the Environmental Planning and Assessment Act (1979).

The purpose of an LEP is to:

- define zonings, permissible land uses and control development;
- reserve land for public purposes;
- control advertisements; and
- provide for the protection of trees, vegetation, native animals and plants (Farrier *et al.*, 1999).

Where a proposed composting facility contravenes a LEP, rezoning of an area may need to be performed. The likelihood of achieving this will depend on the nature of the development and the strategic planning goals a local council has for a particular area.

The performance based development process assesses proposals based on their likely impact — sometimes referred to as *Environmental Impact Assessment (EIA)*. The suitability of a particular proposal is judged not on arbitrary and inflexible legal definitions, but rather on the anticipated impact the development will have on its built and natural environment and the amenity of its neighbours (Inner Sydney Waste Board, 2000).

Figure 1. Assessment procedure for development applications according to Part 4 of the Environmental Planning and Assessment Act (1979) (EP&A Act), and relevant sections of the Environmental Planning and Assessment Regulation (2000) (EP&A Reg.) and Protection of the Environment Operations Act (1997) (POEO Act). References are made to relevant sections of the legislation of the flow chart. Sections quoted are from the EP&A Act (1979) unless otherwise stated.

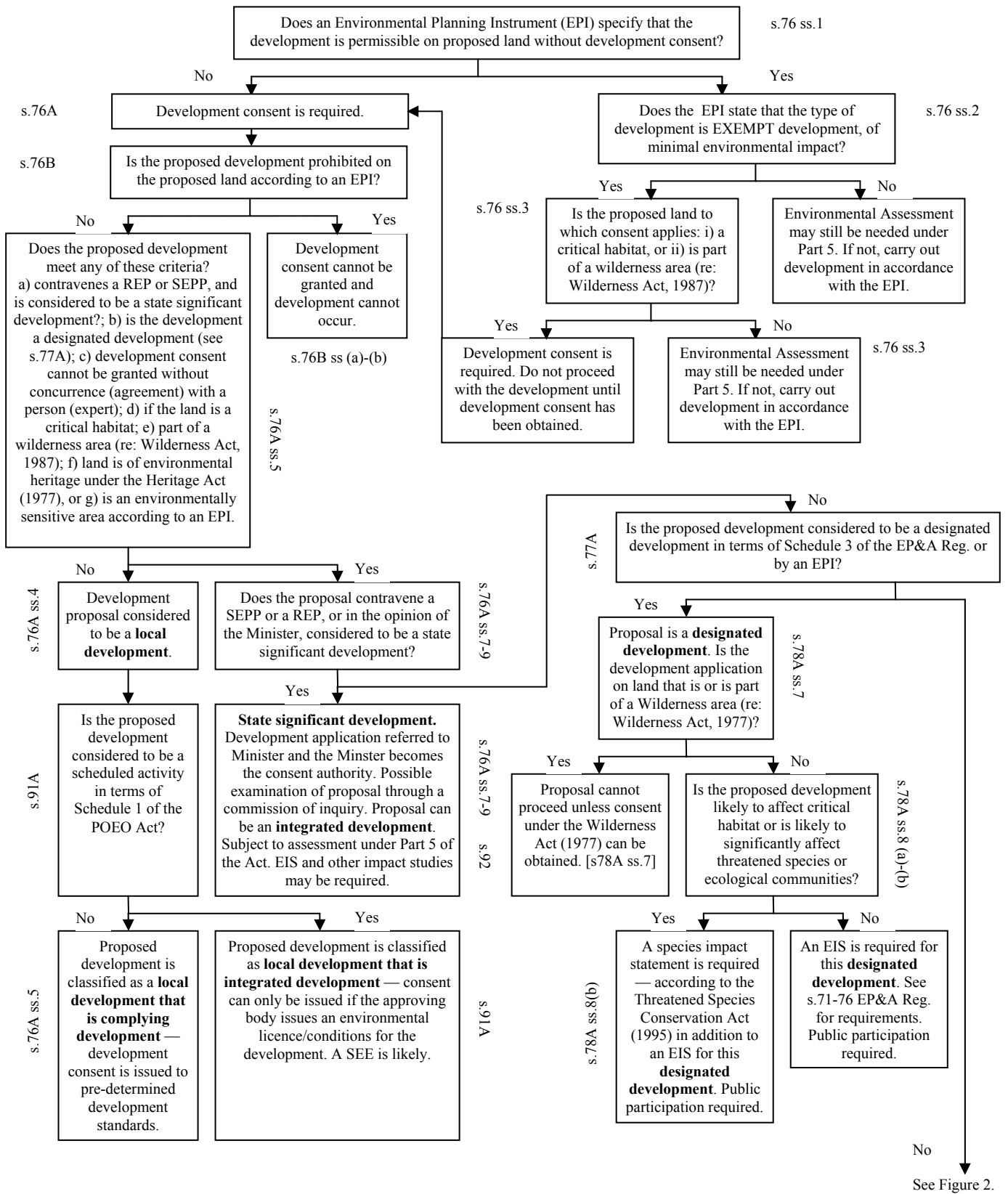
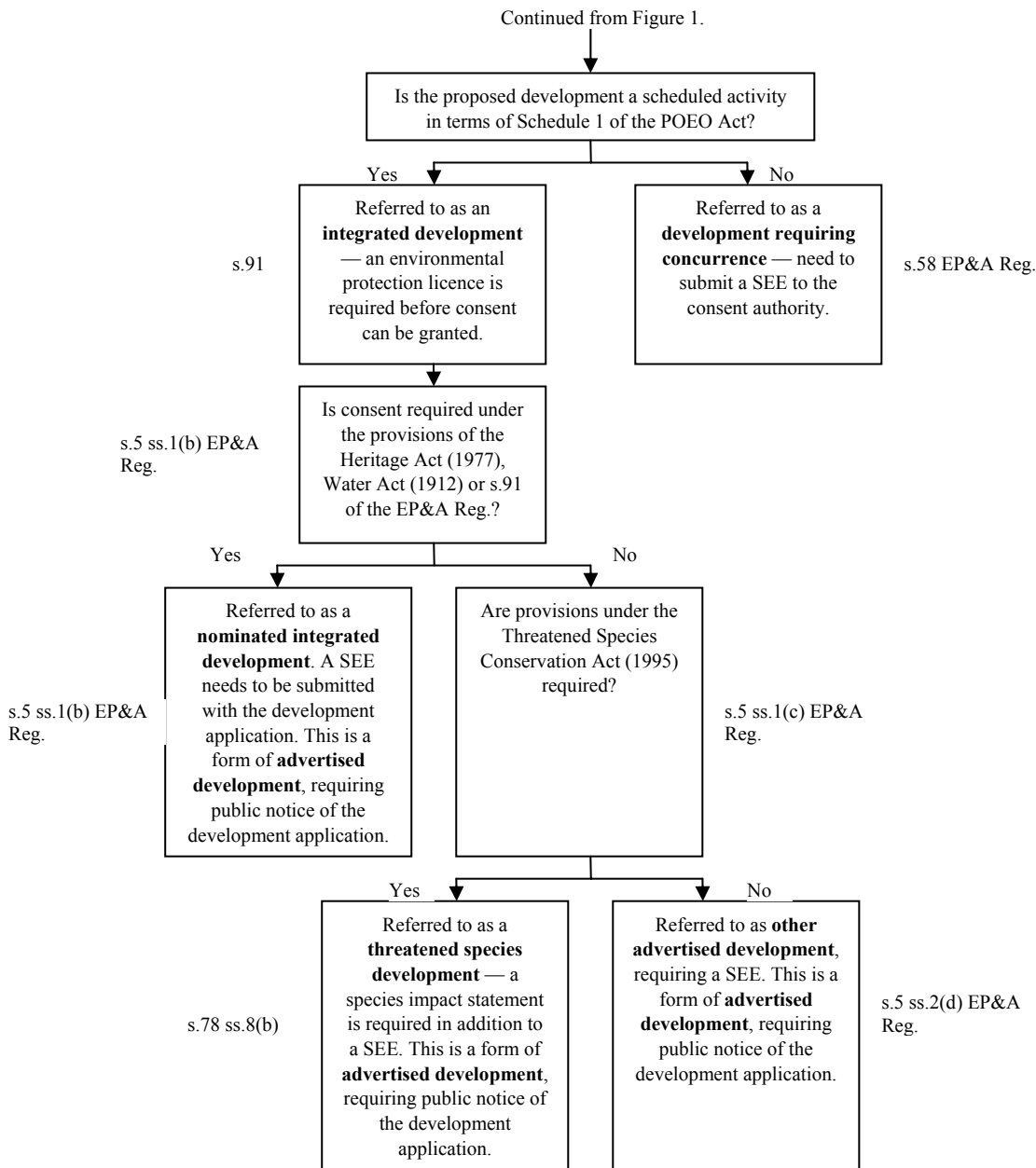


Figure 2. Continued from Figure 1. Assessment procedure for development applications according to Part 4 of the Environmental Planning and Assessment Act (1979) (EP&A Act), and relevant sections of the Environmental Planning and Assessment Regulation (2000) (EP&A Reg.) and Protection of the Environment Operations Act (1997) (POEO Act). References are made to relevant sections of the legislation of the flow chart. Sections quoted are from the EP&A Act (1979) unless otherwise stated.



An overview of the performance based assessment process for development applications is shown in Figures 1 and 2.

Public participation in the development assessment process

A number of different development proposals identified in Figures 1 and 2 allow for public participation in the

approvals process under Part 4 of the Environmental Assessment and Planning Act (1979).

All development proposals requiring consent, regardless of whether they are considered to be *designated developments* or not, can be advertised in the public domain by the *consenting authority* to receive feedback from the community.

Such an approach is taken particularly for designated developments, advertised developments, and other notifiable developments.

The conditions upon which a development is classified as a designated development are shown in Table 1.

Table 1. Extract from Schedule 3 of the Environmental Planning and Assessment Regulation (2000). Proposals that meet any of the conditions listed (or in an environmental planning instrument) are referred to as designated developments and require the preparation of an EIS (and other environmental impact studies if required) for the development application to be assessed.

Conditions That Deem a Proposal a Designated Development	
1.	Process more than 5,000 tonnes per year of organic materials, or
2.	Are located: <ul style="list-style-type: none"> (i) in or within 100 metres of a natural waterbody, wetland, coastal dune field or environmentally sensitive area, or (ii) in an area of high watertable, highly permeable soils, acid sulphate, sodic or saline soils, or (iii) within a drinking water catchment, or (iv) within a catchment of an estuary where the entrance to the sea is intermittently open, or (v) on a floodplain, or (vi) within 500 metres of a residential zone or 250 metres of a dwelling not associated with the development and, in the opinion of the consent authority, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood by reason of noise, visual impacts, air pollution (including odour, smoke, fumes or dust), vermin or traffic.

A consent authority is permitted under the Environmental Planning and Assessment Act (1979) to allow public access to the development application and accompanying documents (e.g. an *Environmental Impact Statement [EIS]*, *Statement of Environment Effects [SEE]* and other environmental impact assessment documents).

Notification of the public with regard to the submission of such development applications is done by advertising in a local newspaper.

Evaluation and determination of a development application

In evaluating a development application, the consent authority takes into consideration the following matters as are of relevance to the development application:

(a) the provisions of:

- any environmental planning instrument;
- any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority;
- any *development control plan*; and
- the regulations that apply to the land to which the development application relates.

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

(b) The suitability of the site for the development.

Definitions

Development Application¹

An application for consent under Part 4 of the Environmental Planning and Assessment Act (1979) to carry out development but does not include an application for a complying development certificate.

Development Consent¹

Means consent under Part 4 of the Environmental Planning and Assessment Act (1979) to carry out development and includes, unless expressly excluded, a complying development certificate.

Environmental Planning Instrument¹

Means a State Environmental Planning Policy (SEPP), a Regional Environmental Plan (REP), or a Local Environmental Plan (LEP), and except where otherwise expressly provided by the Environmental Planning and Assessment Act (1979), includes a deemed environmental planning instrument.

Local Environmental Plan (LEP)²

A policy document which sets out a strategic planning framework for a part of, or for an entire local government area. A LEP identifies zones land that comprises critical habitat; land in a conservation area; and land of environmental heritage. A LEP also contains zoning for permissible development, and identifies developments that may be carried out within the zone without the need for development consent.

Environmental Impact Assessment (EIA)³

The critical appraisal of the likely effects of a policy, plan, program, project, or activity, on the environment. To assist the decision making authority, assessments are carried out independently of the proponent, who may have prepared an EIS (or other document). The decision making authority might be a level of government (local, state or federal) or a government agency (at local, state or federal level).

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(c) Any submissions made in

accordance with this Act or the regulations.

- (d) The public interest (Environmental Planning and Assessment Act, 1979).

Following the evaluation of the development application by the consent authority, the consent authority determines the development application by:

- (a) granting consent to the application, either unconditionally or subject to conditions, or
(b) refusing consent to the application.

Proponents have the right to appeal decisions made by the consent authority under section 93B of the Environmental Planning and Assessment Act (1979).

The next Information Sheet (Information Sheet No. 1-5) reviews the consultation process that proponents of composting facilities need to go through to determine the content of their development applications and required EIA studies.

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Designated Development⁴

Developments that involve heavy industry with high pollution potential. Designated developments require the submission of an environmental impact statement and approval before consent can be granted. A list of designated developments can be found in Schedule 3 of the Environmental Planning and Assessment Regulation Act (2000).

Environmental Impact Statement (EIS)³

A document, prepared by the proponent, describing a proposed activity or development and identifying the possible, probably, or certain effects of the proposal on the environment; examining the alternatives to the proposal; setting out the mitigation measures to be adopted; proposing a program of environmental management; provisions for monitoring; auditing plans for decommissioning and rehabilitation.

Statement of Environmental Effects (SEE)²

A document whose purpose is to specify: the environmental impacts of development; how the environmental impacts of the development have been identified; and the steps to be taken to protect the environment or to lessen the expected harm to the environment.

Development Control Plan (DCP)¹

Documents prepared by local council to provide more detailed provisions than are contained in a local environmental plan or a draft local environmental plan in respect of a part or parts of the land to which that plan or draft plan applies.

¹Environmental Planning and Assessment Act (1979).

²Environmental Planning and Assessment Regulation (2000).

³Gilpin (1995).

⁴Farrier *et al.* (1999).

Important references

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Produced by:

Recycled Organics Unit
PO Box 6267
The University of New South Wales
Sydney Australia 1466

Online contact details:

ROU Angus Campbell

Internet www.recycledorganics.com

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