

How the NSW planning system works

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May 2024



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1. Introduction

The NSW planning system is a complex array of legislation, policy and public authorities. This includes the primary planning legislation – the [Environmental Planning and Assessment Act 1979](#) (EP&A Act), statutory instruments made under the Act, planning policies, guidelines, ministerial circulars, ministerial orders, and the principles and authority of the court. Key public authorities in NSW planning include the Department of Planning, Housing and Infrastructure (DPHI) and local councils. The planning system also plays a role in the implementation of the regulatory regime established by the Commonwealth’s [Environment Protection and Biodiversity Conservation Act 1999](#).

While complex, the planning system can be divided into two broad areas: land use planning, and development control.

Land use planning sets strategic short and long term social, environmental and economic goals for an area. It is both a process – one of study and consultation, and an outcome – culminating in rezoned precincts, land use strategies, or new legislation. As part of the land use planning process, areas of the state may be nominated as being of particular importance because of their suitability for new development or urban revitalisation, or because of their social, economic or environmental characteristics. By means of environmental planning instruments and a hierarchy of strategic plans, the planning system attempts to balance different, and at times competing, land uses.

Development control is about the assessment of development against approval pathways, and its subsequent approval or refusal. Because of the wide-ranging scale, complexity and nature of development, NSW has 8 development approval pathways established under the EP&A Act. This helps to ensure that appropriate assessment rigour and development controls are applied, including the appointment of an appropriate planning authority. In most cases, an environmental impact assessment of a development is required. Building and subdivision certification, established under the EP&A Act, ensures that development is compliant with regulatory requirements and conditions imposed by planning authorities.

This paper updates the previous *NSW planning system* paper published by the NSW Parliamentary Research Service in June 2019,¹ and provides current information about the operation of the NSW planning system as at May 2024. The paper seeks to increase understanding of the planning system and enable easier navigation across its operational complexity.

¹ D Montoya, [The NSW planning system](#), NSW Parliamentary Research Service, June 2019.

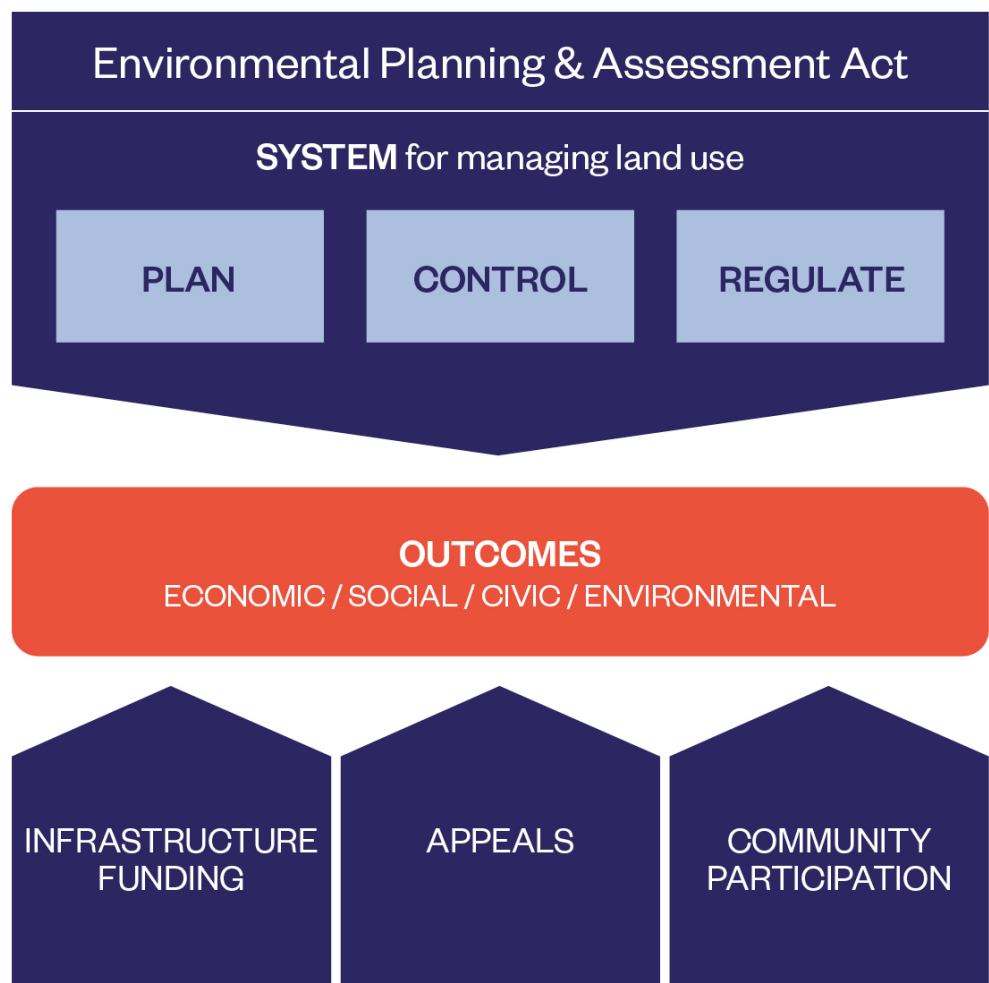
2. Overview of the NSW planning system

2.1 Key components

The planning system is shaped by 7 key components of the EP&A Act (Figure 1), which form the basis for the structure of this paper:

- **Objects of the EP&A Act:** set the goals of the primary planning legislation
- **Planning authorities:** carry out and implement land use planning and assess development before granting or refusing consent
- **Land use planning:** uses environmental planning instruments and a hierarchy of strategic plans to balance different, and at times competing, land uses
- **Development control:** regulates development through one of 8 approval pathways, some of which include environmental impact assessment
- **Infrastructure funding:** establishes a developer contributions system that helps to fund local, regional and state infrastructure
- **Community participation:** seeks to involve the community in the planning decisions that affect them
- **Land and Environment Court:** makes planning principles and provides an avenue for possible recourse against dissatisfaction with planning outcomes or processes.

Figure 1: Key components of the NSW planning system



Source: NSW Parliamentary Research Service using information about the NSW planning system.

The [Environmental Planning and Assessment Regulation 2021](#) (EP&A Regulations) is subordinate legislation that supports and complements the EP&A Act. The EP&A Regulations provide more detailed rules and procedures to support effective implementation of the EP&A Act.

To manage impacts on areas of national environmental significance, such as on world heritage sites, the planning system in NSW implements the regulatory regime established by the Commonwealth's [Environment Protection and Biodiversity Conservation Act 1999](#) (the EPBC Act) through a [bilateral agreement](#). Under this agreement the state prepares an

assessment of potential environmental effects of relevant projects, while the Commonwealth grants or refuses approval under the EPBC Act.

The planning process also considers the regulatory requirements of other NSW legislation, such as the [Biodiversity Conservation Act 2016](#), [Fisheries Management Act 1994](#), and the [Heritage Act 1977](#).

2.2 Objects of the EP&A Act

The EP&A Act has 10 objects ([section 1.3](#)):

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

Section 1.3(b) of the EP&A Act identifies ecologically sustainable development (ESD) as an object. ESD is an important environmental principle at a national and global scale.² [Section 6\(2\)](#) of the *Protection of the Environment Administration Act 1991* defines ESD as 'the effective integration of social, economic and environmental considerations in decision-making processes.' It identifies 4 principles by which ESD can be implemented in decision-making processes:

² D Montoya, [NSW planning reforms: sustainable development](#), Chapter 3, NSW Parliamentary Research Service, July 2013.

- **The precautionary principle:** if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation
- **Inter-generational equity:** the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations
- **Conservation of biological diversity and ecological integrity:** should be a fundamental consideration
- **Valuation and pricing:** environmental factors, such as polluter pays, or pricing based on full life cycle costs of providing goods and services including the use of natural resources, should be included in the valuation of assets and services.

Part 4 of the EP&A Act lists the matters for consideration when determining a development application ([section 4.15](#)). One of the listed matters is the 'public interest'. While the objects of the EP&A Act are not listed in section 4.15, the judgement of [Carstens v Pittwater Council \[1999\] NSWLEC 249](#) found that 'it is in the public interest, in determining a development application, to give effect to the objects of the [Environmental Planning and Assessment] Act [1979].'

3. Planning authorities

[Part 2](#) of the EP&A Act covers planning administration, which is undertaken by planning authorities. Two important roles of planning authorities are to make and amend planning instruments, and to apply planning instruments and other policy to the assessment and determination of proposed development.

In NSW, planning authorities include:

- The Minister for Planning
- The Secretary of the Department of Planning, Housing and Infrastructure (the Planning Secretary)
- The Independent Planning Commission
- A Sydney district or regional planning panel
- A council
- A local planning panel
- A determining authority under Part 5 of the EP&A Act (the minister or public authority)³
- A public authority that may be prescribed by the EP&A Regulations.⁴

The role of state governments and local councils in making planning law, and determining proposed development, is commonplace across Australia and other similar jurisdictions internationally. Local councils assess and determine most development applications (DAs) under the EP&A Act. According to 2020–21 data, 97% of local DAs are determined by council staff.⁵ DPHI coordinates the assessment of state significant projects, with the Minister for Planning, or the minister’s delegate, determining the majority of them.

In addition to these planning authorities that deal with most developments, NSW has introduced other planning authorities into the planning system over the last 2 decades. This has been done to help provide advice on, and determine developments that are more significant or have a contentious or sensitive nature.

³ A determining authority under [Part 5](#) of the EP&A Act is the minister or public authority by or on whose behalf the activity is to be carried out, or any minister or public authority whose approval is required to enable the activity to be carried out.

⁴ The prescribed public authorities are listed in [Schedule 1](#) of the *Environmental Planning and Assessment Regulations 2021*. Examples include port operators, universities, and non-government schools (when certain types of development, for example exempt development, relate to their land) and other ministers.

⁵ Department of Planning, Housing and Infrastructure, [Local Development Performance Monitoring \(LDPM\) 2020-21](#), NSW Government, March 2024.

The Independent Planning Commission and local planning panels were introduced in March 2018 to deal with contentious or sensitive developments. Sydney district and regional planning panels, which mainly deal with regional developments that are not large enough to be considered state significant, have been part of the NSW planning system since 2009, and revised in 2016.

3.1 Independent Planning Commission

The Independent Planning Commission (IPCN) operates independently of government. It is the consent authority for state significant development⁶ (SSD) in NSW in cases where:

- There are at least 50 public objections to the SSD
- The local council objects to the SSD
- A reportable political donations disclosure is made by the SSD applicant.⁷

SSD is a type of DA that is defined under [Schedules 1 and 2](#) of the Planning Systems State Environmental Planning Policy (Planning Systems SEPP). Examples of SSD include mining projects with a capital investment value (CIV) over \$30 million, educational establishments (such as schools) with a CIV over \$20 million, development on significant land such as the Sydney Opera House, and a range of project types that are in environmentally sensitive areas of state significance.

The IPCN is also involved in land use planning matters. It provides advice on all gateway reviews in NSW, and rezoning reviews in the City of Sydney local government area (LGA)

Gateway reviews and rezoning reviews are avenues for proponents or local councils to change the course of a planning proposal's progress or seek changes to its determination. A planning proposal is a document that requests permission to amend a Local Environmental Plan (LEP) by, for example, altering land use zones, development standards, building heights or heritage status (see [section 4.1.2](#)).

[Members](#) of the IPCN are all appointed by the Minister for Planning for their core decision-making skills and backgrounds in a diverse range of planning-related fields. Members are individually appointed for terms of up to 3 years and cannot serve more than 6 years.⁸

When requested to do so by the Minister for Planning, the IPCN can:

- Conduct public hearings into any planning and development matter⁹

⁶ [Division 4.7](#), *Environmental Planning and Assessment Act 1979*.

⁷ [Section 4.5](#), *Environmental Planning and Assessment Act 1979*.

⁸ [Schedule 2, Part 4](#), *Environmental Planning and Assessment Act 1979*.

⁹ [Section 2.9](#); and [Schedule 2, section 3](#), *Environmental Planning and Assessment Act 1979*.

- Provide independent expert advice on a planning matter¹⁰
- Act as a Sydney district or regional planning panel or a local planning panel.

3.2 Sydney district and regional planning panels

[Sydney district and regional planning panels](#) (SDRPPs) bring independent decision-making to larger developments that are not of state significance, such as regionally significant development. SDRPPs are also involved in land use planning matters, such as rezoning reviews, acting as a [planning proposal authority](#),¹¹ and [Aboriginal land planning](#).¹² When involved in other planning matters, SDRPPs are known as strategic planning panels.

Regionally significant development (RSD) is defined under [Schedule 6](#) of the Planning Systems SEPP. Examples of RSDs include development on Crown (that is, state-owned) or council land with a CIV over \$5 million, coastal subdivisions that result in more than 100 lots, or private infrastructure and community facilities (such as telecommunication facilities, or places of public worship) with a CIV over \$5 million.

[Rezoning reviews](#) can be carried out by [regional](#) planning panels for Northern NSW, Hunter and Central Coast regions, Western NSW, Southern NSW, and by a Sydney district planning panel for planning proposals within the Greater Sydney region (but outside the City of Sydney LGA).

Sydney is covered by 5 Sydney district planning panels and the [Central Sydney Planning Committee](#), which is established under the [City of Sydney Act 1988](#), and there are 4 regional planning panels.

Each SDRPP consists of 5 members of which:

- 3 are appointed by the Minister for Planning
- 2 are nominees of an applicable council who are councillors, members of council staff or other persons nominated by the council.

All 3 members appointed by the minister are required to have expertise in a planning-related field, such as planning, architecture, engineering or public administration. At least one of

¹⁰ Independent Planning Commission, [What we do](#), Independent Planning Commission of NSW, accessed 30 April 2024.

¹¹ A planning proposal authority (PPA), usually local councils, prepares and submits a planning proposal to the NSW Government. Under [section 3.32](#) of the *Environmental Planning and Assessment Act 1979*, the Minister for Planning can direct that a Sydney district or regional planning panel be the PPA.

¹² [Chapter 3](#), *Planning Systems State Environmental Planning Policy (SEPP) 2021*.

the 2 applicable council nominees is required to meet the same expertise requirements as members appointed by the minister.¹³

SDRPPs can also be requested to provide advice to the Minister for Planning or the Planning Secretary on relevant planning or development matters.¹⁴

3.3 Local planning panels

[Local planning panels](#) (LPPs), introduced in March 2018, are required for councils in Greater Sydney and Wollongong.¹⁵ Generally, each council has its own LPP. Two or more councils are allowed to form a joint LPP.

Each LPP consists of 4 members which are:

- An approved independent person appointed as the chairperson of the panel with relevant expertise in law or in government and public administration
- Two other approved independent persons with relevant expertise in at least one relevant area such as planning, architecture, and engineering
- A representative of the local community who is not a councillor or mayor.¹⁶

The Minister for Planning has issued [directions](#) about when referrals are to be made to local planning panels.¹⁷ For [development applications](#), referrals to local planning panels for determination should generally be made where:

- There is a conflict of interest, such as a councillor or member of parliament being the applicant or landowner
- 10 or more unique submissions have been made objecting to the application
- There was a departure of more than 10% of a development standard imposed by an environmental planning instrument
- The development is sensitive, such as involving the demolition of a heritage item.

Local planning panels are also involved in land use planning matters. The [planning proposals](#) direction requires all planning proposals prepared after 1 June 2018 to be referred to a local planning panel for advice, unless they are minor or correcting an obvious error.

¹³ [Section 2.13](#), *Environmental Planning and Assessment Act 1979*.

¹⁴ [Section 2.15\(c\)](#), *Environmental Planning and Assessment Act 1979*.

¹⁵ [Section 2.17\(2\)](#), *Environmental Planning and Assessment Act 1979*.

¹⁶ An [approved independent person](#) is an independent person approved by the Minister for appointment to an LPP or a person selected from a pool of independent persons approved by the Minister for appointment to the LPP.

¹⁷ The directions have been made using [section 9.1](#) of the *Environmental Planning and Assessment Act 1979*.

4. Land use planning

Land use planning in NSW primarily involves:

- Making and applying planning instruments, or legal planning controls, identified under Part 3 of the EP&A Act
- Undertaking area-based planning, typically done for select priority precincts and corridors which are of interest to government.

Planning instruments and area-based planning are linked to each other in the NSW planning system. For example, an area-based planning process involving investigation and consultation regarding an area's future potential could recommend changes to a planning instrument.¹⁸

4.1 Planning instruments

Planning instruments are strategic, regulatory, and guidelines-based documents established by the EP&A Act to govern land use and development controls. Planning instruments are generally prepared by the NSW Government or local councils.¹⁹

The planning instruments of the NSW planning system are:

- Strategic planning instruments
- Environmental planning instruments
- Development control plans.

4.1.1 Strategic planning instruments

Strategic planning instruments are a subgroup of planning instruments identified under [Part 3, Division 3.1](#) of the EP&A Act. The hierarchy of strategic planning instruments is:

- **Regional strategic plans:** Examples of these kinds of plans include the [Greater Sydney Region Plan](#), and plans for [other regions](#) like the [North Coast Regional Plan 2041](#). These plans set a general vision and strategic direction around liveability, productivity and sustainability in these regions.
- **District strategic plans:** For the Greater Sydney region, there currently are [5 district plans](#). They are generally consistent with the parent regional strategic plan and provide further strategic direction at a smaller area level. The 5 district plans cover

¹⁸ The NSW Government's [strategic planning toolkit](#) (accessed 30 April 2024) provides resources and guidance in relation to land use planning considerations other than planning instruments, such as ministerial directions, planning circulars, and practice notes.

¹⁹ See [Part 3](#) of the *Environmental Planning and Assessment Act 1979* for authority on the making of various planning instruments.

3 of the cities in the [Six Cities Region – Eastern Harbour City, Central River City and Western Parkland City](#). Under [section 3.4](#) of the EP&A Act, the government is required to make district plans for the other 3 cities – Central Coast City, Illawarra-Shoalhaven City, and Lower Hunter and Greater Newcastle City.²⁰

- **Local strategic planning statements:** In March 2018, the EP&A Act introduced a requirement for local councils to produce land use vision documents, known as [local strategic planning statements](#) (LSPSs). Under [section 3.9\(2\)\(b\)](#) of the EP&A Act, LSPSs in the [Six Cities Region](#) are required to include net additional dwelling targets for 5, 10 and 20 year periods after the plan is prepared.

Strategic planning instruments are required to have regard to other relevant government policies and strategies, such as Infrastructure NSW's [state infrastructure strategy](#) and disaster mitigation plans.

4.1.2 Environmental planning instruments

Environmental planning instruments (EPIs) have a number of purposes, including regulating development, protecting the environment, and land zoning.²¹ There are 2 types of EPIs:

- [State Environmental Planning Policies](#) (SEPPs)
- [Local Environmental Plans](#) (LEPs).

SEPPs address planning issues at a state-wide level. They provide specialised planning guidance on the operation of various aspects of the planning system, or regulate types of development, such as natural resource exploitation or housing.

There are currently 14 SEPPs in force across NSW, 12 of which are consolidated SEPPs from a previous list of 45 SEPPs.²² There are 10 topic-based SEPPs:

- [Biodiversity and Conservation SEPP](#)
- [Exempt and Complying Development Codes SEPP](#)
- [Housing SEPP](#)
- [Industry and Employment SEPP](#)
- [Planning Systems SEPP](#)
- [Primary Production SEPP](#)
- [Resilience and Hazards SEPP](#)

²⁰ As at 30 April 2024, district strategic plans for the Central Coast City, Illawarra-Shoalhaven City, and Lower Hunter and Greater Newcastle City are yet to be made.

²¹ [Part 3, Division 3.2 – 3.4, Environmental Planning and Assessment Act 1979](#).

²² There were 45 SEPPs in NSW prior to the December 2021. For details of the changes see: [SEPP consolidation project](#).

- [Resources and Energy SEPP](#)
- [Sustainable Buildings SEPP](#)
- [Transport and Infrastructure SEPP](#).

There are 4 precinct-based and regional SEPPs:

- [Central River City SEPP](#)
- [Eastern Harbour City SEPP](#)
- [Western Parkland City SEPP](#)
- [Regional SEPP](#).

LEPs contain the statutory planning controls and development standards of local councils. They govern matters such as land zoning, minimum subdivision lot sizes, building height, and floor space ratios (FSRs). All 128 councils in NSW have a LEP in place that is consistent with the [Standard Instrument LEP](#), which sets out the standard format and content that must be included in a council's LEP.

A planning proposal is a request to 'make' or amend a LEP. A planning proposal can be initiated by a proponent, such as the landowner or developer, or a local council. In certain circumstances, particularly when it is of state significance, the Minister for Planning may initiate an amendment to a LEP via a SEPP.²³ A common type of planning proposal is a rezoning – a request to change the land use type of a defined precinct. All planning proposals are assessed and reviewed by DPHI.

Figure 2 outlines the 6 stages of making a LEP, including preparing the planning proposal, gateway determination, public exhibition and finalisation. The '[gateway](#)' is a critical stage of a planning proposal where the NSW Government reviews the strategic and site-specific merit of a planning proposal and determines whether the planning proposal should proceed to public exhibition. At this stage it also considers any conditions to be satisfied before the planning proposal can be made into law.

[Gateway reviews](#) are requested when the proponent of a planning proposal or local council disagrees with the NSW Government's [gateway determination](#), and seeks alterations. A [rezoning review](#) can occur upon request by a proponent when a proponent-initiated planning proposal is not supported or progressed by a local council.²⁴

²³ [Section 3.32](#), *Environmental Planning and Assessment Act 1979*.

²⁴ Full details on the various processes and pathways within the LEP making process can be found in the NSW Government's [Local Environmental Plan making guideline](#), August 2023.

Figure 2: Overview of the process for making Local Environmental Plans



Source: Adapted from NSW Government, [Local Environmental Plan Making Guideline](#) (August 2023).

4.1.3 Development control plans

Development control plans (DCPs) are non-statutory plans made by councils that set out detailed planning controls for land zoning and development permissible under an EPI.²⁵ Councils can have multiple DCPs to guide development in certain precincts, or for certain land use types.²⁶

4.2 Area-based planning

The NSW Government carries out area-based planning in several different ways. An area can be selected for area-based planning if considered suitable for purposes such as release for new development or for rezoning as part of urban revitalisation plans. These areas are usually identified in a strategic planning instrument, such as a regional strategic plan. In turn, a common outcome of area-based planning is the amendment of a planning instrument to enable the area-based plan to be implemented.

Areas can have statutory definitions under SEPPs that guide their assessment processes and planning controls. Of particular importance are [state-significant precincts](#) (SSPs) and [special activation precincts](#) (SAPs), which are areas the Minister for Planning has determined to be of state or regional planning significance.²⁷ The rezoning of an area as a SSP is led by DPHI and, on approval by the Minister for Planning, results in amendments to any relevant LEP or SEPP.²⁸ SSPs are distinct from [state significant development](#) (SSD), [state significant infrastructure](#) (SSI) and [regionally significant development](#) (RSD).

In addition to these defined area-based planning activities, the NSW Government undertakes a number of other area-related activities, including:

- Smaller area renewals, such as [priority growth areas and precincts](#) (led by DPHI)
- Transport station renewals, such as the [Central Precinct Renewal Program](#) (led by Transport for NSW)
- Innovation precincts, such as the [Westmead Health and Innovation District](#) (led by Investment NSW).

Some area-based planning activity seeks to coordinate policy and funding across all 3 levels of government – local, state, and Commonwealth – to realise an area's future potential. An example of this is the [Western Sydney City Deal](#). [City Deals](#) are vehicles for the

²⁵ [Part 3, Division 3.6, Environmental Planning and Assessment Act 1979](#).

²⁶ [Part 3, Division 3.6, Environmental Planning and Assessment Act 1979](#).

²⁷ [Section 3.29\(2\), Environmental Planning and Assessment Act 1979](#).

²⁸ Department of Planning and Environment, [State Significant Precincts Guideline](#), NSW Government, 2016.

Commonwealth government to fund critical infrastructure investments while also driving urban governance and land use reform at the state and local level.²⁹

²⁹ The Australian Housing and Urban Research Institute (AHURI), [Australian City Deals in focus](#), August 2020.

5. Development control

Development is [defined](#) in the EP&A Act as:

- (a) The use of land,
- (b) The subdivision of land,
- (c) The erection of a building,
- (d) The carrying out of a work,
- (e) The demolition of a building or work,
- (f) Any other act, matter or thing that may be controlled by an environmental planning instrument.³⁰

There are 3 broad classes of development: development that does not need consent, development that needs consent, and prohibited development. Where consent is required, the relevant planning authority will assess the development and make a determination by either granting consent, which may be subject to conditions, or by refusing consent.

5.1 Planning approval pathways

5.1.1 Development that does not need consent

Development that does not need consent is still regulated under 3 of [8 planning approval pathways](#) (Table 1).³¹ Exempt development and complying development are defined in the [Exempt and Complying Codes SEPP](#). Exempt development covers minor works where some standards apply but no application for planning or construction approval is required. Complying development covers works that meet certain pre-determined development standards and can be assessed by a certifying authority, either a council or private accredited certifier.³²

Development without consent covers low impact or routine activities, and is defined in the 2 main environmental planning instruments – LEPs and SEPPs. Some low impact or routine activity related to infrastructure, known as [Part 5 activities](#), may need a licence, permit or approval from a public authority under legislation other than the EP&A Act.³³

³⁰ [Section 1.5, Environmental Planning and Assessment Act 1979](#).

³¹ DPHI lists nine development approval pathways on its [website](#) (accessed 30 April 2024). One of the listed pathways, Part 3A development, is no longer in use.

³² Department of Planning and Environment, [Guide to complying development](#), NSW Government, Revised August 2023.

³³ [Part 5, Division 5.1, Environmental Planning and Assessment Act 1979](#)

Table 1: Development types that do not need consent

Description	Examples	Consent authority	Relevant legislation
Complying development			
Development that qualifies for a combined planning and construction approval called a complying development certificate (CDC)	Houses Home alterations and additions New industrial buildings Building demolition	None This type of development must be certified by a private accredited certifier or a local council	Exempt and Complying Codes SEPP Part 6 of the EP&A Act
Exempt development			
Low impact development that can be done for certain residential, commercial and industrial properties	Decks Garden sheds Carports Fences	None	Exempt and Complying Codes SEPP
Development without consent			
Low impact or routine activities, and some activities undertaken by public authorities which are assessed under Part 5 of the EP&A Act (Part 5 activities)	Home businesses Markets Construction of water supply infrastructure by public utility	None Some activities may require a licence, permit or approval from a public authority under legislation other than the EP&A Act	Part 5, Division 5.1 of the EP&A Act Relevant sections of SEPPs and LEPs Transport and Infrastructure SEPP

Source: NSW Parliamentary Research Service using information about the NSW planning system.

5.1.2 Development that needs consent

Development that needs consent is assessed under 5 of [8 planning approval pathways](#),³⁴ the first 2 of which are classified as state significant projects (Table 2). State significant development (SSD), state significant infrastructure (SSI) and regionally significant development (RSD) are defined in the Planning Systems SEPP. Local development is defined within the relevant LEP or SEPP. Development that needs consent is assessed by those planning authorities which have the power under legislation to assess development; when performing this role they are also known as consent authorities.

Under the EP&A Act, the Minister for Planning has powers to classify development into development types by ministerial planning order. For example, the minister can:

³⁴ DPHI lists nine development approval pathways on its [website](#) (accessed 30 April 2024). One of the listed pathways, Part 3A development, is no longer in use.

- Declare specified development on specified land to be SSD, but only if the minister has obtained the IPCN's advice and makes the advice publicly available³⁵
- Amend SEPPs to specify development as being SSI³⁶
- Declare any SSI to be critical SSI (CSSI) if it is in the minister's opinion that the category is essential for the state for economic, environmental or social reasons.³⁷

If a project is declared as CSSI proposals are determined by the Minister for Planning only, as the minister is unable to delegate this decision-making power. There are also no third-party appeal rights for CSSI declarations and decisions, and judicial reviews of CSSI decisions can only occur with the approval of the minister.³⁸

Regionally significant development (RSD) covers development that is relatively large in investment value, scale or complexity, but not significant enough to be declared SSD. Examples include general development with a CIV of more than \$30 million, development on Crown or council land with a CIV over \$5 million, and coastal subdivisions that result in more than 100 lots.

Local development covers development defined in a SEPP or LEP as requiring development consent that is not otherwise classified as RSD or SSD. Some local developments may be categorised as either designated development or integrated development. Designated development refers to high-impact developments, such as those likely to generate pollution, or located near an environmentally sensitive area (such as a wetland).³⁹ Integrated development is development that requires development consent as well as one or more approvals under other legislation (such as the grant of a mining lease under the *Mining Act 1992*).⁴⁰

Designated fishing activities include commercial fishing activities that use certain methods or occur in particular locations. These activities require approval from the Minister for Primary Industries.

³⁵ [Section 4.36\(3\)](#), *Environmental Planning and Assessment Act 1979*.

³⁶ [Section 5.12\(4\)](#), *Environmental Planning and Assessment Act 1979*..

³⁷ [Section 5.13](#), *Environmental Planning and Assessment Act 1979*.

³⁸ More detail on the differences between SSI and CSSI is available from: Department of Planning and Environment, [Declaration of SSI and CSSI](#), State significant infrastructure guide, NSW Government, March 2021.

³⁹ Designated developments are listed in [Schedule 3, Part 2](#) of the *Environmental Planning and Assessment Regulations 2021*. As per [section 4.10](#) of the *Environmental Planning and Assessment Act 1979*, a LEP or SEPP can also declare certain types of development to be designated.

⁴⁰ Integrated developments are listed in [section 4.46](#) of the *Environmental Planning and Assessment Act 1979*.. Integrated development cannot be SSD or complying development.

Table 2: Development types that need consent

Description	Examples	Consent authority	Relevant legislation
State significant development (SSD)			
Development over a certain size, or located in a sensitive environmental area, or which exceeds a specific CIV	Educational establishments Hospitals Correction centres Mines Sites like Barangaroo	Minister for Planning (or delegate ⁴¹) IPCN DPHI coordinates assessment of SSDs but does not determine	Schedules 1 and 2 of the Planning Systems SEPP Part 4 of the EP&A Act
State significant infrastructure (SSI)			
Infrastructure over a certain size, or located in a sensitive environmental area, or which exceeds a specific CIV	Rail infrastructure Roads Water storage and treatment plants Boating facilities	Minister for Planning (or delegate) DPHI coordinates assessment of SSIs but does not determine Minister for Planning is the only consent authority for CSSI	Schedules 3 and 4 of the <i>Planning Systems SEPP</i> Part 5 of the EP&A Act
Regionally significant development (RSD)			
Development that is larger in investment value, scale, and/or complexity, but is not a state significant project (that is not a SSD or SSI)	General development with a CIV over \$30 million Coastal subdivisions of more than 100 lots	Sydney district and regional planning panels Local councils assess RSD applications, and present findings to panels for determination	Schedule 6 of the Planning Systems SEPP Specific sections of the EP&A Act and Regulations
Local development			
Development where an EPI states that development consent is required, including designated and integrated development	Home extensions Medium sized commercial, retail and industrial developments	Council Minister for Planning Local planning panels	Part 4 of the EP&A Act Parts 3-5 of the EP&A Regulations Designated: Schedule 3 of the EP&A Regulations Integrated: Division 4.8 of the EP&A Act

⁴¹ [Section 2.4](#), *Environmental Planning and Assessment Act 1979*; Department of Planning, Housing and Infrastructure (DPHI), [Delegated decisions](#), NSW Government, accessed 30 April 2024.

Description	Examples	Consent authority	Relevant legislation
Designated fishing activities			
Designated fishing activities include commercial fishing activities relating to particular methods and/or locations including fish stocking	Commercial fishing Fish stocking	Minister for Agriculture If the Department of Primary Industries is the proponent, the Minister for Planning will determine	Part 5 of the EP&A Act Fisheries Management Act 1994

Source: NSW Parliamentary Research Service using information about the NSW planning system.

5.2 Assessing for environmental and social impact

5.2.1 Duties and processes under the EP&A Act

The EP&A Act establishes a general duty to take environmental impacts into account. For the determination of local development, RSD and SSD, this duty is under [section 4.15](#). A broader duty that applies to a determining authority⁴² is established under [section 5.5](#).

Most planning approval pathways in NSW require a degree of environmental impact assessment (EIA) (Table 3). In many cases, this is done to inform a consent authority's decision to grant or refuse development consent. The type of EIA required depends on the planning approval pathway and the type of development or activity being proposed:

- **Environmental impact statement (EIS):** reviews the potential environmental impacts of proposed developments, and must be prepared for all SSD, SSI and designated development projects. The Secretary's environmental assessment requirements (SEARs) act as guidelines for information that needs to be included in an EIS. DPHI has released [industry-specific SEARs](#) for SSDs such as in-fill affordable housing, schools and large-scale solar energy, and [standard SEARs](#) for CSSI projects.⁴³
- **Statement of environmental effects (SEE):** explains the likely impacts of a development proposal and must be prepared for all local development other than designated development, and for all RSD.
- **Review of environmental factors (REF):** assesses the environmental impact of activities permitted without consent and must be prepared for low impact or routine activities carried out by a public authority under [Part 5](#) of the EP&A Act (Part 5 activities). [Clause 171\(4\)](#) of the EP&A Regulations requires certain REFs to be

⁴² A type of planning authority, the determining authority is the minister or public authority by or on whose behalf a Part 5 activity is to be carried out or any minister or public authority whose approval is required to enable the activity to be carried out.

⁴³ See [Part 5, Division 5.2](#) of the *Environmental Planning and Assessment Act 1979* and [Part 8](#) of the *Environmental Planning and Assessment Regulations 2021* for further information on SEARs.

published online, such as if the CIV of the work is over \$5 million. A REF can be followed up by an EIS if the REF determines that significant environmental effects are likely.⁴⁴

Every state significant project (SSD, SSI and CSSI) is subject to a [social impact assessment](#) (SIA). These assessments are targeted and proportionate to the likely project impacts, and to the project's context. The SIA aims to identify, predict and evaluate likely social impacts, such as the effects on vulnerable persons or community way of life, arising from a project. The SIA proposes responses to the predicted social impacts.

⁴⁴ Department of Planning and Environment, [Guidelines for Division 5.1 assessments](#), NSW Government, June 2022.

Table 3: Key environmental impact assessments

Description	Relevant pathway or development	Relevant links	Relevant legislation
Environmental impact statement (EIS)			
Document that describes the potential environmental impacts of a proposed development, and outlines mitigation measures for identified impacts Informs the decision to grant or refuse development consent	SSD SSI Designated development (local development)	Guidelines for preparing an EIS for an SSD or SSI (DPHI) Industry-specific EIS guidelines (DPHI) Local councils for designated development	Part 5 of the EP&A Act Part 8, Division 5 of the EP&A Regulations
Statement of environmental effects (SEE)			
Document that explains the likely impacts of a development proposal on the natural and built environment Demonstrates how identified impacts will be minimised	RSD Local development (except designated development)	Application requirements policy (DPHI)	Section 4.64(e) of the EP&A Act Part 3, Division 1 of the EP&A Regulations
Review of environmental factors (REF)			
Document that assesses the environmental impact of an activity that is permitted without consent May take the form of an environmental checklist for a simple maintenance activity, or a more substantial report	Part 5 activities, such as maintenance of infrastructure (development without consent)	Guidelines for Division 5.1 assessments (DPHI) Development without consent pathway (DPHI)	Part 5, Division 5.1 of the EP&A Act Part 8, Division 1 of the EP&A Regulations
Biodiversity assessment reports: Species impact statement (SIS) or Biodiversity development assessment report (BDAR)			
If a proposed development or activity is likely to have a significant impact on threatened species or ecological communities, or their habitats, an SIS or BDAR may be required	SSD SSI RSD Local development Part 5 activities (development without consent)	Guidelines for Division 5.1 assessments (DPE) Threatened species test of significance (DCCEEW) Guideline for BDAR (DCCEEW)	Part 7 of the BC Act Part 7 of the BC Regulations

Source: NSW Parliamentary Research Service using information about the NSW planning system.

5.2.2 Environmental conservation and protection measures

SSD, SSI, RSD, local development and Part 5 activities (development without consent) may have an impact on biodiversity and require further assessment under the [Biodiversity Conservation Act 2016](#) (the BC Act). The BC Act establishes the [biodiversity offsets scheme](#) (BOS) as the primary mechanism for landowners to manage their land for conservation and receive payment for doing so. The BOS applies to:

- SSD and SSI, unless the Secretaries of the Department of Climate Change, Energy, the Environment and Water (DCCEEW) and DPHI determine that the project is not likely to have a significant impact on biodiversity
- RSD and local development if these activities exceed the BOS threshold (such as excessive native vegetation clearing), are carried out on an area of outstanding biodiversity value, or are likely to significantly affect threatened species as determined by the threatened species test of significance.⁴⁵

Proponents of Part 5 activities may voluntarily opt into the BOS.

If the BOS applies to a development, the proponent must submit a [biodiversity development assessment report](#) (BDAR) to the consent authority. A [species impact statement](#) (SIS) must be prepared if the proposed development is on land containing critical habitat or is likely to affect threatened species (Table 3).

RSD and local development that does not exceed the BOS threshold triggers a requirement for a threatened species test of significance to be applied.⁴⁶ The test must be applied to Part 5 activities as well.⁴⁷ The test considers the likely impacts of a development on threatened species, ecological communities and their habitats. If the test finds that there will be a significant impact on threatened species, the BOS will apply.⁴⁸

Certain major projects in NSW, such as SSDs or SSIs, may be subject to an evaluation of proposed actions under the Commonwealth Government's [Environment Protection and Biodiversity Conservation Act 1999](#) (EPBC Act). Under the EPBC Act, a proponent needs to seek approval to undertake an activity that could have a significant impact on a matter of [national environmental significance](#), such as world heritage or nationally threatened species and ecological communities. To avoid a duplication of planning processes, the Commonwealth and NSW governments have a [bilateral agreement](#) on environmental

⁴⁵ Department of Climate Change, Energy, the Environment and Water, [When does the Biodiversity Offsets Scheme apply?](#) NSW Government, 2024, accessed 30 April 2024.

⁴⁶ Office of Environment and Heritage, [Threatened Species Test of Significance Guidelines](#), NSW Government, February 2024.

⁴⁷ Department of Climate Change, Energy, the Environment and Water, [When does the Biodiversity Offsets Scheme apply?](#) NSW Government, 2024, accessed 30 April 2024.

⁴⁸ Department of Climate Change, Energy, the Environment and Water, [When the Biodiversity Offsets Scheme applies](#), NSW Government, 2024, accessed 30 April 2024.

assessment that allows NSW to undertake the EPBC assessment. The Commonwealth Government uses the state-prepared assessment to decide on whether approval is given under the EPBC Act.

5.3 Building and subdivision certification

The building industry is regulated by a number of statutes.⁴⁹ They include the EP&A Act, [Building and Development Certifiers Act 2018](#), [Home Building Act 1989](#), and [Residential Apartment Buildings \(Compliance and Enforcement Powers\) Act 2020](#).

Under [Part 6](#) of the EP&A Act, public and [private certifiers](#) may issue the following certificates to certify different development and building stages:

- Construction certificates
- Occupation certificates
- Compliance certificates
- Complying development certificates (CDCs)
- Subdivision certificates
- Subdivision works certificates.

DPHI [administers](#) building control components of the EP&A Act and EP&A Regulations and the ongoing development, reform and implementation of the Building Code of Australia in NSW. The [Building Commission NSW](#) oversees and regulates the building industry.

⁴⁹ For more detail, see [Chapter 2](#) of D Gilyana and D Montoya, [Regulation of the building industry in New South Wales](#), Key issues for the 58th Parliament, NSW Parliamentary Research Service, Research Paper No. 2023-03, 2023.

6. Infrastructure funding

The NSW planning system has legislation in place that requires funding, or an equivalent of funding, from landowners and developers to go towards the provision of public infrastructure and services. This is known as an infrastructure contribution. The infrastructure contributions system in NSW is established and regulated under [Part 7](#) of the EP&A Act and [Part 9](#) of the EP&A Regulations.

Infrastructure contributions collected under Part 7 must be held for the purposes for which they were required, such as funding for public amenities, and applied towards that purpose within a reasonable time.⁵⁰

The NSW Government has also established a number of funds and funding initiatives to accelerate and support infrastructure delivery and the supply of new housing, such as the [Accelerated Infrastructure Fund](#) or [Low Coast Loans Initiative](#).

6.1 Infrastructure contributions system

Under [section 7.4](#) of the EP&A Act, both local councils and the NSW Government can voluntarily enter into planning agreements with landowners and property developers for the provision of public infrastructure that supports development or changes to environmental planning instruments (changes to SEPPs or LEPs). A planning agreement could include the provision of direct funding, dedication of land, or works-in-kind from the developer. The NSW Government and local councils have their own planning agreement policies to guide this process.⁵¹

To support local development, local councils also have 2 local infrastructure contributions mechanisms to collect developer contributions – section 7.11 and section 7.12 contributions. Prior to reforms to the EP&A Act in March 2018, section 7.11 was known as section 94, and section 7.12 was known as section 94A. The superseded names are sometimes still used across the NSW planning system when dealing with older developments or contributions plans.

[Section 7.11 contributions](#) are collected by local councils in accordance with contribution plans that have been prepared for specified areas identified for increased development or rezoning. Contributions collected under section 7.11 plans are linked to the infrastructure needs generated from the expected additional demand in the specified area. The contributions are usually charged per dwelling or per square metre of the development.

⁵⁰ [Section 7.3](#), *Environmental Planning and Assessment Act 1979*.

⁵¹ Department of Planning, Housing and Infrastructure (DPHI), [State Voluntary Planning Agreements](#), NSW Government, accessed 30 April 2024. Planning agreement policies of local councils will be on the relevant council's website.

[Section 7.12 contributions](#) are a flat and fixed levy imposed on general local development or complying development in a council area where a section 7.11 plan is not in place. [Clause 209](#) of the EP&A Regulations specifies the maximum levy councils can impose under section 7.12. For most councils, the maximum levy is 0.0% for developments of a cost up to \$100,000, 0.5% for developments between \$100,001 and \$200,000, and 1.0% for developments with a cost above \$200,000.⁵²

To fund state and regional infrastructure, the NSW Government collects [housing and productivity contributions](#) (HPC) in locations it specifies by [Ministerial Order](#) (the Order) on the NSW planning portal.⁵³ The latest [2023 Order](#) imposes a HPC on residential, commercial and industrial development in the Greater Sydney, Central Coast, Illawarra-Shoalhaven, and Lower Hunter regions. An example of how the HPC is applied is the requirement of a \$12,000 contribution to the NSW Government for each new dwelling lot generated from a residential subdivision.

The HPC came into effect in October 2023.⁵⁴ Prior to that, the NSW Government administered special infrastructure contributions (SICs) in defined special contribution areas (SCAs). According to the [2023 Order](#), the previous SIC-SCA regime⁵⁵ will apply in the [Western Sydney Aerotropolis](#) and [Western Sydney Growth Areas](#) until July 2026.

Local councils are still able to collect section 7.11 and section 7.12 contributions in cases where a state contribution is required.

6.2 Other infrastructure funding initiatives

The NSW Government has also established funding programs to help support and accelerate the delivery of infrastructure or supply of new housing.

DPHI is responsible for administering 5 infrastructure funding programs:

- [Accelerated Infrastructure Fund](#): aims to stimulate construction investment, and fund infrastructure that unblocks development approvals and enables development activity
- [Housing Acceleration Fund](#): funds critical infrastructure projects, like water and sewerage, that accelerate the delivery of new housing

⁵² [Clause 208\(4\)](#) of the Environmental Planning and Assessment Regulations 2021 lists the circumstances where development costs should not be included in the determination of a section 7.12 contribution. Examples include if the development costs relate to internal fit out works only, are for the provision of affordable housing, or costs related to the adaptive reuse of a heritage item.

⁵³ [Section 7.24\(4\)](#), *Environmental Planning and Assessment Act 1979*.

⁵⁴ The HPC was [introduced](#) by the [Environmental Planning and Assessment Amendment \(Housing and Productivity Contributions\) Act 2023](#).

⁵⁵ The former [section 7.23](#) of the *Environmental Planning and Assessment Act 1979*.

- [Low Coast Loans Initiative](#): allows councils to have 50% of their interest costs absorbed by the NSW Government, if the borrowings are paid towards new infrastructure intended to enable housing supply
- [Metropolitan Greenspace Program](#): distributes grants to local councils for greenspace capital projects like pedestrian and cycle pathways, and new and improved parks or open space
- [NSW Regional Housing Fund](#): provides funding to councils to support regional housing supply and enhancement, including infrastructure and open space projects.⁵⁶

⁵⁶ Department of Planning, Housing and Infrastructure (DPHI), [Infrastructure funding](#), NSW Government, accessed 30 April 2024.

7. Community participation

The NSW planning system provides a range of opportunities for the community to be involved in policy development, and to have their say on proposed developments.

7.1 Opportunities to get involved

Under the EP&A Act, consultation with the public, mostly by way of submissions, is required to be available for:

- Draft regional or district strategic plans and LSPSs⁵⁷
- Draft development control plans⁵⁸
- Planning proposals for LEPs⁵⁹
- Local development, including designated development and integrated development⁶⁰
- Regionally significant development⁶¹
- State significant development⁶²
- Environmental impact assessments, such as environmental impact statements for state significant infrastructure projects⁶³
- Draft contribution plans, including planning agreements.⁶⁴

Consultation with the public is not required for complying development or exempt development. Consultation with relevant stakeholders, which may include feedback from the public, is required for [Part 5](#) activities permitted without consent (such as some infrastructure maintenance) depending on the scale, context and impact of the development. The Minister for Planning has discretion over whether to seek and consider submissions from the public before recommending the making of a SEPP to the NSW Governor.⁶⁵

Minimum public exhibition periods for public consultation are outlined in [Schedule 1](#) of the EP&A Act. Most local development applications require a minimum 14-day public exhibition

⁵⁷ [Section 2.21\(2\)\(a\)](#), *Environmental Planning and Assessment Act 1979*.

⁵⁸ [Section 2.21\(2\)\(a\)](#), *Environmental Planning and Assessment Act 1979*.

⁵⁹ [Section 3.33\(2\)\(e\)](#), *Environmental Planning and Assessment Act 1979*.

⁶⁰ [Section 4.15\(1\)\(d\)](#), *Environmental Planning and Assessment Act 1979*.

⁶¹ [Section 4.15\(1\)\(d\)](#), *Environmental Planning and Assessment Act 1979*.

⁶² [Section 4.15\(1\)\(d\)](#), *Environmental Planning and Assessment Act 1979*.

⁶³ [Section 5.6\(2\)\(b\)](#), *Environmental Planning and Assessment Act 1979*.

⁶⁴ [Division 7.1](#), *Environmental Planning and Assessment Act 1979*.

⁶⁵ [Section 3.30](#), *Environmental Planning and Assessment Act 1979*.

period to receive submissions, while most draft planning instruments and submissions to an EIS require a minimum 28-day public exhibition period.

Communities can also be involved in planning matters through public hearings, including for:

- Development applications (and any other matter) where the Minister for Planning has requested that the IPCN hold a public hearing⁶⁶
- Planning proposals, where the Minister for Planning has determined a public hearing should be held by the IPCN.⁶⁷

Community members can also be involved in the planning system as members of local planning panels.⁶⁸

7.2 Community participation plan-making

Planning authorities in NSW are required to prepare [community participation plans](#) (CPPs) under [Division 2.6](#) of the EP&A Act. CPPs set out how planning authorities will look to engage the public in their decision-making. DPHI has prepared a [CPP](#), and each council has prepared their own CPP. [Section 2.23\(2\)](#) of the EP&A Act identifies 8 principles for planning authorities to apply in preparing a CPP. Some of these principles include that:

- The community has the right to be informed on planning matters that affect them
- Opportunities to participate and enable community views should be made available as early as possible, and be genuinely considered
- Community participation methods should have proportionate regard to the significance of proposed developments.

Local councils are also required to prepare community strategic plans (CSPs) and establish community engagement strategies under [sections 402-402A](#) of the *Local Government Act 1993* (the LG Act). A council may meet the requirement to make a CPP as part of these requirements.

⁶⁶ [Section 2.9\(1\)\(d\)](#), *Environmental Planning and Assessment Act 1979*.

⁶⁷ [Section 3.34\(2\)\(e\)](#), *Environmental Planning and Assessment Act 1979*.

⁶⁸ [Section 2.18\(2\)\(c\)](#), *Environmental Planning and Assessment Act 1979*.

8. Land and environment court

The NSW [Land and Environment Court](#) (LEC) was founded in September 1980 as a specialised 'one stop shop' for environmental, planning and land matters by the [Land and Environment Court Act 1979](#) (LEC Act). The LEC supports the effective administration of NSW planning law. A number of other statutes also grant the court jurisdiction to hear and determine matters including the *Local Government Act 1993*, *Protection of the Environment Operations Act 1997* and *Biodiversity Conservation Act 2016*.⁶⁹

8.1 Planning principles

Since 2003, some of the judgements of the LEC have included [planning principles](#). The planning principles provide guidance to councils, applicants, and other stakeholders; and promote the consistent adjudication of planning decisions where matters are brought before the court. Some examples of current planning principles include:

- **Communal open space:** Where a planning instrument, policy or guideline requires the provision of communal open space, the space should be provided principally at ground level, unless in dense urban contexts or where the guidance says otherwise.
- **Development control plans (DCPs):** A DCP which has been consistently applied by a council will be given significantly greater weight than one which has only been selectively applied.
- **Surrounding development:** For a new development to be visually compatible with its context, it should contain, or at least respond to, the essential elements that make up the character of the surrounding urban environment. Other principles are established around the treatment of building heights, setbacks, landscaping, architectural style and materials in this context.
- **Precautionary principle:** Two conditions, precedents or thresholds must be met for the precautionary principle to be triggered: a threat of serious or irreversible environmental damage; and scientific uncertainty as to the environmental damage.

8.2 Role of the LEC

The LEC has 4 main roles for environmental and planning law:

- **Merits appeals:** This is where the LEC can reconsider a decision made by a local council, a minister, or another government official or agency. There are various opportunities for merit appeals available under the EP&A Act.
- **Civil enforcement:** The LEC can impose an obligation on a developer to obtain a licence, issue an order to stop an unauthorised activity, or impose an obligation on

⁶⁹ The Law Society of NSW, [A practitioner's guide to the Land and Environment Court](#), May 2019.

government decision-makers to consider all relevant matters when exercising their power.

- **Criminal enforcement:** The LEC can oversee prosecutions for criminal breaches of environmental law such as unauthorised development, taking water without a licence, water pollution, or native vegetation damage.
- **Judicial review:** The LEC can inquire into the legality of a decision made by a minister, government official, or agency, and the decision-making process.⁷⁰

Formally, the LEC's jurisdiction is separated into 8 'classes' under [Part 3](#) of the LEC Act (Table 4). Class 1 relates to environmental planning and protection appeals, and Class 8 relates to mining matters. These are the classes that relate most closely to the planning matters commonly brought before the LEC.⁷¹

Class 1 matters relating to environmental planning and protection appeals constituted the majority (61%) of the LEC's finalised caseload in 2022, and most of these (60% of finalised Class 1 matters) dealt with appeals by applicants against decisions by councils under [section 8.7](#) of the EP&A Act.⁷² Dispute resolution processes (such as mediation and neutral evaluation) are available in the NSW LEC, as is the case with other courts and tribunals. In 2022, 72% of all matters were finalised by pre-trial disposals, and 28% by adjudication of the court.⁷³

⁷⁰ R Lyster, Z Lipman, S O'Neill, E Couzens, J Smith., *Environment and Planning Law in New South Wales*, 5th edition, The Federation Press, 2021.

⁷¹ The Land and Environment Court of NSW, [Annual Review 2022](#), October 2023.

⁷² The Land and Environment Court of NSW, [Annual Review 2022](#), 2023, p 34.

⁷³ The Land and Environment Court of NSW, [Annual Review 2022](#), 2023, p 33.

Table 4: Classes of the NSW Land and Environment Court's (LEC) jurisdiction

Description	Examples of matters
Class 1	
Environmental planning and protection appeals (merits review appeals)	<p>Applicant dissatisfaction with the determination of an application by the consent authority (s 8.7 of the EP&A Act). This includes applications where a council has not determined a DA within the statutory time period, known as a 'deemed refusal'</p> <p>Applications to modify a development consent, following a dissatisfactory determination by a consent authority (s 8.9 of the EP&A Act)</p> <p>Appeals against a council's development control order, such as a stop work order or demolish work order (s 8.18 of the EP&A Act)</p> <p>Appeals against a council for failing or refusing to issue a certificate under Part 6 of the EP&A Act, such as a construction certificate or occupation certificate (s 8.16 of the EP&A Act)</p>
Class 2	
Local government, trees and miscellaneous appeals (merits review appeals)	<p>Applications under the Trees (Disputes Between Neighbours) Act 2006</p> <p>Appeals against heritage orders (s 120L of the <i>Heritage Act 1977</i>)</p> <p>Appeals against prohibition (s 10), stop work (s 30), and building rectification orders (s 49) under the <i>Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020</i></p>
Class 3	
Land tenure, valuation, rating and compensation matters (merits review appeals)	<p>Compensation claims for compulsory acquisition of land (Div 2 of the LEC Act)</p> <p>Land valuation or rating appeals (s 37 of the <i>Valuation of Land Act 1916</i>)</p> <p>Aboriginal land claims (s 36(7) or s 174 of the <i>Aboriginal Land Rights Act 1983</i>)</p>
Class 4	
Environmental planning and protection (civil enforcement and judicial review)	<p>Seeking an order to remedy or restrain a breach of the EP&A Act (s 9.45 of the EP&A Act)</p> <p>Challenging the validity of an EPI within 3 months of it being published on the NSW legislation website (s 3.27 of the EP&A Act)</p> <p>Judicial review proceedings, such as to enforce an obligation or duty imposed by a planning or environmental law, or to make declaration of a right to exercise a function (ss 20(2) and (3) of the LEC Act)</p>
Class 5	
Environmental planning and protection (summary criminal enforcement)	<p>Proceedings for an offence against the EP&A Act or Regulations (s 9.57 of the EP&A Act)</p> <p>Proceedings for an offence against the <i>Protection of the Environment Operations Act 1997</i> (the POEO Act) such as for unlawful disposal of asbestos waste or pollution of land (Parts 8.2 and 8.3 of the POEO Act)</p> <p>Proceedings for an offence against the <i>Local Government Act 1993</i> (the LG Act) (s 691 of the LG Act)</p>

Description	Examples of matters
Class 6	
Appeals against convictions or sentences relating to environmental offences (appeals as of right from decisions of the Local Court in prosecutions for environmental offences)	Any person who has been convicted or sentenced by the Local Court with respect to an environmental offence appealing to the LEC against the conviction or sentence (s 31 of the <i>Crimes (Appeal and Review) Act 2001</i>) The Director of Public Prosecutions or the Environment Protection Authority appealing to the LEC against a sentence imposed on a person by the Local Court in relation to an environmental offence (s 42 of the <i>Crimes (Appeal and Review) Act 2001</i>)
Class 7	
Appeals against convictions or sentences relating to environmental offences (appeals requiring leave from decisions of the Local Court in prosecutions for environmental offences)	Appeals requiring leave under sections 32 and 43 of the <i>Crimes (Appeal and Review) Act 2001</i>
Class 8	
Civil proceedings under the mining legislation	Hearing and disposing of proceedings arising under the <i>Mining Act 1992</i> or the <i>Petroleum (Onshore) Act 1991</i> , but not to proceedings for an offence under either of those Acts (s 21C of the LEC At)

Source: Adapted from: The Land and Environment Court of NSW, [Annual Review 2022](#), 2023, p 7; and [Part 3](#) of the *Land and Environment Court Act*.

Despite its specialist focus, the NSW LEC does not have exclusive jurisdiction over all planning and environment matters. Other jurisdictions and proceedings include:

- The [NSW Civil and Administrative Tribunal](#) (NCAT), which has a broader jurisdiction than the LEC across matters such as consumer claims, residential tenancies and strata schemes. NCAT can also handle disputes between neighbours over development proposals, boundaries, and issues related to complying development certificates.
- Proceedings in common law actions with an environmental context, such as negligence and nuisance. These types of proceedings are not dealt with by the LEC. Depending on the amount of compensation sought, these matters can go to the Supreme Court, District Court, or Local Court.

9. Recent changes and moving forward

The NSW planning system is always changing. It intersects with a broad range of [policy issues](#) that are the subject of reform, such as natural hazards, building quality, renewable energy and the environment. It also consists of a large number of statutory planning instruments at the state and local government level which regulate land use, and to which amendments are continuously being proposed and made. Current [planning reform](#) priorities are listed on the DPHI website.⁷⁴ They include improving development assessment time frames, reducing red tape, eliminating double-handling, and fast-tracking projects that deliver public benefits, job creation, and economic growth.

Housing is a high-profile example of a policy issue associated with the planning system. Boosting [housing supply and affordability](#) has been a key focus of NSW planning policy and legislative reform over the last few years. Housing reforms in 2023–2024 have amended several SEPPs. These reforms include:

- Changes to the [Housing SEPP](#) to legislate for a density bonus of up to 30% for residential development where at least 10% is set aside for affordable housing
- Changes to the [Planning Systems SEPP](#) to add a SSD pathway for affordable housing development if certain thresholds and criteria are met, such as CIV or the number of dwellings being provided. The thresholds and requirements differ depending on whether the development is being carried out by certain public authorities⁷⁵ or a private residential developer⁷⁶
- Changes to the [Housing SEPP](#) that expands permissibility of denser housing types in key public transport locations.

Further proposed housing reforms continue to be considered by the NSW Government, such as low- and mid-rise housing in [diverse and well-located areas](#) and a [pattern book of housing design](#).

⁷⁴ Department of Planning, Housing and Infrastructure, [Planning reforms](#), NSW Government, accessed 30 April 2024.

⁷⁵ The thresholds and requirements on certain public authorities, which include the Aboriginal Housing Office (AHO), the Land and Housing Corporation (LAHC), or Landcom, are set out in [section 26](#) of the *Planning Systems SEPP*.

⁷⁶ The thresholds and requirements on private residential developers are set out in [section 26A](#) of the *Planning Systems SEPP*.

10. Acronyms

BC Act	<i>Biodiversity Conservation Act 2016</i>
BC Regulations	Biodiversity Conservation Regulation 2017
BDAR	Biodiversity development assessment report
BOS	Biodiversity offsets scheme
CDC	Complying development certificate
CIV	Capital investment value
CPP	Community participation plan
CSP	Community strategic plan
CSSI	Critical state significant infrastructure
DA	Development application
DCCEEW	Department of Climate Change, Energy, the Environment and Water
DCP	Development control plan
DPHI	Department of Planning, Housing and Infrastructure
EIA	Environmental impact assessment
EIS	Environmental impact statement
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulations	Environmental Planning and Assessment Regulation 2021
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPI	Environmental planning instrument
ESD	Ecologically sustainable development
FSR	Floor space ratios
HPC	Housing and productivity contributions
IPCN	Independent Planning Commission
LEC	Land and Environment Court
LEC Act	<i>Land and Environment Court Act 1979</i>
LEP	Local Environmental Plan
LGA	Local government area
LG Act	<i>Local Government Act 1993</i>
LPP	Local planning panel
LSPS	Local strategic planning statement
NCAT	NSW Civil and Administrative Tribunal
PPA	Planning proposal authority
REF	Review of environmental factors
RSD	Regionally significant development
SAP	Special activation precinct
SCA	Special contribution area

SDRPP	Sydney district and regional planning panel
SEAR	Secretary's environmental assessment requirement
SEE	Statement of environmental effect
SEPP	State Environmental Planning Policy
SIA	Social impact assessment
SIS	Species impact statement
SSD	State significant development
SSI	State significant infrastructure
SSP	State significant precinct

How the NSW planning system works

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Research Paper No. 2024-04

ISSN 2653-8318

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The Parliament of New South Wales acknowledges and respects the traditional lands of all Aboriginal people and pays respects to all Elders past and present. We acknowledge the Gadigal people as the traditional custodians of the land on which the Parliament of New South Wales stands.

This image comes from 'Our Colours of Country', which was created for the Parliament of NSW by Wallula Bethell (Munro) a Gumbaynggirr/Gamilaroi artist born and raised in Tamworth who has spent time living on Dughutti Country and is currently living in Western Sydney on Darug Country with her husband and son.

