Environmental Defenders Office

Development Applications and Consents in 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.

This factsheet was last updated on 03 December 2021

What is this factsheet about?

This factsheet outlines the process for regulating development through the development application and development consent process under Part 4 of the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**).

Outline

(Click subheadings to skip to that section)

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.

Read: EDO factsheets bundle on **LEPs and SEPPs** for more information

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 factsheet.

- State significant development (**SSD**) or State significant infrastructure (**SSI**) projects under Part 4 Division 4.7 or Part 5.1 Division 5.2 of the EP&A Act

  This includes major projects of State or regional significance.

- 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.

Development for major government projects, such as for SSDs or SSIs, is also regulated under the EP&A Act but is not dealt with in this factsheet.

Read: EDO factsheet on **State Significant Development and State Significant Infrastructure in NSW** for more information about SSD and SSI projects

The Land and Environment Court hears appeals against development consents and enforcement cases under the EP&A Act.

Read: EDO factsheet on (the) **Land and Environment Court of NSW** for more information

Who is responsible for the EP&A Act?

The NSW Minister for Planning and Public Spaces is ultimately responsible for the EP&A Act, with assistance from the NSW Department of Planning, Industry and Environment (**DPIE**).

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 Independent Planning Commission (**IPC**) or a Joint Regional Planning Panel (**JRPP**), e.g., SSD applications.

Visit: The NSW DPIE Planning Portal for more information about the Department

Visit: The NSW IPC website for more information about the Commission

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, and;
- 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 EPIs - 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.

Read: EDO factsheets bundle on **LEPs and SEPPs** for more information, particularly the factsheets on:

- **Environmental Planning Instruments**;
- **Local Environmental Plans**, and;
- **State Environmental Planning Policies**

Development that does not need consent

An EPI can allow specific types of development to be carried out without development consent.[1] 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[2] unless it is a

[1] *Environmental Planning and Assessment Act 1979* (NSW), s 4.1 (**EP&A Act**).
[2] Ibid, Part 5.

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 Local Environmental Plan 2006* (NSW) (**Standard Instrument—Principal LEP**) allow home occupations to be carried out without consent.[3]

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.[4]

Exempt development

An EPI can also 'exempt' particular types of development from the need for development consent.[5] This is known as 'exempt development'.

Unlike development which is 'permitted without consent', exempt development does not need to undergo any environmental assessment.[6]

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.[7]

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

- State Environmental Planning Policy (Infrastructure) 2007 (**Infrastructure SEPP**) which declares certain types of development which are carried out by or on behalf of public authorities to be exempt development.[8]
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (**Codes SEPP**) which contains a list of exempt (and complying) development and the development standards that apply.

Read: EDO factsheets bundle on **LEPs and SEPPs** for more information, particularly the factsheet on **State Environmental Planning Policies**

---

[3] *Standard Instrument—Principal Local Environmental Plan 2006* (NSW), Land Use Table (**Standard Instrument—Principal LEP**).

[4] 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.

[5] EP&A Act, s 1.6.

[6] Ibid, s 1.6.

[7] For example, the Sutherland Shire LEP allows cabanas and gazebos which will be less than 10m^2, 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.'

[8] State Environmental Planning Policy (Infrastructure) 2007 cl 20-20A; Sch 1 (**Infrastructure SEPP**).

Exempt development cannot be carried out on:

- critical habitat, or;
- land that is or is part of a wilderness area. [9]

NSW Housing Code and exempt development

The NSW Housing Code[10] 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.

Visit: The NSW DPIE's page on the Housing Code for more information

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 the Infrastructure SEPP. The aim of this SEPP is to facilitate the delivery of infrastructure across NSW.

Accordingly, the Infrastructure SEPP 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.

N.B. These developments will still need to undergo an environmental assessment[11] (unless they are exempt development).

The State Environmental Planning Policy (State and Regional Development) 2011 (**State and Regional Development SEPP**) 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.[12] The Minister for Planning may declare an infrastructure project to be Critical State Significant Infrastructure (**CSSI**) if the Minister believes that the infrastructure is essential for the

[9] EP&A Act, s 1.7.
[10] The NSW Housing Code has been introduced through the Codes SEPP.
[11] Under the EP&A Act, Part 5.
[12] State Environmental Planning Policy (State and Regional Development) 2011, Sch 3 (**State and Regional Development SEPP**).

State for economic, environmental or social reasons.[13] If a project is declared SSI or CSSI, it will not be subject to range of additional environmental approvals,[14] while other approvals must be granted consistently with the CSSI approval.[15]

Read: EDO factsheet on **State Significant Development and State Significant Infrastructure in NSW** for more information about SSD and SSI projects

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:[16]

- 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 (**JRPP**). However, a SEPP can specify a different consent authority, which will often be the Minister for Planning, or the Independent Planning Commission (**IPC**) if the Minister has delegated that role to the IPC.

LEPs indicate which 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.

[13] EP&A Act, s 5.13.
[14] Ibid, s 5.23.
[15] Ibid, s 5.24.
[16] Ibid, s 4.2.

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.[17] This provides a faster and simpler alternative for minor developments to be approved (10 days),[18] compared to the process for obtaining development consent. A complying development certificate is issued by council or by a private accredited certifier.[19]

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,[20] and;
- The Codes SEPP.[21]

The NSW Housing Code

The Housing Code aims for faster home approvals for those proposals in compliance with the Code.

Visit: The NSW DPIE's page on the Housing Code for more information

Prohibited development

A LEP can specify the types of development which are prohibited in any given zone.[22]

Prohibited development will therefore vary from zone to zone, and between local government areas, depending on the LEP. However, the Standard Instrument—Principal LEP aims to bring local government areas in line, and some zones in the land use table contain developments that are prohibited.[23]

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.[24] For example, State Environmental Planning Policy No 50—Canal Estate

[17] EP&A Act, s 4.2.
[18] EP&A Regulation, cl 130AA.
[19] EP&A Act, s 4.28.
[20] Ibid, s 4.2.
[21] See cl 1.18 of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (**Codes SEPP**) for a full list of general requirements for complying development.
[22] EP&A Act, s 3.19.
[23] Standard Instrument—Principal LEP, cl 2.3.
[24] EP&A Act, ss 3.19, 4.3.

Development 1997 prohibits canal estate developments from being built anywhere in NSW, regardless of whether they are permitted under a LEP.[25]

A person must not carry out development on land if it is prohibited.[26] A council can give an order to a person who is using premises for a prohibited purpose to stop using them for that purpose.[27]

Exceptions that 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.[28] 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.[29]

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.'[30]

State Environmental Planning Policy No 1 - Development Standards 1980 (**SEPP 1**) (repealed in January 2020) 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 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').[31] 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.[32]

The provisions of SEPP 1 have now been largely incorporated into the Standard Instrument—Principal LEP. Once a LEP has been prepared in accordance with the Standard Instrument—Principal LEP, SEPP 1 will cease to apply to that council area

---

[25] State Environmental Planning Policy No 50—Canal Estate Development 1997, cl 5.
[26] EP&A Act, s 4.3.
[27] Ibid, ss 9.34, 9.35, 9.36, Sch 5, Pts 1-3.
[28] Ibid, s 3.28.
[29] State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, cl 2(2)(a), 5(3), 8, 15, 16.
[30] EP&A Act, s 1.4 definition of 'development standards'.
[31] State Environmental Planning Policy No 1 - Development Standards 1980, cl 6 (**SEPP 1**).
[32] Ibid, cl 7, 8.

and development standards in that council area can only be varied in accordance the new LEP clause.

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.[33] The consent authority is usually the local council, but it can also be a JRPP, the NSW Minister for Planning, or the IPC, 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.[34] 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.

A development application can only be made by the owner of the land or by a person who has the landholder's written consent.[35] There are exceptions to this, e.g., if the application is for an SSD mining or petroleum project landholder consent may not be required.[36]

Read: EDO factsheets on **State Significant Development and State Significant Infrastructure in NSW** and **Mining and Coal Seam Gas in NSW** for more information

Obligation to disclose political donations

Developers are required to disclose political donations and gifts when lodging or commenting on a development proposal.[37]

---

[33] EP&A Act, s 4.12; also see the EP&A Regulations, which sets out the procedures for lodging development applications generally: cls 47 - 57. Cl. 50 refers to a standard form in Schedule 1.
[34] EP&A Regulation, cl 50; Sch 1 sets out the information that must be included in a development application.
[35] EP&A Regulation, cl 49(1).
[36] EP&A Regulation, cl 49(2)-49(5).
[37] EP&A Act, s 10.4.

Under the EP&A Act, the obligation to disclose applies to all:[38]

- 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.[39] Where an application is made to the Minister for Planning or Director-General of Planning and Environment, all political donations of $1,000 or more must be disclosed.[40]

Disclosure statement must accompany the 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.[41]

Both the NSW DPIE and local councils must make the disclosures publicly available, on the internet within 14 days of the disclosure being made.[42]

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:

- Complying development

  A very simple assessment process is followed and a private certifier can approve the development;[43]

[38] EP&A Act, s 10.4.
[39] Ibid.
[40] Ibid.
[41] Ibid.
[42] Ibid.
[43] Ibid, ss 4.25-4.30.

- Designated development

  An environmental impact statement will be required and third parties must be notified and can appeal against a decision to grant consent;[44] and

- Integrated development

  Approval will need to be obtained from other public authorities (e.g., the EPA) before consent can be granted.[45]

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.

Complying development

An EPI (a LEP or SEPP) can identify some development to be 'complying development'.[46] 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.[47]

The NSW Housing Code

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 Codes SEPP.

Visit: The NSW DPIE's page on the Housing Code for more information

[44] EP&A Act, ss 4.10-4.20, 8.13.
[45] Ibid, ss 4.44-4.52.
[46] Ibid, s 4.1.
[47] Warringah Local Environmental Plan 2011, Schedule 3 Part 1.

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.[48] A complying development certificate can be issued by either a council or an accredited certifier.[49]

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.[50] 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.[51]

Visit: The NSW DPIE's page on the Housing Code for more information about issuing complying development certificates

The council must be notified within 2 days after the date of the determination under a complying development certificate issued by a private certifier.[52]

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.[53]

Designated development

'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

[48] EP&A Act, s 4.9; EP& Regulation, cl 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.
[49] EP&A Act, s 4.28.
[50] Ibid, s 4.28; EP&A Regulation, s 125-137.
[51] EP&A Act, s 4.28; EP&A Regulation, cl 130AA.
[52] EP&A Act, s 4.28; EP&A Regulation, cl 130(4).
[53] EP&A Act, s 4.59; EP&A Regulation, cll 137-138.

sensitive area (e.g., a wetland). Designated development does not include State significant development.[54]

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

- must be accompanied by an environmental impact statement (**EIS**)[55] (see below for more information);
- will require public notification,[56] and;
- can be the subject of a merits appeal to the Land and Environment Court by objectors.[57]

How is a development categorised as designated development?

There are two ways a development can be categorized as 'designated development':[58]

- The class of development can be listed in Schedule 3 of the EP&A Regulation as being designated development,[59] or;
- a LEP or SEPP can declare certain types of development to be designated.[60]

Examples of designated development under the EP&A Regulation include chemical factories, large marinas, quarries and sewerage treatment works.

Visit: The NSW Legislation Register to read Schedule 3 of the EP&A Regulations for the full list of designated developments

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

- the development is SSD or SSI, in which case the Planning Minister or the IPC 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 development application (**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

[54] EP&A Act, s 4.10.
[55] Ibid, s 4.12.
[56] Ibid, Sch 1, cl 8.
[57] Ibid, ss 8.8, 8.10.
[58] Ibid, s 4.10.
[59] EP&A Regulation, cl 4, Schedule 3 Part 1.
[60] EP&A Act, s 3.17.

Director-General is not the consent authority) or to the council (if the council is not the consent authority).[61]

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:[62]

- publish notice of the DA on the consent authority's website;[63]
- exhibit notice of the DA on the land to which the DA relates;[64]
- give written notice to any other public authorities which may be interested in the DA;[65] 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 notice must be publicly exhibited for a minimum of 28 days and 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.[66]

During the submission period, any person can:

- inspect the DA and accompanying information;[67]
- make extracts from or copies of them,[68] and;
- make a written submission.[69]

A submission objecting to the DA should set out the grounds for the objection.[70]

The consent authority must take submissions which are made during the public submission period into account in deciding whether to approve the DA.[71]

A consent authority can choose not to readvertise and renotify if a DA is amended, substituted, or withdrawn and replaced.[72]

---

[61] EP&A Regulation, cl 50(6).
[62] Ibid, cl 50(6).
[63] EP&A Regulation, cl 77.
[64] Ibid, cl 78.
[65] Ibid, cl 77.
[66] EP&A Act, Sch 1, cl 8; EP&A Regulation, cl 78.
[67] EP&A Act, Sch 1, cl 8.
[68] Ibid, Sch 1, cl 8.
[69] Ibid, Sch 1, cl 8.
[70] Ibid, Sch 1, cl 8.
[71] Ibid, s 4.15.
[72] Ibid, Sch 1, cl 8.

Integrated development

Integrated development refers to a development which, in addition to development consent, requires one or more additional approvals before it can proceed.[73]

Additional approvals which trigger integrated development provisions

Integrated development is development which, as well as development consent, requires on or more of the following types of approvals:[74]

- 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.[75]

The consent authority must not impose any conditions which are inconsistent with those indicated by the other approval authority.[76] 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.[77]

---

[73] EP&A Act, s 4.46.
[74] Ibid, s 4.46.
[75] Ibid, s 4.47; EP&A Regulation, ss 66, 70.
[76] EP&A Act, s 4.47.
[77] Ibid, s 4.47.

Public notification of application and submissions

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).[78]

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)), must be publicly advertised if and as required under the relevant Development Control Plan (**DCP**).[79]

Categorization of a development as 'integrated development' does not affect an applicant's (or an objector's) appeal rights,[80] 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.

Non-designated, non-advertised development

There is no specific term for development that does not fall under the designated 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 designated development.

However, many councils will have either a 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.[81]

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.[82] 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.[83]

[78] EP&A Regulation, cl 5(1)(b).
[79] EP&A Act, s 3.43.
[80] Ibid, s 4.52.
[81] Ibid, Sch 1.
[82] *Somerville v Dalby* (1990) 69 LGRA 422.
[83] *Hillpalm Pty Ltd v Tweed Shire Council* (2002) 119 LGERA 86.

Case Study: Reasonable expectation of development consent notification

Lesnewski v Mosman Municipal Council [2005] NSWCA 99

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 (now Schedule 1, cl 7 of the EP&A Act) provides:
'A development application for specified development (other than designated development or advertised development) must be notified or advertised in 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' – N.B This is now Schedule 1, cl 7 of the EP&A Act. 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 (now s 4.59), 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 notification, 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.[84] It is important to note the new guidance for councils about copyright and compliance with the *Government Information (Public Access) Act 2009* (NSW).

[84] EP&A Regulation, cl 56.

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

The Minister for Planning and Public Spaces, or the IPC under delegation from the Planning Minister, is the consent authority for these projects.[85]

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 SSDs and SSIs, however existing Part 3A projects and modifications to these projects are still assessed under Part 3A transitional provisions.

This factsheet does not deal with SSD, SSI, or Part 3A.

Read: EDO factsheet on **State Significant Development and State Significant Infrastructure in NSW** for more information about SSD and SSI 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.

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 Statement of Environmental Effects (**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.[86]

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 SEE.[87]

---

[85] EP&A Act, s 4.5.
[86] EP&A Regulation, Sch 1 Part 1(2)(1)(c).
[87] Ibid, cl 50; Sch 1 Part 1(2)(1)(c).

Environmental Impact Statement

Development which falls within the category of designated development or State significant development requires an environmental impact statement (**EIS**).[88] 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).

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.[89]

There are a number of matters which an EIS must address, including:[90]

- 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,
- 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 Statements

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 will be assessed under the Biodiversity Offsets Scheme (**BOS**). Once triggered, the applicant must elect to prepare either a species impact statement (**SIS**)

[88] EP&A Regulation, cl 50; Sch 1 Part 1(2)(1)(e).
[89] *Prineas v Forestry Commission of NSW & Ors* (1983) 49 LGRA 402.
[90] EP&A Regulation, cl 50; Sch 2, Part 3 (7).

or a biodiversity development assessment report (**BDAR**) to accompany their development application.[91]

In deciding whether there is likely to be a significant impact on threatened species, a consent authority can apply a five-part.[92] 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.[93]

Similarly, a SIS must be prepared if there is likely to be a significant impact on threatened fish or marine vegetation.[94]

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.[95]

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.[96] The Native Vegetation Reform Package has also received biodiversity certification.[97]

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 threatened species, populations, or ecological communities, thereby avoiding the need for a species impact statement.[98]

The Secretary of Department of Planning and Environment or the 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.[99]

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

---

[91] *Biodiversity Conservation Act 2016* (NSW), s 7.8.
[92] Ibid, s 7.2-7.3.
[93] Ibid, s 5A.
[94] EP&A Act, s 1.7; *Fisheries Management Act 1994* (NSW), ss 7A, 221ZW, Sch 1AA(8).
[95] *Biodiversity Conservation Act 2016* (NSW), Div 5.
[96] Ibid, Part 8, Div 2.
[97] Ibid, s 8.3.
[98] Ibid, s 8.4.
[99] EP&A Act, ss 4.13(8)-(9).

'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, coal seam gas (**CSG**) exploration activities and forestry activities.

How is Part 5 assessment conducted?

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.[100] 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 several 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.[101]

Also, matters such as:[102]

- 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.[103]

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**).

---

[100] EP&A Act, s 5.5.

[101] *Biodiversity Conservation Act 2016* (NSW), s 7.2.

[102] EP&A Regulation, s 228(2).

[103] Ibid, cl 228.

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

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 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.[104]

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.

There is no legal requirement to notify the public of most Part 5 projects, but it may be standard practice to do so.

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

[104] EP&A Act, s 5.8.

is the subject of a complying development application at least 14 days prior to its approval.[105]

The time limit for determining applications for complying development is 20 days.[106]

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 SEPP or a LEP 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.[107] These developments may still be subject to environmental assessment under Part 5.

The State and Regional Development SEPP also identifies a list of projects which can be carried out by or on behalf of public authorities. These projects are called SSI, and include rail infrastructure, port facilities, and water treatment facilities with high investment values. The Minister for Planning and Public Spaces 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

[105] EP&A Regulation, cl 130AB.
[106] Ibid, cl 130AA.
[107] Infrastructure SEPP, cl 20A, Sch 1.

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.

Read: EDO factsheet on **State Significant Development and State Significant Infrastructure in NSW** for more information about SSD and SSI projects

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 can specify a different consent authority, such as:[108]

- the Planning Minister;
- the IPC;
- a Sydney district and regional planning panel, or;
- the 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.[109]

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.[110] 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.[111]

---

[108] EP&A Act, s 4.5.
[109] *Local Government Act 1993* (NSW), s 377(1).
[110] EP&A Act, s 9.
[111] Ibid.

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:[112]

- The provisions of any SEPP, LEP or DCP;
- Any proposed environmental planning instrument which has been placed on public exhibition;
- Any planning agreement;[113]
- Any additional matters set out in the Regulations, such as the NSW Coastal Policy and the need for fire safety;[114]
- 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 programs;[115]
- 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).[116] A council must appoint a panel of experts if environmental planning instrument (LEP or SEPP) requires it to do so.[117]

The panel can receive or hear submissions from interested persons and must then report to the council.[118] The council must provide staff and facilities for the panel.[119]

The Independent Commission

Minister can delegate decisions to Commission

The Independent Planning Commission (**IPC**) is a statutory authority established under the EP&A Act.[120] The Planning Minister appoints IPC members.[121] However, the

[112] EP&A Act, s 4.15.
[113] Ibid, s 7.4.
[114] EP&A Regulation, cll 92, 93.
[115] *Coastal Protection Act 1979* (NSW), Part 4A.
[116] EP&A Act, s 2.17(1).
[117] Ibid, s 2.17(2).
[118] Ibid, s 2.19.
[119] Ibid, s 2.20(4).
[120] Ibid, s 2.7(1).
[121] Ibid, s 2.8(1).

IPC is an independent authority and is not subject to the direction or control of the Planning Minister.[122]

The EP&A Act details the functions of the IPC, which includes the determination of project applications when those matters are delegated to it by the Minister for Planning. The IPC also provides advice to the Planning Minister on a range of planning and development matters.[123] These include EPIs such as LEPs and SEPPs.

The IPC 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.[124]

The IPC 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 IPC and includes measures to prevent members from being bribed.

Delegation of some major projects

The Minister has issued an instrument of delegation to the IPC for the determination of certain project applications. These include SSD and SSI applications, and existing Part 3A applications, including modifications.

The IPC is required to meet with people interested in a proposed development before making its determination. If the IPC receives more than 50 submissions on a proposed development, the IPC will hold a public meeting.

If a developer applies to have land rezoned to allow an SSD project that would have been prohibited to occur under the zoning on the relevant LEP, the IPC must assess both the development application and the application for the spot rezoning.[125]

Public meetings and public hearings

The IPC 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 IPC is a meeting or a hearing. If the IPC holds a public hearing, objector appeal rights (merits appeal) are extinguished.

IPC reviews

A review by the IPC is different to a determination made by the IPC. Additionally, while a public hearing can be one aspect of a review by the IPC, a review does not always have to include a public hearing, although in practice a review usually does involve a public hearing.

[122] EP&A Act, s 2.7(2).
[123] Ibid, s 2.9(c)
[124] Ibid, s 2.26.
[125] Ibid, s 4.38.

Sydney district and 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 4.55 of the EP&A Act;
- advice on planning or development requested by the Minister.

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.[126] This might be the Planning Minister, another government Department, or the Environment Minister if the development will affect threatened species.

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.[127] Development consent which is granted without concurrence (where concurrence is required) is voidable.[128]

Post-consent provisions

Notification of grant of consent

Once a decision has been made, the consent authority must notify:[129]

- 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).[130]

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.[131]

---

[126] EP&A Act, s 4.13.
[127] Ibid, ss 4.13(8)-(9).
[128] Ibid, s 4.13(10).
[129] Ibid, s 4.18; EP&A Regulation, cll 100, 102.
[130] EP&A Regulation, cl 102(2).
[131] EP&A Act, s 4.18(3).

All notices must be sent within 14 days.[132] Failure to send the notice within 14 days will not invalidate the consent.[133]

Register of consents

A council must keep a register of the following documents:[134]

- 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.[135]

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 on the website of both consent authorities and those people who made submissions on the original DA must be notified.[136]

If the modification will result in a substantially different development a new DA should be lodged.[137]

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.[138] The consent will not lapse if building, engineering, or construction work is physically commenced on the land before the lapsing date.[139] Commencement of the work must be lawful.[140]

---

[132] EP&A Regulation, cl 102(1).
[133] Ibid, cl 102(3).
[134] EP&A Act, s 4.58, EP&A Regulation, cll 264-268.
[135] EP&A Act, s 4.58(2).
[136] EP&A Regulation, cl 118.
[137] EP&A Act, s 4.55.
[138] Ibid, s 4.53(1).
[139] Ibid, s 4.53(4).
[140] *Detala Pty Ltd v Byron Shire Council* (2002) 133 LGERA 1.

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.[141]

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.

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.[142] 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.[143]

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 IPC 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.[144] 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 (**LEC**).[145] Additionally, the council cannot review a decision that the Land and Environment Court has disposed of in an appeal.[146]

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 LEC within 6 months of receiving notice of the decision.[147] An applicant can also appeal against a decision on a modification application within 6 months of lodging it.[148]

---

[141] EP&A Act, Part 4, Div 4.11.
[142] Ibid, ss 4.19, 6.6, 6.7, 6.12-6.14.
[143] Ibid, s 6.9.
[144] Ibid, ss 8.2.
[145] Ibid, ss 8.2-8.10.
[146] Ibid, ss 8.2, 8.7.
[147] Ibid, s 8.10.
[148] Ibid, s 8.10.

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'.[149] 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.[150]

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.[151] 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 IPC.

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.[152] Each objector then has 28 days to apply to the Court if they wish to be joined to the hearing.

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;[153]
- decisions made by the Independent Planning Commission (**IPC**) cannot be appealed if the decision was made after a public hearing.[154]
- decisions on designated development made by any determining authority if the decision was made after a public hearing by the IPC.[155]

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

[149] Ibid, s 8.11; EP&A Regulation, cl 113.
[150] EP&A Act, s 8.11; EP&A Regulation, cl 113.
[151] EP&A Act, s 8.10.
[152] Ibid, s 8.12.
[153] Ibid, s 8.6.
[154] Ibid.
[155] Ibid, s 8.8.

that there has been a legal error in the way a decision about a development consent was made, in other words, that there has been a breach of the EP&A Act.[156]

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.[157] Public notice is given by the council publishing a notice on their website.[158] Each council must keep a note of the date and a copy of a notice published on their website.[159]

Read: EDO factsheet on (the) **Land and Environment Court of NSW** for more information

Glossary

Key terms used in this factsheet:

Coastal Management SEPP means the State Environment Planning Policy (Coastal Management) 2018

Codes SEPP means the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

CSG means the coal seam gas

CSSI means Critical State Significant Infrastructure

DA means the Development Application

DCP means the Development Control Plan

DPIE means the NSW Department of Planning, Industry and Environment

EIA means the Environmental Impact Assessment

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 2000* (NSW)

EPI means Environmental Planning Instruments, including **LEPs** and **SEPPs**

Infrastructure SEPP means the State Environmental Planning Policy (Infrastructure) 2007

IPC means the NSW Independent Planning Commission

JRPP means a Joint Regional Planning Panel

LEC means the Land and Environment Court

---

[156] EP&A Act, s 9.45.
[157] Ibid, s 4.59.
[158] EP&A Regulation, cll 124,137.
[159] Ibid, cl 266, 267.

LEP means Local Environmental Plan

REF means the Review of Environmental Factors

SEE means a Statement of Environmental Effects

SEPP means State Environmental Planning Policy

SEPP 1 means the (repealed) State Environmental Planning Policy No 1 - Development Standards 1980

SIS means a Species Impact Statement

Standard Instrument—Principal LEP means the *Standard Instrument—Principal Local Environmental Plan 2006* (NSW)

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