



State Significant Development and State Significant Infrastructure 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 5 May 2015

Overview

The Part 3A system for assessing major projects was repealed in 2011.¹ Major project assessment has since been replaced by two separate assessment pathways:

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

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

Projects that do not qualify as State significant under either of these categories usually remain with local councils for assessment.²

There are transitional provisions for dealing with Part 3A applications still in the system. The Planning Minister has delegated his approval functions to the Independent Planning Commission (**IPC**) so most remaining Part 3A applications that were not returned to local councils will be assessed by the IPC.³

This factsheet outlines the assessment and approval process for SSD and SSI.

¹ [Environmental Planning and Assessment Amendment \(Part 3A Repeal\) Act 2011 \(NSW\)](#) (**EP&A Repeal Act**).

² [Environmental Planning and Assessment Act 1979 \(NSW\)](#), Part 4 (**EP&A Act**).

³ <https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Planning-Approval-Pathways/Part-3a-Development>.

Tracking SSD and SSI

The website of the NSW Department of Planning, Industry and Environment (**DPIE**) allows the public to track the progress of SSD and SSI applications. The Department's Planning Portal allows you to:

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

Visit: [The NSW DPIE's Planning Portal Major Projects page](#)

What is State Significant Development?

Generally, State Significant Development (**SSD**) includes large-scale or complex projects that may involve significant environmental impacts. A development can become SSD in one of two ways:⁴

1. It can be declared to be SSD under [State Environmental Planning Policy \(State and Regional Development\) 2011](#) (**State and Regional Development SEPP**),⁵ or;
2. It can be declared to be SSD by order of the Planning Minister.⁶

The State and Regional Development SEPP sets out categories of development that will qualify as SSD.⁷ It also includes certain sites where any type of development is considered to be SSD due to the significance of the site. Such sites include Sydney Olympic Park, Redfern-Waterloo and Barangaroo.⁸

Where the Planning Minister believes that a particular development should be assessed as SSD, he or she can 'call in' the development by publishing an order in the [State Environmental Planning Policy \(State and Regional Development\) 2011](#). However, the Minister must first obtain and make publicly available advice from the Planning Assessment Commission about the State or regional planning significance of the development.⁹

Visit: [The NSW Legislation Register to view the NSW Government Gazette](#)

⁴ EP&A Act, s 4.36.

⁵ [State Environmental Planning Policy \(State and Regional Development\) 2011](#), Schedules 1 and 2 (**State and Regional Development SEPP**).

⁶ EP&A Act, s4.36.

⁷ State and Regional Development SEPP, Schedule 1.

⁸ Ibid, Schedule 2.

⁹ EP&A Act, s 4.36.

Development categories under the State and Regional Development SEPP

Some of the categories of development that qualify as SSD include:¹⁰

- Mining;
- Petroleum (oil, and gas);
- Intensive livestock agriculture;
- Chemical, manufacturing and other industries;
- Warehouses or distribution centres;
- Hospitals, medical centres and health research facilities;
- Timber milling, timber processing, paper & pulp processing;
- Port facilities and wharf or boating facilities;
- Electricity generating works, and;
- Waste and resource management facilities.

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

How is a SSD project processed?

Applicant applies for the Director-General's Requirements

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

At this stage, a decision must be made as to whether the proposed development qualifies as SSD. If it does, the DGRs will be issued, if it does not, the DGRs will not be issued and the development will most likely be assessed by the local council.¹¹

Director-General sets environmental assessment requirements

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

In preparing the DGRs, the Director-General must consult with relevant public authorities such as Heritage NSW and the local council in the area where the project is to take place, to ensure that all key issues are identified and assessed.¹²

¹⁰ State and Regional Development SEPP, Schedule 1.

¹¹ [Environmental Planning and Assessment Regulation 2000 \(NSW\)](#), Schedule 2 cl 3 (**EP&A Regulation**).

¹² *Ibid*, Schedule 2.

The Director-General has to issue the DGRs within 28 days. The DGRs will be placed on the NSW DPIE website within 5 days of issue. Those agencies that are consulted by the Director-General have 14 days to provide their recommended requirements.¹³

In some circumstances the Director-General can waive the requirement for an application for DGRs. However, the DGRs cannot be waived if the SSD is on land that is part of a critical habitat, or if the SSD is likely to significantly affect threatened species, populations or ecological communities, or their habitats. The Director-General also cannot waive the requirement for DGRs if specific authorisations are required under other Acts, such as a mining lease under the [Mining Act 1992 \(NSW\)](#).¹⁴

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

Environment Impact Statement is prepared

The applicant must then prepare an environmental impact statement that meets the requirements that have been set by the Director-General. In addition to addressing the DGRs, an EIS must include the following:¹⁵

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

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

¹³ EP&A Regulation, Schedule 2 cl 3.

¹⁴ Ibid, Schedule 2 cl 3.

¹⁵ Ibid, Schedule 2 cl 7.

Project application

Once the applicant has completed the EIS, it is sent to the Director-General together with a development application.¹⁶

The Department may reject the development application within 14 days of receiving it if it is illegible, unclear, or incomplete.¹⁷ If after 90 days the consent authority has not determined the application, the development application is deemed to have been refused.¹⁸

Visit: [The NSW DPIE's Planning Portal page on The SSD Process for more information](#)

Public exhibition and submissions

If the Director-General is satisfied that the development application and the EIS are in the approved form and meet the Department's requirements, the Director-General must place the development application and EIS on public exhibition as soon as practicable after receiving it.¹⁹

Public notice of the application must be published in a local newspaper and on the website of the Department.²⁰ A copy of the notice must also be given to people owning or occupying adjoining land detailing the proposed development and the submission period.²¹

The minimum exhibition period for SSD is 30 days.²² During this exhibition period, any person can make a written submission to the Director-General about the project.²³ It is important for objectors to make written submissions on time as this preserves objector appeal rights later on (see Appeals, below). It is important that any reasons for objections to the development are clearly stated.²⁴

Once the exhibition period has closed, the Director-General must either pass the submissions or a summary of the submissions to the applicant.²⁵ The submissions will also be made available on the Department's website within 10 days of the submission period closing.

The Director-General may decide to ask the applicant to respond to some or all of the issues raised in the submissions, however this is discretionary.²⁶ If a response is required, the applicant will have 21 days (unless the Director-General sets a different

¹⁶ EP&A Regulation, Schedule 1.

¹⁷ Ibid, cl 51.

¹⁸ Ibid, cl 113.

¹⁹ EP&A Act, Schedule 1, cl 9.

²⁰ EP&A Regulation, cl 84(1).

²¹ Ibid, cl 84(2).

²² Ibid, cl 83.

²³ EP&A Act, Schedule 1, cl 9.

²⁴ Ibid, Schedule 1, cl 9.

²⁵ EP&A Regulation, cl 85A.

²⁶ Ibid, cl 85A.

time) to lodge a response. This response will also be placed on the Department's website.²⁷

If the applicant proposes minor changes, the Department will take steps to finalise the assessment.²⁸ If the changes are deemed to be significant, the amended development application and EIS will be placed on public exhibition again.²⁹

Visit: [The NSW DPIE's Planning Portal On Exhibition page](#) and filter by "State Significant Development" under "Assessment type" to view SSD proposals on exhibition

Public access to documents

SSD applications and documents relating to them must be made available on the Department's website.³⁰ You should be able to access:

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

The public has a right to copy and inspect these documents during the minimum 30 days that they are exhibited.³¹

Decision

The Planning Minister has the power to decide all SSD projects.³²

However, the Minister may delegate this power to either the Independent Planning Commission (**IPC**), the Director-General of Planning or, theoretically, to any other public authority.³³

²⁷ EP&A Regulation, cl 85B.

²⁸ EP&A Act, s 4.55; EP&A Regulation, cl 115, 117.

²⁹ EP&A Act, s 4.55; EP&A Regulation, cl 115, 117.

³⁰ EP&A Regulation, cl 85B.

³¹ EP&A Act, Schedule 1, cl 9.

³² *Ibid*, s 4.37.

³³ *Ibid*, ss 2.4, 2.28.

The Minister has delegated the consent authority for all SSD project applications lodged by *private developers* to the IPC and the NSW DPIE. The Minister will continue to determine all SSD applications lodged by public authorities.

Under the terms of the current delegation, the IPC will determine larger and more controversial projects (that is, applications that have received more than 25 public submissions) and all SSD applications where a reportable political donation has been made.

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

When assessing SSD projects, the decision-maker must take into account (where relevant) the following:³⁴

- Any environmental planning instrument (such as a local environmental plan or State Environmental Planning Policy);
- Coastal Zone management plans;
- The likely impacts of the development, including:
 - Environmental impacts on the natural and built environment;
 - Social impacts in the locality; and
 - Economic impacts in the locality.
- The suitability of the site for the development;
- Public submissions;
- The public interest; and
- The findings and recommendations of the IPC (if the IPC is not the decision maker).³⁵

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

If the project is approved, the decision maker can attach such conditions as they think necessary to the consent.³⁶ For example, approvals can be conditional upon the applicant acquiring and retiring biodiversity credits or subject to the applicant complying with a BioBanking statement.³⁷ Conditions are often aimed at avoiding or minimising any adverse impacts of the development.

³⁴ EP&A Act, ss 4.15, 4.40.

³⁵ Ibid, s 4.16

³⁶ Ibid, s 4.38.

³⁷ Ibid, s 89I.

Relevance of environmental planning instruments

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

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

LEPs control what development can go where through a system of zones. The types of development that tend to qualify as SSD are often wholly or partially prohibited by the LEP. Some SEPPs also place restrictions on where certain types of development can be located.

SSD is still governed by EPIs to some extent. Where an EPI wholly prohibits the development on the relevant land, consent cannot be granted to that development.³⁸ Where an EPI only partly prohibits the development, consent may be granted.³⁹

However, a development application for SSD that is wholly or partly prohibited by an EPI can be accompanied by a proposed change to the EPI to permit the carrying out of the development.⁴⁰ In other words, where the development would otherwise be prohibited, the developer can apply to have the EPI changed so that this prohibition no longer applies. The Director-General can also propose changes to a LEP for the purposes of permitting the development of an otherwise prohibited SSD.⁴¹

Where an LEP needs to be amended to facilitate SSD, only the IPC can approve the amendment.⁴² Further, only the IPC can determine the development application for SSD that requires an amendment to a LEP.⁴³

Read: [EDO factsheet LEPs and SEPPs factsheets bundle for more information on EPIs](#)

Relevance of other environmental laws

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

³⁸ EP&A Act, s 4.38.

³⁹ Ibid, s 4.38.

⁴⁰ Ibid, s 4.38.

⁴¹ Ibid, s 4.38; EP&A Regulation, Part 3 Division 4B.

⁴² Ibid, s 4.38.

⁴³ Ibid, s 4.38.

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

The following authorisations are not required for SSD:⁴⁴

- the concurrence of the Minister for the Environment to carry out development in the coastal zone;⁴⁵
- a permit to carry out dredging or reclamation work,⁴⁶ a permit to harm marine vegetation in a protected area,⁴⁷ or a permit to block the passage of fish in a watercourse;⁴⁸
- an approval to interfere with places or buildings protected by a heritage protection order⁴⁹ or an excavation permit for excavation that is likely to uncover a relic;⁵⁰
- an Aboriginal heritage impact permit;⁵¹
- an authorisation to clear native vegetation or State protected land;⁵²
- a bush fire safety authority;⁵³
- a water use approval⁵⁴, a water management work approval⁵⁵ or an activity approval (other than an aquifer interference approval).⁵⁶

The following authorisations are still required, but must be granted consistently with a development consent for SSD:⁵⁷

- a permit to undertake aquaculture;⁵⁸
- an approval to alter or erect improvements or to subdivide land within a mine subsidence district;⁵⁹
- a mining lease;⁶⁰

⁴⁴ EP&A Act, s 4.41.

⁴⁵ [Coastal Management Act 2016 \(NSW\)](#), s 27.

⁴⁶ [Fisheries Management Act 1994 \(NSW\)](#), s 201.

⁴⁷ *Ibid*, s 205.

⁴⁸ *Ibid*, s 219.

⁴⁹ [Heritage Act 1977 \(NSW\)](#), Part 4.

⁵⁰ *Ibid*, s 139.

⁵¹ [National Parks and Wildlife Act 1974 \(NSW\)](#), s 90.

⁵² [Native Vegetation Act 2003 \(NSW\)](#), s 12.

⁵³ [Rural Fires Act 1997 \(NSW\)](#), s 100B.

⁵⁴ [Water Management Act 2000 \(NSW\)](#), s 89.

⁵⁵ *Ibid*, s 90.

⁵⁶ *Ibid*, s 91.

⁵⁷ EP&A Act, s 4.42

⁵⁸ [Fisheries Management Act 1994 \(NSW\)](#), s 144.

⁵⁹ [Mine Subsidence Compensation Act 1961 \(NSW\)](#), s 15.

⁶⁰ [Mining Act 1992 \(NSW\)](#).

- a petroleum production lease;⁶¹
- an environment protection licence (also known as a licence to pollute);⁶²
- a consent to undertake an activity with regards to a public road such as to dig up the surface of the road or to interfere with a structure or tree on a public road;⁶³
- a licence to construct or operate a pipeline.⁶⁴

Modifications

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

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

Modifications can only be granted in certain circumstances, namely:

- if, in the opinion of the consent authority, the modification would have minimal environmental impact;
- if the modification would still result in substantially the same development as was originally approved;⁶⁵ or
- to correct a minor error, misdescription or miscalculation.⁶⁶

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

Modifications involving the correction of minor errors or that will have only a minimal environmental impact do not need to be publicly notified and there will be no opportunity for the public to comment.⁶⁷

Other modifications are required to be notified for at least 14 days in the same manner as the original application was notified.⁶⁸

⁶¹ [Petroleum \(Onshore\) Act 1991 \(NSW\)](#).

⁶² [Protection of the Environment \(Operations\) Act 1997 \(NSW\)](#), Chapter 3 for any of the purposes listed in s 43.

⁶³ [Roads Act 1993 \(NSW\)](#), s 138

⁶⁴ [Pipelines Act 1967 \(NSW\)](#).

⁶⁵ EP&A Regulation, cl 117.

⁶⁶ EP&A Act, s 4.55.

⁶⁷ *Ibid*, s 4.55; EP&A Regulation, cl 119(1).

⁶⁸ EP&A Act, s 4.55; EP&A Regulation, cl 119(1) and (2).

What is State Significant Infrastructure?

State Significant Infrastructure (**SSI**) is another category of development. As with SSD, the types of development that qualify as SSI are listed in the State and Regional Development SEPP.⁶⁹ Development on specific sites can also become SSI.⁷⁰

Some developments can be declared to be SSI because they are to be carried out by a public authority. Such developments would not normally need consent because the body carrying out the development (the proponent) is also the consent authority. However, if the proponent thinks the development requires an environmental impact statement, the development will be deemed to be SSI.⁷¹ These tend to be large-scale public infrastructure projects carried out by a State agency such as the Roads and Maritime Services or Sydney Water.

There are different types of SSI. Critical SSI⁷² and Staged SSI are dealt with in more detail below.

Categories of SSI

Some of the developments that can qualify as SSI include:⁷³

- Port facilities and wharf or boat facilities;
- Rail infrastructure;
- Water storage or water treatment facilities;
- Pipelines;
- Submarine, Telecommunication cables

Proposals that meet both SSD and SSI criteria will usually default to SSD assessment to ensure that the SSI process is restricted to public authorities undertaking infrastructure projects.⁷⁴

How are SSI projects assessed?

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

Application

A proponent must submit an application that describes the infrastructure project to the Director-General of Planning and Infrastructure.⁷⁵

⁶⁹ EP&A Act, s 5.12. See also State and Regional SEPP, Schedule 3.

⁷⁰ State and Regional SEPP, Schedule 4.

⁷¹ EP&A Act, s 5.12. See also State and Regional SEPP, Schedule 3.

⁷² EP&A Act, s 5.13.

⁷³ State and Regional SEPP, Schedule 3.

⁷⁴ EP&A Act, s 5.12.

⁷⁵ Ibid, s 5.15.

Director-General sets the environmental assessment requirements

The Director-General will then prepare site-specific environmental assessment requirements (**DGRs**) which the proponent must address in an environmental impact statement (**EIS**).⁷⁶ In preparing the DGRs, the Director-General must consult with relevant public authorities such as Heritage NSW.⁷⁷ Importantly, the Director-General can modify these requirements at a later date, simply by providing written notice of the modifications to the proponent.⁷⁸

Proponent prepares an environmental impact statement

The proponent then prepares and submits an EIS to the Director-General.⁷⁹ The Director-General can ask the proponent to revise the EIS to address certain matters,⁸⁰

Public exhibition and submissions

Once the Director-General is satisfied with the EIS, it will be placed on public exhibition for a minimum of 30 days.⁸¹

During this exhibition period, any person or public authority may comment on the EIS.⁸²

The Director-General must then submit either the submissions or a report on the issues raised by the submissions to the proponent and any other public authority that the Director-General considers appropriate, including the NSW DPIE if the SSI will require an environment protection licence (licence to pollute).⁸³

The Director-General may require the proponent to respond to the issues raised by the submission and/or lodge a 'preferred infrastructure report' that outlines any proposed changes to the development to minimise its environmental impact or to deal with any other issue raised.⁸⁴

If the Director-General believes that these proposed changes to the SSI are significant, he or she may make the preferred infrastructure report available to the public, but this is discretionary.⁸⁵

⁷⁶ EP&A Act, s 5.16.

⁷⁷ Ibid, s 5.16.

⁷⁸ Ibid, s 5.16.

⁷⁹ Ibid, s 5.17; Schedule 1, cl 12.

⁸⁰ Ibid, s 5.17; Schedule 1, cl 12.

⁸¹ Ibid, s 5.17; Schedule 1, cl 12; EP&A Regulation, cl 194.

⁸² EP&A Act, s 5.17; Schedule 1, cl 12.

⁸³ Ibid, s 5.17; Schedule 1, cl 12.

⁸⁴ Ibid, s 5.17; Schedule 1, cl 12.

⁸⁵ Ibid, s 5.17; Schedule 1, cl 12.

Public access to documents

Documents relating to SSI applications must be made publicly available on the Department's website or by an electronic link on the Department's website to the document on another website⁸⁶ for a minimum of 30 days.⁸⁷ You should have access to:⁸⁸

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

Visit: [The NSW DPIE's Planning Portal On Exhibition](#) page and filter by "State Significant Infrastructure" under "Assessment type" to view SSI proposals on exhibition

Decision

The Planning Minister is the consent authority for all SSI projects.⁸⁹

The Director-General is required to prepare an environmental assessment report which must be considered by the Minister during the decision-making process.⁹⁰ The report must include:⁹¹

- a copy of the proponent's environmental impact statement and any preferred infrastructure report;
- any advice provided by public authorities on the State significant infrastructure;
- a copy of any report or advice of the Planning Assessment Commission; and
- any environmental assessment undertaken by the Director-General or other matter the Director-General considers appropriate.

⁸⁶ EP&A Act, ss 5.17, 5.28, Schedule 1, cl 12; EP&A Regulation, cl 196.

⁸⁷ EP&A Regulation, cl 194.

⁸⁸ EP&A Act, s 5.28.

⁸⁹ Ibid, s 5.19.

⁹⁰ Ibid, s 5.18.

⁹¹ Ibid, s 5.19.

In addition to the Director-General's report, the Minister must also consider:⁹²

- any advice provided by the Minister having responsibility for the proponent; and
- any findings or recommendations of the Planning Assessment Commission following a review in respect of the proposed infrastructure project.

The Planning Minister may then decide whether or not to approve the project. The Minister can approve the project with modifications, and can grant an approval subject to any conditions that the Minister thinks fit.⁹³

For example, the Minister can make it a condition of consent that the proponent acquires BioBanking credits that are to be retired as part of the proposal, and to comply with the conditions of a BioBanking statement.⁹⁴

Landholder's consent

SSI projects are often proposed over land that is privately owned. Where this is the case, landholder consent is required before the project can go ahead unless:⁹⁵

- The application is made by a public authority;
- It is a critical SSI project, or;
- The SSI relates to linear transport or utility infrastructure.

If landholder consent is not required, the proponent must still notify the landholder of the proposal in writing no later than fourteen days after lodging the SSI application, or by an advertisement published in a newspaper circulating in the area in which the SSI is to be carried out at least fourteen days before the EIS relating to the SSI is placed on public exhibition.⁹⁶

Relevance of environmental planning instruments

LEPs and SEPPs do not apply to SSI except in very limited circumstances. For example, where they apply to the declaration of infrastructure as SSI or as CSSI.⁹⁷

Relevance of other environmental laws

As with SSD, SSI projects do not require a range of additional authorisations that would ordinarily be needed before the project could proceed. For example, they do not require:⁹⁸

⁹² EP&A Act, s 5.19.

⁹³ Ibid, s 5.19.

⁹⁴ Ibid, s 115ZC.

⁹⁵ Ibid, ss 5.29; EP&A Regulation, cl 193.

⁹⁶ EP&A Regulation, cl 193(4).

⁹⁷ EP&A Act, s 5.22.

⁹⁸ Ibid, s 5.23.

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

In addition, where consent has been granted for a SSI development, a number of additional approvals *must* be granted if they are necessary for carrying out the approved SSI and are substantially consistent with the SSI approval, including:⁹⁹

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

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

SSI developments are not subject to the usual range of administrative orders which can be used by public authorities to enforce other environmental laws. For example, interim protection orders and stop work orders to protect threatened species, and environment protection notices to reduce pollution, cannot be issued against a critical infrastructure project.¹⁰⁰

Critical State Significant Infrastructure

Any SSI application can also be declared to be Critical State significant infrastructure (**CSSI**) if the Planning Minister believes the infrastructure is essential for the State for economic, environmental or social reasons.¹⁰¹ At the time of writing, there were two main categories of CSSI – projects forming part of the Pacific Highway upgrade, and rail infrastructure projects.¹⁰²

Land owner consent not required

Unlike most other forms of development, an application for a CSSI project can be lodged without the consent of landowners.¹⁰³

⁹⁹ EP&A Act, s 5.24.

¹⁰⁰ Ibid, s 5.23.

¹⁰¹ Ibid, s 5.13.

¹⁰² State and Regional SEPP, Schedule 5.

¹⁰³ EP&A Regulation, s 193(1)(b).

Exemption from other environmental laws

As with SSI, CSSI developments do not require a range of additional environmental approvals,¹⁰⁴ while other approvals must be granted consistently with the CSSI approval.¹⁰⁵

Staged Infrastructure

Staged Infrastructure refers to an application for SSI that sets out concept proposals for the proposed infrastructure¹⁰⁶ and where separate proposals for different parts of the development will require separate approvals from the Minister.¹⁰⁷

This means the Minister has the power to consider applications that only have detailed proposals for the first stage of the development.¹⁰⁸

However, the granting of an approval for the first stage of development does not authorise the development of further stages unless subsequent, detailed applications have been submitted for the Minister's approval.¹⁰⁹

Appeals

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

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

		SSD		SSI		CSSI	
		<i>Availability</i>	<i>Time Limit</i>	<i>Availability</i>	<i>Time Limit</i>	<i>Availability</i>	<i>Time Limit</i>
Proponent Appeals	<i>Merits review</i>	Yes	6 months	No	N/A	No	N/A
	<i>Judicial Review</i>	Yes	3 months	Yes	3 months	Yes	3 months
Third Party Appeals	<i>Merits review</i>	Yes, objectors only	28 days	No	N/A	No	N/A
	<i>Judicial review</i>	Any person	3 months	Yes	3 months	Only if approved by Minister	3 months

¹⁰⁴ EP&A Act, s 115ZG(3).

¹⁰⁵ Ibid, s 115ZH.

¹⁰⁶ Ibid, s Part 5.1 Division 3.

¹⁰⁷ Ibid, s 115ZD.

¹⁰⁸ Ibid, s 115ZD.

¹⁰⁹ Ibid, s 115ZD(2).

Proponent appeals

SSD approvals

A proponent who is dissatisfied with the Minister's refusal to approve or modify an SSD application can appeal the merits of the decision in the Land and Environment Court (Class 1).¹¹⁰ Any appeal must be brought within 6 months of the proponent receiving notice of the decision, or a deemed refusal.¹¹¹

However merits appeals are not available if the decision was made by the IPC after the IPC held a public hearing.¹¹²

A proponent can bring judicial review proceedings against a decision regarding SSD.¹¹³ Any proceedings must be commenced within 3 months after public notice of the decision was given.¹¹⁴

SSI approvals

A proponent who is dissatisfied with a decision in relation to an SSI application cannot appeal on the merits at all. Judicial review has to be brought within 3 months of the proponent receiving notice of the decision, or a deemed refusal.¹¹⁵

CSSI approvals

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

Judicial review is only available in relation to CSSI if they are brought within 3 months after public notice of the decision was given.¹¹⁶

Third party appeals

SSD approvals

Merits appeals are permitted for a third party in relation to SSD but only if that person is an objector (that is, lodged a submission objecting to the development during the exhibition period). An objector can appeal against a decision regarding SSD provided the appeal is brought within 28 days of the date on which notice of the determination was given to the objector.¹¹⁷ However, this right only applies to SSD projects that would have been 'designated development' had they not been declared to be SSD.¹¹⁸

Merits appeals are not available if the decision was made after the IPC held a public hearing.¹¹⁹

¹¹⁰ EP&A Act, ss 8.7, 8.10.

¹¹¹ Ibid, ss 8.7, 8.10.

¹¹² Ibid, s 8.6.

¹¹³ Ibid, s 4.59.

¹¹⁴ Ibid, s 4.59.

¹¹⁵ Ibid, s 5.26.

¹¹⁶ Ibid, s 5.26.

¹¹⁷ Ibid, ss 8.8, 8.10.

¹¹⁸ Ibid, ss 4.10, 8.8, 8.10.

¹¹⁹ Ibid, ss 8.6, 8.8, 8.10.

A third party can bring judicial review proceedings challenging the legal validity of a decision regarding SSD.¹²⁰ Any proceedings must be commenced within 3 months after public notice of the decision was given.¹²¹

SSI approvals

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

A third party can only bring judicial review proceedings against a SSI approval if the SSI is not for critical infrastructure. Any proceedings must be commenced within 3 months after public notice of the decision was given.¹²²

CSSI approvals

Third parties are not permitted to commence merit appeals concerning decisions relating to CSSI.¹²³

Third parties can only bring judicial review proceedings in relation to CSSI if the proceedings are brought, or approved by, the Planning Minister.¹²⁴ If proceedings are brought, they must be commenced within 3 months after public notice of the decision was given.¹²⁵

Case study – Overcoming restricted appeal rights

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

The power stations were approved under the now repealed Part 3A of the EP&A Act. They were categorised as 'critical infrastructure projects' - a category very similar to the CSSI in that the approvals could not be challenged by third party objectors without the Planning Minister's approval.

Mr Haughton sought the Minister's approval to challenge the development consents but was unsuccessful. He was therefore forced to challenge the legality of the sections of the EP&A Act which sought to restrict his right to bring a judicial review case before the Court.

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

¹²⁰ EP&A Act, s 4.59.

¹²¹ Ibid, s 4.59.

¹²² Ibid, s 5.26.

¹²³ Ibid, s 5.27.

¹²⁴ Ibid, s 5.27.

¹²⁵ Ibid, ss 5.26-5.27.

Glossary

CSSI means critical state significant infrastructure

DGRs means the Director-General's Environmental Assessment Requirements

DPIE means the NSW Department of Planning, Industry and Environment

EARs means Environmental Assessment Requirements

EIS means an environmental impact assessment

EP&A Act means the [*Environmental Planning and Assessment Act 1979 \(NSW\)*](#)

EP&A Regulation means the [*Environmental Planning and Assessment Regulation 2000 \(NSW\)*](#)

EP&A Repeal Act means the [*Environmental Planning and Assessment Amendment \(Part 3A Repeal\) Act 2011 \(NSW\)*](#)

EPI means environmental planning instrument

IPC means the NSW Independent Planning Commission (formerly known as the NSW Planning Assessment Commission)

LEP means local environmental plan

SEPP means state environmental planning policy

SSD means state significant development

SSI means state significant infrastructure

State and Regional Development SEPP means the [*State Environmental Planning Policy \(State and Regional Development\) 2011*](#)

The Department means the NSW Department of Planning, Industry and Environment