These Fact Sheets are a guide only and are no substitute for legal advice. To request free initial legal advice on an environmental or planning law issue, please visit our website or call our Environmental Law Advice Line. Your request will be allocated to one of our solicitors who will call you back, usually within a few days of your call.

Sydney: 02 9262 6989
Northern Rivers: 1800 626 239
Rest of NSW: 1800 626 239

Overview

There are three main elements to the legislative scheme which regulates planning and development in NSW.

These are:

- the Environmental Planning and Assessment Act 1979 (NSW) (EP&A Act), which sets out the major concepts and principles, including Part 4 which deals with development applications,

- the Environmental Planning and Assessment Regulation 2000 (NSW) (EP&A Regulation), which contains many of the details for the various processes set out under the Act, and

- environmental planning instruments (EPIs), i.e. LEPs and SEPPs, which set out when development consent is required, and which often nominate the consent authority for specific types of development. For more information, see our LEPs and SEPPs Fact Sheet.

Under this legislative scheme, development proposals can fall into one of three categories:

- Part 4 development proposals: these are dealt with through the development application process, which is the focus of this Fact Sheet.

- State significant development (SSD) or State significant infrastructure (SSI) projects under Part 4 Division 4.1 or Part 5.1 of the EP&A Act: major projects

1 http://www.edonsw.org.au/legal_advice
of State or regional significance: see our State Significant Development and State Significant Infrastructure Fact Sheets. For information on the now repealed Part 3A see our Part 3A Major Approvals Fact Sheets.

- **Part 5 environmental assessment**: covers activities requiring environmental assessment which does not fall under Part 4 or Part 4 Division 4.1 or Part 5.1.

This Fact Sheet explains the process for regulating development through the development application and development consent process under Part 4 of the EP&A Act. It also briefly describes the environmental assessment process of Part 5.

Development for major government projects, such as for infrastructure (SSI) and State significant development (SSD) is also regulated under the EP&A Act, but is not dealt with in this Fact Sheet. For more information about SSD and SSI projects, see our State Significant Development and State Significant Infrastructure Fact Sheets. For more information about how existing Part 3A projects are assessed, see our Part 3a Major Approvals Fact Sheets.

The Land and Environment Court hears appeals against development consents and enforcement cases under the EP&A Act. For information on the Court, see our Land and Environment Court Fact Sheet.

**Who is responsible for the Environmental Planning and Assessment Act 1979 (NSW)?**

The NSW Planning Minister is ultimately responsible for the EP&A Act, with assistance from the NSW Department of Planning and Environment.

In many cases, however, the EP&A Act delegates responsibility to local councils to make decisions regarding individual developments. In some cases the EP&A Act along with the Planning Minister’s instrument of delegation also delegates responsibility to the Planning Assessment Commission (PAC) or a Joint Regional Planning Panel (JRPP), e.g. SSD applications.

**When is consent required?**

All development will fall into one of the following three categories:

- development that does not need consent;
- development that needs consent;
- development that is prohibited.

In order to find out which of these categories a development falls into, you need to look at the relevant environmental planning instrument (EPI).

There are two types of EPI - local environmental plans (LEPs) and State Environmental Planning Policies (SEPPs). It's important to note that a SEPP can override a LEP so even if development is prohibited under a LEP, a SEPP may allow the development to proceed in certain circumstances. For more information on EPIs, see our LEPs and SEPPs Fact Sheet.
Development that does not need consent

An EPI can allow specific types of development to be carried out without development consent. These will usually be minor, low-impact, or routine forms of development that are typical of what already exists in the area (e.g. farming in an agricultural zone).

However, even if a development does not need development consent, it may still need other forms of approval, such as:

- a construction certificate; or
- an occupation certificate for a residential building.

The development is also likely to need to undergo an environmental assessment such as a review of environmental factors or an environmental impact statement unless it is a major project or exempt development. See below for more information on exempt development.

To find out whether a particular development needs consent, you should look first at the zoning tables in the LEP that applies to the land. For example, several zones in the *Standard Instrument – Principal LEP* allow home occupations to be carried out without consent.

In addition to the zoning tables, you should also look to see whether there are any specific provisions in the LEP that exempt certain types of development from the need to obtain development consent.

**Exempt development**

An EPI can also ‘exempt’ particular types of development from the need for development consent. This is known as ‘exempt development’.

Unlike development which is ‘permitted without consent’, exempt development does not need to undergo any environmental assessment.

An EPI which allows for exempt development can provide that these developments must also meet certain standards (e.g. maximum height standards) in order to be carried out as exempt development.

SEPPs can also specify categories of exempt development, with the main SEPPs being:

---

2 *Environmental Planning and Assessment Act 1979* (NSW), s. 76(1).
3 *Environmental Planning and Assessment Act 1979* (NSW), Part 5.
4 See our Fact Sheets on [SSD and SSI](#) or [Part 3A](#).
5 *Standard Instrument – Principal Local Environmental Plan*, Land Use Table.
6 For example, clause 5.11 of the Sutherland Shire LEP 2006 allows a public authority to carry out maintenance dredging in tidal waterways without consent, despite consent being required in the zoning tables.
7 *Environmental Planning and Assessment Act 1979* (NSW), s. 76(2).
8 *Environmental Planning and Assessment Act 1979* (NSW), s. 76(3)(b).
9 For example, the Sutherland Shire LEP allows cabanas and gazebos which will be less than 10m², and which will not exceed 4 metres in height, to be built as exempt development, thus avoiding the need for development consent. See: *Sutherland Shire LEP 2006*, cl. 12, Sch. 2 ‘Cabanas or gazebos’.
- **SEPP 4 - Development Without Consent and Miscellaneous Exempt and Complying Development** which declares certain types of development to be exempt development, such as minor subdivision (e.g. boundary adjustments), minor alterations to a building, filming, rainwater tanks and satellite TV dishes. These developments can proceed without development consent, despite what might be required under the relevant LEP.

- **SEPP (Infrastructure) 2007** which declares certain types of development which are carried out by or on behalf of public authorities to be exempt development.

- **SEPP (Exempt and Complying Development Codes) 2008** which contains a list of exempt (and complying) development and the development standards that apply.

Read our Fact Sheets for more information about LEPs and SEPPs.

Exempt development cannot be carried out on:

- critical habitat;
- land that is or is part of a wilderness area.

**NSW Housing Code 2008 and exempt development**

The NSW Housing Code provides for many aspects of minor alterations and modifications to residential development to be processed as exempt development. The Code also contains a complying development code for housing. See below for more information on complying development.

One of the main purposes of the Code is to standardise exempt and complying development codes for housing development across NSW.

**Development by public authorities**

Many activities carried out by public authorities don't require development consent. The LEP might not require consent, or the public authority might be allowed to carry out the development without consent under SEPP (Infrastructure) 2007. The aim of this SEPP is to facilitate the delivery of infrastructure across NSW.

Accordingly, SEPP (Infrastructure) 2007 identifies an extensive list of infrastructure projects which public authorities can carry out without consent, such as developments for air transport facilities, correctional facilities, educational establishments, electricity transmission and distribution networks, gas pipelines and telecommunications facilities.

---

10 *State Environmental Planning Policy* 4, cls. 5A-12, 14-17.
11 *State Environmental Planning Policy (Infrastructure) 2007*, cls. 20-20A; Sch. 1.
12 *Environmental Planning and Assessment Act 1979* (NSW), s. 76(3).
13 The NSW Housing Code has been introduced through the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. For more information, visit the [Planning Department’s website on the NSW Housing Code](http://www.planning.nsw.gov.au/).
Note however, that these developments will still need to undergo an environmental assessment\(^\text{14}\) (unless they are exempt development).

**SEPP (State and Regional Development) 2011** also identifies a list of projects which can be carried out by or on behalf of public authorities without consent. These projects are called State significant infrastructure (SSI), and include rail infrastructure, port facilities, and water treatment facilities with high investment values.\(^\text{15}\) The Minister for Planning may declare an infrastructure project to be Critical SSI (CSSI) if the Minister believes that the infrastructure is essential for the State for economic, environmental or social reasons.\(^\text{16}\) If a project is declared SSI or CSSI, it will not be subject to range of additional environmental approvals,\(^\text{17}\) while other approvals must be granted consistently with the CSSI approval.\(^\text{18}\) For more information on SSI, read our [SSD and SSI Fact Sheets](#).

**Development that needs consent**

EPIs (LEPs and SEPPs) set out when development consent is needed for a particular development.

If an EPI says that development consent is required, a person must not carry out the development unless they:\(^\text{19}\)

- have obtained such a consent; and
- carry out the development in accordance with the consent and with any additional provisions in the LEP or SEPP.

A simpler and faster alternative to obtaining development consent is for the developer to obtain a complying development certificate. This can only be done in certain circumstances. See below for more information.

Development consents are issued by the consent authority. This will often be the local council or a **Joint Regional Planning Panel**. However a SEPP can specify a different consent authority, which will often be the Minister for Planning, or the Planning Assessment Commission (PAC) if the Minister has delegated that role to the PAC.

**LEPs indicate what types of development need consent**

To find out if development needs consent, you should look first at the zoning tables in the relevant LEP. Each zone will contain a heading which specifies what type of development is permitted with consent.

**SEPPs can override LEPs**

A SEPP can also specify when development consent is required, and this can override the provisions of a LEP.

---

\(^{14}\) Under the *Environmental Planning and Assessment Act 1979* (NSW), Part 5.
\(^{15}\) State Environmental Planning Policy (State and Regional Development) 2011, Sch. 3.
\(^{16}\) *Environmental Planning and Assessment Act 1979* (NSW), s. 115V.
\(^{17}\) *Environmental Planning and Assessment Act 1979* (NSW), s. 115ZH.
\(^{18}\) *Environmental Planning and Assessment Act 1979* (NSW), s. 76A.
For example:

- **SEPP 14 - Coastal Wetlands** requires all developments on mapped coastal wetlands which will clear, drain or fill the wetland to have development consent;

- **SEPP 62 - Sustainable Aquaculture** requires pond-based and tank-based aquaculture to have development consent; and

- **SEPP 26 - Littoral Rainforests** requires developments on mapped littoral rainforests to have development consent.

**Complying development can replace need for development consent**

Some types of minor development which would usually need development consent can be approved by a complying development certificate instead.\(^{20}\) This provides a faster and simpler alternative for minor developments to be approved (10 days),\(^{21}\) compared to the process for obtaining development consent. A complying development certificate is issued by council or by a private accredited certifier.\(^{22}\)

To find out whether a particular development is categorised as complying development, you will need to look at:

- the relevant LEP which will set out what is complying development in that local government area;\(^ {23}\) and

- any relevant SEPPs (see below).

SEPPs can declare certain things to be complying development, with the two main SEPPs being:

- **SEPP 4 - Development Without Consent and Miscellaneous Exempt and Complying Development**; and

- **SEPP (Exempt and Complying Development Codes) 2008**.

See **Exempt development** above for more information on these SEPPs.

**The NSW Housing Code**

The NSW Department of Planning and Environment’s Housing Code aims for faster home approvals for those proposals in compliance with the Code. For more information, visit the [NSW Housing Code website](#).

**Prohibited development**

**EPIs can prohibit development**

A LEP can specify the types of development which are prohibited in any given zone.\(^ {24}\)

---

\(^{20}\) *Environmental Planning and Assessment Act 1979 (NSW)*, s. 76A(2)(b).

\(^{21}\) *Environmental Planning and Assessment Regulation 2000 (NSW)*, cl. 130AA.

\(^{22}\) *Environmental Planning and Assessment Act 1979 (NSW)*, s. 85A(1).

\(^{23}\) *Environmental Planning and Assessment Act 1979 (NSW)*, s. 76A(5).
Prohibited development will therefore vary from zone to zone, and between local government areas, depending on the LEP. However, the Standard LEP aims to bring local government areas in line, and some zones in the land use table contain developments that are prohibited.25

If a LEP says that a certain type of development is prohibited in a zone, this will usually mean that the consent authority cannot approve that kind of development in that zone (unless an exception applies – see below).

SEPPs can also prohibit development, and can override a LEP which permits that type of development.26 For example, SEPP 50 - Canal Estate Development prohibits canal estate developments from being built anywhere in NSW, regardless of whether they are permitted under a LEP.27

A person must not carry out development on land if it is prohibited.28 A council can give an order to a person who is using premises for a prohibited purpose to stop using them for that purpose.29

**Exceptions which can allow prohibited development**

There are two ways that development which is prohibited under a LEP can still proceed:

- where a SEPP specifically overrides the LEP; and
- where permission is granted to override a development standard.

The first exception is where a SEPP specifically overrides a prohibition in a LEP, thus allowing prohibited development to be approved.30 For example, SEPP (Housing for Seniors or People with a Disability) 2004 makes housing for people over 55 or people with a disability permissible in zones where this type of housing is otherwise expressly prohibited under a LEP.31

The second type of exception is where a LEP prohibits development based on the size, location or other characteristics of the development, and the consent authority grants an exemption from the need to meet those standards. This can occur where a LEP does not place a total prohibition on a certain type of development, but instead prohibits developments which are over a certain size, height or density. These requirements are known as 'development standards'.32

**State Environmental Planning Policy No 1 - Development Standards** (SEPP 1) allows a consent authority to approve a development which fails to meet a development standard in a LEP (e.g. the building exceeds the height limit for the

---

24 *Environmental Planning and Assessment Act 1979* (NSW), s. 31.
25 *Standard Instrument - Principal Local Environmental Plan*, cl. 2.3.
26 *Environmental Planning and Assessment Act 1979* (NSW), ss. 31, 76B.
27 *State Environmental Planning Policy 50 - Canal Estate Development*, cl. 5.
28 *Environmental Planning and Assessment Act 1979* (NSW), s. 76B.
29 *Environmental Planning and Assessment Act 1979* (NSW), s.121B.
30 *Environmental Planning and Assessment Act 1979* (NSW), s. 36(1)(a).
31 *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*, cl. 2(2)(a), 5(3), 8, 15, 16.
32 *Environmental Planning and Assessment Act 1979* (NSW), s. 4(1) definition ‘development standards’. 
zone) if the developer lodges an objection with their development application that compliance with the standard is unreasonable or unnecessary in the circumstances (known as a ‘SEPP 1 objection’). The consent authority can grant development consent if it is satisfied that the objection is well-founded, and if the Director-General of Planning also agrees.

The provisions of SEPP 1 have now been largely incorporated into the Standard LEP. Once a LEP has been prepared in accordance with the Standard LEP, SEPP 1 will cease to apply to that council area and development standards in that council area can only be varied in accordance the new LEP clause. Read our Fact Sheets for more information about LEPs and SEPPs.

How is a development application made?

In order to obtain development consent, the person proposing the development must lodge a development application with the consent authority. The consent authority is usually the local council, but it can also be a JRPP, the NSW Minister for Planning, or the PAC, depending on the type of development and any delegation instruments in place.

The development application must be in the form approved by the consent authority, and include the minimum information set out in the EP&A Regulation, such as the name and address of the applicant, a description of the development, identification of the land to be developed, and the established cost of the development. The application must also include a plan of the land and a sketch of the development, and, if required, an environmental impact statement or species impact statement: see below.

The type of environmental assessment which must be lodged with the development application (e.g. environmental impact statement, species impact statement, etc.) will differ depending on the likely impacts of the development. For more information, see our other Development Applications and Consents Fact Sheets.

A development application can only be made by the owner of the land or by a person who has the landholder's written consent. There are exceptions to this, e.g. if the application is for a SSD mining or petroleum project landholder consent may not be required. For more information, see our Fact Sheets on SSD and SSI, Mining, and Coal seam gas (CSG).

Obligation to disclose political donations

33 State Environmental Planning Policy No 1 - Development Standards, cl. 6.
34 State Environmental Planning Policy No 1 - Development Standards, clss. 7, 8.
35 Environmental Planning and Assessment Act 1979 (NSW), s. 78A(1); see also Environmental Planning and Assessment Regulation 2000 (NSW) which sets out the procedures for lodging development applications generally: clss. 47 - 57. Cl. 50 refers to a standard form in Schedule 1.
36 Environmental Planning and Assessment Regulation 2000 (NSW), cl. 50; Sch 1 sets out the information that must be included in a development application.
37 Environmental Planning and Assessment Regulation 2000 (NSW), cl. 49(1). There are exceptions to this if the development relates to an application for a Part 3A project (now repealed): Environmental Planning and Assessment Regulation 2000 (NSW), cl. 8F, or a SSD mining or petroleum project: Environmental Planning and Assessment Regulation 2000 (NSW), cl. 49(5).
38 Environmental Planning and Assessment Regulation 2000 (NSW), cl 49(5).
Developers are required to disclose political donations and gifts when lodging or commenting on a development proposal.\textsuperscript{39}

Under the EP&A Act, the obligation to disclose applies to all:\textsuperscript{40}

- development applications;
- formal requests to the Planning Minister, a local council, or the Director-General of the Department of Planning and Environment to initiate the making of an environmental planning instrument or development control plan;
- formal requests to the Minister or the Director-General for the development of a particular site to be made State significant or to be declared SSD, SSI, or an existing Part 3A project under the EP&A Act; and
- applications for the approval of a concept plan or project (or a modification) of a SSD, SSI, or existing Part 3A project.

Developers seeking consent from a local council must disclose all donations of $1,000 or more, and any gifts which have been made to any local councillor (including when they were a candidate) or employee of that council within 2 years before the application or request is made and ending when the application is determined.\textsuperscript{41} Where an application is made to the Planning Minister or Director-General of Planning and Environment, all political donations of $1,000 or more must be disclosed.\textsuperscript{42}

**Disclosure statement must accompany Development Application**

Disclosure must be made in a statement accompanying the development application or planning request. If the donation or gift is made after the application or request is made, the developer must lodge a statement with the decision maker within 7 days.\textsuperscript{43}

Both the Department of Planning and Environment and local councils must make the disclosures publicly available, on the internet within 14 days of the disclosure being made.\textsuperscript{44} For more information, visit the Department of Planning and Environment’s website.

**Categories of development**

The procedures for applying for development consent, the level of environmental assessment required, the notification required and appeal rights, differ depending on how a development is categorised. For example:

---

\textsuperscript{39} Environmental Planning and Assessment Act 1979 (NSW), s. 147.
\textsuperscript{40} Environmental Planning and Assessment Act 1979 (NSW), s. 147.
\textsuperscript{41} Environmental Planning and Assessment Act 1979 (NSW), s. 147(4), (5).
\textsuperscript{42} Environmental Planning and Assessment Act 1979 (NSW), s. 147(3).
\textsuperscript{43} Environmental Planning and Assessment Act 1979 (NSW), s. 147(6).
\textsuperscript{44} Environmental Planning and Assessment Act 1979 (NSW), s. 147(12).
for **complying development**, a very simple assessment process is followed and a private certifier can approve the development;\footnote{Environmental Planning and Assessment Act 1979 (NSW), ss. 84-87.}

for **designated development**, an environmental impact statement will be required and third parties must be notified and can appeal against a decision to grant consent;\footnote{Environmental Planning and Assessment Act 1979 (NSW), ss. 77A-83.}

for **integrated development**, approval will need to be obtained from other public authorities (e.g. the EPA) before consent can be granted;\footnote{Environmental Planning and Assessment Act 1979 (NSW), ss. 90-93B.} and

for **advertised development**, the consent authority will have to give the public notice of the development application.\footnote{Environmental Planning and Assessment Act 1979 (NSW), ss. 29A,74C,79A.}

It is therefore important to establish at the outset which category or categories of development an application falls into. Some of these categories can overlap. For example, a development could be categorized as both integrated development and advertised development, or as designated development and integrated development.

The different categories of development are described below. For more information, visit the Department of Planning and Environment website.

**Complying development**

An EPI (a LEP or SEPP) can identify some development to be 'complying development'.\footnote{Environmental Planning and Assessment Act 1979 (NSW), s. 76A(5).} This category is intended to apply to fairly routine types of development, such as extensions to a dwelling, or the construction of a swimming pool.

For example, **Warringah Local Environmental Plan 2011** allows a complying development certificate for garages which are set back at least 4.5 metres from the side boundaries, at least 6 metres from the rear boundary, and at least 6.5 metres from the front boundary, and meet other specified guidelines.\footnote{Warringah Local Environmental Plan 2011, Schedule 3 Part 1.}

**NSW Housing Code 2008**

The NSW Housing Code provides for many aspects of minor residential development to be processed as complying development.

The NSW Housing Code applies to residential developments including:

- Detached single and double storey dwellings
- Home extensions, and
- Other related development, such as swimming pools.

One of the main purposes of the Code is to standardize complying development codes for housing development across NSW.
The NSW Housing Code was introduced through the *SEPP (Exempt and Complying Development Codes) 2008*. For more information, visit the [Department of Planning and Environment NSW Housing Code website](#).

**Complying development certificates**

If a development is categorized as ‘complying development’, the standard development application process will not apply to that development. Instead, complying developments can be approved by a complying development certificate, which is a simpler and faster process (10 days) than development consent.51 A complying development certificate can be issued by either a council or an accredited certifier.

Before work commences on site, the developer must apply to either the council or to a private accredited certifier for a complying development certificate, who is then responsible for assessing the development application. The council or certifier decides whether the development complies with all development standards applying to the development and either issues (or refuses) the certificate.52 The certificate must be issued before work commences.

The council or accredited certifier cannot refuse to issue a certificate if the proposed development meets the prescribed development standards, and the certificate must be either issued or refused within 10 days.53 For more information about the issuing of complying development certificates, visit the [Department of Planning and Environment’s NSW Housing Code website](#).

The council must be notified within 2 days after the date of the determination under a complying development certificate issued by a private certifier.54

**Public participation**

Councils or private certifiers are not required to advertise applications for a complying development certificate. However, they are required to advertise their determination of applications for a complying development certificate by publishing a public notice in a newspaper describing the land subject to the certificate. This notice must state that the determination is available for public inspection, free of charge, during ordinary office hours at the council’s offices.55

**Designated development**

51 *Environmental Planning and Assessment Act 1979* (NSW), s. 77(b). *Environmental Planning and Assessment Regulation 2000* (NSW), cls. 125 - 137; Sch 1 (Part 2, cls. 3-4) sets out the information to be included in an application for a complying development certificate, and the documents which must accompany one.

52 *Environmental Planning and Assessment Act 1979* (NSW), s. 85A(1).

53 *Environmental Planning and Assessment Act 1979* (NSW), s. 85A(6); *Environmental Planning and Assessment Regulation 2000* (NSW), cls. 125-137.

54 *Environmental Planning and Assessment Act 1979* (NSW), s. 85A(7), (8); *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 130AA.

55 *Environmental Planning and Assessment Act 1979* (NSW), s. 85A(11); *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 130(4).

56 *Environmental Planning and Assessment Act 1979* (NSW), s. 101; *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 137.
'Designated development' refers to developments which are high-impact developments (e.g. likely to generate pollution), or which are located in or near an environmentally sensitive area (e.g. a wetland). Designated development does not include State significant development.\(^{57}\)

If a development application is categorized as designated development, the application:

- must be accompanied by an environmental impact statement (EIS)\(^{58}\) (see below for more information);
- will require public notification;\(^ {59}\) and
- can be the subject of a merits appeal to the Land and Environment Court by objectors.\(^ {60}\)

**How is a development categorized as designated development?**

There are two ways a development can be categorized as ‘designated development’.\(^ {61}\)

- The class of development can be listed in Schedule 3 of the EP&A Regulation as being designated development,\(^ {62}\) or
- a LEP or SEPP can declare certain types of development to be designated.\(^ {63}\)

Examples of designated development under the EP&A Regulation include chemical factories, large marinas, quarries and sewerage treatment works. For the Regulation’s full list of designated developments, read Schedule 3 of the EP&A Regulation.

The local council will usually be the consent authority for designated development, unless:

- the development is SSD or SSI or is an existing project to which Part 3A of the EP&A Act applies, in which case the Planning Minister or the PAC under delegation will be the consent authority; or
- a SEPP declares someone other than the council to be the consent authority, such as the Planning Minister.

After receiving a DA for designated development, the consent authority must forward the application and a copy of the EIS to the Director-General of the Department of Planning and Environment (if the Minister or the Director-General is not the consent authority) or to the council (if the council is not the consent authority).\(^ {64}\)

---

\(^{57}\) Environmental Planning and Assessment Act 1979 (NSW), s. 77A.

\(^{58}\) Environmental Planning and Assessment Act 1979 (NSW), s. 78A(8)(a).

\(^{59}\) Environmental Planning and Assessment Act 1979 (NSW), s. 79(1).

\(^{60}\) Environmental Planning and Assessment Act 1979 (NSW), s. 79(1).

\(^{61}\) Environmental Planning and Assessment Act 1979 (NSW), s. 98(1).

\(^{62}\) Environmental Planning and Assessment Regulation 2000 (NSW), cl. 4, Schedule 3 Part 1.

\(^{63}\) Environmental Planning and Assessment Act 1979 (NSW), s. 29.

\(^{64}\) Environmental Planning and Assessment Regulation 2000 (NSW), cl. 50(6).
Public notification and submissions

If a DA falls within the category of designated development, then, as soon as practicable after receiving the DA, the consent authority must: 65

- place the DA and any accompanying information on public exhibition for a period of at least 30 days (the ‘submission period’); 66
- publish notice of the DA in a local newspaper; 67
- exhibit notice of the DA on the land to which the DA relates; 68
- give written notice to any other public authorities which may be interested in the DA; 69 and
- give written notice to:
  - owners and occupiers of adjoining land, and
  - if practicable, any other people who own or occupy land the use or enjoyment of which may be detrimentally affected by the development.

The written notice to other landowners must contain a range of things, including a description of the proposed development, when and where the DA can be inspected, how submissions can be made, and the person’s appeal rights. 70

During the submission period, any person can:

- inspect the DA and accompanying information; 71
- make extracts from or copies of them; 72 and
- make a written submission. 73

A submission objecting to the DA should set out the grounds for the objection. 74

The consent authority must take submissions which are made during the public submission period into account in deciding whether to approve the DA. 75

A consent authority can choose not to readvertise and renotify if a DA is amended, substituted, or withdrawn and replaced. 76

---

65 Environmental Planning and Assessment Regulation 2000 (NSW), cl. 50(6).
66 Environmental Planning and Assessment Act 1979 (NSW), s. 79; Environmental Planning and Assessment Regulation 2000 (NSW), cl. 78.
67 Environmental Planning and Assessment Regulation 2000 (NSW), cl. 80.
68 Environmental Planning and Assessment Regulation 2000 (NSW), cl. 79.
69 Environmental Planning and Assessment Regulation 2000 (NSW), cl. 77.
70 Environmental Planning and Assessment Act 1979 (NSW), s. 79; Environmental Planning and Assessment Regulation 2000 (NSW), cl. 78.
71 Environmental Planning and Assessment Act 1979 (NSW), s. 79(4).
72 Environmental Planning and Assessment Act 1979 (NSW), s. 79(4).
73 Environmental Planning and Assessment Act 1979 (NSW), s. 79(5).
74 Environmental Planning and Assessment Act 1979 (NSW), s. 79(5).
75 Environmental Planning and Assessment Act 1979 (NSW), s. 79C(1)(d).
Integrated development

Integrated development refers to a development which, in addition to development consent, requires one or more additional approvals before it can proceed.\textsuperscript{77}

**Additional approvals which trigger integrated development provisions**

Integrated development is development which, as well as development consent, requires one or more of the following types of approvals:\textsuperscript{78}

- A permit (aquaculture, dredging, removing marine vegetation, or to alter a waterway) under the *Fisheries Management Act 1994* (NSW)
- Approval under the *Heritage Act 1977* (NSW)
- Approval to erect improvements within a mine subsidence district
- A mining lease under the *Mining Act 1992* (NSW)
- Consent to destroy Aboriginal relics under s 90 of the *National Parks and Wildlife Act 1974* (NSW)
- Production lease under the *Petroleum (Onshore) Act 1991* (NSW)
- A pollution licence under the *Protection of the Environment Operations Act 1997* (NSW)
- Consent to alter a public road under the *Roads Act 1993* (NSW)
- Bush fire safety authorisation under the *Rural Fires Act 1997* (NSW)
- An approval under the *Water Management Act 2000* (NSW)

The purpose of the integrated development provisions is to streamline the approvals process, and to avoid duplication and conflicting decisions, where more than one decision-maker is involved in approving a development.

For integrated development, the normal assessment and notification procedures are followed, but the consent authority must also ask the authority responsible for giving the other approval in advance whether it will consent to the proposal, and if so, on what terms.\textsuperscript{79}

The consent authority must not impose any conditions which are inconsistent with those indicated by the other approval authority.\textsuperscript{80} If the approval authority indicates that it will not grant approval (e.g. if the EPA says it will not grant a pollution licence), the consent authority must refuse the development consent.\textsuperscript{81}

**Public notification of application and submissions**

\textsuperscript{76} *Environmental Planning and Assessment Act 1979* (NSW), s. 79(6).
\textsuperscript{77} *Environmental Planning and Assessment Act 1979* (NSW), s. 91.
\textsuperscript{78} *Environmental Planning and Assessment Act 1979* (NSW), s. 91.
\textsuperscript{79} *Environmental Planning and Assessment Act 1979* (NSW), s. 91A(2), *Environmental Planning and Assessment Regulation 2000* (NSW), cls. 66, 70.
\textsuperscript{80} *Environmental Planning and Assessment Act 1979* (NSW), s. 91A(3).
\textsuperscript{81} *Environmental Planning and Assessment Act 1979* (NSW), s. 91A(4).
A DA for integrated development must be publicly notified in the same way as for advertised development, but only if the DA requires an approval under the Heritage Act 1977 (NSW), the Water Management Act 2000 (NSW) or the Protection of the Environment Operations Act 1997 (NSW) (pollution licence). See paragraph 2.2.4.4 below on advertised development for more information.

All other types of integrated development (e.g. those which require a permit under the Fisheries Management Act 1994 (NSW), or an Aboriginal Heritage Impact Permit to destroy Aboriginal objects or places under s 90 of the National Parks and Wildlife Act 1974 (NSW)), are non-advertised development which must be publicly advertised if and as required under the relevant DCP.

Categorization of a development as ‘integrated development’ does not affect an applicant's (or an objector’s) appeal rights, so if the integrated development is also categorised as designated development, objectors will have 28 days to lodge a merits appeal. If the development is not classified as designated development there are no objector merit appeal rights.

**Advertised development**

Certain types of development can be declared to be ‘advertised development’, which imposes additional public notification requirements on all DAs for advertised development.

The advertised development provisions can therefore overlap with other categories of development, such as non-designated development, integrated development and complying development, but do not apply to designated development or to State significant development because these have their own processes for public notification.

Apart from additional advertising and public notification requirements, the approval process for advertised development remains the same as for other non-designated development.

**What is advertised development?**

Advertised development can be identified under:

- The EP&A Regulation (see below)
- An EPI (LEP or SEPP), or
- A development control plan (DCP).

The EP&A Regulation identifies the following types of development as advertised development:

---

82 Environmental Planning and Assessment Regulation 2000 (NSW), cl. 5(1)(b).
83 Environmental Planning and Assessment Act 1979 (NSW), s. 74C(1)(c)(i).
84 Environmental Planning and Assessment Act 1979 (NSW), s. 79A(1).
85 Environmental Planning and Assessment Act 1979 (NSW), s. 29A.
86 Environmental Planning and Assessment Act 1979 (NSW), s. 29A.
87 Environmental Planning and Assessment Act 1979 (NSW), s. 74C(1)(b).
- Integrated development, if it requires an approval under the *Heritage Act 1977 (NSW)*, the *Water Management Act 2000 (NSW)* or the *Protection of the Environment Operations Act 1997 (NSW)* (pollution licence) (called ‘nominated integrated development’);

- Development affecting threatened species which requires a species impact statement (called ‘threatened species development’); and

- Development that is Class 1 aquaculture under *SEPP 62 - Sustainable Aquaculture* (called ‘Class 1 aquaculture development’).

**Public notification of application and submissions**

If a development falls within the category of advertised development, the consent authority must give written notice, as soon as practicable after receiving the development application, by:\n
- publishing a notice in a local newspaper;
- giving written notice to owners and occupiers of adjoining land; and
- giving written notice to other public authorities that may have an interest in the DA.

The notice must include a range of things, including the address of the land, the name of the applicant, a description of the proposed development, details of where the DA can be viewed, and state whether the development requires a species impact statement.\nThe notice should also state that any person may make a written submission about the DA to the decision maker. A local council can choose not to readvertise and renotify a DA which is amended or substituted (called a ‘replacement application’).\n
After notification takes place, the public has:

- 14 days within which to inspect the DA and supporting documentation and to make written submissions to the consent authority;\n- or

- 30 days if the DA relates to:
  - integrated development which requires a heritage, water, or pollution approval), or
  - development affecting threatened species which requires a species impact statement.

During that time any person can inspect the DA and accompanying information and make extracts or copies from them. A submission objecting to the development must

---

89 *Environmental Planning and Assessment Regulation 2000 (NSW)*, cl. 5.
90 *Environmental Planning and Assessment Regulation 2000 (NSW)*, cl. 87, 88.
91 *Environmental Planning and Assessment Regulation 2000 (NSW)*, cl. 89.
92 *Environmental Planning and Assessment Regulation 2000 (NSW)*, cl. 90.
93 *Environmental Planning and Assessment Regulation 2000 (NSW)*, cl. 119.
set out the grounds of the objection. To read more about access to information, read our Access to Information Fact Sheet.

The consent authority must take these public submissions into account in deciding whether to approve the DA.

Non-designated, non-advertised development

There is no specific term for development that does not fall under either the non-designated or non-advertised categories of development – it is simply known as development.

Public notification requirements

The EP&A Act does not have specific requirements for notification of development that is not advertised or designated development.

However, many councils will have either a development control plan (DCP) or policy which sets out when people must be notified of development, such as where neighbours are likely to be affected. Where such a DCP exists, public notification of a development is mandatory under the EP&A Act.

In addition, if a council has a notification policy which it regularly observes (as opposed to a DCP), the Land and Environment Court has held that this may give rise to a legitimate expectation that the policy will be followed. By contrast, the Court has found that informal notification policies, such as those which depend upon the council deciding whether a person might be affected or not, are not legally enforceable.

Case Study: Reasonable expectation of development consent notification


Mrs Lesnewski brought Class 4 proceedings in the Land and Environment Court, seeking a declaration that the development consent given by Mosman Municipal Council to her neighbours Mr Robert and Mrs Carol Wright be dismissed.

The Council had adopted a development control plan under section 72 (now repealed) of the EP&A Act regarding notification requirements. Mrs Lesnewski alleged she did not receive the copy of the plans nor were they made available for inspection, as required under the DCP. She claimed a denial of procedural fairness and natural justice.

Section 79A(2) EP&A Act provides:

'A development application for specified development (other than designated development or advertised development) must be notified or advertised in

---

94 Environmental Planning and Assessment Regulation 2000 (NSW), cl. 91.
95 Environmental Planning and Assessment Act 1979 (NSW), s. 79C(1)(d).
96 Environmental Planning and Assessment Act 1979 (NSW), s. 79A.
97 Somerville v Dalby (1990) 69 LGRA 422.
98 Hillpalm Pty Ltd v Tweed Shire Council (2002) 119 LGERA 86.
accordance with the provisions of a development control plan if the development control plan provides for the notification or advertising of the application.’

Tobias JA found that ‘a breach of section 79A(2) does not necessarily lead to the conclusion that there has been a denial of procedural fairness’. He also found that ‘it would be a matter for argument as to whether the failure to comply with one or more of those items would result in a denial of procedural fairness. It is well established that the content of the duty to afford procedural fairness depends on the circumstances of the case’.

The court also held that Mrs Lesnewski’s challenge to the consent’s validity on the basis that she was denied procedural fairness, was not covered by section 101, which states that where public notice has been given in accordance with the regulations, the validity of the consent cannot be challenged in legal proceedings except in the LEC within 3 months of that notice, and that the primary judge [in the Land and Environment Court] erred in finding to the contrary. The case was referred back to the Land and Environment Court and was settled before the hearing date.

Members of the public are entitled to go to council offices to inspect development applications free of charge (except for internal residential plans) and have a right to make copies of those documents for a reasonable photocopying charge. It is important to note the new guidance for councils about copyright and compliance with the Government Information (Public Access) Act 2009 (NSW). For more information, read our Access to Information Fact Sheet or read the information from Information and Privacy Commission.

State significant development, state significant infrastructure, and Part 3A major projects

The Planning Minister, or the Planning Assessment Commission under delegation from the Planning Minister, is the consent authority for these projects.

The major project provisions are used to assess and approve large public and private projects, such as new mines, transport developments and pipelines. They also apply to projects which are declared by the Minister to be a critical infrastructure. Part 3A has been repealed and replaced by State Significant Development (SSD) and State Significant Infrastructure (SSI), however existing Part 3A projects and modifications to these projects are still assessed under Part 3A transitional provisions.

This Fact Sheet does not deal with SSD, SSI, or Part 3A. For more information on how major projects are assessed, approved and can be appealed, read our Fact Sheets on SSD and SSI or Part 3A major projects.

Environmental impact assessment

Environmental impact assessment (EIA) is a general term which refers to the process of assessing the potential impacts of a proposed development or activity.

99 Environmental Planning and Assessment Regulation 2000 (NSW), cl. 56.
100 Environmental Planning and Assessment Act 1979 (NSW), Part 3A (now repealed), Part 4 Division 4.1 and Part 5.1.
Most development applications must be accompanied by some form of EIA to enable the decision-maker to understand the likely impacts of the proposal before deciding whether or not to grant consent. The assessment process should also encourage the applicant and the decision-maker to consider what measures can be adopted to minimise the impact of a proposal.

There are different kinds of environmental assessment for different types of development.

**Statement of environmental effects**

A SEE must identify the environmental impacts of the development and how they were identified, and the steps which will be taken to protect the environment or reduce harm.\(^{101}\)

The SEE may be prepared by the applicant or by a consultant acting on behalf of the applicant.

All development applications except for designated development or State significant development must be accompanied by a statement of environmental effects (SEE).\(^{102}\)

**Environmental impact statement (EIS)**

Development which falls within the category of designated development or State significant development requires an environmental impact statement (EIS).\(^{103}\) The EIS can be prepared by the applicant, but it is usually a very complex document which is prepared by a consultant on behalf of the applicant.

An EIS can also be required for a Part 5 activity (see below), or for a Part 3A Major project although Part 3A projects are being phased out of the planning system. For more information, see our Fact Sheet on Part 3A Major Project Approvals.

An EIS should give a detailed analysis of all potential areas of concern in relation to the development. It should be written in easy to understand language and contain material which would alert lay people and specialists to the problems inherent in carrying out the activity.\(^{104}\)

There are a number of matters which an EIS must address, including:\(^{105}\)

- a statement of the objectives of the development, activity or infrastructure (the development),
- an analysis of any feasible alternatives to the carrying out of the development, including the consequences of not carrying out the development,
- a full description of the development,
- a general description of the environment likely to be affected by the development, together with a detailed description of those aspects of the environment that are likely to be significantly affected,

\(^{101}\) *Environmental Planning and Assessment Regulation 2000* (NSW), Sch 1 Part 1(2)(1)(c).

\(^{102}\) *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 50, Sch 1 Part 1(2)(1)(c).

\(^{103}\) *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 50, Sch 1 Part 1(2)(1)(e).

\(^{104}\) *Prineas v Forestry Commission of NSW & Ors* (1983) 49 LGRA 402.

\(^{105}\) *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 50, Sch 2, Part 3 (7).
• the likely impact on the environment of the development,
• a full description of the measures proposed to mitigate any adverse effects of the development,
• a list of any approvals that must be obtained under any other Act or law before the development may lawfully be carried out,
• the reasons justifying the carrying out of the development in the manner proposed, having regard to biophysical, economic and social considerations, including the principles of ecologically sustainable development.

Species Impact Statement (SIS)

When is a Species Impact Statement required?

If a development is on land containing critical habitat or is likely to significantly affect threatened species, populations or ecological communities, the development application must be accompanied by a species impact statement (SIS).\(^\text{106}\)

In deciding whether there is likely to be a significant impact on threatened species, a consent authority can apply the ‘7-part test’.\(^\text{107}\) This includes factors such as whether the action is likely to place a viable local population of the species at risk of extinction, and whether the action is likely to result in the fragmentation or isolation of habitat.\(^\text{108}\)

Similarly, a SIS must be prepared if there is likely to be a significant impact on threatened fish or marine vegetation.\(^\text{109}\)

The SIS must include a full description of the proposed development, as well as a description of the threatened species known or likely to be present in the area. The SIS must also include details such as an estimate of the number of the species in the local area and region, likely impacts of the development on these species or communities, and details of measures for the mitigation of these impacts.\(^\text{110}\)

Species impact statements are not required for State significant developments where biodiversity factors are to be addressed in the EIS as per any Director-General’s requirements for environmental impact assessment.

Biodiversity certification

The NSW Environment Minister can confer biodiversity certification on land by either certifying the land itself or land under an EPI. The Native Vegetation Reform Package has also received biodiversity certification.\(^\text{111}\)

The effect of biodiversity certification is that if a development is permitted under the certified plan, it is automatically assumed to not have a significant impact on

---

\(^{106}\) Environmental Planning and Assessment Act 1979 (NSW), s. 78A(8)(b).

\(^{107}\) See: Environmental Planning and Assessment Act 1979 (NSW), s. 5A.

\(^{108}\) Environmental Planning and Assessment Act 1979 (NSW), s. 5A.

\(^{109}\) Environmental Planning and Assessment Act 1979 (NSW), s. 5C; Fisheries Management Act 1994 (NSW).

\(^{110}\) Threatened Species Conservation Act 1995 (NSW), s. 110.

\(^{111}\) Threatened Species Conservation Act 1995 (NSW), Part 7 Division 4, Part 7AA.
threatened species, populations or ecological communities, thereby avoiding the need for a species impact statement.\textsuperscript{112}

For more information on biodiversity certification, see our Threatened species and ecological communities Fact Sheet.

\textbf{BioBanking statements}

A developer who obtains a biobanking statement will not need to carry out a species impact statement, as the development will then be deemed not to significantly affect threatened species.\textsuperscript{113}

For more information see our Biobanking factsheet.

\textbf{Concurrence of Director-General or Environment Minister}

Developments which are likely to significantly affect threatened species cannot be approved without the agreement of the Chief Executive of the Office of Environment and Heritage, or in some cases, the Environment Minister (unless a biobanking statement has been issued).\textsuperscript{114}

In deciding whether or not to grant concurrence, the Chief Executive or Environment Minister must take a range of factors into account, including any species impact statement, whether the development is likely to accelerate the extinction of the species, population or ecological community or place it at risk of extinction, any public submissions received, and the principles of ecologically sustainable development.\textsuperscript{115} It is important to note that these factors are only required to be considered, and there is no direction as to how much weight the Chief Executive or Minister must place in each matter.

The Chief Executive or Environment Minister has the power to either approve or refuse the development, or to impose additional conditions on the development concerning the protection of threatened species.\textsuperscript{116}

\textbf{Part 5 activities and environmental assessment}

Certain developments and some activities do not require development consent. This means that no development application is necessary. However, the environmental impacts of the development still need to be assessed. Part 5 of the EP&A Act is a ‘safety-net’, providing for a separate environmental assessment procedure which applies to developments and activities which are not assessed as part of the development consent process.

Part 5 assessments are often required for activities such as roads, CSG exploration activities and forestry activities.

\textbf{How is Part 5 assessment conducted?}

\begin{itemize}
    \item \textsuperscript{112} Threatened Species Conservation Act 1995 (NSW), s 126I.
    \item \textsuperscript{113} Threatened Species Conservation Act 1995 (NSW), ss. 127ZO, 127ZP.
    \item \textsuperscript{114} Environmental Planning and Assessment Act 1979 (NSW), s. 79B(3).
    \item \textsuperscript{115} Environmental Planning and Assessment Act 1979 (NSW), s. 79B(5).
    \item \textsuperscript{116} Environmental Planning and Assessment Act 1979 (NSW), ss. 79B(8), (8A), (8B), (9).
\end{itemize}
Under Part 5, the Minister or public authority responsible for deciding whether to approve or proceed with an activity (‘determining authority’) must examine and take into account to the fullest extent possible all matters which are likely to affect the environment if the activity goes ahead. For example, the Minister for Primary Industries is responsible for granting exploration licences and assessment leases for mining operations, and is therefore the determining authority for those activities. The Minister must therefore ensure that the environmental impacts of the exploration have been taken into account before granting an exploration title.

There are a number of factors that the determining authority must take into account when considering the likely impact of an activity on the environment. These include the impact of the activity on critical habitat, threatened species, populations and ecological communities, and their habitats, and any other protected fauna or protected native plants.

Also, matters such as:

- any environmental impact on a community,
- any transformation of a locality,
- any environmental impact on the ecosystems of the locality,
- any reduction of the aesthetic, recreational, scientific or other environmental quality or value of a locality,
- any long-term effects on the environment,
- any reduction in the range of beneficial uses of the environment,
- any pollution of the environment, and
- any cumulative environmental effect with other existing or likely future activities.

There may be guidelines in place that set out the specific factors that must be taken into account in relation to particular types of activities or developments.

In practice, there are two key methods of measuring the environmental impacts of a proposed development or activity: a review of environmental factors (REF) and an environmental impact statement (EIS).

### Review of environmental factors

There is no legal requirement to prepare a REF, but it is standard practice of the Department of Planning and Environment and other public authorities to require REFs for activities subject to Part 5.

REFs are usually prepared by a consultant on behalf of the proponent. They take a preliminary look at the likely environmental, social and economic impacts of the proposed activity or development.

### Environmental impact statements

---

117 Environmental Planning and Assessment Act 1979 (NSW), s. 111.
118 Environmental Planning and Assessment Act 1979 (NSW), s. 111.
119 Environmental Planning and Assessment Regulation 2000 (NSW), cl. 228(2).
120 Environmental Planning and Assessment Regulation 2000 (NSW), cl. 228.
A determining authority usually decides whether to require a full EIS based on the REF. If an activity is likely to have a significant effect on the environment, an EIS must be prepared. If the activity or development is proposed on land that is critical habitat or is likely to significantly affect threatened species, populations or ecological communities or their habitats, then a species impact statement (SIS) may also be required.

Commenting on environmental assessments

There may not be an opportunity to comment on a REF. With regards to mining titles, the REF is only published once the activities have been approved.

If an EIS is prepared, it must be placed on public exhibition for at least 30 days, during which time the public can make submissions.

Decision-making process

After considering the environmental impacts, the determining authority can then either approve or refuse the activity, or where the determining authority is also the proponent, they can decide to carry out the activity, modify it, or refrain from doing it.

Are the public or neighbours required to be notified about Part 5 developments?

If an EIS or SIS is required, it must be placed on public exhibition by the determining authority for a period of at least 30 days, during which time any person can make a written submission to the determining authority about the activity. You can read more about how to make an effective submission on our Have Your Say website.

There is no legal requirement to notify the public of most Part 5 projects, but it may be standard practice to do so. For example, applications for CSG exploration licences do not need to be notified by law, but NSW Trade and Investment – Division of Resources and Energy publishes all applications on its website and also in the NSW Government Gazette.

Complying development

There are neighbour notification requirements for complying development (development that does not need consent, but will require environmental assessment under Part 5) in residential and rural zones. For certain types of development (such as new dwellings) the certifying authority must notify neighbours within 20m of land that is the subject of a complying development application at least 14 days prior to its approval.

The time limit for determining applications for complying development is 20 days.

The proponent must also give at least 7 days’ notice to neighbours within 20m of the development before commencing construction work. It is important to note that the notification requirements are advisory only which means that neighbours are not able to lodge objections to the complying development.

Is Part 5 environmental assessment required for exempt development?
An EPI such as a State Environmental Planning Policy or a Local Environment Plan can ‘exempt’ particular types of development from the need for development consent. This is known as ‘exempt development’. Unlike development which is ‘permitted without consent’, exempt development does not need to undergo any environmental assessment, as long as the development is not on critical habitat or on a wilderness area, and it is carried out according to the requirements of the EPI. EPIs often require exempt development to meet certain standards (e.g. maximum height standards) in order to be carried out as exempt development.

**Is Part 5 environmental assessment required for developments carried out by public authorities?**

Many activities carried out by public authorities do not require development consent by virtue of the Infrastructure SEPP, which is designed to facilitate the delivery of infrastructure across NSW. The Infrastructure SEPP identifies an extensive list of infrastructure projects that can be carried out by public authorities without consent, such as developments for air transport facilities, correctional facilities, educational establishments, electricity transmission and distribution networks, gas pipelines and telecommunications facilities. These developments may still be subject to environmental assessment under Part 5.

SEPP (State and Regional Development) also identifies a list of projects which can be carried out by or on behalf of public authorities. These projects are called State significant infrastructure (SSI), and include rail infrastructure, port facilities, and water treatment facilities with high investment values. The Minister for Planning and Infrastructure may declare an infrastructure project to be Critical SSI (CSSI) if the Minister believes that the infrastructure is essential for the State for economic, environmental or social reasons.

If a project is declared SSI or CSSI, Part 5 does not apply. These types of developments are assessed under Part 5.1 of the EP&A Act and need approval from the Minister for Planning and Infrastructure.

When an application is made for the Minister’s approval for State significant infrastructure, the Secretary of the Department of Planning and Environment prepares environmental assessment requirements and the proponent must prepare an EIS that addresses those requirements.

The EIS is made publicly available for at least 30 days during which time members of the public can make submissions.

For more information on SSI, read our [SSD and SSI Fact Sheet](#).

**How is a development application considered?**

Once a development application (DA) has been lodged and the environmental assessment and public participation procedures are completed, the consent authority (decision-maker) can consider the application.

**Who is the ‘consent authority’?**

In most cases the consent authority will be the local council.
However, the EP&A Act, the Regulations, or an EPI (LEP or SEPP) can specify a different consent authority, such as:121

- the Planning Minister;
- the Planning Assessment Commission (PAC);
- a joint regional planning panel (JRPP); or
- a public authority (other than the council).

If the consent authority is the local council, it is the elected councillors who will make the decision, although sometimes the councillors may delegate power to determine certain standard or non-contentious applications to the general manager or another council officer.122

**Minister can appoint planning assessment panels**

The Planning Minister can appoint a planning assessment panel or joint regional planning panel to exercise a council’s functions as a consent authority to decide on development applications under the EP&A Act.123 The Minister can make this appointment if the Minister is of the opinion that a council has failed to comply with its obligations under the EP&A Act, or has demonstrated unsatisfactory performance in dealing with planning matters, or if the council agrees to the appointment.124

**Consent authority decides whether to approve or refuse consent**

The consent authority (decision-maker) decides whether to grant or refuse consent. When deciding on a development application, the consent authority must take into consideration the matters including:125

- The provisions of any SEPP, LEP or DCP;
- Any proposed environmental planning instrument which has been placed on public exhibition;
- Any planning agreement;126
- Any additional matters set out in the Regulations, such as the NSW Coastal Policy and the need for fire safety;127
- The likely impacts of the development, including the impacts on the natural, built, social and economic environment;
- The suitability of the site for the development;
- Any coastal zone management plan;128

121 *Environmental Planning and Assessment Act 1979 (NSW)*, s. 4(1).
122 *Local Government Act 1993 (NSW)*, s. 377(1).
123 *Environmental Planning and Assessment Act 1979 (NSW)*, ss. 117C-118AG.
124 *Environmental Planning and Assessment Act 1979 (NSW)*, s. 118(1).
125 *Environmental Planning and Assessment Act 1979 (NSW)*, s. 79C.
126 *Environmental Planning and Assessment Act 1979 (NSW)*, ss. 93F-93L.
127 *Environmental Planning and Assessment Regulation 2000 (NSW)*, cls. 92(1), 93.
- Any public submissions made in accordance with the legislation; and
- The public interest.

**Council can appoint a panel of experts**

To assist it in assessing a DA, a local council can establish an independent hearing and assessment panel (panel of experts) to review any aspect of a DA (or any planning matter). A council must appoint a panel of experts if environmental planning instrument (LEP or SEPP) requires it to do so.

The panel can receive or hear submissions from interested persons and must then report to the council. The council must provide staff and facilities for the panel.

**The Planning Assessment Commission**

**Minister can delegate decisions to Commission**

The Planning Assessment Commission (PAC) is a statutory authority established under the EP&A Act. The Planning Minister appoints PAC members. However, the PAC is an independent authority and is not subject to the direction or control of the Planning Minister.

The EP&A Act details the functions of the PAC, which includes the determination of project applications when those matters are delegated to it by the Minister for Planning. The PAC also provides advice to the Planning Minister on a range of planning and development matters. These include environmental planning instruments (EPIs) such as LEPs and SEPPs.

The PAC must consult with a local council before making a decision that will or might reasonably be expected to have a significantly adverse financial impact on a council. Councils must assist the PAC, and will sometimes be required to pay the PAC’s costs.

The PAC also has a code of conduct which it must follow, including directions to exercise its power with honesty, integrity, and in the public interest. It also requires members to disclose and conflict of interest in matters being considered by the PAC, and includes measures to prevent members from being bribed.

**Delegation of some major projects**

128 Coastal Protection Act 1979 (NSW), Part 4A.
129 Environmental Planning and Assessment Act 1979 (NSW), s. 23I.
130 Environmental Planning and Assessment Act 1979 (NSW), s. 23I(2).
131 Environmental Planning and Assessment Act 1979 (NSW), s. 23I(4).
132 Environmental Planning and Assessment Act 1979 (NSW), s. 23I(6).
133 Environmental Planning and Assessment Act 1979 (NSW), Schedule 3.
134 Environmental Planning and Assessment Act 1979 (NSW), s. 23B.
135 Environmental Planning and Assessment Act 1979 (NSW), s. 23B(3).
136 Environmental Planning and Assessment Act 1979 (NSW), s. 23D.
137 Environmental Planning and Assessment Act 1979 (NSW), s. 23M.
138 Environmental Planning and Assessment Act 1979 (NSW), s. 23O.
The Minister has issued an instrument of delegation to the PAC for the determination of certain project applications. These include State significant development (SSD) and State significant infrastructure (SSI) applications, and existing Part 3A applications, including modifications.

The PAC is required to meet with people interested in a proposed development before making its determination. If the PAC receives more than 25 submissions on a proposed development, the PAC will hold a public meeting. The PAC released a document outlining procedures for decision making in August 2011, including directions on how public meetings and public hearings are to be conducted.

If a developer applies to have land rezoned to allow a State significant development (SSD) project that would have been prohibited to occur under the zoning on the relevant LEP, the PAC must assess both the development application and the application for the spot rezoning.

Public meetings and public hearings

The PAC can hold public meetings and public hearings in the process of considering an application. Public meetings and public hearings are different things, and it is important to be clear on whether a meeting with the PAC is a meeting or a hearing. If the PAC holds a public hearing, objector appeal rights (merits appeal) are extinguished. For more information on merits appeal, read our Development applications and consents or the Land and Environment Court Fact Sheets.

PAC reviews

A review by the PAC is different to a determination made by the PAC. Additionally, while a public hearing can be one aspect of a review by the PAC, a review does not always have to include a public hearing, although in practice a review usually does involve a public hearing. The PAC can undertake a review of any aspect of a project or a concept plan under Part 3A, including environmental aspects. This can happen before the project or concept plan application is determined. Projects are often determined without a review by the PAC, as a review is not mandatory.

Joint regional planning panels

The main function of regional panels is to determine regionally significant DAs. Other functions include:

- acting as the relevant planning authority for preparing a LEP when appointed by the Minister;
- determining DA’s for the Crown referred by the council or applicant not determined within the time prescribed in the EP&A Regulation;
- determining applications to modify a consent for regionally significant development under s 96(2) EP&A Act;

139 Planning Assessment Commission, Procedures for Decision Making (31 August 2011) [3.2].
140 Environmental Planning and Assessment Act 1979 (NSW), s. 89E.
• advice on planning or development requested by the Minister.\textsuperscript{141}

**Consultation and concurrence**

The EP&A Act or an EPI (LEP or SEPP) can require a consent authority to either consult with, or obtain the concurrence (agreement) of, another person before they can approve a DA.\textsuperscript{142} This might be the Planning Minister, another government Department, or the Environment Minister if the development will affect threatened species.

For example, developments which are likely to significantly affect threatened species cannot be approved without the concurrence of the Chief Executive of the Office of Environment and Heritage (unless a biobanking statement has been issued).\textsuperscript{143}

A person whose concurrence is required has the power to either approve or refuse the development application, or to impose additional conditions on the development.\textsuperscript{144} Development consent which is granted without concurrence (where concurrence is required) is voidable.\textsuperscript{145}

**Post-consent provisions**

**Notification of grant of consent**

Once a decision has been made, the consent authority must notify:\textsuperscript{146}

- the applicant;
- where the development is designated development, each person who made a written submission or objection during the public submission period; and
- any person who made a submission during a public submission period (whether or not the development was designated).\textsuperscript{147}

Where the consent relates to designated development, the notification which is given to those who objected must also include information about the objector’s appeal rights.\textsuperscript{148}

All notices must be sent within 14 days.\textsuperscript{149} Failure to send the notice within 14 days will not invalidate the consent.\textsuperscript{150}

**Register of consents**

A council must keep a register of the following documents:\textsuperscript{151}

\textsuperscript{141} Joint Regional Planning Panels Operational Procedures September 2012.
\textsuperscript{142} Environmental Planning and Assessment Act 1979 (NSW), s. 79B.
\textsuperscript{143} Environmental Planning and Assessment Act 1979 (NSW), s. 79B(3).
\textsuperscript{144} Environmental Planning and Assessment Act 1979 (NSW), ss. 78B(8), (8A), (8B), (9).
\textsuperscript{145} Environmental Planning and Assessment Act 1979 (NSW), s. 79B(10).
\textsuperscript{146} Environmental Planning and Assessment Act 1979 (NSW), s. 81; EP&A Regulation, cls 100, 102.
\textsuperscript{147} Environmental Planning and Assessment Regulation 2000 (NSW), cl. 102(2).
\textsuperscript{148} Environmental Planning and Assessment Act 1979 (NSW), s. 81(3).
\textsuperscript{149} Environmental Planning and Assessment Regulation 2000 (NSW), cl. 102(1).
\textsuperscript{150} Environmental Planning and Assessment Regulation 2000 (NSW), cl. 102(3).
• All applications for development consent,
• All development consents,
• The decisions regarding all applications for complying development certificates, and
• The decision of any appeal regarding a development consent.

The register must be available for public inspection free of charge at the council's offices. 152

Modification of development consent

A developer can apply for development consent to be modified provided that the modified proposal is of minimal environmental impact and is substantially the same development.

If the original development application was designated development, State significant development, or any other advertised development where the council was not the consent authority the notice of the modification application must be published in a newspaper and those people who made submissions on the original DA must be notified. 153

If the modification will result in a substantially different development a new DA should be lodged. 154

Expiration or lapsing of development consent

Development consent lapses if work has not commenced on a development before the expiration of the consent. A development consent lapses 5 years after it is given, although in some cases the consent authority may reduce the period within which work must be commenced to no less than two years. 155 The consent will not lapse if building, engineering or construction work is physically commenced on the land before the lapsing date. 156 Commencement of the work must be lawful. 157

A development consent runs with the land, and unless the consent has lapsed, any person who has the use of the land in the future (e.g. a subsequent purchaser of the land) can take advantage of the consent. 158

Construction and occupation certificates

Once a development consent has been granted, further approvals may still be necessary before the development can be used for the proposed purpose.

151 Environmental Planning and Assessment Act 1979 (NSW), s. 100, Environmental Planning and Assessment Regulation 2000 (NSW), cls. 264-268.
152 Environmental Planning and Assessment Act 1979 (NSW), s. 100(2).
153 Environmental Planning and Assessment Regulation 2000 (NSW), cl. 118.
154 Environmental Planning and Assessment Act 1979 (NSW), s. 96.
155 Environmental Planning and Assessment Act 1979 (NSW), s. 95.
156 Environmental Planning and Assessment Act 1979 (NSW), s. 95(4).
157 Detala Pty Ltd v Byron Shire Council (2002) 133 LGERA 1.
158 Environmental Planning and Assessment Act 1979 (NSW), s. 78A.
For example, where a building is to be erected, a construction certificate may be required from the council or an accredited certifier before work can lawfully commence.\textsuperscript{159} This is to certify that the plans comply with the development consent and with any relevant predetermined standards such as the Building Code of Australia.

An occupation certificate is required before a new building can be occupied or used, unless the development was exempt development.\textsuperscript{160}

**Appeals**

There are opportunities to appeal planning decisions. Whether or not there is an opportunity to appeal will depend on several factors, including the type of development, and whether or not the Planning Assessment Commission (PAC) held a public hearing.

**Applicant can request council to review decision**

If the consent authority is a council, an applicant can request the council to review a decision concerning a DA, but not if the decision relates to a complying development certificate, designated development, or for integrated development.\textsuperscript{161} The council cannot review a decision made more than 6 months before if an appeal has not been made to the Land and Environment Court.\textsuperscript{162} Additionally, the council cannot review a decision that the Land and Environment Court has disposed of in an appeal.\textsuperscript{163}

**Merit appeals**

*Appeal rights: applicant*

An applicant who is dissatisfied with a decision of a consent authority regarding their development application can appeal to the Land and Environment Court within 6 months of receiving notice of the decision.\textsuperscript{164} An applicant can also appeal against a decision on a modification application within 6 months of lodging it.\textsuperscript{165}

An applicant can also appeal against a failure of a council or the Minister to make a decision regarding a DA within the time limits specified in the EP&A Act and Regulations. This is known as a ‘deemed refusal’.\textsuperscript{166} A DA will be deemed to have been refused if it has not been determined within a certain time period after the lodgement of the application. The deemed refusal period is 40 days, or 60 days for designated development, integrated development or development which requires concurrence. If the application is for State significant development, the deemed refusal period is 90 days.\textsuperscript{167}

\textsuperscript{159} *Environmental Planning and Assessment Act 1979* (NSW), s. 81A.

\textsuperscript{160} *Environmental Planning and Assessment Act 1979* (NSW), s. 109M.

\textsuperscript{161} *Environmental Planning and Assessment Act 1979* (NSW), s. 82A.

\textsuperscript{162} *Environmental Planning and Assessment Act 1979* (NSW), ss. 82A(2), 97.

\textsuperscript{163} *Environmental Planning and Assessment Act 1979* (NSW), ss. 82A(2), 97.

\textsuperscript{164} *Environmental Planning and Assessment Act 1979* (NSW), s. 97.

\textsuperscript{165} *Environmental Planning and Assessment Act 1979* (NSW), s. 97AA.

\textsuperscript{166} *Environmental Planning and Assessment Act 1979* (NSW), s. 82; EP&A Regulation, cl 113.

\textsuperscript{167} *Environmental Planning and Assessment Act 1979* (NSW), s. 82; EP&A Regulation, cl 113.
Appeal rights: objectors

An objector is a person who made a submission objecting to a development application during the public exhibition period. An objector can bring a merits appeal against a decision to approve designated development within 28 days of notification of the decision. An objector cannot appeal against the approval of development that is not classified as designated. It is important to note that there is no appeal available if a public hearing has been held by the Planning Assessment Commission.

Can an objector be joined to a developer’s merits appeal?

If a developer brings a merits appeal in relation to a designated development each person who objected to the development during the public submission period must be notified of the consent. Each objector then has 28 days to apply to the Court if they wish to be joined to the hearing.

The Court also has power to join a person to a merits appeal of a decision relating to non-designated development. The Court may order the joinder of a third party who has an interest in the development application upon their application to the Court if the Court is of the opinion that the person is able to raise an issue that should be considered in relation to the appeal but would not be likely to be sufficiently addressed if the person were not joined as a party, that it is in the interests of justice that the person be joined as a party, or that it is in the public interest that the person be joined as a party to the appeal.

Merit appeals which are excluded

The EP&A Act excludes anyone from bringing a merits appeal in the following cases:

- a dissatisfied applicant for a complying development certificate cannot appeal (on the merits) against a decision to issue or refuse a complying development certificate;
- decisions made by the Planning and Assessment Commission (PAC) cannot be appealed if the decision was made after a public hearing.
- decisions on designated development made by any determining authority if the decision was made after a public hearing by the PAC.

Judicial review proceedings

Any person can bring a legal challenge or judicial review in the Land and Environment Court within 3 months of public notification of a decision. In judicial review it is argued that there has been a legal error in the way a decision about a

---

168 Environmental Planning and Assessment Act 1979 (NSW), s. 98.
169 Environmental Planning and Assessment Act 1979 (NSW), s. 97A.
170 Land and Environment Court Act 1979 (NSW), s. 39A.
171 Land and Environment Court Act 1979, s. 39A.
172 Environmental Planning and Assessment Act 1979 (NSW), s. 85A(10).
173 Environmental Planning and Assessment Act 1979 (NSW), s. 23F.
174 Environmental Planning and Assessment Act 1979 (NSW), ss. 97(7), 98(5).
development consent was made, in other words, that there has been a breach of the EP&A Act.¹⁷⁵

There are strict time limits on judicial review proceedings. Any challenge to the legal validity of a development consent or complying development must be brought within 3 months of the date on which public notice of the decision was given.¹⁷⁶ Public notice is given by the council publishing a notice in a newspaper.¹⁷⁷ Each council must keep a note of the date and a copy of the page of the newspaper in which the notice was published.¹⁷⁸

See our Fact Sheet on the Land and Environment Court for more information on judicial review.

**Glossary**

**Key to terms used in this Fact Sheet**

**Act** means the *Environmental Planning and Assessment Act 1979 (NSW)*

**Consent authority** means the person responsible for deciding whether to grant development consent or not, usually a local council, but sometimes the Planning Minister or the PAC

**DA** means a development application

**DCP** means a development control plan

**Department** means the NSW Department of Planning and Environment

**Determining authority** means the NSW Minister for Planning or a public authority whose approval is required in order to enable the activity to be carried out e.g. local council

**DGR's** are the Director-General of Planning’s environmental impact assessment requirements

**Director-General** means the Director-General of the NSW Department of Planning and Environment

**Environment Minister** means the NSW Minister for the Environment

**EIS** means an Environmental Impact Statement

**EP&A Act** means the *Environmental Planning and Assessment Act 1979 (NSW)*

**EP&A Regulation** means the *Environmental Planning and Assessment Regulation 2000 (NSW)*

¹⁷⁵ *Environmental Planning and Assessment Act 1979 (NSW)*, s. 123.
¹⁷⁶ *Environmental Planning and Assessment Act 1979 (NSW)*, s. 101.
¹⁷⁷ *Environmental Planning and Assessment Regulation 2000 (NSW)*, cls. 124,137.
¹⁷⁸ *Environmental Planning and Assessment Regulation 2000 (NSW)*, cls. 266,267.
EPI means an environmental planning instrument, which includes LEPs and SEPPs
IHAP means an Independent Hearing and Assessment Panel
JRPP means a Joint Regional Planning Panel
LEC means the Land and Environment Court of New South Wales
LEC Act means the Land and Environment Court Act 1979 (NSW)
LEP means a Local Environmental Plan
OEH means the NSW Office of Environment and Heritage
PAC means the Planning Assessment Commission
Planning Minister means the NSW Minister for Planning
REF means Review of Environmental Factors
SEPP means a State Environmental Planning Policy
SSD means State significant development
SSI means State significant infrastructure
TSC Act means the Threatened Species Conservation Act 1995 (NSW)