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## The NSW planning system

by Daniel Montoya

### 1. Introduction

The NSW planning system consists of a complex array of legislation, policy and public authorities. This includes the primary legislation – the [Environmental Planning and Assessment Act 1979](#) (EP&A Act<sup>1</sup>) – statutory instruments made under the Act, planning policies, guidelines, ministerial circulars and ministerial orders. It also plays a role in the implementation of the regulatory regime established by the Commonwealth's [Environment Protection and Biodiversity Conservation Act 1999](#).<sup>2</sup> Key public authorities include the [Department of Planning, Industry & Environment](#) (DPIE) and [local councils](#).

The NSW planning system may be divided into two broad areas: land use planning; and development control.<sup>3</sup> Land use planning sets strategic short and long term social, environmental and economic objectives for an area. By means of **environmental planning instruments** (EPIs) and a hierarchy of **strategic plans**, the system attempts to balance different and, at times, competing land uses. **Subregional areas** of the State may be nominated as being of particular importance from a planning perspective because of their suitability for new development or urban revitalisation, or because of their social, economic or environmental characteristics.

Development is assessed and approved by the relevant **planning authority** in accordance with one of the eight **planning approval pathways** established under the EP&A Act. Each pathway contains specific statutory and policy requirements, some of which are contained in EPIs. In many cases, an **assessment of the environmental impact** of the development is required. The EP&A Act also regulates **public infrastructure planning and delivery** and **building and subdivision certification**.

A glossary of planning acronyms has been included at the end of the paper ([Section 8](#)).

### 2. Objects of the NSW planning system

[Section 1.3](#) of the EP&A Act lists the objects of the planning system:

- (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<sup>4</sup> 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.

Objects (f), (g) and (h) were introduced in 2017 as part of broader [reforms](#) to the EP&A Act that [aimed](#) to improve the planning system through simpler processes, enhanced strategic planning, improved community participation and more balanced and transparent decision-making.

### 3. Planning authorities

[Planning authorities](#) have a number of functions under the EP&A Act, including making **planning instruments** and **development control**. **Planning authorities** include:

- The Minister for Planning;
- The Planning Secretary;
- The [Independent Planning Commission](#) (IPC);
- The [Greater Sydney Commission](#) (GSC);
- A [Sydney district](#) or [regional planning panel](#);
- A council;
- A [Local Planning Panel](#) (LPP), previously known as Independent Hearing and Assessment Panels (IHAPs);
- A [determining authority](#) under Part 5 (the Minister or public authority); and
- A public authority prescribed in the regulations.

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[Section 6.1](#) of this paper sets out all of the different types of development, and the appropriate planning authority where consent is required.

### Independent Planning Commission

The [IPC](#) operates independently of the NSW Government.<sup>5</sup> IPC Members are appointed by the Minister and must have expertise in one or more areas of relevance.<sup>6</sup> The IPC has three main functions:

- (1) Determining some **State Significant Development** (SSD) applications;
- (2) Conducting public hearings for some **development applications** (DAs) and other planning and development matters; and
- (3) Providing independent expert advice to the Minister for Planning or DPIE.

The IPC is the consent authority for SSD applications and modification applications where:

- There have been 25 or more public objections to the application; or
- The local council has objected; or
- A reportable political donation has been made.

The IPC may hold a *public meeting* during the SSD determination process, at its own discretion. This does not affect appeal rights under the EP&A Act. However, if the IPC holds a *public hearing* as part of the SSD determination process or in relation to any other planning matter, where requested to do so by the Minister, merit appeal rights to appeal to the Land and Environment Court are extinguished.

### Greater Sydney Commission

Established in 2015, the [Greater Sydney Commission](#) (GSC) represents the NSW Government's commitment to "improving planning in Sydney and making Sydney more sustainable, more liveable and more productive"<sup>7</sup>. The GSC has seven principal objectives under the [Greater Sydney Commission Act 2015](#), including:

- Leading metropolitan planning for the Greater Sydney Region;
- Promoting orderly development in the Greater Sydney Region, integrating social, economic and environmental considerations with regard to the principles of ecologically sustainable development;
- Promoting the alignment of Government infrastructure decision-making with land use planning; and
- Providing increased opportunity for public involvement and participation in environmental planning and assessment in the Greater Sydney Region.

Initially having reported to the Minister for Planning, as of 1 July 2018 the GSC reports to the NSW Premier.<sup>8</sup> As part of this change, the Premier and Chief Commissioner agreed on a [new set of priorities](#) for the GSC.

The GSC also has several roles under the EP&A Act, including:

- Preparing regional and district plans for Greater Sydney;
- Providing written advice to a council that it supports the councils' **Local Strategic Planning Statement** (LSPS) prior to the LSPS being made; and
- Being consulted by the Minister for Planning before the Minister makes an EPI or determines a **planning proposal** that is likely to significantly affect implementation of a Greater Sydney strategic plan.

### Planning panels

[Planning Panels](#) (formerly Joint Regional Planning Panels or JRPPs) are independent bodies established under the EP&A Act to:

- Determine regionally significant DAs and certain other DAs and modification applications;
- Make Local Environmental Plans (LEPs) as the **Planning Proposal Authority** (PPA) when directed;
- Undertake rezoning reviews; and
- Provide advice on planning and development matters when requested.

Sydney is covered by five [Sydney Planning Panels](#) (SPPs) and the City of Sydney [Central Sydney Planning Committee](#), which is established under the [City of Sydney Act 1988](#). The remainder of the State is covered by four [Regional Planning Panels](#) (RPPs).

### Local Planning Panels

[Local Planning Panels](#)<sup>9</sup> (LPPs; also known as Independent Hearing and Assessment Panels, or IHAPs) assess certain DAs lodged with all Sydney councils and the Wollongong City Council. All other councils may choose whether or not to establish an LPP. They have [three objectives](#):

- Better planning outcomes through greater expertise, independence, and probity in decision-making;
- Faster decisions; and
- Improved capacity for councils to undertake strategic planning functions.

The Minister for Planning has set four broad criteria which may trigger the referral of a DA to an LPP, with specifics varying by [council area](#):

- (1) Conflict of interest;
- (2) Contentious development;
- (3) Departure from development standards; and
- (4) Sensitive development.

LPPs may also advise councils on planning proposals, or any other planning or development matter referred to it.

### 4. Community participation

The EP&A Act provides for several ways by which the community may participate in environmental planning and assessment, including:

- As [members](#) of LPPs;
- In accordance with a **community participation plan** (CPP);
- As part of the IPC [public hearing process](#); and
- Through the [NSW planning portal](#).

A [CPP](#) must be made by a planning authority in relation to the following planning functions:

- The making of planning instruments;
- The development approval process under Part 4 of the Act;
- The **environmental impact assessment** ([EIA](#)) process under Division 5.1 of the Act;
- The **State Significant Infrastructure** ([SSI](#)) approval process under Division 5.2 of the Act; and
- The making of a local infrastructure **contribution plan**;

Each CPP must meet [community participation principles](#) set out in section 2.23(2) of the Act. A council may meet the requirement to make a CPP as part of the **community strategic plan** (CSP) or community engagement strategy it must make under section 402 of the [Local Government Act 1993](#) (LG Act). All planning authorities need to have the [final version](#) of their CPP in place by 1 December 2019.

Schedule 1 of the Act prescribes minimum public exhibition periods for plans, DAs and **Environmental Impact Statements** ([EISs](#)). It also includes a new mandatory requirement for decision makers to notify the public of a decision made in relation to the following matters, as well as the reasons for the decision and how community views were taken into account when the decision was made:

- An SSI application, or modification of approval for an SSI;
- A DA, or modification of approval for a DA; and
- Approval of a development where an EIS was publicly exhibited.

### 5. Land use planning

#### 5.1 Planning instruments

The planning system makes provision for three types of statutory [planning instruments](#):

- (1) **Strategic planning instruments**;
- (2) **Environmental planning instruments** (EPIs); and
- (3) **Development control plans** (DCPs).

The first two of these instruments relate to either one or more **Local Government Areas** (LGAs). DCPs relate to part or all of an LGA. Note that non-statutory strategic plans may also be made by DPIE (for example [Land Use and Infrastructure Implementation Plans](#)<sup>10</sup> (LUIIPs)).

### Strategic planning instruments

[Strategic planning instruments](#) set a vision for an area which incorporates environmental, social and economic objectives.

### Regional Plans and District Plans

Ten regional plans cover the State: the Greater Sydney Region Plan – [A Metropolis of Three Cities](#); and nine across [Regional NSW](#). Five [District Plans](#) sit under the Greater Sydney Region Plan;<sup>11</sup> and the [Greater Newcastle Metropolitan Plan 2036](#) sits under the [Hunter Regional Plan](#).

### Local Strategic Planning Statements

The 2017 [legislative reforms](#) added local strategic planning statements (LSPSs) to the hierarchy of strategic planning instruments. An LSPS must include a statement identifying the ways in which it is consistent with any relevant regional plan or district plan, as well as any CSP made under the LG Act. In the case of councils within Greater Sydney, an LSPS may only be finalised if the GSC has expressed support for the LSPS in writing (see [section 8](#) glossary). Councils are also required to develop a [Local Housing Strategy](#) aimed at delivering [District Plan housing targets](#).<sup>12</sup> Greater Sydney councils are required to have a [final version](#) of their LSPS in place by late 2019; regional councils must have theirs in place by mid 2020.

### Environmental planning instruments

Two types of EPIs may be made:

- (1) **State Environmental Planning Policies** (SEPPs); and
- (2) **Local Environmental Plans** (LEPs).<sup>13</sup>

EPIs may have a number of purposes including regulating development, protecting the environment, and land zoning. DPIE is part way through a [SEPP review program](#). As of 18 July 2019, [46 SEPPs](#) are in force.<sup>14</sup> Some of these cover planning matters of Statewide relevance, such as:

- [Aboriginal Land SEPP](#);
- [Affordable Housing SEPP](#);
- [Coastal Management SEPP](#);
- [Educational Establishments and Child Care Facilities SEPP](#);
- [Exempt and Complying Development Codes SEPP](#);
- [Infrastructure SEPP](#);
- [Mining, Petroleum Production and Extractive Industries SEPP](#); and
- [State and Regional Development SEPP](#).



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The [Exempt and Complying Development Codes SEPP](#) is of particular significance as it provides Codes designed to streamline the approval of certain types of development, including different types of housing, by making them exempt from requiring development consent:

- [Housing Code](#): new and existing 1-2 storey dwellings in residential areas (Part 3);
- [Rural Housing Code](#): new 1-2 storey dwellings on rural land (Part 3A);
- [Low Rise Medium Density Housing Code](#): new and existing 1-2 storey dual occupancies, [manor houses](#) and terraces (Part 3B);
- [Greenfield Housing Code](#): new and existing 1-2 storey dwellings in greenfield areas (Part 3C); and
- [Inland Code](#): new and existing 1-2 storey dwellings on rural land in certain LGAs (Part 3D).

Other SEPPs relate to specific areas of the State, for example:

- [Koala Habitat Protection SEPP](#);
- [State Significant Precincts SEPP](#);
- [Sydney Drinking Water Catchment SEPP](#); and
- [Sydney Region Growth Centres SEPP](#).

At the local government level, all [128 councils in NSW](#) have a LEP in place that is consistent with the [Standard Instrument LEP](#). LEPs guide council planning decisions through development controls and land zoning. A LEP may be amended by a [planning proposal](#), which must progress through the [Gateway process](#) before the amendments can become law. Planning proposals are made by a PPA, which is usually the relevant council but may also be the Secretary of the Department of Planning or a Planning Panel where appointed by the Minister for Planning.

### Development control plans

[DCPs](#) are non-statutory plans that set out detailed planning controls for land zoning and development permissible under an EPI. As of August 2018, there were [over 400 DCPs](#) across NSW. The 2017 legislative reforms [introduced](#) a requirement for DCPs to be standardised in order to “reduce red tape for industry, increase transparency and simplify useability for the community”. As of 18 July 2019, the review of the [Environmental Planning and Assessment Regulation 2000](#) (EP&A Regulation), which will establish a “standard format” for DCPs, is still [ongoing](#). Standard format DCPs are due to [commence](#) in mid-2020.

### 5.2 Subregional planning

There are several ways in which the NSW Government may conduct planning for subregional areas and small areas of land.<sup>15</sup> Usually identified in a strategic planning document, these areas are considered to be either suitable for release for new development or for rezoning as part of urban revitalisation plans. The nomenclature used for the different types of areas is at times inconsistent, and some areas have shifted from one classification to another. These issues are noted where relevant below and in the endnotes.

Subregional areas may be categorised as either a **Growth Centre**, **Growth Area**, **State Significant Precinct (SSP)**, **Urban Renewal Area** or **Urban Renewal Corridor**.<sup>16</sup> Note that part or all of a Growth Centre may also be classed as an SSP.

Subregional areas are all aggregations of precincts – small areas used for fine grained planning – and some of these precincts are identified as **Planned Precincts**.

### Growth Centres

Both the Growth Centres and the Development Corporations responsible for their management are established under the [Growth Centres \(Development Corporations\) Act 1974](#).<sup>17</sup> There are six Growth Centres in NSW, the first of which is managed by the Hunter & Central Coast Development Corporation (HCCDC), with the remainder managed by Infrastructure NSW (INSW):

- The [Hunter and Central Coast](#), which consists of 11 LGAs – Central Coast, Cessnock, Dungog, Lake Macquarie, Maitland, Mid-Coast, Muswellbrook, Newcastle, Port Stephens, Singleton and Upper Hunter Shire;
- [The Bays](#);
- [Cooks Cove](#);
- [Granville](#);
- [Parramatta North](#); and
- [Redfern Waterloo](#).<sup>18</sup>

Under the Act, HCCDC and INSW are responsible for promoting, co-ordinating, managing and securing the orderly and economic development of their respective Growth Centres. This may involve conducting land use planning investigations and feasibility studies, developing masterplans that integrate planning for economic and social development, and owning, buying and selling government land. Development within the Growth Centres is subject to the EP&A Act and any relevant LEP. The Granville and Redfern Waterloo Growth Centres are also subject to the [State Environmental Planning Policy \(Urban Renewal\) 2010](#).

### Growth Areas

Growth Areas<sup>19</sup> (also known as **Priority Growth Areas**) are [greenfield urban growth areas](#) which contain housing, employment, health and education facilities, parks, and new or upgraded infrastructure. Three Growth Areas are declared under the [State Environmental Planning Policy \(Sydney Region Growth Centres\) 2006](#) (Sydney Region Growth Centres SEPP) and managed by DPIE:

- [North West Growth Area](#) (formerly a Growth Centre);
- [South West Growth Area](#) (formerly a Growth Centre); and
- [Wilton Growth Area](#).

On 8 October 2015, then Minister for Planning, Rob Stokes, [announced](#) the establishment of the Western Sydney Priority Growth Area. However, at the



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time of writing it had not declared under the Sydney Region Growth Centres SEPP, most probably because it may have its own SEPP (see below). In June 2016, a [Western Sydney City Deal](#) was announced – a [partnership](#) between the Commonwealth Government, NSW Government, and Blue Mountains, Camden, Campbelltown, Fairfield, Hawkesbury, Liverpool, Penrith and Wollondilly councils. The Western Sydney Priority Growth Area was renamed the [Western Sydney Aerotropolis](#) (otherwise known as the [Badgerys Creek Aerotropolis](#)), and will be managed by a joint Commonwealth-NSW Government body called the [Western Sydney Development Authority](#) which is yet to be established. The regulatory planning framework is being developed, and will include:

- A [Land Use and Infrastructure Implementation Plan](#) made under section 9.1 of the EP&A Act ;
- State and local infrastructure contributions plans;
- A new SEPP; and
- Individual precinct plans for the nine precincts in the Aerotropolis.

DPIE has also proposed the creation of three new Growth Areas: the [Greater Macarthur Growth Area](#);<sup>20</sup> the [Greater Parramatta Growth Area](#);<sup>21</sup> and the [Ingleside Growth Area](#).<sup>22</sup>

### State Significant Precincts

[State Significant Precincts](#) (SSPs; formerly known as [State Significant Sites](#) (SSSs)) are areas with State or regional planning significance because of their social, economic or environmental characteristics. Note that SSPs are distinct from [State Significant Development](#) (SSD) and [State Significant Infrastructure](#) (SSI). The [SSP Guideline](#) sets out four criteria against which an SSP proposal is assessed:

- (1) be a large area of land within a single ownership or control, typically Government owned;
- (2) be of State or regional importance in achieving Government policy objectives, particularly those relating to increasing delivery of housing and jobs;
- (3) be of State or regional importance for environmental or natural resource conservation; and
- (4) be of State or regional importance for heritage or historical significance.

If a site meets the criteria, it is declared to be an SSP by the Minister in Schedule 3 of the [State Environmental Planning Policy \(State Significant Precincts\) 2005](#). The urban renewal process for an SSP typically involves preparation of a plan by the relevant government agency, which is assessed by DPIE. Proposed amendments to zones and planning controls can then be made by a SEPP which, in most cases, amends the relevant LEP. There are currently 18 SSPs,<sup>23</sup> with a further eight potential SSPs, some of which constitute proposed changes to current SSPs (note that some are also Growth Centres, or part of a Growth Centre):

- [Parramatta North](#)<sup>24</sup> (Growth Centre);

- [Elizabeth Street, Redfern](#);
- [North Eveleigh West](#) (a proposed amendment to the existing Redfern-Waterloo Authority Sites SSP, and also part of a Growth Centre);
- [Sydney Olympic Park](#) (a proposed amendment to the existing Sydney Olympic Park SSP);
- [The Bays](#) (Growth Centre);
- [Riverwood Estate](#);
- [Waterloo Metro Quarter](#) (part of a Growth Centre); and
- [Waterloo Estate](#) (part of a Growth Centre).

### Urban Renewal Areas and Urban Renewal Corridors

Urban Renewal Areas and Urban Renewal Corridors are areas where changing land use and transport outcomes can be closely integrated. There are currently four such areas in Greater Sydney:

- [Epping and Macquarie Park Urban Renewal Area](#);
- [Glenfield to Macarthur Urban Renewal Corridor](#);
- [Sydenham to Bankstown Urban Renewal Corridor](#); and
- [Sydney Metro Northwest Urban Renewal Corridor](#).<sup>25</sup>

DPIE has released a strategy<sup>26</sup> for the last three of these areas, each of which will be implemented via precinct plans and amendments to relevant SEPPs or LEPs.

### Planned Precincts

Planned Precincts (PPs) are:

... areas with good access to existing or planned transport infrastructure and that have the potential to provide for significant growth in housing and jobs with a focus on providing priority infrastructure, including schools, parks, transport, hospitals and road upgrades. The purpose of the Planned Precincts Program is to ensure that these precincts are strategically planned and that the required infrastructure is delivered in a coordinated manner. It is a NSW Government led program based on collaboration with local councils and local communities.

Formerly known as [Urban Activation Precincts](#) (2012 to 2014), then [Priority Precincts](#) (2014 to 2017), at the time of writing there were 24 PPs across NSW.<sup>27</sup> They are generally located within a larger subregional planning area. For example, the Sydenham to Bankstown Urban Renewal Corridor has 11 precincts in total, four of which are PPs.

There are no set guidelines for Planned Precincts.<sup>28</sup> The Minister for Planning has the ability to make changes to the relevant planning instruments for a Planned Precinct under section 3.31 of the EP&A Act.<sup>29</sup>

## 6. Development control

### 6.1 Planning approval pathways

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.

Broadly speaking, there are three 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.

#### Development that does not need consent

Development that does not need consent is still regulated under three of eight<sup>30</sup> planning approval pathways. Complying development and exempt development are defined in the Exempt and Complying Development Codes SEPP. Development without consent is defined in LEPs and SEPPs (see section 8 glossary).

Complying development	Exempt development	Development without consent
<p><u>Development</u> that qualifies for a combined planning and construction approval called a complying development certificate (CDC)</p>	<p><u>Low impact development</u> that can be done for certain residential, commercial and industrial properties</p>	<p><u>Low impact or routine activities</u>, and some activities undertaken by public authorities which are assessed under Part 5 of the EP&amp;A Act (Part 5 activities)</p>
<p>EXAMPLES</p> <ul style="list-style-type: none"> <li>• Houses</li> <li>• Home alterations and additions</li> <li>• New industrial buildings</li> <li>• Building demolition</li> </ul>	<p>EXAMPLES</p> <ul style="list-style-type: none"> <li>• Decks</li> <li>• Garden sheds</li> <li>• Carports</li> <li>• Fences</li> </ul>	<p>EXAMPLES</p> <ul style="list-style-type: none"> <li>• Home businesses</li> <li>• Markets</li> <li>• Construction of water supply infrastructure by public utility</li> </ul>
<p>CONSENT AUTHORITY</p> <p>Council or <u>accredited certifier</u></p>	<p>CONSENT AUTHORITY</p> <p>None</p>	<p>CONSENT AUTHORITY</p> <p>Some may require a licence, permit or approval from a public authority</p>

## Development that needs consent

Development that needs consent is assessed under five of [eight<sup>31</sup> planning approval pathways](#), the first three of which are collectively classified as [major development](#). State Significant Development (SSD), State Significant Infrastructure (SSI) and regionally significant development are [defined](#) in the EP&A Act and declared under the [State and Regional Development SEPP](#). Local development is defined within the relevant LEP or SEPP.

<p><b>State Significant Development</b></p> <p><a href="#">Development</a> over a certain size, or located in a sensitive environmental area, or which exceeds a specific capital investment value (CIV)</p> <p><b>EXAMPLES</b></p> <ul style="list-style-type: none"> <li>• Educational establishments</li> <li>• Hospitals</li> <li>• Correction centres</li> <li>• Mines</li> <li>• Sites like Barangaroo</li> </ul> <p><b>CONSENT AUTHORITY</b></p> <p>The Minister for Planning, or DPIE, or IPC</p>	<p><b>State Significant Infrastructure</b></p> <p><a href="#">Infrastructure</a> over a certain size, or located in a sensitive environmental area, or which exceeds a specific capital investment value (CIV)</p> <p><b>EXAMPLES</b></p> <ul style="list-style-type: none"> <li>• Rail infrastructure</li> <li>• Roads</li> <li>• Water storage and treatment plants</li> <li>• Boating facilities</li> </ul> <p><b>CONSENT AUTHORITY</b></p> <p>The Minister for Planning, or DPIE. The Minister is the only consent authority for <a href="#">Critical State Significant Infrastructure (Critical SSI)</a><sup>32</sup></p>	<p><b>Part 3A Development</b></p> <p><a href="#">Part 3A development</a> was replaced by SSD and SSI in 2011, and the transitional arrangements closed on 1 March 2018. Some <a href="#">developments</a> are still being assessed under this system</p> <p><b>EXAMPLES</b></p> <ul style="list-style-type: none"> <li>• Hospitals</li> <li>• Mines</li> <li>• Roads</li> <li>• Rail infrastructure</li> </ul> <p><b>CONSENT AUTHORITY</b></p> <p>The Minister for Planning, or DPIE, or IPC</p>
<p><b>Regionally significant development</b></p> <p><a href="#">Development</a> with a CIV over \$30 million, council-related or Crown development with a CIV over \$5 million, extractive industries, waste facilities and marinas that are <a href="#">designated development</a>, and development with a CIV between \$10 and \$30 million subject to a delay in determination by council</p> <p><b>CONSENT AUTHORITY</b></p> <p>The relevant <a href="#">Planning Panel</a></p>		
<p><b>Local development</b></p> <p><a href="#">Development</a> where an EPI states that development consent is required. It includes the following categories – <a href="#">designated development</a>,<sup>33</sup> <a href="#">integrated development</a><sup>34</sup> and <a href="#">advertised development</a><sup>35</sup></p> <p><b>EXAMPLES</b></p> <p>Home extensions, and medium sized commercial, retail and industrial developments</p> <p><b>CONSENT AUTHORITY</b></p> <p>Council or Minister for Planning</p>		

### 6.2 Environmental impact assessment

**Environmental impact assessment** (EIA) informs the decision to either grant or refuse development consent. This assessment may occur in one or more of four ways.<sup>36</sup>

#### (1) General duty to take environmental impacts into account

[Section 4.15](#) of the EP&A Act establishes a general duty for a [consent authority](#) to take into account the environmental impact of local development, regionally significant development and SSD when determining the DA. [Section 5.5](#) establishes a broader duty that applies to a [determining authority](#), who may also be the proponent, and is not confined to the approval decision.

#### (2) Statement of Environmental Effects

[Schedule 1](#) of the EP&A Regulation requires a **Statement of Environmental Effects** (SEE) to be [submitted](#) for all regionally significant development and local development except designated development. The SEE needs to address the environmental impacts of the development and the development controls contained in a relevant EPI.

#### (3) Environmental Impact Statements and threatened species protection

An [EIS](#) is an in-depth assessment and evaluation of environmental impact that must be prepared for designated development, SSD, SSI and Part 5 activities. An EIS must address matters set out in the [EP&A Regulation](#) and the DPIE **Secretary's Environmental Assessment Requirements (SEARs)**.<sup>37</sup>

The **threatened species test of significance** is used to determine if a development or activity is likely to significantly affect threatened species or ecological communities, or their habitats, that are listed under the [Biodiversity Conservation Act 2016](#) (BC Act). It is set out in [section 7.3](#) of the BC Act and applies to local development, regionally significant development, Part 5 activities, SSD and SSI.<sup>38</sup> If a development or activity is likely to have a significant impact, the proponent must either apply the **Biodiversity Offsets Scheme** or prepare a **Species Impact Statement (SIS)**. The [Biodiversity Offsets Scheme](#) creates a “transparent, consistent and scientifically based approach to biodiversity assessment and offsetting for all types of development that are likely to have a significant impact on biodiversity”. If the proponent does not opt in to the Scheme, they must prepare an SIS that addresses the matters set out in the [Biodiversity Conservation Regulation 2017](#). An SIS may also be required where a development is likely to significantly affect threatened species, populations or ecological communities, or their habitats, that are listed under the [Fisheries Management Act 1994](#).

#### (4) Public inquiries

The [IPC](#), [Planning Panels](#) and [LPPs](#) assess the environmental impact of a project as part of their broader development assessment role. Each may hold a public hearing as part of the assessment process.

### 6.3 Building and subdivision certification

The building industry is regulated by a number of statutes including the EP&A Act, [Building Professionals Act 2005](#)<sup>39</sup> and [Home Building Act 1989](#). Under the EP&A Act, public and [private certifiers](#)<sup>40</sup> may issue the following certificates to certify different development and building stages:

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

DPIE [administers](#) the building control components of the EP&A Act and Regulation and the ongoing development, reform and implementation of the [Building Code of Australia](#) in NSW.

### 6.4 Infrastructure

#### Infrastructure planning and delivery

DPIE carries out in [infrastructure planning and delivery](#) in several ways:

- Setting planning principles and development standards through SEPPs ([section 5.1](#));
- Through the strategic planning process, including the development of LUIIPs ([section 5.1](#));
- Assessing SSI development proposals ([section 6.1](#));
- Publishing [regulations, ministerial directions, guidelines and circulars](#) relating to infrastructure funding; and
- Involvement in infrastructure provision funding systems.

The GSC has designed [Growth Infrastructure Compacts](#) (GICs) as a way to “bring government, business and the community together to match housing and jobs growth with timely and cost effective delivery of infrastructure”. It has two pilot GICs: [Greater Parramatta to the Olympic Peninsula](#) (GPOP); and the [Western Parkland City](#).

#### Infrastructure funding

There are five infrastructure provision funding systems.

##### Special Infrastructure Contributions

DPIE administers the four current [Special Infrastructure Contributions](#) (SICs),<sup>41</sup> which provide funding for state and regional roads, transport facilities, regional open space, and social infrastructure such as schools and hospitals. DPIE has [proposed](#) establishing a SIC for every current and proposed [Growth Area](#) and [Planned Precinct](#). The Minister for Planning determines a SIC following a planning and consulting phase.



### Local Infrastructure Contributions

Local councils administer two types of [local infrastructure contributions](#):

- (1) **Section 7.11 contributions** where there is a demonstrated link between the development and the infrastructure that the contribution is funding. The contribution rate is charged per dwelling or per square metre; and
- (2) **Section 7.12 levies** where there does not need to be a demonstrated link between the development and the infrastructure funded from the contribution. Here, the contribution rate<sup>42</sup> is charged as a percentage of the estimated cost of the development.

Caps for contributions are set by DPIE. Council contributions plans which propose to exceed the caps are [assessed](#) by the Independent Pricing and Regulatory Tribunal New South Wales (IPART).

### Voluntary Planning Agreements

[Voluntary Planning Agreements](#) (VPAs) are commercial agreements entered into by a developer and the Minister for Planning, other Ministers or a council. They are intended to enable planning authorities and developers to jointly produce innovative infrastructure outcomes, and generally require the developer to provide funding towards, or construct, infrastructure such as public amenities and affordable housing. VPAs to which the Minister for Planning is a party may be found on the [VPA Register](#); local councils are [required](#) to make registers and copies of planning agreements publicly available.

### Local Infrastructure Growth Scheme

The [Local Infrastructure Growth Scheme](#) (LIGS) funds the gap between the maximum contribution councils can charge a developer and the actual cost of the infrastructure identified in a contributions plan.

### Housing Acceleration Fund

The [Housing Acceleration Fund](#) (HAF) provides funding to enable and accelerate housing development in NSW. Funds may be used for “[critical enabling infrastructure](#)” such as roads, water, wastewater, drainage and electricity.

## 7. Conclusion

The NSW planning system as set out in this paper is current as of 18 July 2019. Reforms introduced by the [Environmental Planning and Assessment Amendment Act 2017](#) are still being rolled out, with an [implementation timetable](#) stretching from early 2018 to mid 2020. Some parts of the planning system remain under review, including the [EP&A Regulation](#), [VPAs](#), and a number of [SEPPs](#). New planning initiatives are [released](#) on a frequent basis. Further possibilities for reform of the system may be found in recent reviews and audits of planning in NSW.<sup>43</sup> These include establishment of an Ethics Unit within DPIE, and an audit of all infrastructure contributions and spending of same to enable evidence-based decision-making on the collection and monitoring of those contributions.<sup>44</sup>

## 8. Glossary of acronyms

**BC Act** – [\*Biodiversity Conservation Act 2016\*](#)

**CDC** – Complying Development Certificate

**CSP** – Community strategic plan

**CPP** – Community participation plan

**DA** – Development application

**DCP** – Development Control Plan

**DPIE** – Department of Planning, Industry & Environment

**EIA** – Environmental impact assessment

**EIS** – Environmental Impact Statement

**EP&A Act** – [\*Environmental Planning & Assessment Act 1979\*](#)

**EP&A Regulation** – [\*Environmental Planning & Assessment Regulation 2000\*](#)

**EPI** – Environmental Planning Instrument

**GPOP** – Greater Sydney to the Olympic Peninsula

**GSC** – Greater Sydney Commission

**HAF** – Housing Acceleration Fund

**HCCDC** – Hunter & Central Coast Development Corporation

**IHAP** – Independent Hearing & Assessment Panel

**INSW** – Infrastructure NSW

**IPART** – Independent Pricing and Regulatory Tribunal New South Wales

**IPC** – Independent Planning Commission

**JRPP** – Joint Regional Planning Panel

**LEP** – Local Environmental Plan

**LGA** – Local Government Area

**LG Act** – [\*Local Government Act 1993\*](#)

**LIGS** – Local Infrastructure Growth Scheme

**LPP** – Local Planning Panel

**LSPS** – Local Strategic Planning Statement

**LUIIP** – Land Use and Infrastructure Implementation Plan

**RPP** – Regional Planning Panel

**PP** – Planned Precinct

**PPA** – Planning Proposal Authority

**SEARs** – Secretary's Environmental Assessment Requirements

**SEE** – Statement of Environmental Effects

**SEPP** – State Environmental Planning Policy

**SIC** – Special Infrastructure Contribution

**SIS** – Species Impact Statement

**SPP** – Sydney Planning Panel

**SSD** – State Significant Development

**SSI** – State Significant Infrastructure

**SSP** – State Significant Precinct

**SSS** – State Significant Site

**VPA** – Voluntary Planning Agreement

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- <sup>1</sup> See the Department of Planning, Industry & Environment (DPIE) [website](#) for examples of the range of legislation with which the EP&A Act intersects.
- <sup>2</sup> This takes place under a [Bilateral Agreement](#) between the NSW and Federal Governments, by which the planning system is accredited to undertake assessment of impacts to matters of national environmental significance of proposed projects that would otherwise be assessed by the Commonwealth [Department of the Environment and Energy](#).
- <sup>3</sup> Lyster R et al., *Environmental & Planning Law in New South Wales*, 4<sup>th</sup> Ed, 2016
- <sup>4</sup> Ecologically sustainable development (ESD) is a [key component](#) of the objects of the EP&A Act, having been of particular significance in several Land & Environment Court decisions including the [Rocky Hill Coal Mine Project](#) case. In this [case](#), the Court found that the mine was contrary to the principles of ESD because of the mine's likely contribution to climate change. A number of stakeholders have argued that ESD should be part of an object that sits above all of the other objects, including the 2012 [independent review of the planning system](#) commissioned by the O'Farrell Government.
- <sup>5</sup> The IPC [website](#) notes that the "Commission is not subject to direction or control of the Minister for Planning or any government agency, except in relation to procedural matters as set out under the *Environmental Planning and Assessment Act 1979*".
- <sup>6</sup> As set out in [section 2.8](#) of the EP&A Act, the areas of relevance are planning, architecture, heritage, the environment, urban design, land economics, soil or agricultural science, hydro-geology, mining or petroleum development, traffic and transport, law, engineering, tourism or government and public administration.
- <sup>7</sup> Stokes R, [Greater Sydney Commission Bill 2015](#), *NSW Hansard*, 22 October 2015. See also: Griffith G, [The Greater Sydney Commission](#), NSW Parliamentary Research Service, e-brief 20/2015, October 2015.
- <sup>8</sup> Berejiklian G, [Premier announces new focus for the Greater Sydney Commission](#), Media Release, 26 June 2018.
- <sup>9</sup> DPIE commissioned a review of the IHAP model in 2018: Department of Planning & Environment, [Minimising and monitoring risk in the IHAP framework](#), April 2018.
- <sup>10</sup> It appears that DPIE [first began](#) developing Land Use and Infrastructure Implementation Plans (LUIIPs) in January 2015, in relation to the North West and South West Priority Growth Areas.
- <sup>11</sup> Greater Sydney was originally divided into [six regions](#): Central; North; South; South West; West; and West Central.
- <sup>12</sup> DPIE has produced an [LSPS Guideline for Councils](#) and a [Local Housing Strategy Guideline and Template](#).
- <sup>13</sup> Under [section 3.28](#) of the EP&A Act, a State Environmental Planning Policy prevails over a Local Environmental Plan in the event of an inconsistency.
- <sup>14</sup> This includes nine "Deemed SEPPs" – Regional Environmental Plans (REPs) [taken to be a SEPP](#).
- <sup>15</sup> There are no clear legislative or policy definitions for "subregional areas and small areas of land". This terminology has been selected by the author to encapsulate a range of land use planning mechanisms, only some of which have a statutory basis. It appears that there is no public policy document available which defines each mechanism or describes the selection of one mechanism instead of another. Further, planning sources such as the DPIE website, plans and policies employ inconsistent terminology when naming the mechanisms. For example, [priority precincts](#) were also sometimes known as [priority urban renewal precincts](#).  
Note also that four types of areas that use similar nomenclature have been excluded from this paper because of their relatively narrow focus on economic matters: [employment land precincts](#); [employment precincts](#); [special activation precincts](#); and [innovation precincts](#). It is unclear what the distinction is, if any, between these types of precincts.
- <sup>16</sup> The Greater Sydney Commission (GSC) is engaged in similar planning processes. It has identified 10 [Collaboration Areas](#), which are "place-based, multi-stakeholder approach to solving complex urban issues ... [which] are led by the Commission over a 12-month period and support councils, state agencies and stakeholders to address major issues and achieve better outcomes for an area". The GSC is also committed to developing and implementing a vision for the [Greater Parramatta to the Olympic Peninsula region](#) (GPOP), an area it considers to be "Greater Sydney's true centre, the connected and unifying heart". To this end, the GSC is trialling Growth Infrastructure Compacts "which will bring government, business and the community together to match housing and jobs growth with timely and cost- effective delivery of infrastructure".

- <sup>17</sup> The North West and South West Growth Areas were managed by the Growth Centres Commission under this legislation until 2009, when the Commission was abolished and the Department of Planning assumed responsibility.
- <sup>18</sup> The Redfern Waterloo Growth Area used to be managed by the [Redfern-Waterloo Authority](#) under the [Redfern-Waterloo Authority Act 2004](#). Management transferred to the Sydney Metropolitan Development Authority (SMDA) in 2011, which was renamed UrbanGrowth NSW Development Corporation (UrbanGrowth NSW) in 2013. On 1 July 2019, UrbanGrowth NSW was abolished by the [State Revenue and Other Legislation Amendment Act 2019](#). This Act also abolished the [Barangaroo Delivery Authority](#). The functions of both bodies were [transferred to INSW](#).
- <sup>19</sup> Note that “growth area” and “priority growth area” terminology are also used for other areas not declared as Growth Areas under the Sydney Region Growth Centres SEPP. These include the [Greater Penrith to Eastern Creek Growth Area](#), and areas in the [Hunter](#) (Maitland Corridor, Newcastle-Lake Macquarie Western Corridor, and an emerging centred on Coorangong, Morisset and Wyee) and Illawarra-Shoalhaven (West Dapto, Calderwood, Tallawarra, and Nowra-Bomaderry) regions.
- <sup>20</sup> DPIE [exhibited](#) the Greater Macarthur Land Release Investigation Land Use and Infrastructure Analysis and the draft Glenfield to Macarthur Urban Renewal Corridor Strategy in late 2015 and placed the proposed Greater Macarthur Growth Area boundary on exhibition in August 2016. In November 2018, DPIE released [Greater Macarthur 2040: An Interim Plan for the Greater Macarthur Growth Area](#) (Greater Macarthur 2040) for consultation. This document does not describe the Growth Area as still under proposal. However, the DPIE [website](#) does describe Greater Macarthur as a “proposed Growth Area”. *Greater Macarthur 2040* states that the “Department is proposing the use of a new approach that introduces an urban development zone under the Growth Centres SEPP” (p 77). The final plan will be released with a Direction under section 9.1 of the EP&A Act requiring future rezoning and development to be consistent with the final plan.
- <sup>21</sup> In June 2017, DPIE released the [Greater Parramatta Interim Land Use and Infrastructure Implementation Plan](#). On page 2, it states: “Following the recent release of the draft vision for Greater Parramatta to Olympic Peninsula (GPOP), Draft West Central District Plan and Towards our Greater Sydney 2056 by the Greater Sydney Commission, the Department of Planning and Environment, in collaboration with City of Parramatta and Greater Sydney Commission, has prepared an Interim Land Use and Infrastructure Implementation Plan for the Greater Parramatta Priority Growth Area (the interim Plan). Given the importance of GPOP to Greater Sydney, which is anticipated to experience the most significant urban transformation over the next 20 years, it is proposed to establish the Greater Parramatta Priority Growth Area by including it in the State Environmental Planning Policy (Sydney Region Growth Centres) 2006. This will ensure that any future planning process within the priority growth area considers and is consistent with the interim Plan.” At the time of writing, it appears that no further developments to have occurred.
- <sup>22</sup> In December 2016, a [Draft Land Use and Infrastructure Strategy](#) was made available for public consultation. A proposed amendment to the Sydney Region Growth Centres SEPP was also released which would have declared Ingleside Growth Area under the SEPP. The Strategy was [withdrawn](#) by DPIE due to the unacceptable bushfire risks to which new residents may have been exposed. DPIE has been developing a detailed bushfire evacuation model and [expects](#) to release the findings in 2019.
- <sup>23</sup> As of 18 July 2019, the 18 existing SSPs are: Sydney Opera House; The Luna Park site; Channel 7 site; Redfern-Waterloo Authority Sites; Kings Forest site; North Head Federal Police Training site; Huntingwood West Precinct; Tomago Industrial site; Barangaroo site; Greystanes Southern Employment Lands site; Sydney Olympic Park site; Sandon Point site; Wahroonga Estate site; Rise Bilambil Heights site; Calderwood site; Edmonson Park South site; Southern Highlands Regional Shooting Complex site; and Sirius site.
- <sup>24</sup> It [appears](#) that this was formerly known as Parramatta North Urban Renewal Area.
- <sup>25</sup> Bayside Council also has an area named in the same manner, the [Rockdale Urban Renewal Area](#). However, this area has not been included in this list because it is not found on the DPIE website.
- <sup>26</sup> [Glenfield to Macarthur Urban Renewal Corridor Strategy](#) (July 2015), [Sydenham to Bankstown Urban Renewal Corridor Strategy](#) (June 2017), and [Sydney Metro Northwest Urban Renewal Corridor Strategy](#) (October 2013).
- <sup>27</sup> According to the NSW Auditor-General’s [Planning and Environment 2018: Financial Audit](#), which was released on 13 December 2018, there are “currently three special contributions areas in New South Wales, and another 27 proposed special contributions areas for all Planned Precincts and Growth Areas across the State”. This sentence may be interpreted in two ways: as stating that the three existing and 27 proposed areas together relate to “all Planned Precincts and Growth Areas”; or as meaning that there are only 27 Planned

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Precincts and Growth Areas. The latter interpretation has been assumed, as the DPIE [website](#) lists three Special Infrastructure Contribution Determinations for areas that do not appear to be either Planned Precincts or Growth Areas (Warnervale Town Centre, Wyong Employment Zone, and Gosford City Centre). Due to difficulties in ascertaining the exact number of current Growth Areas according to DPIE (see section on Growth Areas and respective endnotes), it has been assumed that there are only three current Growth Areas (those declared under the SEPP) for the purposes of calculating the number of Planned Precincts. At the time of writing, the author was still waiting for confirmation of these numbers from DPIE.

<sup>28</sup> Departmental staff member, Personal communication, Department of Planning & Environment, 20 November 2018.

<sup>29</sup> *Ibid.*

<sup>30</sup> The DPIE website [lists nine](#). The ninth – [designated fishing activities](#) – has been excluded from this paper as those sections of the EP&A Act which established this approval pathway were moved to [Schedule 1AA](#) of the *Fisheries Management Act 1994* by the *Environmental Planning and Assessment Amendment Act 2017*.

<sup>31</sup> *Ibid.*

<sup>32</sup> Any infrastructure that, in the opinion of the Minister, is essential for the State for economic, environmental or social reasons. As of 18 July 2019, 14 projects are listed as [Critical SSI](#) under the State and Regional Development SEPP: certain Pacific Highway projects (e.g. the Coffs Harbour Bypass); certain rail infrastructure projects (e.g. the North West Rail Link); the F3-M2 project; WestConnex; Sydney Metro City and Southwest; the Northern Road Upgrade project; Inland Rail; Parramatta Light Rail; Bayswater Power Station Turbine Efficiency Upgrade project; Snowy 2.0 and Transmission Project; Port Kembla Gas Terminal; F6 Extension Stage 1; Newcastle Gas-Fired Power Station project; and Shoalhaven Hydro Expansion Project.

<sup>33</sup> Development that requires an Environmental Impact Statement with an application for consent. Designated development is listed in [Schedule 3](#) of the EP&A Regulation.

<sup>34</sup> Development that also requires approvals under other legislation that are integrated under general terms of approval.

<sup>35</sup> [Advertised development](#) includes two types of development. **Nominated integrated development** is integrated development (not being threatened species development or Class 1 aquaculture development) that requires an approval (within the meaning of section 4.45 of the Act) under the [Heritage Act 1977](#), [Water Management Act 2000](#) or the [Protection of the Environment Operations Act 1997](#). **Threatened species development** is development to which section 7.7(2) of the [Biodiversity Conservation Act 2016](#) or section 221ZW of the [Fisheries Management Act 1994](#) applies. Class 1 aquaculture development is development that is Class 1 aquaculture under [State Environmental Planning Policy \(Primary Production and Rural Development\) 2019](#).

<sup>36</sup> Lyster R et al., *Environmental & Planning Law in New South Wales*, 4<sup>th</sup> Ed, 2016, p 152

<sup>37</sup> See for example: [Indicative Secretary's Environmental Assessment Requirements \(SEARs\) for state significant mining developments](#) (October 2015); and [Critical State Significant Infrastructure Standard Secretary's Environmental Assessment Requirements \(SEARs\)](#) (December 2015).

<sup>38</sup> It [applies](#) to SSD and SSI unless the Secretary of the Department of Planning and Environment and the Chief Executive of OEH determine that the project is not likely to have a significant impact

<sup>39</sup> The *Building Professionals Act 2005* is due to be repealed by the [Building and Development Certifiers Act 2018](#). As of 18 July 2019, none of the provisions of the *Building and Development Certifiers Act 2018* have come into force.

<sup>40</sup> Currently, private certifiers are accredited by the [Building Professionals Board](#) (BPB). The BPB will be disbanded by the [Building and Development Certifiers Act 2018](#) when the Act comes into effect, with its functions [transferred](#) to [Fair Trading NSW](#).

<sup>41</sup> As of 18 July 2019, the [four SICs](#) are the; Western Sydney Growth Area SIC; Warnervale Town Centre SIC; Wyong Employment Zone SIC; and Gosford City Centre SIC.

<sup>42</sup> As of [18 July 2019](#), proposed developments costing up to \$100,000 have nil imposed levy; proposed developments costing between \$100,001 and \$200,000 have a levy of 0.5%; and proposed developments costing over \$200,000 have a levy of 1.0%.

<sup>43</sup> See: McGregor C, [Integrity Adviser Review April 2019](#), April 2019; Kaldas N, [Review of Governance in the NSW Planning System](#), 18 December 2018; Audit Office of NSW, [Planning and Environment 2018](#), Financial Audit, 13 December 2018; Audit Office of NSW, [Newcastle Urban Transformation and Transport Program](#), Performance Audit, 12 December 2018; Audit Office of NSW, [Regulation of Water Pollution in Drinking Water](#)



[Catchments and Illegal Disposal of Solid Waste](#), Performance Audit, 28 June 2018;  
Corbyn L, [Assessment Reports: Independent Review](#), Final Report, August 2017.  
<sup>44</sup> Kaldas N, [Review of Governance in the NSW Planning System](#), 18 December 2018.

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