



Environmental Defenders Office

How to have your say in developments across NSW

Disclaimer: This factsheet is a guide only and is designed to give readers a plain English overview of the law. It does not replace the need for professional legal advice in individual cases. To request free initial legal advice on a public interest environmental or planning law issue, please visit our [website](#).

While every effort has been made to ensure the information is accurate, the EDO does not accept any responsibility for any loss or damage resulting from any error in this factsheet or use of this work.

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What is this factsheet about?

This factsheet outlines public rights to participate in development decisions in NSW. It will be useful for anyone who wants to comment on a development application or exercise other public participation rights, such as appealing development decisions.

Outline

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Overview

In NSW, development is regulated under the:

- [Environmental Planning and Assessment Act 1979 \(NSW\)](#) (**EP&A Act**)
- [Environmental Planning and Assessment Regulation 2021 \(NSW\)](#) (**EP&A Regulation**);
and
- Environmental planning instruments (**EPis**) which is a collective name for state environmental planning policies (**SEPPs**) and local environmental plans (**LEPs**).

The Department of Planning and Environment (**the Department**) is responsible for administering these laws and policies. These laws, policies and plans set out the different categories of development and the assessment process that each category must go through to be approved.

Read: EDO factsheet on **How to have your say in land-use planning in NSW** for information on the land-use planning scheme that underpins development decisions in NSW

This factsheet will focus on the public participation opportunities for each category of development that needs consent, including:

- State Significant Development;
- Regionally Significant Development;
- Designated Development; and
- Local Development.

This factsheet will also discuss public participation opportunities for the categories of development that do *not* need consent. These include:

- State Significant Infrastructure;
- Exempt Development;
- Complying Development; and
- Other development that does not need consent.

Public participation opportunities

The NSW public has the right to participate in development decisions. This may include:

- The right to be notified of development applications;
- The right to comment on development applications; and
- The right to appeal a decision in court.

The availability of these rights will differ depending on the category of development. This part of the factsheet will explain these rights at a general level. The following two sections of the factsheet will identify the availability and extent of these rights for each category of development.

Your right to be notified

The public will often have a right to be notified of a planned development. The notification is likely to appear on the website of the **consent authority** (also referred to as the decision-maker). Sometimes, notices will be placed in local or state-wide newspapers. In limited circumstances, adjoining landholders may be personally notified of proposed developments.

The information available on a development will depend on the category of development but it will often include a development application and some form of environmental assessment. These documents will be publicly available for a specific number of days, known as the public notification period. The public notification period for each category of development is outlined in the consent authority's **Community Participation Plan (CPP)**. In this factsheet, we indicate the mandatory minimum notification period as set out in legislation.¹

Visit: The Department's [website](#) to read its Community Participation Plan.
Your local council's website to read its Community Participation Plan.

You can register to receive email alerts of development applications near you through PlanningAlerts. This service operates independently of consent authorities, so may not cover every development application.

Visit: The PlanningAlerts [website](#) to sign up for email alerts of development applications near you.

Development Application

The **development application (DA)** will contain information about the proposed development, site plans and location details as well as information about the proponent (the person or body proposing to carry out the development). The DA should indicate the category of development.

The DA will usually be available on the consent authority's website.

Environmental Assessments

Environmental assessments (EA) are documents designed to evaluate the impacts a proposed development is expected to have on the environment, including social and economic impacts. The type of environmental assessment required will differ depending on the category of development. EAs will usually be available on the website of the consent authority.

¹ *Environmental Planning and Assessment Act 1979* (NSW) sch 1 (**EP&A Act**).

The following are common forms of environmental assessment in NSW:

- An **Environmental Impact Statement (EIS)** is the most thorough environmental assessment required in NSW. An EIS must contain certain information, including a general description of the environment likely to be affected by the development and an analysis of any feasible alternatives to carrying out the development.² The Secretary of the Department may also set some environmental assessment requirements that the proponent must address in the EIS (known as **SEARs**).³
- A **Statement of Environmental Effect (SEE)** is a report identifying the likely environmental impacts of a proposed project, how those impacts were identified and proposed strategies to mitigate any negative outcomes.⁴
- A **Review of Environmental Factors (REF)** is a report that analyses the likely environmental, social and economic impacts of a proposed development.⁵ These tend to be preliminary reports and can be followed up by a full EIS if the REF determines significant environmental impacts are likely.
- A **Biodiversity Development Assessment Report (BDAR)** is a report that is prepared in addition to other forms of environmental assessment if the development triggers the Biodiversity Offset Scheme. A BDAR will:
 - Identify the biodiversity values of the land;
 - Identify the impacts of the proposed development;
 - Outline the actions proposed by the proponent to avoid or minimise the impacts of the development or activity; and
 - Specify the number and class of biodiversity credits that are required to be retired to offset the residual impacts on biodiversity values.

Visit: The Department's [website](#) to learn more about the Biodiversity Offset Scheme.

- A **Species Impact Statement (SIS)** must be prepared if a development is on land containing critical habitat or is likely to significantly affect threatened species, populations or ecological communities. A consent authority can apply a '7-part test'⁶ to determine if there is likely to be a significant impact on a threatened species. A SIS must include details about the threatened species in the area and the likely impacts the development would have on the species. SISs have been largely superseded by BDARs.

² EP&A Act, s 4.12(8).

³ Ibid, s 5.16(4).

⁴ *Environmental Planning and Assessment Regulations 2021* (NSW) cl 171 (**EP&A Regulations**).

⁵ Ibid, cl 171.

⁶ EP&A Act, s 1.7

Your right to comment

Where the public has a right to comment on a development application, this is usually done by making a written submission to the consent authority during the public notification period. The consent authority must take all submissions into account when assessing the development application.

The public notification period will vary depending on the type of development, as set out in the relevant CPP. It is important to make written submissions on time for them to be considered.

A submission can be made by sending your written comment by post or email to the consent authority. If a project is advertised online, the relevant website will usually include a link to make a submission. For example, submissions about state significant developments can be made through a link on the Department's Major Projects [website](#).

A submission should clearly stipulate whether the writer supports or objects to the development application.

Environmental Planning and Assessment Act 1979 (NSW) s.4.15 - evaluation criteria

To be relevant, a submission should also address the criteria that the consent authority must use to evaluate the development application. For example, all developments requiring consent must be evaluated against the same criteria (to the extent that they are relevant). These factors include:⁷

- Any environmental planning instrument (such as a SEPP or LEP)
- The likely impacts of the development, including:
 - Environmental impacts on the natural and built environment
 - Social impacts on the locality, and
 - Economic impacts on the locality.
- The suitability of the site for the development
- Public submissions
- The public interest, and

The findings and recommendations of the IPC (if the IPC is not the consent authority).⁸

⁷ EP&A Act, s 4.15.

⁸ Ibid, s 4.15.

Sometimes, the consent authority will seek public comments through a public hearing or a public meeting. A public hearing will be held by the Independent Planning Commission (**IPC**), if requested by the Minister.⁹ A Sydney or Regional Planning Panel may hold a public briefing meeting to hear submissions from the public if a proposal attracts significant community interest. A Sydney or Regional Planning Panel may hold a determination meeting to consider the application, if 10 or more unique objection submissions are made. A local planning panel will hold a public meeting if a proposal receives 10 or more unique objection submissions.

Public meetings and hearings provide a good opportunity to raise concerns about a proposed development in a public forum. It will usually be necessary to register to speak at a public meeting or hearing.

If the IPC holds a public hearing, any merits appeal rights are extinguished so it is particularly important to make the most of the opportunity to influence the IPC's decision at the public hearing.

Read: EDO factsheet on **Submissions, Letters and Petitions** for guidance on how to write a submission and appear before a public hearing or meeting.

Your right to appeal a decision

Members of the public may be able to appeal against a development decision that they are not happy with. This happens in the Land and Environment Court of NSW (**LEC**).

There are two types of appeal available to members of the public:

- In **merits review**, the Court acts as the consent authority and remakes the decision which is being challenged from scratch. The applicant argues that the Court should reach a different decision to the original consent authority and supports that argument with evidence as to why a different decision is preferable. The Court can either approve or refuse the development application (or approve it subject to conditions).
- In **judicial review**, the applicant is arguing that there has been a legal error in the way the decision was made (typically, a problem with the procedure that was followed in assessing and approving a development application). The Court does not remake the decision, it only determines whether the decision was legally correct. If the Court finds the decision is not lawful, it can void the decision (meaning there is no longer any development consent).

These appeal options are not always available and even where they are there are tight timeframes that must be met.

⁹ EP&A Act, s 2.9.

Read: EDO factsheet on the **Land and Environment Court of NSW** for more information on appeal rights.

Another form of public participation through the courts is called **civil enforcement**.

In civil enforcement proceedings a person alleges that there has been a breach of an environmental law and asks the Court to make orders to remedy or restrain that breach.

Examples of breaches of environmental law that civil enforcement proceedings may seek a remedy for include:

- Where a person causes pollution without an environment protection licence or more than the limit permitted by that licence
- Where a developer breaches the conditions of their development consent
- Where a person breaches wildlife protection provisions of the *National Parks and Wildlife Act 1974* (NSW) or the *Threatened Species Conservation Act 1995* (NSW), or
- Where a person undertakes development without the required development consent.

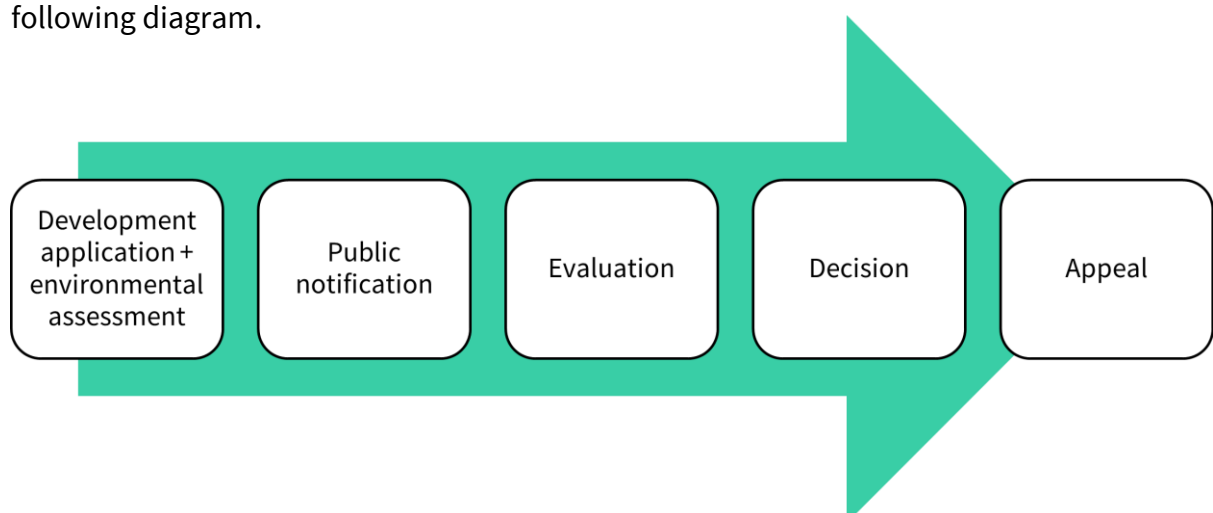
Development that needs consent

A development that needs consent means the development proposal must be approved by the consent authority.

This part of the factsheet will outline public participation opportunities for:

- State Significant Development
- Regionally Significant Development
- Designated Development, and
- Local Development.

All developments that need consent go through the same general process, outlined in the following diagram.



There are some key differences depending on the category of development, including the consent authority, the type of environmental assessment required, the public notification period, the ability for the public to make comments and the types of appeal that are available to the public.

State Significant Development

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| What is it? | State Significant Developments (SSD) include large-scale or complex projects that may involve significant environmental impacts. Examples include coal mines, coal seam gas production, waste management facilities and energy generating facilities. ¹⁰ To qualify as SSD, some types of development must meet certain thresholds, such as size, location, or cost. ¹¹ |
| Consent Authority | The Department is responsible for assessing the development application. The Minister is the consent authority. ¹² However, the IPC is declared to be the consent authority for some SSD applications. ¹³ |
| Key Documents | All development applications for SSD must be accompanied by an EIS. A BDAR is also required unless the Planning Agency Head and the Environment Agency Head determine that the proposed development is not likely to have any significant impact on biodiversity values. ¹⁴ |
| Public notification | The Secretary of the Department must place the EIS and DA on public exhibition on the Department's Major Projects website for a minimum of 28 days ¹⁵ and alert the owners and occupiers of adjoining land of the application. ¹⁶ |
| Public comment | During the public notification period, any person can make a written submission to the consent authority about the project. ¹⁷ |
| Factors considered | The consent authority must consider the factors set out in s 4.15 of the EP&A Act (outlined above) and the likely impact the development would have on biodiversity values as assessed in any BDAR. The |

¹⁰ For more information, see <https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Planning-Approval-Pathways/State-Significant-Development>.

¹¹ NOTE: A development can become SSD in one of two ways. It can be declared to be SSD under State Environmental Planning Policy (Planning Systems) 2021; or it can be declared to be SSD by order of the Minister.

¹² EP&A Act, s 4.5(a).

¹³ For example, the IPC is declared to be the consent authority where the relevant local council has objected to the development, there are 50 or more submissions from the public objecting to the development, or the proponent has made a reportable political donation in connection with the development application.

¹⁴ EP&A Act, s 4.12; *Biodiversity Conservation Act 2016* (NSW) s 7.9.

¹⁵ Department of Planning, Industry and Environment, *Community Consultation Plan* (2019) <https://www.planning.nsw.gov.au/About-Us/Our-Work/Our-Community-Participation-Plan>.

¹⁶ EP&A Regulations, cl 56.

¹⁷ *Ibid*, cl 195.

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| | <p>consent authority must publish how public submissions were considered in the decision.¹⁸</p> <p>The consent authority will then decide whether to approve the project. If the project is approved, the consent authority can attach conditions to the consent.¹⁹ Conditions are often aimed at avoiding or minimising any adverse impacts of the development.</p> |
| Appeal | <p>Merits appeals may be available to members of the public but only in limited circumstances. For example, only those who objected to the development by writing a submission can bring a merits appeal to challenge the decision.²⁰ The appeal must commence within 28 days of notification of the decision.²¹ Merits appeal is only available if the development would have been a designated development had it not qualified as SSD (see below for more information on designated development).</p> <p>Merits appeal rights are extinguished if the IPC holds a public hearing on the development.</p> <p>Any person may seek judicial review²² of a development consent within 3 months of the decision.²³</p> |

Visit: The Department's [website](#) for more information about SSD.

The Department's Major Projects [website](#) for information on each SSD proposal.

Regionally Significant Development

What is it?

Regionally Significant Developments include:²⁴

- Eco-tourist facilities
- Rail infrastructure facilities
- Road infrastructure facilities
- Development that has a cost of more than \$30 million

¹⁸ The Secretary will provide all submissions, or a summary of all submissions, to the proponent and to the public via the Department's website. The Secretary may decide to ask the applicant to respond to some or all the issues raised in the submissions. If a response is required, this response will be placed on the project's page on the Department's website.

¹⁹ EP&A Act, s 4.38.

²⁰ If the IPC held a public hearing on the development, there are no merit appeal rights at all.

²¹ EP&A Act, s 8.10(2).

²² Ibid, s 4.59.

²³ Ibid, s 4.59.

²⁴ State Environmental Planning Policy (Planning Systems) 2021, s 2.19.

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| | <ul style="list-style-type: none"> • Council related development that has a cost of more than \$5 million, and • Development carried out by the NSW Government that has a cost of more than \$5 million.²⁵ |
| Consent Authority | Planning Panels are responsible for assessing Regionally Significant Development applications. ²⁶ There are 5 Sydney Planning Panels which assess applications for the Greater Sydney area, and 4 Regional Planning Panels which assess applications for regional areas. |
| Key documents | A DA and EIS are required for Regionally Significant Development applications. ²⁷ A BDAR will be required if the development is likely to significantly affect threatened species. |
| Public Notification | The Department must place the application on public exhibition for a minimum of 14 days. ²⁸ The application will be available on the relevant planning panel's website. ²⁹ |
| Public comment | Any person can make a submission within the notification period. ³⁰ Submissions should be made to the relevant local council. The council will provide all submissions to the Planning Panel that is the consent authority for the proposed project. |
| Factors considered | The consent authority must consider the criteria listed in s 4.15 of the EP&A Act (outlined above) and the likely impact the development would have on biodiversity values as assessed in any BDAR. |
| Appeal | Merits appeals are not available. Any person may bring judicial review proceedings ³¹ within 3 months of the decision. ³² |

Visit: The Sydney and Regional Planning Panels [website](#) for information on each regionally significant development.

²⁵ For more information see: <https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Planning-Approval-Pathways/Regional-Development>.

²⁶ EP&A Act, s 4.5(b).

²⁷ Ibid, s 5.7.

²⁸ Department of Planning, Industry and Environment, *Community Consultation Plan* (2019) <https://www.planning.nsw.gov.au/About-Us/Our-Work/Our-Community-Participation-Plan>.

²⁹ EP&A Regulations, cl 56.

³⁰ Department of Planning, Industry and Environment, *Community Consultation Plan* (2019) <https://www.planning.nsw.gov.au/About-Us/Our-Work/Our-Community-Participation-Plan>.

³¹ EP&A Act, s 4.59.

³² Ibid, s 4.59.

Designated Development

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| What is it? | Designated developments are high-impact developments (e.g. likely to generate pollution), or which are in or near an environmentally sensitive area (e.g. a wetland). ³³ There is some overlap between the types of development that are categorised as designated developments and those that are categorised as SSD. SSD tends to have higher thresholds than designated development e.g. bigger, greater cost value, higher outputs etc. ³⁴ |
| Consent Authority | The local council will usually be the consent authority unless an EPI declares someone other than the council to be the consent authority e.g. a local planning panel. ³⁵ |
| Key Documents | The proponent must complete a DA and EIS. ³⁶ A BDAR is required if the development is likely to significantly affect threatened species. |
| Public notification | The consent authority must place all information about the development on public exhibition for a minimum of 28 days. ³⁷ This information will be on the relevant local council's website. Written notice must also be given to any other public authority which may be interested in the application and owners and occupiers of adjoining land. ³⁸ |
| Public comment | Any person can make a submission to the consent authority within the notification period. Submissions can usually be made on the relevant local council's website. Otherwise, address submissions to the Planning Manager of the relevant local council. |
| Factors considered | The consent authority must consider the factors listed in s 4.15 of the EP&A Act (outlined above) and the likely impact the development would have on biodiversity values as assessed in any BDAR. |

³³ There are two ways a development can be categorized as 'designated development'. The type of development can be listed in Schedule 3 of the *Environmental Planning and Assessment Regulations 2021* (NSW) as being designated development, or an EPI can declare certain types of development to be designated development.

³⁴ For more information see: <https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Planning-Approval-Pathways/Local-Development>.

³⁵ EP&A Act, s 4.5(d).

³⁶ Ibid, s 4.12.

³⁷ Department of Planning, Industry and Environment, *Community Consultation Plan* (2019) <https://www.planning.nsw.gov.au/About-Us/Our-Work/Our-Community-Participation-Plan>.

³⁸ EP&A Regulations, cl 56. 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.

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| Appeal | Objectors (those who made a submission objecting to the development) can file a merits appeal ³⁹ against the decision in the LEC within 28 days. ⁴⁰ Any person can seek judicial review in the LEC within 3 months of the decision. |
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Local Development

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| What is it? | A development is a local development if it is not in another category of development, such as SSD or designated development and an EPI (such as a LEP) states that consent is required. ⁴¹ |
| Consent Authority | The relevant local council will be the consent authority unless an EPI declares someone other than the council to be the consent authority e.g. a local planning panel. ⁴² |
| Key documents | The development application must be accompanied by a SEE. A BDAR will be required if the development is likely to significantly affect threatened species. |
| Public notification | The public notification period will differ depending on the CPP of the relevant local council. It is possible for the CPP to specify that no notification period applies, or it may set a notification period. If the CPP is silent as to notification period, the default position is 14 days. ⁴³ |
| Public comment | |
| Factors considered | The consent authority must consider the criteria listed in s 4.15 of the EP&A Act (outlined above) and the likely impact of the proposed development on biodiversity values as assessed in any BDAR. ⁴⁴ The proposal must be refused if it will have serious and irreversible impacts on biodiversity values. ⁴⁵ |
| Appeal | Merits appeals are not available to the public. Any person may bring judicial review proceedings ⁴⁶ in the LEC within 3 months of the decision. ⁴⁷ |

³⁹ EP&A Act, s 8.8.

⁴⁰ Ibid, s 8.10(2).

⁴¹ For more information see: <https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Planning-Approval-Pathways/Local-Development>.

⁴² EP&A Act, s 4.5(d).

⁴³ Ibid, sch 1, s 7(1)(c).

⁴⁴ *Biodiversity Conservation Act 2016* (NSW), s 7.13(2).

⁴⁵ Ibid, s 7.16.

⁴⁶ EP&A Act, s 4.59.

⁴⁷ Ibid, s 4.59.

Visit: The NSW Government's legislation [website](#) to view all environmental planning instruments. EPIs are listed alphabetically under 'In force' - Environmental Planning Instruments. All SEPPs are listed under 'S'.

Development that does not need consent

Developments that do not need consent do not require a development application or need to be approved by a consent authority.

This part of the factsheet will outline public participation opportunities for:

- State Significant Infrastructure
- Exempt Development
- Complying Development, and
- Development permitted without consent.

As these developments do not require consent they do not follow the same application and assessment pathway as the developments outlined above and are often approved in very short time frames. Due to this, there may be limited opportunities for public participation in these categories of development.

State Significant Infrastructure

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| What is it? | State Significant Infrastructure (SSI) tends to be large-scale infrastructure projects. ⁴⁸ Some SSI can be declared to be Critical SSI (CSSI) if the Minister believes the infrastructure is essential for the state for economic, environmental or social reasons. ⁴⁹ |
| Approval Authority | The Minister is the approval authority for SSI developments. ⁵⁰ |
| Key documents | The proponent must apply to the Secretary for Environmental Assessment Requirements (SEARs) and prepare an EIS that addresses those requirements. The proponent must also prepare and submit a BDAR unless the Planning Agency Head and the Environment Agency |

⁴⁸ Developments that are classified as State Significant Infrastructure (SSI) are listed in the *State Environmental Planning Policy (Planning Systems) 2021*. See Schedules 3, 4 and 5. For more information see: [https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Planning-Approval-Pathways/State-Significant-Infrastructure#:~:text=State%20significant%20infrastructure%20\(SSI\)%20includes,Road%20infrastructure.](https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Planning-Approval-Pathways/State-Significant-Infrastructure#:~:text=State%20significant%20infrastructure%20(SSI)%20includes,Road%20infrastructure.)

⁴⁹ EP&A Act, s 5.13.

⁵⁰ Ibid, s 5.14.

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| | Head determine that the SSI is not likely to have any significant impact on biodiversity values. ⁵¹ |
| Public notification | The environmental assessment documents will be made publicly available on the Department's Major Projects website for a minimum of 28 days. ⁵² |
| Public comment | Any person can comment on an SSI via a written submission within the public notification period. The IPC may be directed to hold a public meeting and/or a public hearing. Members of the public can register for an opportunity to address the Commission at both. |
| Factors considered | The Secretary of the Department is required to prepare an environmental assessment report which must be considered by the Minister before deciding on the proposal. ⁵³ In addition to the Secretary's report, the Minister must also consider: <ul style="list-style-type: none"> • Any advice provided by the Minister having responsibility for the proponent, • Any findings or recommendations of the IPC following a review of the proposed infrastructure project, and • The likely impact of the proposed development on biodiversity values as assessed in the BDAR.⁵⁴ |
| Appeal | Merits appeals are not available to the public. A third party can only bring judicial review proceedings against a SSI approval if the SSI is not for critical infrastructure. ⁵⁵ Any proceedings must commence within 3 months after public notice of the decision was given. |

Visit: The Department's Major Projects [website](#) for information on each SSI proposal

⁵¹ EP&A Act, ss 5.15-5.16; *Biodiversity Conservation Act 2016* (NSW), s 7.9.

⁵² Department of Planning, Industry and Environment, Community Consultation Plan, <https://www.planning.nsw.gov.au/About-Us/Our-Work/Our-Community-Participation-Plan>, p 19.

⁵³ EP&A Act, s 5.18. The report must include a copy of the proponent's EIS and any preferred infrastructure report, any advice provided by public authorities on the SSI, a copy of any report or advice of the IPC and any environmental assessment undertaken by the Secretary or other matter the Secretary considers appropriate.

⁵⁴ *Biodiversity Conservation Act 2016* (NSW) s 7.14(2).

⁵⁵ EP&A Act, s 5.27(2).

Exempt Development

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| What is it? | <p>EPIs (such as SEPPs and LEPs) may list certain types of development as exempt developments which means they do not require development consent or any form of environmental assessment. Exempt developments tend to be routine developments that are considered to have minimal environmental impacts so long as they comply with any relevant development standards.⁵⁶</p> <p>Several exempt developments are listed in section 3.1 of the <i>Standard Instrument – Principle Local Environmental Plan (2006) EPI 155a</i> and the <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>.⁵⁷</p> |
| Consent Authority | <p>Exempt development does not require consent, so there is no consent authority.</p> <p>The development can be carried out without consent so long as it meets any relevant development standards set out in the applicable EPI.</p> |
| Key documents | <p>Exempt development does not require a development application or environmental assessment.⁵⁸</p> |
| Public notification | <p>There are no notification requirements for exempt development.</p> |
| Public comment | <p>There is no opportunity for public comment on exempt development.</p> |
| Factors considered | <p>Exempt development cannot be carried out on certain land, which will be specified in the relevant EPI. For example, exempt development cannot be carried out on land that has been declared an Area of Outstanding Biodiversity Value or on land that is part of a wilderness area.⁵⁹</p> |
| Appeal | <p>Merits and judicial review are not available as there is no decision to challenge.</p> <p>However, you may bring civil enforcement proceedings if you believe the development was improperly categorised as exempt development or requirements in relevant EPIs have not been met.</p> |

Visit: The NSW Government's legislation [website to view all EPIs](#).

⁵⁶ EP&A Act, s 1.6. For more information see: <https://www.planning.nsw.gov.au/exemptdevelopment>.

⁵⁷ For more information, see <https://www.planningportal.nsw.gov.au/development-assessment/codes-sepp>

⁵⁸ EP&A Act, s 1.6.

⁵⁹ State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 cl. 1.16.

Complying Development

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| What is it? | <p>Complying developments tend to be routine types of development, such as extensions to houses or the construction of a swimming pool. However, they can also include things like greenfield housing developments.⁶⁰ Complying development codes set out the development standards and other requirements that must be met and, so long as development complies with those codes, no development consent is required.⁶¹</p> <p>Several exempt developments are listed in section 3.2 of the <i>Standard Instrument – Principle Local Environmental Plan (2006) EPI 155a</i> and the <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>.</p> |
| Approval Authority | <p>Local councils or private certifiers are the approval authorities for complying development. Approval is granted via a complying development certificate.</p> |
| Key documents | <p>Proponents must submit an application and a range of documents including site plans, design plans and building specifications.⁶² Full environmental assessments are not required, however reports such as a soil and water management plan or a stormwater management plan may be required.</p> |
| Public notification | <p>For some developments, the certifier must give written notice to neighbors and the council (if the council is not the certifier).⁶³ For other developments, a complying development application is only made public once the complying development certificate has been issued.</p> |
| Public comment | <p>The public does not have the right to comment on applications for complying development certificates.</p> |
| Factors considered | <p>The local council or private certifier must consider whether the development is complying development and whether it complies with any applicable development standards and other requirements. If it is complying development, and complies with the standards and requirements, the council or certifier must issue a complying development certificate.⁶⁴</p> |
| Appeal | <p>Merits and judicial review are not available as there is no decision to challenge.</p> |

⁶⁰ For more information see: <https://www.planning.nsw.gov.au/complyingdevelopment>.

⁶¹ For more information, see: <https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Planning-Approval-Pathways/Complying-development>

⁶² EP&A Regulations, cl 121.

⁶³ Ibid, cl 134. The developments that require notification be given to neighbors and the council are set out in s 133.

⁶⁴ EP&A Act, s 4.28.

Any person may bring civil enforcement proceedings to argue the development is unlawful if it doesn't comply with an EPI.

Development permitted without consent

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| What is it? | <p>Many EPIs declare that certain types of development are permitted without consent. Where this is the case, the development can be carried out without consent, but other approvals may be required. This may mean that an environmental assessment needs to be undertaken.⁶⁵</p> <p>It is also common for public authorities to assess and approve their own development. In such cases, no development application is required, but the public authority has a duty to fully consider the environmental impacts of its proposed works before proceeding.⁶⁶</p> |
| Approval authority | <p>There is no consent authority because the development does not need consent. However, there may be another approval authority e.g. an approval to clear native vegetation may be required from the Native Vegetation Panel.</p> |
| Key documents | <p>A development application is not required.</p> <p>However, the environmental impacts of the development or activity may still need to be assessed.⁶⁷ Though not legally required, it is standard practice to prepare a Review of Environmental Factors (REF).</p> <p>If the REF reveals the development or activity is likely to result in significant environmental impacts, a full EIS must be prepared and put on public exhibition.⁶⁸</p> <p>If the development or activity is likely to significantly affect threatened species, a SIS or BDAR is also required. The proponent can choose whether to produce a SIS or BDAR.⁶⁹</p> |
| Public notification | <p>There is no general legal requirement to notify the public of developments that are permitted without consent or to publish a REF (although it may be standard practice of some public authorities to do so).</p> |

⁶⁵ For more information, see: <https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Planning-Approval-Pathways/Development-without-Consent>

⁶⁶ For more information see:

<https://www.planning.nsw.gov.au/developmentwithoutconsent#:~:text=What%20is%20development%20without%20consent,in%20a%20public%20recreation%20zone>.

⁶⁷ EP&A Act, s 5.5.

⁶⁸ Ibid, ss 5.7-5.8.

⁶⁹ *Biodiversity Conservation Act 2016* (NSW) s 7.8.

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| | If an EIS (including a SIS or BDAR) is prepared, it must be placed on public exhibition for at least 28 days before any decision is made. ⁷⁰ |
| Public comment | There is no legal right for the public to comment on a REF although some public authorities do seek public comment. However, any person can comment on an EIS (and any SIS or BDAR) during the public notification period. |
| Factors considered | The determining authority must examine and fully consider all matters which are likely to affect the environment if the development or activity goes ahead. ⁷¹ These include matters such as: <ul style="list-style-type: none"> • 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 • 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.⁷² |
| Appeal | Merits and judicial review are not available as there is no decision to challenge. Any person may bring civil enforcement proceedings to argue the development is unlawful if it doesn't comply with an EPI. |

Development that has already been approved

Once a decision on a development proposal has been made, details about the decision will usually be published on the consent authority's website. Any conditions of consent will also be published.

⁷⁰ Department of Planning, Industry and Environment, *Community Consultation Plan* (2019) <https://www.planning.nsw.gov.au/About-Us/Our-Work/Our-Community-Participation-Plan>.

⁷¹ EP&A Act, s 5.5.

⁷² There may be guidelines in place that set out the specific factors that must be considered in relation to particular types of activities or developments.

Any person may bring civil enforcement proceedings in the LEC to enforce a condition of a consent.⁷³

Glossary

Key terms used in this factsheet:

BDAR means a Biodiversity Development Assessment Report

Consent means development consent – the approval of a development application

Consent authority is also referred to as the decision-maker

DA means a Development Application

Department means the NSW Department of Planning and Environment

EIS means 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 2021 \(NSW\)](#)

EPI means Environmental Planning Instrument which is a collective name for local environmental plans and state environmental planning policies

IPC means the NSW Independent Planning Commission

LEC means the Land and Environment Court of NSW

Minister means the Minister for Planning

Objector means a person who filed a submission opposing a development application

Proponent means the person or body proposing the development

Public exhibition means to make information about a development publicly available

Public notification period means the time information about a development is publicly available and during which the community has an opportunity to comment.

REF means the Review of Environmental Factors

SEE means a Statement of Environmental Effects

SIS means a Species Impact Statement

Submission means a comment by any person for or against a development to the consent authority

⁷³ *Environmental Planning and Assessment Act 1979 (NSW) s 4.59.*

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