



# Declaration of SSI and CSSI

State Significant Infrastructure Guide

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# 1. General Overview

This Guideline sets out the general principles for the declaration of projects as *State significant infrastructure* (SSI) and *critical State significant infrastructure* (CSSI).

A development may be declared SSI by a State environmental planning policy (SEPP) or by an order of the Minister for Planning and Public Spaces (the Minister) that amends a SEPP for that purpose. The Minister may also declare development that is SSI to be CSSI if it is considered essential for the State for economic, environmental or social reasons.

## 2. State significant infrastructure

### 2.1 The difference between State significant development and SSI

Development that is of significance to the State and requires development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (the Act) is generally State significant development (SSD). This includes major industrial and warehousing projects, primary industries and resources and site specific large-scale urban developments.

SSD proponents generally have merit appeal rights in respect of any decision. In some cases, there are also third-party merit appeal rights.

In contrast, SSI are projects of State significance that primarily involve the delivery of infrastructure that is permitted without development consent under Part 4 of the Act. As a consequence they are assessed under [Division 5.2](#) of the Act. This includes development such as transport, and other linear infrastructure and utilities (e.g. gas and water pipelines, energy transmission, telecommunication networks etc) along with environmental service infrastructure such as stormwater management systems and flood mitigation works.

SSI projects may also include other types of development that are ancillary or related to the infrastructure. These projects may be proposed by public authorities or private proponents and principally provide a public service function.

Although any person may request a judicial review for determinations of SSI, there are no merit appeal rights for such determinations.

### 2.2 The circumstances in which an SSI declaration could be made

Under [Section 5.12](#) of the Act, development may become SSI in two ways.

First, a State Environmental Planning Policy (SEPP) may declare any development, or class of development, to be SSI. Such development must be permitted by a SEPP to be carried out without consent under Part 4 of the Act<sup>1</sup>.

[Schedule 3](#) of the *State & Regional Development SEPP 2011* (SRD SEPP) declares several general types of development to be SSI, including:

- Activities where the proponent (other than a council) is also the determining authority and the activity is likely to have a significant impact on the environment;
- Port facilities and wharf or boating facilities that have a capital investment value (CIV) of more than \$30 million;
- Rail infrastructure, where the proponent is the Australian Rail Track Corporation and has a CIV of more than \$50 million;
- Water storage or water treatment facilities that have a CIV of more than \$30 million;
- Pipelines, either with or requiring a licence under the Pipelines Act 1967;
- Submarine telecommunication cables for communications between Australia and other countries; and
- Certain development in National Parks (over a certain size, CIV or located in sensitive locations).

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<sup>1</sup> For example, *State Environmental Planning Policy (Infrastructure) 2007* permits a range of infrastructure types to be carried out by public authorities without development consent including: transport, utilities and linear infrastructure.

Second, specified development on specified land may be declared SSI by a SEPP or by the Minister for Planning making an order that amends a SEPP.

[Schedule 4](#) of the SRD SEPP identifies a list of these specified developments that have been declared SSI via an Order made by the Minister and published on the NSW legislation website. The Independent Planning Commission or Infrastructure NSW may also recommend to the Minister that an SSI declaration be made under Section 5.12(4) of the Act.

## 2.3 What happens if development meets both SSI and SSD definitions?

The Act states that if development meets both SSD<sup>2</sup> and SSI thresholds, and it is SSI based on it being declared under Schedule 3 of the SRD SEPP, generally the SSD pathway applies.<sup>3</sup> For example, a railway project may include a proposed residential apartment building over a railway station. The apartment building would ordinarily require development consent under Part 4 of the Act.

Notwithstanding the relationship between with the railway project (which is appropriately classified as SSI), the residential component of the development should remain SSD. Unlike the railway the development does not have a 'public' character. Therefore, the development that is otherwise 'development with consent' (for example commercial or residential uses) should remain SSD. This also preserves the usual assessment regime familiar to proponents and the community, as well as preserving existing merit appeal rights.

However, if a project is declared SSI under Section 5.12(4) of the Act, (that is, it is declared specified development on specified land), this SSI declaration has the effect of making all development on the specified land SSI, regardless of whether some part of the development on the site meets the definition of SSD or could be assessed under another assessment pathway, such as under Division 5.1 of the Act that is utilised by public authorities in certain circumstances. These projects are then listed in Schedule 4 of the SRD SEPP.

## 2.4 Key reasons for the Minister to declare development as SSI under SRD SEPP: Schedule 4

In deciding whether infrastructure is State significant the Minister may consider whether:

- the infrastructure delivers major public benefits such as large-scale essential transport, utility infrastructure or social services to the community, such that it warrants removing third party appeal rights that would have been preserved if it were assessed as SSD
- the infrastructure proposal is complex, unique, multifaceted or geographically broad in scale and may have conflicting or multiple planning pathways. The declaration will provide certainty through a single assessment pathway for all stakeholders. For example, the infrastructure proposal may be based on a conceptual or reference design and the SSI assessment pathway can allow for innovative design and construction methods which may help to reduce environmental impacts, costs and delivery timeframes
- the infrastructure would assist in implementation of State plans, strategies and policy frameworks (e.g. State Infrastructure Strategy; Future Transport Strategy 2056, NSW Renewable Energy Action Plan; NSW Climate Change Policy Framework; NSW Freight and Ports Plan, Strategic Regional Plans).

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<sup>2</sup> SSD is development that is declared under s.4.36 of the *Environmental Planning and Assessment Act 1979*.

<sup>3</sup> [Environmental Planning and Assessment Act 1979, s.5.12 \(6\)](#).

- the infrastructure is a strategic priority for the State and/or the benefits of the infrastructure will extend beyond the site of the development (e.g. responds to anticipated urban growth; secures energy supply for the State)
- the infrastructure will generate employment, attract investment or provide other economic, social, or environmental benefits to the State (e.g. improve reliability and cost of energy supply; reduce travel times for individuals and freight; reduce greenhouse gas emissions; improving cycling and pedestrian infrastructure)

Finally, there may be other circumstances, or combination of matters, which may lead to the declaration of a proposal as SSI.

#### **Examples of development declared as SSI under SRD SEPP: Schedule 4**

*Northern Beaches Hospital Precinct* - proponent was public authority and the capital investment value was greater than \$30 million. Works include development of a private/public hospital (which would otherwise be SSD).

This project would have otherwise been SSD but included substantial supporting infrastructure that was permitted without consent (and on balance, it was more appropriate to deal with the whole project as SSI to ensure there was one comprehensive assessment of all impacts.).

*Albion Park Rail Bypass* – the SSI declaration provided a clear assessment pathway for related works in close proximity to the SSI development that would have otherwise been SSD. The project included the construction of a multi lane road and any works to be carried out for the Croom Regional Sporting Complex as a result of the new road (including relocating or replacing sporting and other facilities). The multi lane road runs adjacent to the sporting complex. This project included SSI and SSD components, but on balance, it was considered more effective to assess the whole proposal under the one SSI pathway. This project was high priority infrastructure that is important to the State.

## 3. Critical State significant infrastructure

### 3.1 The circumstances in which a CSSI declaration could be made

Under [Section 5.13](#) of the Act SSI may be declared to be CSSI if the Minister is of the opinion that it is essential for the State for economic, environmental or social reasons.<sup>4</sup> In declaring a project to be CSSI, the Minister is not expressing a view on the merits of the project. A proposal can be declared both SSI and CSSI at the same time. The Minister may make a declaration for a limited period of time before the declaration lapses.

In deciding whether infrastructure is essential for the State for economic, environmental or social reasons, the Minister may consider whether:

1. the infrastructure is essential to meeting the needs of the public, meaning that it is necessary for the orderly function of the State and the NSW public would significantly benefit from the project for economic, environmental or social reasons.
2. the project is of immediate priority meaning the infrastructure needs of the NSW public are immediate or imminent, and that a CSSI declaration could assist in delivering the infrastructure in critical timeframes. For example, infrastructure may be required urgently in response to a state of emergency or extreme events (bushfires, pandemics, heat waves, storm events); to emerging resource shortages (e.g. water supply) or critical supply/demand imbalances (e.g. hospital bed shortages)
3. the circumstances are unique and the public benefit of the project is considered significant, meaning the infrastructure type is not developed routinely or that the project scenario is uncommon and could not be anticipated in advance. It is envisaged that CSSI provisions would be used sparingly, as most common types of development could be accommodated for within the standard SSI and SSD framework.

In summary, before a development is declared to be CSSI, the Minister may consider:

- whether the proposal is primarily a type of infrastructure development with principally a public purpose;
- whether the proposal is of significance to the State, having regard to the key reasons outlined in Part 2.4 above; and

#### **Examples of projects declared both SSI and CSSI at the same time**

*Newcastle Gas Fired Power Station* – The SSI declaration provided a clear pathway for the assessment and determination of the full development. It also reduced the risk of delay as the project required comprehensive assessment and extensive community consultation. The project included the gas fired power station, transmission line, gas transmission and storage pipeline and related works, ancillary development including road upgrades, construction compounds and water management infrastructure, and the decommissioning of the project and the rehabilitation of the site. The project was also declared CSSI as the project was considered essential to NSW for economic reasons, and that it would also have environmental and social benefits.

<sup>4</sup> [Environmental Planning and Assessment Act 1979, s. 5.13.](#)

- whether the proposal is essential for the State for economic, environmental or social reasons, having regard to the matters in Part 3.1 above.

Finally, there may be other circumstances., or a combination of matters, that would justify a declaration of a proposal as CSSI.

All infrastructure proposals that are declared CSSI are determined by the Minister. The Minister cannot delegate this decision-making power. There are also no third-party appeal rights in relation to CSSI declarations and decisions. Judicial reviews in relation to CSSI decisions can only occur with the [approval](#) of the Minister.

[Schedule 5](#) of the SRD SEPP lists declared CSSI projects. The categories currently cover major transport, power and gas projects.

In addition to the above, specific emergency water supply developments that are related to specific water storage projects have been declared CSSI under the [NSW Water Supply \(Critical Needs\) Act 2019 \(Critical Needs Act\)](#). These projects are upgrades the Wyangala Dam, the construction of new dams (two) on the Mole River and Dungowan Creek and the Western Weirs program.