

## CONTROLS OVER THE USE OF LAND

Much as we would like to have the freedom to do with our land just whatever we would like, society has set up a system that prevents us from doing this. We are controlled in the ways we use our land, just as we are controlled in the ways we use highways, beaches, shopping centres, parks or footpaths. We are controlled in how we own or rent land, how we subdivide it, what we can grow on it, what we can take from it and, most of all, what we can use it for.

The control of the use of land is accomplished in many ways, some of which many people are not aware of. However, some controls are well known, and are occasionally the cause of some annoyance to some people. Yet these controls are generally in society's interest, even if that is sometimes contrary to the landowner's desires.

The basic control over land is the system of **land tenure and ownership**. The State, as the theoretical original owner of land, has created various forms of land tenure. There are more than twenty of these, but most people deal only with a very few of them. In Esk Shire we mostly deal with freehold land, although some people lease land from the State.

There is a rigid system of registration of ownership of land, operated by the State government. Under that system, our land is something owned, and able to be included in our estate. Thus, it passes to our heirs at death. Legal systems are in place to record such changes. Or we can sell the land, and there are systems in place to record the change. We can encumber the land with easements or leases, and there are systems for recording those encumbrances.

Various **State laws** govern various aspects of land usage, most of them restrictive rather than promotional. For example, laws relating to environmental protection restrict the extent to which we can clear vegetation from the land, or take water from streams, or allow pest plants to grow or undertake mining as well.

Local governments are empowered by State legislation to create **local laws** to control certain aspects of the use of land, such as extractive industries, driveway access, keeping of pets, control of pest plants, and so on. However, local laws cannot control development.

Any use of land that involves what is classed as development is controlled by a local government's **planning scheme**. This is a document that the *Integrated Planning Act* requires local governments to prepare to guide and control development within the local government's area. It has the force of law, and there are penalties for carrying out development other than in accordance with the planning scheme.

Development includes those things referred to in the hyperlink titled [How the \*Integrated Planning Act\* controls development](#).

Esk Shire Council is in the process of preparing a new planning scheme and expects to have it available shortly for inspection and comment by the people of the Shire. After public consultation Council will amend it, if necessary, then formally adopt it.

Refer also to the following related topics:

[How the \*Integrated Planning Act\* controls development](#)  
[Why Do We Need a New Planning Scheme?](#)  
[What the New Planning Scheme Aims to Achieve](#)  
[The Shire Structure Plan](#)