State Significant Development and State Significant Infrastructure

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Sydney: 02 9262 6989
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Overview

The Part 3A system for assessing major projects was repealed in 2011. Major project assessment has since been replaced by two separate assessment pathways:

1. State significant development (SSD); and
2. State significant infrastructure (SSI).

Projects that fall under either of these categories will be assessed by the Department of Planning and Environment (the Department).

Projects that do not qualify as State significant under either of these categories usually remain with local councils for assessment.

There are transitional provisions for dealing with Part 3A applications still in the system. The Planning Minister has delegated his approval functions to the Planning Assessment Commission (PAC) so most remaining Part 3A applications that were not returned to local councils will be assessed by the PAC. For more information about Part 3A major project assessment, see our Part 3A Major Project Approvals Fact Sheets.

2. [Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011](http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=cGhe0IAKNmU%3d&tabid=514&language=en-AU) (NSW)
This Fact Sheet outlines the assessment and approval process for State significant development (SSD) and State significant infrastructure (SSI).

**Tracking SSD and SSI**

The website of the NSW Department of Planning and Environment allows the public to track the progress of SSD and SSI applications. The Department’s development assessment tracking system allows you to:

- Find out information on SSD and SSI proposals that are before the Department;
- Make submissions on proposals which are on exhibition; and
- Find out about decisions on proposals.

[Click here](#) to go to the Department’s tracking system.

**What is State Significant Development?**

Generally, State significant development (SSD) includes large-scale or complex projects that may involve significant environmental impacts. A development can become SSD in one of two ways:

1. It can be declared to be SSD under [State Environmental Planning Policy (State and Regional Development) 2011](#) (State and Regional Development SEPP), or
2. It can be declared to be SSD by order of the Planning Minister.

The State and Regional Development SEPP sets out categories of development that will qualify as SSD. It also includes certain sites where any type of development is considered to be SSD due to the significance of the site. Such sites include Sydney Olympic Park, Redfern-Waterloo and Barangaroo.

Where the Planning Minister believes that a particular development should be assessed as SSD, he or she can ‘call in’ the development by publishing an order in the NSW Government Gazette. However, the Minister must first obtain and make publicly available advice from the Planning Assessment Commission about the State or regional planning significance of the development.

**Development categories under the State and Regional Development SEPP**

Some of the categories of development that qualify as SSD include:

- Mining;

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5. [Environmental Planning and Assessment Act 1979 (NSW), s. 89C.](#)
6. [State Environmental Planning Policy (State and Regional Development) 2011, Schedules 1 and 2.](#)
7. [Environmental Planning and Assessment Act 1979 (NSW), s. 89C(3).](#)
8. [State Environmental Planning Policy (State and Regional Development) 2011, Schedule 1.](#)
9. [State Environmental Planning Policy (State and Regional Development) 2011, Schedule 2.](#)
10. [Environmental Planning and Assessment Act 1979 (NSW), s. 89C.](#)
11. [State Environmental Planning Policy (State and Regional Development) 2011, Schedule 1.](#)
- Petroleum (oil, and gas);
- Intensive livestock agriculture;
- Chemical, manufacturing and other industries;
- Warehouses or distribution centres;
- Hospitals, medical centres and health research facilities;
- Timber milling, timber processing, paper & pulp processing;
- Port facilities and wharf or boating facilities;
- Electricity generating works; and
- Waste and resource management facilities.

Most categories contain a number of requirements and thresholds that must be met before the project can be classified as SSD. For example, some developments must satisfy a minimum capital investment value or employ a minimum number of people. If the project does not meet the threshold requirements, it will not be considered to be SSD.

**How is a SSD project processed?**

**Applicant applies for the Director-General's Requirements**

The assessment process is initiated when the applicant lodges an online request for the Director-General's Environmental Assessment Requirements (DGRs). The DGRs set out what the applicant needs to cover in their environmental impact assessment.

At this stage, a decision must be made as to whether the proposed development qualifies as SSD. If it does, the DGRs will be issued, if it does not, the DGRs will not be issued and the development will most likely be assessed by the local council.  

**Director-General sets environmental assessment requirements**

DGRs are sometimes referred to as Environmental Assessment Requirements (EARs).

In preparing the DGRs, the Director-General must consult with relevant public authorities such as the Office of Environment and Heritage (OEH) and the local council in the area where the project is to take place, to ensure that all key issues are identified and assessed.  

The Director-General has to issue the DGRs within 28 days. The DGRs will be placed on the Department of Planning and Environment’s website within 5 days of issue. Those agencies that are consulted by the Director-General have 14 days to provide their recommended requirements.  

In some circumstances the Director-General can waive the requirement for an application for DGRs. However, the DGRs cannot be waived if the SSD is on land that is part of a critical habitat, or if the SSD is likely to significantly affect threatened species, populations or ecological communities, or their habitats. The Director-

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12 Environmental Planning and Assessment Regulation 2000 (NSW), Schedule 2 cl. 3.
13 Environmental Planning and Assessment Regulation 2000 (NSW), Schedule 2.
14 Environmental Planning and Assessment Regulation 2000 (NSW), Schedule 2 cl. 3.
General also cannot waive the requirement for DGRs if specific authorisations are required under other Acts, such as a mining lease under the *Mining Act*.\textsuperscript{15}

*Where the DGRs are waived, the applicant will still need to prepare an environmental impact statement (EIS) that meets the general EIS requirements set out below.*

**Environmental Impact Statement is prepared**

The applicant must then prepare an environmental impact statement that meets the requirements that have been set by the Director-General. In addition to addressing the DGRs, an EIS must include the following:\textsuperscript{16}

- a summary of the environmental impact statement,
- a statement of the objectives of the development,
- an analysis of any feasible alternatives to the carrying out of the development in relation to its objectives, and the consequences of not carrying it out,
- an analysis of the development, including:
  - a full description of the development,
  - a general description of the environment likely to be affected by the development,
  - a detailed description of those aspects of the environment that are likely to be *significantly* affected,
  - the likely impact of the development on the environment,
  - a full description of mitigation measures proposed,
  - a list of any approvals that may be obtained under any other Act – such as a licence to pollute (environment protection licence) from the Office of Environment and Heritage, and
- Reasons justifying the carrying out of the development in the manner proposed.

The applicant will often consult with local council, Government Agencies and the community when preparing the EIS.

**Project application**

Once the applicant has completed the EIS, it is sent to the Director-General together with a development application.\textsuperscript{17}

The Department has posted a [checklist](#) which applicants seeking consent can refer to.

The Department may reject the development application within 14 days of receiving it if it is illegible, unclear, or incomplete.\textsuperscript{18} If after 90 days the consent authority has not determined the application, the development application is deemed to have been refused.\textsuperscript{19}

\textsuperscript{15} *Environmental Planning and Assessment Regulation 2000 (NSW)*, Schedule 2 cl. 3.
\textsuperscript{16} *Environmental Planning and Assessment Regulation 2000 (NSW)*, Schedule 2 cl. 7.
\textsuperscript{17} *Environmental Planning and Assessment Regulation 2000 (NSW)*, Schedule 1.
\textsuperscript{18} *Environmental Planning and Assessment Regulation 2000 (NSW)*, cl. 51.
\textsuperscript{19} *Environmental Planning and Assessment Regulation 2000 (NSW)*, cl. 113.
Public exhibition and submissions

If the Director-General is satisfied that the development application and the EIS are in the approved form and meet the Department’s requirements, the Director-General must place the development application and EIS on public exhibition as soon as practicable after receiving it.  

Public notice of the application must be published in a local newspaper and on the website of the Department. A copy of the notice must also be given to people owning or occupying adjoining land detailing the proposed development and the submission period.

The minimum exhibition period for SSD is 30 days. Click here to access the Department of Planning and Environment’s list of SSD proposals on exhibition.

During this exhibition period, any person can make a written submission to the Director-General about the project. It is important for objectors to make written submissions on time as this preserves objector appeal rights later on (see Appeals, below). It is important that any reasons for objections to the development are clearly stated. For more information, see our Submissions, Letters and Petitions Fact Sheet.

Once the exhibition period has closed, the Director-General must either pass the submissions or a summary of the submissions to the applicant. The submissions will also be made available on the Department’s website within 10 days of the submission period closing.

The Director-General may decide to ask the applicant to respond to some or all of the issues raised in the submissions, however this is discretionary. If a response is required, the applicant will have 21 days (unless the Director-General sets a different time) to lodge a response. This response will also be placed on the Department’s website.

If the applicant proposes minor changes, the Department will take steps to finalise the assessment. If the changes are deemed to be significant, the amended development application and EIS will be placed on public exhibition again.

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20 Environmental Planning and Assessment Act 1979 (NSW), s. 89F.
21 Environmental Planning and Assessment Regulation 2000 (NSW), cl. 84(1).
22 Environmental Planning and Assessment Regulation 2000 (NSW), cl. 84(2).
23 Environmental Planning and Assessment Regulation 2000 (NSW), cl. 83.
24 Environmental Planning and Assessment Act 1979 (NSW), s. 89F(3).
25 Environmental Planning and Assessment Act 1979 (NSW), s. 89F(3).
26 Environmental Planning and Assessment Regulation 2000 (NSW), cl. 85A.
27 Environmental Planning and Assessment Regulation 2000 (NSW), cl. 85A.
28 Environmental Planning and Assessment Regulation 2000 (NSW), cl. 85B.
29 Environmental Planning and Assessment Act 1979 (NSW), s. 96; Environmental Planning and Assessment Regulation 2000 (NSW), cll. 115, 117.
30 Environmental Planning and Assessment Act 1979 (NSW), s. 96; Environmental Planning and Assessment Regulation 2000 (NSW), cll. 115, 117.
EDO NSW eBulletin lists new SSD applications weekly

The Department lists all new applications for SSD and SSI open for public comment on its website. Each week, the EDO publishes an email bulletin which includes a list of the new projects which have been listed for public comment during the past week.

Public access to documents

SSD applications and documents relating to them must be made available on the Department’s website. 31 You should be able to access:

- the Director-General’s environmental assessment requirements (DGRs),
- the development application, including any accompanying documents or information and any amendments made to the development application,
- any submissions received during the submission period and any response provided by the applicant,
- any environmental assessment report prepared by the Director-General,
- any development consent or modification to a development consent issued for the project,
- any application made for a modification to development consent, including any accompanying documents or information,
- any documents or information provided to the Director-General by the applicant in response to submissions.

The public has a right to copy and inspect these documents during the minimum 30 days that they are exhibited. 32

Please refer to our Access to Information Fact Sheet for further information about obtaining documents from public authorities.

Decision

The Planning Minister has the power to decide all SSD projects. 33

However, the Minister may delegate this power to either the Planning Assessment Commission (PAC), the Director-General of Planning or, theoretically, to any other public authority. 34

The Minister has delegated the consent authority for all SSD project applications lodged by private developers to the PAC and Department of Planning and Environment. The Minister will continue to determine all SSD applications lodged by public authorities. 35

Under the terms of the current delegation, the PAC will determine larger and more controversial projects (that is, applications that have received more than 25 public

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31 Environmental Planning and Assessment Regulation 2000 (NSW), cl. 85B.
32 Environmental Planning and Assessment Act 1979 (NSW), s. 89F.
33 Environmental Planning and Assessment Act 1979 (NSW), s. 89D.
34 Environmental Planning and Assessment Act 1979 (NSW), s. 23.
35 Department of Planning and Infrastructure Fact Sheet, State significant assessment system: an overview September 2011 page 4, Available at: http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=VXQ9cmtH4pI%3d&tabid=517&language=en-AU
submissions) and all SSD applications where a reportable political donation has been made.

Senior Department of Planning and Environment staff will assess less controversial projects, (that is, projects that have attracted fewer than 25 public submissions objecting to the proposal where the local council has not objected). 36

When assessing SSD projects, the decision-maker must take into account (where relevant) the following, 37:

- Any environmental planning instrument (such as a local environmental plan or State Environmental Planning Policy);
- Coastal Zone management plans;
- The likely impacts of the development, including:
  - Environmental impacts on the natural and built environment;
  - Social impacts in the locality; and
  - Economic impacts in the locality.
- The suitability of the site for the development;
- Public submissions;
- The public interest; and
- The findings and recommendations of the PAC (if the PAC is not the decision maker). 38

The decision-maker will then decide whether or not to approve the project.

If the project is approved, the decision maker can attach such conditions as they think necessary to the consent. 39 For example, approvals can be conditional upon the applicant acquiring and retiring biodiversity credits or subject to the applicant complying with a BioBanking statement. 40 Conditions are often aimed at avoiding or minimising any adverse impacts of the development.

Relevance of environmental planning instruments

The purpose of SSD provisions is to allow the State Government to determine whether or not consent should be granted to projects deemed to be of State or regional significance. This takes the decision out of the hands of local councils and local communities and is intended to allow for more strategic decision-making.

Planning at the local level is governed by local environmental plans (LEPs) and State Environmental Planning Policies (SEPPs) which are both forms of environmental planning instruments (EPIs).

LEPs control what development can go where through a system of zones. The types of development that tend to qualify as SSD are often wholly or partially prohibited by

36 Environmental Planning and Assessment Act 1979 (NSW) Instrument of Delegation September 2011; Department of Planning and Infrastructure Fact Sheet, State significant assessment system: an overview September 2011 page 4.
37 Environmental Planning and Assessment Act 1979 (NSW), ss. 79C, 89H.
38 Environmental Planning and Assessment Act 1979 (NSW), s. 80(7).
39 Environmental Planning and Assessment Act 1979 (NSW), s. 89E(1) (a).
40 Environmental Planning and Assessment Act 1979 (NSW), s. 89I.
the LEP. Some SEPPs also place restrictions on where certain types of development can be located.

For more information on EPIs, see our LEPs and SEPPs Fact Sheets.

SSD is still governed by EPIs to some extent. Where an EPI wholly prohibits the development on the relevant land, consent cannot be granted to that development.\textsuperscript{41} Where an EPI only partly prohibits the development, consent may be granted.\textsuperscript{42}

However, a development application for SSD that is wholly or partly prohibited by an EPI can be accompanied by a proposed change to the EPI to permit the carrying out of the development.\textsuperscript{43} In other words, where the development would otherwise be prohibited, the developer can apply to have the EPI changed so that this prohibition no longer applies. The Director-General can also propose changes to a LEP for the purposes of permitting the development of an otherwise prohibited SSD.\textsuperscript{44}

Where an LEP needs to be amended to facilitate SSD, only the Planning Assessment Commission can approve the amendment.\textsuperscript{45} Further, only the PAC can determine the development application for SSD that requires an amendment to a LEP.\textsuperscript{46}

\textbf{Relevance of other environmental laws}

Often, a project needs a number of approvals in addition to development consent. These approvals are often granted by other Government Departments such as the Office of Environment and Heritage or the Office of Water. For example, a proposal to build a power station might also require a licence to pollute and approval to access and take water. Many developments require a permit to clear native vegetation or to harm threatened species.

With SSD, many of these additional approvals are either unnecessary or subject to a requirement that the approval must be given consistently with the development consent, meaning there is no discretion to refuse the approval if it is necessary to carry out SSD.

The following authorisations are not required for SSD:\textsuperscript{47}

\begin{itemize}
\item the concurrence of the Minister for the Environment to carry out development in the coastal zone;\textsuperscript{48}
\item a permit to carry out dredging or reclamation work,\textsuperscript{49} a permit to harm marine vegetation in a protected area,\textsuperscript{50} or a permit to block the passage of fish in a watercourse;\textsuperscript{51}
\end{itemize}

\begin{footnotes}
\textsuperscript{41} \textit{Environmental Planning and Assessment Act 1979} (NSW), s. 89E(2).
\textsuperscript{42} \textit{Environmental Planning and Assessment Act 1979} (NSW), s. 89E(3).
\textsuperscript{43} \textit{Environmental Planning and Assessment Act 1979} (NSW), s. 89E(5).
\textsuperscript{44} \textit{Environmental Planning and Assessment Act 1979} (NSW), s. 89E(6).
\textsuperscript{45} \textit{Environmental Planning and Assessment Act 1979} (NSW), s. 89E(6).
\textsuperscript{46} \textit{Environmental Planning and Assessment Act 1979} (NSW), s. 89J.
\textsuperscript{47} \textit{Coastal Protection Act 1979} (NSW), Part 3.
\textsuperscript{48} \textit{Fisheries Management Act 1994} (NSW), s. 201.
\textsuperscript{49} \textit{Fisheries Management Act 1994} (NSW), s. 205.
\textsuperscript{50} \textit{Fisheries Management Act 1994} (NSW), s. 219.
\end{footnotes}
- an approval to interfere with places or buildings protected by a heritage protection order\textsuperscript{52} or an excavation permit for excavation that is likely to uncover a relic\textsuperscript{53}
- an Aboriginal heritage impact permit\textsuperscript{54}
- an authorisation to clear native vegetation or State protected land\textsuperscript{55}
- a bush fire safety authority\textsuperscript{56}
- a water use approval\textsuperscript{57}, a water management work approval\textsuperscript{58} or an activity approval (other than an aquifer interference approval)\textsuperscript{59}

The following authorisations are still required, but must be granted consistently with a development consent for SSD\textsuperscript{60}:

- a permit to undertake aquaculture\textsuperscript{61}
- an approval to alter or erect improvements or to subdivide land within a mine subsidence district\textsuperscript{62}
- a mining lease\textsuperscript{63}
- a petroleum production lease\textsuperscript{64}
- an environment protection licence (also known as a licence to pollute)\textsuperscript{65}
- a consent to undertake an activity with regards to a public road such as to dig up the surface of the road or to interfere with a structure or tree on a public road\textsuperscript{66}
- a licence to construct or operate a pipeline\textsuperscript{67}

**Modifications**

SSD consents can be modified which means the applicant can seek to alter the project in some way after consent has been granted.

The applicant has to apply for a modification to the same consent authority that made the original decision.

Modifications can only be granted in certain circumstances, namely:

- if, in the opinion of the consent authority, the modification would have minimal environmental impact;

\textsuperscript{52} *Heritage Act 1977* (NSW), Part 4.
\textsuperscript{53} *Heritage Act 1977* (NSW), s. 139.
\textsuperscript{54} *National Parks and Wildlife Act 1974* (NSW), s. 90.
\textsuperscript{55} *Native Vegetation Act 2003* (NSW), s. 12
\textsuperscript{56} *Rural Fires Act 1997* (NSW), s. 100B.
\textsuperscript{57} *Water Management Act 2000* (NSW), s. 89.
\textsuperscript{58} *Water Management Act 2000* (NSW), s. 90.
\textsuperscript{59} *Water Management Act 2000* (NSW), s. 91.
\textsuperscript{60} *Environmental Planning and Assessment Act 1979* (NSW), s. 89K.
\textsuperscript{61} *Fisheries Management Act 1997* (NSW), s. 144.
\textsuperscript{62} *Mine Subsidence Compensation Act 1961* (NSW), s. 15.
\textsuperscript{63} *Mining Act 1992* (NSW).
\textsuperscript{64} *Petroleum (Onshore) Act 1991* (NSW).
\textsuperscript{65} *Protection of the Environment (Operations) Act 1997* (NSW), Chapter 3 for any of the purposes listed in s. 43.
\textsuperscript{66} *Roads Act 1993* (NSW), s. 138
\textsuperscript{67} *Pipelines Act 1967* (NSW).
• if the modification would still result in substantially the same development as was originally approved,\(^{68}\) or
• to correct a minor error, misdescription or miscalculation.\(^{69}\)

Whether or not the modification application will be publicly exhibited and opened up for public comment will depend on the modification.

Modifications involving the correction of minor errors or that will have only a minimal environmental impact do not need to be publicly notified and there will be no opportunity for the public to comment.\(^{70}\)

Other modifications are required to be notified for at least 14 days in the same manner as the original application was notified.\(^{71}\)

What is State Significant Infrastructure?

State Significant Infrastructure (SSI) is another category of development. As with SSD, the types of development that qualify as SSI are listed in the SEPP (State and Regional Development) 2011.\(^{72}\) Development on specific sites can also become SSI.\(^{73}\)

Some developments can be declared to be SSI because they are to be carried out by a public authority. Such developments would not normally need consent because the body carrying out the development (the proponent) is also the consent authority. However, if the proponent thinks the development requires an environmental impact statement, the development will be deemed to be SSI.\(^{74}\) These tend to be large-scale public infrastructure projects carried out by a State agency such as the Roads and Traffic Authority or Sydney Water.

There are different types of SSI. Critical SSI\(^{75}\) and Staged SSI are dealt with in more detail below (see 5.9 and 5.10).

Categories of SSI

Some of the developments that can qualify as SSI include:\(^{76}\)

• Port facilities and wharf or boat facilities;
• Rail infrastructure;
• Water storage or water treatment facilities;

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\(^{68}\) Environmental Planning and Assessment Regulation 2000 (NSW), cl. 117.
\(^{69}\) Environmental Planning and Assessment Act 1979 (NSW), s. 96.
\(^{70}\) Environmental Planning and Assessment Act 1979 (NSW), s. 96(1) and (1A); Environmental Planning and Assessment Regulation 2000 (NSW), cl. 119(1).
\(^{71}\) Environmental Planning and Assessment Act 1979 (NSW), s. 96 (2); Environmental Planning and Assessment Regulation 2000 (NSW), cl. 119(1) and (2).
\(^{72}\) Environmental Planning and Assessment Act 1979 (NSW), s. 115U. See also State Environmental Planning Policy (State and Regional Development) 2011, Schedule 3.
\(^{73}\) State Environmental Planning Policy (State and Regional Development) 2011, Schedule 4.
\(^{74}\) Environmental Planning and Assessment Act 1979 (NSW), s. 115U(3). See State Environmental Planning Policy (State and Regional Development) 2011, Schedule 3.
\(^{75}\) Environmental Planning and Assessment Act 1979 (NSW), s. 115V(3).
\(^{76}\) State Environmental Planning Policy (State and Regional Development) 2011, Schedule 3.
- Pipelines;
- Submarine, Telecommunication cables

Proposals that meet both SSD and SSI criteria will usually default to SSD assessment to ensure that the SSI process is restricted to public authorities undertaking infrastructure projects.\(^{77}\)

**How are SSI projects assessed?**

The assessment process for SSI is similar to but also different to the process for SSD.

**Application**

A proponent must submit an application that describes the infrastructure project to the Director-General of Planning and Infrastructure.\(^{78}\)

**Director-General sets the environmental assessment requirements**

The Director-General will then prepare site-specific environmental assessment requirements (DGRs) which the proponent must address in an environmental impact statement (EIS).\(^{79}\) In preparing the DGRs, the Director-General must consult with relevant public authorities such as the Office of Environment and Heritage (OEH).\(^{80}\) Importantly, the Director-General can modify these requirements at a later date, simply by providing written notice of the modifications to the proponent.\(^{81}\)

**Proponent prepares an environmental impact statement**

The proponent then prepares and submits an EIS to the Director-General.\(^{82}\)

The Director-General can ask the proponent to revise the EIS to address certain matters,\(^{83}\)

**Public exhibition and submissions**

Once the Director-General is satisfied with the EIS, it will be placed on public exhibition for a minimum of 30 days.\(^{84}\)

During this exhibition period, any person or public authority may comment on the EIS.\(^{85}\)

The Director-General must then submit either the submissions or a report on the issues raised by the submissions to the proponent and any other public authority that the Director-General considers appropriate, including the Office of Environment and

\(^{77}\) *Environmental Planning and Assessment Act 1979* (NSW), s. 115U(6).

\(^{78}\) *Environmental Planning and Assessment Act 1979* (NSW), s. 115X.

\(^{79}\) *Environmental Planning and Assessment Act 1979* (NSW), s. 115Y.

\(^{80}\) *Environmental Planning and Assessment Act 1979* (NSW), s. 115Y(3).

\(^{81}\) *Environmental Planning and Assessment Act 1979* (NSW), s. 115Y(4).

\(^{82}\) *Environmental Planning and Assessment Act 1979* (NSW), s. 115Z.

\(^{83}\) *Environmental Planning and Assessment Act 1979* (NSW), s. 115Z (2).

\(^{84}\) *Environmental Planning and Assessment Act 1979* (NSW), s. 115Z(3); *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 194.

\(^{85}\) *Environmental Planning and Assessment Act 1979* (NSW), s. 115Z(4).
Heritage if the SSI will require an environment protection licence (licence to pollute).\(^{86}\)

The Director-General may require the proponent to respond to the issues raised by the submission and/or lodge a ‘preferred infrastructure report’ that outlines any proposed changes to the development to minimise its environmental impact or to deal with any other issue raised.\(^{87}\)

If the Director-General believes that these proposed changes to the SSI are significant, he or she may make the preferred infrastructure report available to the public, but this is discretionary.\(^{88}\)

**Public access to documents**

Documents relating to SSI applications must be made publicly available on the Department’s website or by an electronic link on the Department’s website to the document on another website\(^ {89}\) for a minimum of 30 days.\(^ {90}\) You should have access to:\(^ {91}\)

- The application to carry out State significant infrastructure;
- The environmental assessment requirements set by the Director-General;
- The environmental impact statement prepared by the proponent and any responses provided to the Director-General by the proponent after the end of the public exhibition period;
- Any environmental assessment reports provided to the Minister by the Director-General;
- Any advice, recommendations or reports received from the Planning Assessment Commission;
- Any approval to carry out State significant infrastructure given by the Minister; and
- Any requests to modify an approval and any modifications made by the Minister.

Click here to access the Department of Planning and Environment’s list of SSI proposals on exhibition.

**Decision**

The Planning Minister is the consent authority for all SSI projects.\(^ {92}\)

The Director-General is required to prepare an environmental assessment report which must be considered by the Minister during the decision-making process.\(^ {93}\) The report must include.\(^ {94}\)

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\(^{86}\) *Environmental Planning and Assessment Act 1979* (NSW), s. 115Z(5).

\(^{87}\) *Environmental Planning and Assessment Act 1979* (NSW), s. 115Z(6).

\(^{88}\) *Environmental Planning and Assessment Act 1979* (NSW), s. 115Z(7).

\(^{89}\) *Environmental Planning and Assessment Act 1979* (NSW), s. 115ZL; *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 196.

\(^{90}\) *Environmental Planning and Assessment Regulation 2000* (NSW), cl 194.

\(^{91}\) *Environmental Planning and Assessment Act 1979* (NSW), s. 115ZL.

\(^{92}\) *Environmental Planning and Assessment Act 1979* (NSW), s. 115ZB.

\(^{93}\) *Environmental Planning and Assessment Act 1979* (NSW), s. 115ZA.
• a copy of the proponent’s environmental impact statement and any preferred infrastructure report;
• any advice provided by public authorities on the State significant infrastructure;
• a copy of any report or advice of the Planning Assessment Commission; and
• any environmental assessment undertaken by the Director-General or other matter the Director-General considers appropriate.

In addition to the Director-General’s report, the Minister must also consider:95

• any advice provided by the Minister having responsibility for the proponent; and

• any findings or recommendations of the Planning Assessment Commission following a review in respect of the proposed infrastructure project.

The Planning Minister may then decide whether or not to approve the project. The Minister can approve the project with modifications, and can grant an approval subject to any conditions that the Minister thinks fit.96

For example, the Minister can make it a condition of consent that the proponent acquires BioBanking credits that are to be retired as part of the proposal, and to comply with the conditions of a BioBanking statement.97

See our Biobanking Fact Sheet for more information on BioBanking and biodiversity statements.

**Landholder’s consent**

SSI projects are often proposed over land that is privately owned. Where this is the case, landholder consent is required before the project can go ahead unless:98

• The application is made by a public authority;
• It is a critical SSI project. (For more detail about CSSI, see 5.9 below); or
• The SSI relates to linear transport or utility infrastructure.

If landholder consent is not required, the proponent must still notify the landholder of the proposal in writing no later than fourteen days after lodging the SSI application, or by an advertisement published in a newspaper circulating in the area in which the SSI is to be carried out at least fourteen days before the EIS relating to the SSI is placed on public exhibition.99

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94 Environmental Planning and Assessment Act 1979 (NSW), s. 115ZA(2)
95 Environmental Planning and Assessment Act 1979 (NSW), s. 115ZB.
96 Environmental Planning and Assessment Act 1979 (NSW), s. 115ZB(3).
97 Environmental Planning and Assessment Act 1979 (NSW), s. 115ZC.
98 Environmental Planning and Assessment Act 1979 (NSW), ss. 115ZM; Environmental Planning and Assessment Regulation 2000 (NSW), cl. 193.
99 Environmental Planning and Assessment Regulation 2000 (NSW), cl. 193(4).
Relevance of environmental planning instruments

Local environmental plans (LEPs) and State Environmental Planning Policies (SEPPs) do not apply to SSI except in very limited circumstances. For example, where they apply to the declaration of infrastructure as SSI or as CSSI.  

Relevance of other environmental laws

As with SSD, SSI projects do not require a range of additional authorisations that would ordinarily be needed before the project could proceed. For example, they do not require:

- an Aboriginal heritage impact permit;
- a permit to clear native vegetation;
- a bush fire safety authority; or
- a water use approval.

In addition, where consent has been granted for a SSI development, a number of additional approvals must be granted if they are necessary for carrying out the approved SSI and are substantially consistent with the SSI approval, including:

- an aquaculture permit;
- a mining lease;
- a petroleum production lease;
- an environment protection licence (which is a licence to pollute); and
- a pipeline licence.

This means that once the Planning Minister approves a SSI project there is very little that other public authorities (such as the EPA) can do to prevent the project from being carried out.

SSI developments are not subject to the usual range of administrative orders which can be used by public authorities to enforce other environmental laws. For example, interim protection orders and stop work orders to protect threatened species, and environment protection notices to reduce pollution, cannot be issued against a critical infrastructure project.

Critical State Significant Infrastructure

Any SSI application can also be declared to be Critical State significant infrastructure (CSSI) if the Planning Minister believes the infrastructure is essential for the State for economic, environmental or social reasons. At the time of writing, there were two main categories of CSSI – projects forming part of the Pacific Highway upgrade, and rail infrastructure projects.

100 Environmental Planning and Assessment Act 1979 (NSW), s. 115ZF.
101 Environmental Planning and Assessment Act 1979 (NSW), s. 115ZG.
102 Environmental Planning and Assessment Act 1979 (NSW), s. 115ZH.
103 Environmental Planning and Assessment Act 1979 (NSW), s. 115V.
104 State Environmental Planning Policy (State and Regional Development) 2011, Schedule 5.
**Land owner consent not required**

Unlike most other forms of development, an application for a CSSI project can be lodged without the consent of landowners.\(^\text{106}\)

**Exemption from other environmental laws**

As with SSI, CSSI developments do not require a range of additional environmental approvals,\(^\text{107}\) while other approvals must be granted consistently with the CSSI approval.\(^\text{108}\) See 5.8 above.

**Staged Infrastructure**

Staged Infrastructure refers to an application for SSI that sets out concept proposals for the proposed infrastructure\(^\text{109}\) and where separate proposals for different parts of the development will require separate approvals from the Minister.\(^\text{110}\)

This means the Minister has the power to consider applications that only have detailed proposals for the first stage of the development.\(^\text{111}\)

However, the granting of an approval for the first stage of development does not authorise the development of further stages unless subsequent, detailed applications have been submitted for the Minister’s approval.\(^\text{112}\)

**Appeals**

There are different appeal rights for SSD, SSI and CSSI. Appeal rights also vary for proponents and third parties. All appeals are heard by the Land and Environment Court.

The following table summarises the appeal rights for SSD, SSI and CSSI. The text below should be consulted for more detail concerning these appeal rights.

<table>
<thead>
<tr>
<th>Proponent Appeals</th>
<th>SSD</th>
<th>SSI</th>
<th>CSSI</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Appeal Type</strong></td>
<td>Appeal Type</td>
<td>Availability</td>
<td>Time Limit</td>
</tr>
<tr>
<td><strong>Merits Appeal</strong></td>
<td>Yes</td>
<td>Merits appeal</td>
<td>No</td>
</tr>
<tr>
<td><strong>Judicial Review</strong></td>
<td>Yes</td>
<td>Judicial Review</td>
<td>Yes</td>
</tr>
</tbody>
</table>

\(^\text{106}\) Environmental Planning and Assessment Regulation 2000 (NSW), cl. 193(1)(b).

\(^\text{107}\) Environmental Planning and Assessment Act 1979 (NSW), s. 115ZG(3).

\(^\text{108}\) Environmental Planning and Assessment Act 1979 (NSW), s. 115ZH.

\(^\text{109}\) Environmental Planning and Assessment Act 1979 (NSW), Part 5.1 Division 3.

\(^\text{110}\) Environmental Planning and Assessment Act 1979 (NSW), s. 115ZD.

\(^\text{111}\) Environmental Planning and Assessment Act 1979 (NSW), s. 115ZD(2).
<table>
<thead>
<tr>
<th>Third Party Appeals</th>
<th>Merits Appeal</th>
<th>28 days</th>
<th>Merits Appeal</th>
<th>No</th>
<th>N/A</th>
<th>Merits Appeal</th>
<th>No</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judicial Review</td>
<td>Yes, objectors only</td>
<td>3 months</td>
<td>Judicial Review</td>
<td>Yes</td>
<td>3 months</td>
<td>Judicial review</td>
<td>Only if approved by Minister</td>
<td>3 months</td>
</tr>
</tbody>
</table>

Proponent appeals

**SSD approvals**

A proponent who is dissatisfied with the Minister's refusal to approve or modify an SSD application can appeal the merits of the decision in the Land and Environment Court (Class 1). Any appeal must be brought within 6 months of the proponent receiving notice of the decision, or a deemed refusal.

However merits appeals are not available if the decision was made by the PAC after the PAC held a public hearing.

A proponent can bring judicial review proceedings against a decision regarding SSD. Any proceedings must be commenced within 3 months after public notice of the decision was given.

**SSI approvals**

A proponent who is dissatisfied with a decision in relation to an SSI application cannot appeal on the merits at all. Judicial review has to be brought within 3 months of the proponent receiving notice of the decision, or a deemed refusal.

**CSSI approvals**

Proponents can't bring merits appeals to challenge decisions about critical SSI.

Judicial review is only available in relation to CSSI if they are brought within 3 months after public notice of the decision was given.

**Third party appeals**

**SSD approvals**

Merits appeals are permitted for a third party in relation to SSD but only if that person is an objector (that is, lodged a submission objecting to the development during the exhibition period). An objector can appeal against a decision regarding SSD provided the appeal is brought within 28 days of the date on which notice of the...

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113 Environmental Planning and Assessment Act 1979 (NSW), s. 97.
114 Environmental Planning and Assessment Act 1979 (NSW), s. 97(2).
115 Environmental Planning and Assessment Act 1979 (NSW), s. 23F.
116 Environmental Planning and Assessment Act 1979 (NSW), s. 101
117 Environmental Planning and Assessment Act 1979 (NSW), s. 115ZJ.
118 Environmental Planning and Assessment Act 1979 (NSW), s. 115ZJ.
determination was given to the objector.\textsuperscript{120} However, this right only applies to SSD projects that would have been ‘designated development’ had they not been declared to be SSD.\textsuperscript{121}

Merits appeals are not available if the decision was made after the PAC held a public hearing.\textsuperscript{122}

A third party can bring judicial review proceedings challenging the legal validity of a decision regarding SSD.\textsuperscript{123} Any proceedings must be commenced within 3 months after public notice of the decision was given.\textsuperscript{124}

\textbf{SSI approvals}

An objector who is dissatisfied with a decision in relation to an SSI application cannot appeal on the merits.

A third party can only bring judicial review proceedings against a SSI approval if the SSI is not for critical infrastructure. Any proceedings must be commenced within 3 months after public notice of the decision was given.\textsuperscript{125}

\textbf{CSSI approvals}

Third parties are not permitted to commence merit appeals concerning decisions relating to CSSI.\textsuperscript{126}

Third parties can only bring judicial review proceedings in relation to CSSI if the proceedings are brought, or approved by, the Planning Minister.\textsuperscript{127} If proceedings are brought, they must be commenced within 3 months after public notice of the decision was given.\textsuperscript{128}

Case study – Overcoming restricted appeal rights

\textbf{EDO NSW acted for Ned Haughton} – a student and environmental activist challenging the Minister for Planning’s approvals of two new coal or gas fired power stations – Bayswater B Power Station and the Mount Piper Power Station Extension.

The power stations were approved under the now repealed Part 3A of the \textit{Environmental Planning and Assessment Act 1979} (NSW). They were categorised as ‘critical infrastructure projects’ - a category very similar to the CSSI in that the approvals could not be challenged by third party objectors without the Planning Minister’s approval.

Mr Haughton sought the Minister’s approval to challenge the development consents but was unsuccessful. He was therefore forced to challenge the legality of the

\begin{itemize}
\item \textsuperscript{120} \textit{Environmental Planning and Assessment Act 1979} (NSW), s. 98.
\item \textsuperscript{121} \textit{Environmental Planning and Assessment Act 1979} (NSW), s. 98(5) and s 77A(2).
\item \textsuperscript{122} \textit{Environmental Planning and Assessment Act 1979} (NSW), ss. 98(5), 23F.
\item \textsuperscript{123} \textit{Environmental Planning and Assessment Act 1979} (NSW), s. 101.
\item \textsuperscript{124} \textit{Environmental Planning and Assessment Act 1979} (NSW), s. 101.
\item \textsuperscript{125} \textit{Environmental Planning and Assessment Act 1979} (NSW), s. 115ZJ.
\item \textsuperscript{126} \textit{Environmental Planning and Assessment Act 1979} (NSW), s. 115ZK.
\item \textsuperscript{127} \textit{Environmental Planning and Assessment Act 1979} (NSW), s. 115ZK(2).
\item \textsuperscript{128} \textit{Environmental Planning and Assessment Act 1979} (NSW), ss. 115ZK(4) and 115ZJ(1).
\end{itemize}
sections of the EP&A Act which sought to restrict his right to bring a judicial review case before the Court.

On this issue, Mr Haughton was successful. The Court found that the EP&A Act could not remove the jurisdiction of the Court and that any person can bring proceedings to address alleged breaches of the Act.

Glossary

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

**Applicant** means the person or company who proposes a development, often called the developer or the proponent

**Consent authority** means the person responsible for deciding whether or not to approve an application for SSD. This can be the Minister for Planning or the PAC

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

**DGRs** means the Director General’s Environmental Assessment Requirements

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

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

**EIS** means Environmental Impact Statement

**EPA** means the NSW Environment Protection Authority

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

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

**LEC Act** means the *Land and Environment Court Act 1979 (NSW)*

**LEP** means Local Environmental Plan

**NPW Act** means *National Parks and Wildlife Act 1974 (NSW)*

**OEH** means the NSW Office of Environment and Heritage

**PAC** means Planning Assessment Commission

**Planning Minister** means the NSW Minister for Planning

**Proponent** means the person or company who proposes a development, often called the developer or the applicant

**SEPP** means *State Environmental Planning Policy (State and Regional Development) 2011*

**SIS** means Species Impact Statement
SSD means State significant development
SSI means State significant infrastructure

**Useful websites**

SSD and SSI projects are administered by the NSW Department of Planning and Environment. Click here to go to NSW Department of Planning and Environment’s website, which includes a series of Fact Sheets.

**Useful legal texts**
