



Local Government Air Quality Toolkit

# Land-use planning guidance note

Information on the interaction between land-use planning and air quality management

## Acknowledgement of Country

Department of Climate Change, Energy, the Environment and Water acknowledges the Traditional Custodians of the lands where we work and live.

We pay our respects to Elders past, present and emerging.

This resource may contain images or names of deceased persons in photographs or historical content.

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The Local Government Air Quality Toolkit has been developed by Department of Climate Change, Energy, the Environment and Water in collaboration with the NSW Environment Protection Authority, the NSW Department of Planning, Housing and Infrastructure, Local Government NSW and local councils.

Cover photo: A residential area. DCCEEW

Artist and designer Nikita Ridgeway from Aboriginal design agency – Boss Lady Creative Designs, created the People and Community symbol.

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ISBN 978-1-923200-69-2  
EH 2024/0178 July 2024

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# 1. Introduction

This guidance note provides general information on the interaction between land-use planning and air quality management, including key considerations for local councils. It does not provide guidance in relation to work health and safety.

This guidance note has the following chapters:

- Chapter 1 – an overview of what’s in the guidance note
- Chapter 2 – information on the legal framework for environment protection and land-use planning in New South Wales
- Chapter 3 – land-use planning and how it provides opportunities to manage air quality
- Chapter 4 – how local councils can use strategic planning to improve air quality outcomes for their communities
- Chapter 5 – considering air quality in council development assessment and approval processes
- Chapter 6 – references and other useful resources.

Local government officers have an important role in delivering positive air quality and health outcomes via the use of appropriate land-use planning, statutory notices, orders and directions.



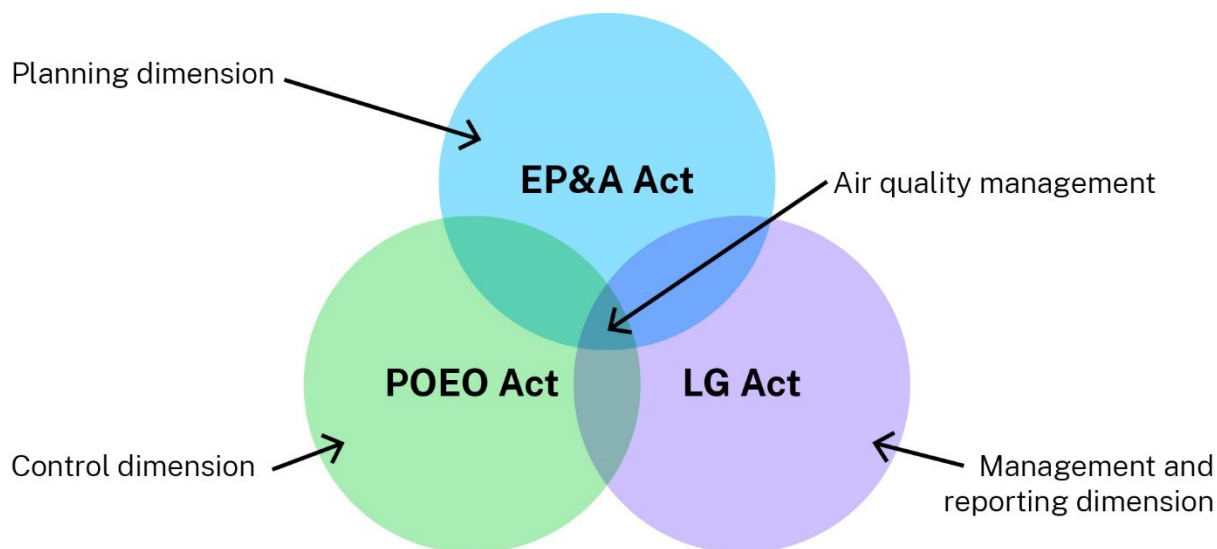
## 2. Legal framework

Air quality is regulated by a number of Acts, Regulations, policies and programs as described below.

### 2.1 NSW framework

As outlined in Figure 1, the legal framework for managing air quality in New South Wales comprises the:

- *Protection of the Environment Operations Act 1997* (POEO Act) and supporting *Protection of the Environment Operations (General) Regulation 2022* (POEO General Regulation) and *Protection of the Environment Operations (Clean Air) Regulation 2022* (Clean Air Regulation), which together provide the statutory framework for managing air quality in New South Wales, including establishing the licensing scheme for scheduled activities and offences and penalties for a wide range of air pollution issues
- *Environmental Planning and Assessment Act 1979* (EP&A Act) and supporting regulations, which provide the statutory framework for land-use management in New South Wales, including tools for managing the location of polluting sources
- *Local Government Act 1993* (LG Act), which provides a legal framework for local councils to carry out their functions in a way that facilitates local communities that are strong, healthy and prosperous.



**Figure 1** Primary legislation for air quality in New South Wales

Local government authorities play an important role, alongside the NSW Government, in implementing and enforcing the POEO Act, the EP&A Act and the LG Act.

## 2.2 Environmental Planning and Assessment Act 1979

The EP&A Act is the primary legislation that regulates land-use planning and development activities in New South Wales. It determines the processes for evaluating and managing the environmental, social and economic impacts of land-use development and associated activities.

The EP&A Act details:

- objectives of the NSW planning system
- planning authorities and their functions under the EP&A Act, including making planning instruments and development controls
- several ways by which the community can participate in environmental planning and assessment
- land-use planning, including the provision of planning instruments and sub-regional planning
- development control, through planning approval pathways, environmental impact assessment, building and subdivision certification, infrastructure planning and delivery
- a framework for evaluating and managing the environmental, social and economic impacts of land-use development and associated activities in New South Wales. This framework is supported through planning instruments, discussed in Chapter 4
- processes for issuing planning consents, which may include conditions to manage air quality impacts.

### Environmental Planning and Assessment Regulation 2021

The Environmental Planning and Assessment Regulation 2021 (EP&A Regulation), supports the EP&A Act, and sets out conditions and processes that local councils must adhere to when assessing development applications (DAs). The Regulation includes key operational conditions for the NSW planning system, including those relating to:

- planning instruments
- existing land uses
- DAs and complying development certificate applications
- environmental impact assessments (EIAs) under Part 5 of the EP&A Act
- state significant infrastructure applications
- environmental impact statements (EIS)
- building regulation and subdivision certification
- fees and charges of planning services
- planning certificates
- development contributions
- amounts for penalty notices for breaches of the EP&A Act and the Regulation, council record keeping requirements and other miscellaneous matters.

See Chapters 3, 4 and 5 for information about the role of land-use planning, strategic planning and development controls to manage air quality, respectively.

## 2.3 Local Government Act 1993

The main air quality responsibilities of local councils are in respect of small businesses, domestic premises and land-use planning. Local government contributes significantly to managing regional as well as local impacts on air quality. Specific air quality requirements under the LG Act include:

- Section 402 of the LG Act requires local councils to develop and endorse a Community Strategic Plan (CSP) that identifies the main priorities and aspirations of their community over a period of at least 10 years from when the plan is endorsed. CSPs address 4 focus areas, including environmental factors within the local government area (LGA). The Office of Local Government's *Community Strategic Plan* webpage provides further information (OLG 2024).
- Section 68 of the LG Act outlines certain activities that require approval from council prior to being carried out. In relation to air quality these activities include the installation of a domestic oil or solid fuel heating appliance (e.g. wood heater) (other than a portable appliance).

A *Neighbourhood smoke guidance note* is provided as part of this Local Government Air Quality Toolkit, which discusses practical regulation of solid fuel heating appliances.

## 2.4 Protection of the Environment Operations Act 1997

The POEO Act is a key piece of environment protection legislation with objectives that include to protect, restore and enhance the quality of the NSW environment. In relation to air quality and pollution, the POEO Act includes offences related to air pollution and allows for the regulation of pollution, including air pollution, from commercial, industrial and domestic activities. The POEO Act sets out which activities require an environment protection licence and provides that licence conditions may require monitoring of air quality impacts and development of and compliance with pollution reduction programs.

The POEO Act has the following regulations and other provisions.

### Protection of the Environment Operations (General) Regulation 2022

The POEO General Regulation provides for the administration of the licensing scheme for scheduled activities, the provision of air quality information through local air quality monitoring networks, and economic incentives for licensed businesses and industry to reduce pollution, including emissions to air, through load-based licensing.

### Protection of the Environment Operations (Clean Air) Regulation 2022

The Clean Air Regulation is the key regulatory mechanism in New South Wales for reducing emissions of harmful pollutants in the air. It prescribes standards and requirements to control emissions from industry, motor vehicles and motor vehicle fuels, wood heaters and backyard burning.

The Clean Air Regulation includes a general obligation to prevent or minimise air pollution and also prescribes standards and requirements for certain activities to reduce the impact of air pollutants. Any new or modified development will need to comply with those standards and requirements.



## Regulation of scheduled and non-scheduled activities

The NSW Environment Protection Authority (EPA) is the appropriate regulatory authority (ARA) under the POEO Act, except as provided by s 6 of that Act.

The local council is the ARA if:

- the activity is not listed as a scheduled activity under Schedule 1 of the POEO Act
- there is not a licence to control water pollution from the activity
- the activity is not carried out by the state or a public authority.

In general, where they are the ARA for an activity in their LGA, local councils can regulate that activity through notice and enforcement powers available under the POEO Act.

## Environment protection licensing

Environment protection licensing is required for scheduled activities under the POEO Act and for non-scheduled activities for the purpose of regulating any resulting water pollution. Licences are granted and administered by the EPA. Section 45 of the POEO Act provides a list of factors to be considered when deciding if a licence is to be granted. These include:

- any protection of the environment policies (PEPs)
- the impact on the environment of any pollution likely to be caused by the proposed activity or work
- any relevant EIS or other statement of environmental effects prepared or obtained by the applicant under the EP&A Act
- any public submission received by the EPA that is in relation to the licence application or that has been made under the EP&A Act in connection with the activity to which the licence relates.

The licence conditions will typically be aimed at preventing pollution and requiring monitoring of pollution and/or impacts.

For most non-scheduled activities, an environment protection licence will not be required.

Further information on EPA licensing can be obtained from the EPA's *Guide to licensing under the Protection of the Environment Operations Act 1997* (EPA 2023).

## Environment protection notices

The POEO Act enables local councils, where they are the ARA for an activity, to issue environment protection notices with directions requiring operators to maintain and operate equipment in a proper and efficient manner to minimise air pollution.

## Protection of the environment policies

The POEO Act enables the NSW Government to make PEPs between the state government and local councils for environment protection functions. PEPs are instruments for setting environmental standards, goals, protocols and guidelines. They provide both the framework for government decisions that affect the environment and the means of adopting Australia-wide environment protection measures set by the National Environment Protection Council. There are no PEPs in force in New South Wales at this time.

## 2.5 Approved methods

The EPA has developed and published approved methods covering the assessment, modelling, sampling and analysis of air pollutants in New South Wales. The approved methods can be used when undertaking impact assessments at the planning stage of a development and may be required to be used where this is a condition of an environment protection licence or a notice issued under the POEO Act.

The *Approved methods for the modelling and assessment of air pollutants in NSW* (EPA 2022b) lists the statutory methods for modelling and assessing air pollutants from stationary sources in New South Wales. It also specifies assessment criteria that reflect the environmental outcomes adopted by the EPA.

The *Approved methods for the sampling and analysis of air pollutants in NSW* (EPA 2022c) lists the methods to be used for the sampling and analysis of air pollutants for statutory purposes in New South Wales. It also prescribes methods for the sampling and analysis of air pollutants from stationary sources and mobile sources, motor vehicle fuels and pollutants in ambient air.

Further details of the POEO Act, regulations made under the Act and the approved methods publications mentioned above are provided in the Local Government Air Quality Toolkit – Module 2, *Legislative and policy framework for air quality management*. That module also specifically provides commentary on:

- roles and responsibilities in air pollution control – including the ARA, authorised officers and enforcement officers
- duty to warn
- charges for inspections.

## 3. Land-use planning

Land-use planning sets strategic short- and long-term social, environmental and economic objectives for an area. Integration of air quality considerations at the earliest stage of the planning process is an effective and efficient way to prevent air pollution impacts together with other planning objectives. For example, the Greater Cities Commission recognises air pollution as an urban hazard to be addressed in creating a resilient city. This principle is reflected in the district plans and several local strategic planning statements developed by councils.

### 3.1 Managing air quality through land-use planning

One of the most effective ways to manage air quality impacts is through strategic (see Chapter 4) and statutory (see Chapter 5) land-use planning, including:

- avoiding and managing potential land-use conflict
- minimising impacts through appropriate development design.

Key areas for councils to consider via appropriate land-use planning include:

- planning for potential new emission sources, such as new transport projects, industries, waste facilities, distributed energy facilities and potential odour sources
- planning, siting and design of sensitive land uses (where vulnerable populations are at risk of exposure to pollution), including residences, health facilities and facilities for children and the aged; for example, site playgrounds away from high volume traffic routes. Apply the *Development near rail corridors and busy roads – interim guideline* (DoP 2008)
- the Clean Air Society of Australia and New Zealand *Good practice guide for the assessment and management of air pollution from road transport projects* (CASANZ 2023) also provides useful guidance on the assessment of air quality impacts and how to minimise them for road projects, and impacts on developments near road corridors
- managing wood heater emissions through use of planning provisions (e.g. development control plans) to reduce impacts
- managing land-use conflict risk associated with existing or proposed agricultural development, and recognising and applying guidance, including the Department of Primary Industries *Land use conflict risk assessment guide* (DPI 2011).

### 3.2 Land-use planning and appropriate site selection

Air quality impacts in residential and other sensitive areas often stem from inappropriate land-use decisions allowing air polluting industry to develop near these areas or allowing the residential zone to grow around an established industry. Once the land is developed in this way, the range of air pollution control measures available is restricted. Better management of the source and engineering solutions are options but may be expensive to apply retrospectively.

### 3.3 Developmental stages in land-use planning

Where the opportunity exists to apply land-use planning as a pollution control (generally newly developing areas) there are 3 developmental stages to consider:

- initial planning stage (pre-zoning stage)
- subdivision planning stage
- pre-consent stage.

## Initial planning stage or pre-zoning

A 'green-field site' offers the greatest management flexibility to zone industrial, commercial and air pollution-sensitive land so that the affected zone is clearly defined in planning instruments, and the land abutting the industrial or commercial zone is not zoned in an incompatible way. This would avoid any future conflict; for example, consider a transition of land uses so that sensitive receptors are not adjacent to odour-generating facilities such as a sewage treatment plant. Public transport, walking and cycling options can also be included in plans to reduce car usage and associated air quality impacts.

Where a grouping of industries in a location is likely to occur, for example in an industrial estate, consideration of likely cumulative impacts of air pollutants may be warranted at the planning stage.

## Subdivision planning stage

When re-zoning has been done to locate residential, industrial or commercial lands close to one another (but residential development has not started), there is an opportunity to design internal subdivisions so that the most air pollution-intensive land uses are located nearest to industry. It follows that the most sensitive land uses (e.g. residential, childcare centres, schools or nursing homes) would then be located furthest away from the air pollution sources.

After re-zoning has been made, there is little opportunity to influence or change the permitted land use. It is likely that only through conditions of consent and only if there is a post approval management plan can land use be altered.

## Pre-consent stage

It is important to consider if air pollution controls have been considered as part of the building design at the early planning stages, so that air pollution can be minimised.

Examples could involve locating areas of the building where people live or work away from the facades exposed to air pollution sources, carefully designing natural airflow through buildings, removing operable windows from facades closest to odorous industry, or incorporating an appropriate ventilation and air-conditioning system. Implementing such measures at an early stage is much more cost-effective than adding them later.

Where existing developments have become incompatible due to changes in land use, planning consent authorities will need to make strategic decisions about the preferred land use in an area to inform development assessment.

A consent authority is designated under s 4.5 of the EP&A Act. A consent authority could be the Independent Planning Commission, the Minister, the Sydney district or regional planning panel for the area in which the development is to be carried out, or the local council (or other public authority) of the area in which the development is to be carried out.

## 3.4 Development consent

### Using development consent conditions to manage air pollution impacts

Having assessed the likely environmental impacts of the proposed development on the natural environment under s 4.15 of the EP&A Act, consent authorities should, when formulating the conditions of consent, consider:

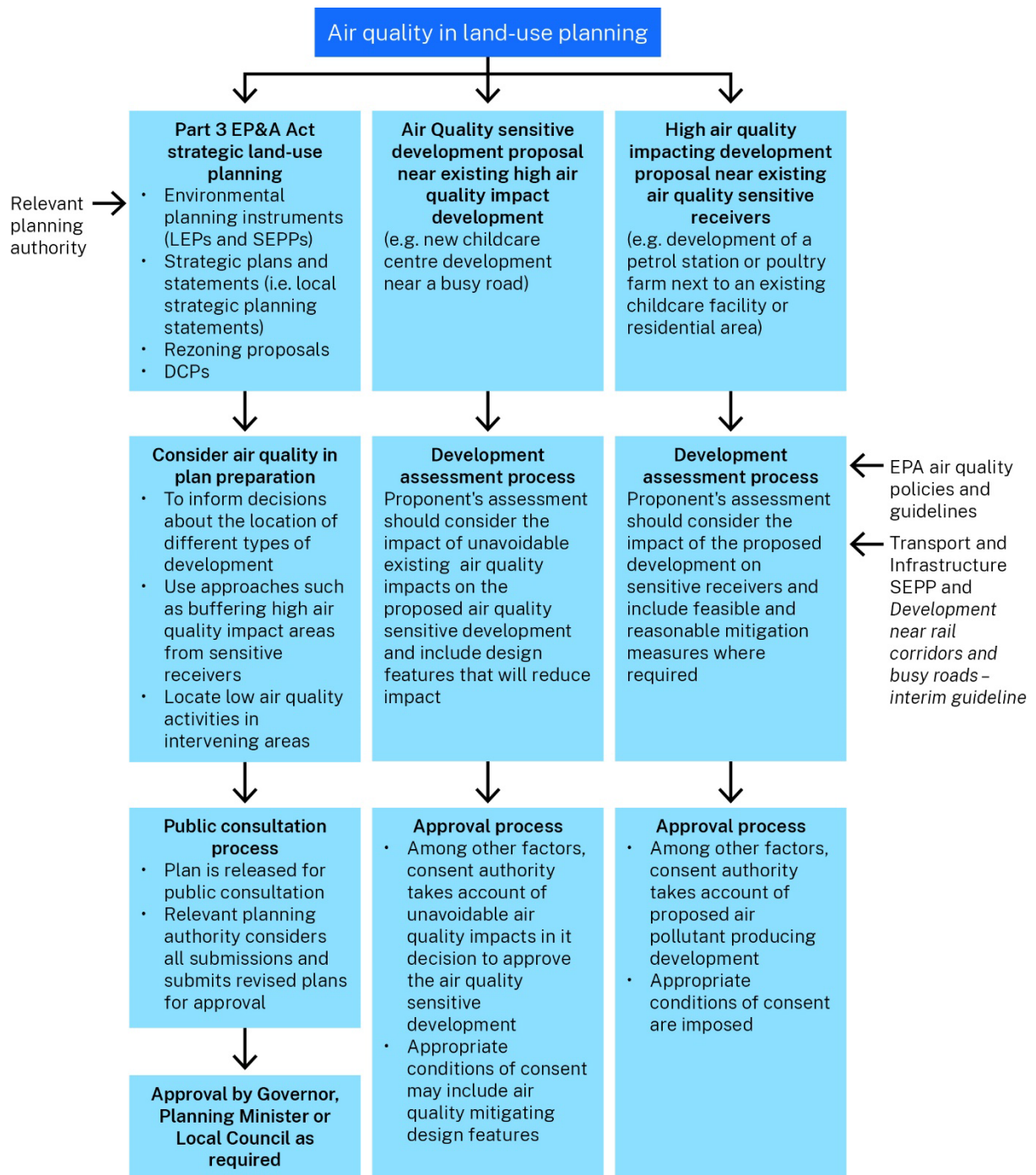
- assessed air pollution impacts
- any mitigation measures required to achieve the relevant performance criteria (i.e. particle emission concentration limits)
- identifying any practical limit for air pollution control
- trade-offs and negotiated agreements
- where the final air pollution performance needs to be underpinned by monitoring, reporting or complaints management.

### Integrated development assessment

Under the ‘integrated development assessment’ provisions of the EP&A Act, where a DA requires an environment protection licence in addition to a development consent, the consent authority must seek the EPA’s general terms of approval (GTAs). The conditions of any consent granted for the development must be consistent with the GTAs. The *Development referrals guide* (DPE 2023a) provides information for councils and applicants on the integrated development process for environment protection licences issued by the EPA.

Figure 2 provides an overview of air quality considerations in land-use planning. The roles of local councils and developers to prevent and manage air quality impacts are summarised in Table 1. Strategic planning and DAs are discussed in more detail in Chapters 4 and 5.





**Figure 2 Considering air quality in land-use planning**

**Table 1 Key roles in considering air quality impacts in planning processes**

Responsibility	Description of role and key documents
Council – strategic planning	<p>In land-use planning, council should consider the potential air quality impacts of various land uses. Planning instruments or policies should be developed or amended to provide a consistent method for managing potential air quality impacts.</p> <p>During the planning proposal phase for new or changing land uses, planners should consider potential air quality impacts. This is applicable to both air pollution emitting activities and air quality sensitive receivers.</p>
Council – regional planning	<p>Council can influence and make input to the relevant planning authority on the development of regional and district strategic plans.</p> <p>Local strategic planning statements (LSPSs) are strategic planning instruments led by councils. Legislative reforms added LSPSs to the hierarchy of strategic planning instruments. An LSPS must include a statement identifying how it is consistent with any relevant regional strategic plan or district strategic plan, as well as any CSP made under the LG Act.</p>
Council – statutory planning	<p>As the consent authority for a range of development types including some subdivision, local councils have the role of decision-maker for some types of local development.</p> <p>During the DA phase for new or changing land uses, planners should consider potential air quality impacts as part of the assessment of the DA. This is applicable to both air pollution producing activities and air quality sensitive receivers.</p>
Council – environmental health/compliance	<p>Environmental health officers can provide support to planners by reviewing and commenting on air quality reports for individual DAs. These air quality assessment reports should be prepared by a suitably qualified air quality professional (refer to Chapter 6 or the <i>Resource pack</i> and Chapter 9 of Module 4) and should review the existing and proposed air quality impacts and methods for ensuring compliance.</p>
Developers	<p>Industry and developers should consider air quality impacts when preparing planning proposals, DAs and operating procedures, to ensure air quality impacts are minimised.</p> <p>Consultation with stakeholders is also required.</p>
Infrastructure/development managers	<p>Infrastructure/development managers have a significant role in the design and operation of infrastructure and developments to ensure air quality impacts are minimised, particularly in areas of conflicting land uses (both air pollution producing activities and air quality sensitive receivers).</p>

## Case study – Childcare centres and air quality

Note that this case study is for illustrative purposes only. It does not indicate a procedure that ARAs, authorised officers and enforcement officers should follow in all cases and does not constitute legal advice. Readers should seek their own legal advice in relation to their specific circumstances.

### Proposal

A proposal was made for a 2-storey childcare centre catering for 47 children, operating Monday to Friday from 7:30 am to 6.00 pm. The centre is proposed to include 21 onsite car parking spaces including 12 basement car spots. The childcare centre is situated adjacent to a collector road and 80 m from a major road. The childcare centre DA included an air quality report comprising dispersion modelling showing air quality predictions at the proposed development. The local council is the ARA for this development.

### Air quality assessment

Council determined the following legislation and policy as relevant to the proposed childcare centre:

- *State Environmental Planning Policy (Transport and Infrastructure) 2021* (the Transport and Infrastructure SEPP), including Chapter 3 'Educational establishments and child care facilities (schools, child care centres, and TAFEs)'
- *Child care planning guideline* (DPIE 2021)
- *Development near rail corridors and busy roads – interim guideline* (DoP 2008)
- *Approved methods for the modelling and assessment of air pollutants in NSW* (EPA 2022b)
- the council's DCP.

One of the objectives of the NSW *Child care planning guideline* is to ensure air quality is acceptable where childcare facilities are proposed close to sources of air pollution, such as major roads. Where consideration 26 (C26) cannot be satisfied, an air quality impact assessment under C27 should be considered.

#### *NSW Child care planning guideline Section 3.6 provisions (DPIE 2021)*

- C26 Locate child care facilities on sites which avoid or minimise the potential impact of external sources of air pollution such as major roads and industrial development.
- C27 A suitably qualified air quality professional should prepare an air quality assessment report to demonstrate that proposed childcare facilities close to major roads or industrial developments can meet air quality standards in accordance with relevant legislation and guidelines. The air quality assessment report should evaluate design considerations to minimise air pollution such as:
  - creating an appropriate separation distance between the facility and the pollution source. The location of play areas, sleeping areas and outdoor areas should be as far as practicable from the major source of air pollution.
  - using landscaping to act as a filter for air pollution generated by traffic and industry. Landscaping has the added benefit of improving aesthetics and minimising visual intrusion from an adjacent roadway.
  - incorporating ventilation design into the design of the facility.

Case study continues overleaf...

## Issues raised

Key air quality issues raised included:

- close proximity of play areas to the collector road <15 m
- cumulative impact on air quality associated with the major road
- the exposure of children to air pollutants generated from both roads
- the location of plant, intake and exhaust from the basement carpark
- the Tool for Roadside Air Quality (TRAQ) and an analysis of roadside air quality data for the WestConnex road development was initially used by the applicant to model the predicted air impacts. TRAQ, developed by Roads and Maritime Services (now Transport for NSW), is a first-pass screening tool of air quality impacts for road projects
- council concluded that more modelling of the cumulative impact of the major road and collector road was required. Council engaged an air quality consultant to peer review the modelling.

## Outcomes

Key outcomes of the peer review included:

- The proposed basement carpark was amended to an at grade carpark at the rear of the property. Predicted air quality concentrations in the modelling were well within their respective impact assessment criteria as set out in the approved methods.
- Further dispersion modelling focusing on PM<sub>2.5</sub>, PM<sub>10</sub> and NO<sub>x</sub>/NO<sub>2</sub> was completed to assess the cumulative impact from emissions generated by motor vehicle traffic using the collector road and major road, focusing on the front outdoor areas and at the building facade. The model results were compared against relevant criteria in the approved methods and mitigation measures identified. All modelling was completed in accordance with the approved methods.

Note: In instances where council considers there is not enough evidence that air quality will be acceptable at the childcare facility, council can request mitigation measures be identified so that air quality impacts are acceptable and/or can refuse the proposal. An example of a council refusing an application for a childcare centre along a busy road based on a comprehensive review of air quality issues is *Creative Drafting Services v City of Parramatta Council [2019] NSWLEC 1413* (Land and Environment Court New South Wales 2019).

## Mitigation measures

Several air pollution mitigation measures were employed as part of the final design and development consent to minimise the exposure of children to air pollution.

Measures included:

- separation distances between the roadways and outdoor play areas increased to the maximum extent practicable as informed by the modelling undertaken
- fresh air intakes servicing the building air-conditioning systems located as far from the adjacent roadways as practicable
- allowance within the ventilation ductwork for (HEPA) filtration to remove fine particulate matter (PM<sub>2.5</sub>) prior to circulation through indoor areas
- as required (i.e. for high pollution / bushfire days), the facility can operate with sealed, filtered, air-conditioned air within the building
- landscaping (vegetation barriers) to act as a filter for air pollution generated by traffic and industry
- development and regular review of an air quality management plan requiring the centre and staff to actively manage air quality, including referring to air quality standards and any nearby real-time air monitoring data, identifying air issues such as bushfire smoke and dust, identifying susceptible children (e.g. asthmatics), setting procedures for poor air quality such as bringing children indoors, closing windows and activating air-conditioning and filtration, and providing communication and training.





**Figure 3** Childcare centre located along a road with vegetative barrier and landscaping to reduce air pollution impacts

Source: Kim Boxsell/DCCEEW



**Figure 4** Childcare centre located along a busy road not showing evidence of required mitigating measures

Source: Jane Barnett/Zephyr Environmental



## 4. Strategic planning

Strategic planning under Part 3 of the EP&A Act gives local councils the opportunity to manage air quality through development and implementation of local environmental plans (LEPs), local strategic planning statements (LSPSs) and development control plans (DCPs). Councils also have a key role to play in strategic planning when considering planning proposals, putting forward precinct plans, etc.

A local council's upfront strategic planning should consider potential air quality impacts, to guide decision-making on the suitable location of emission-generating activities and sensitive land uses and mitigate any impact through design features.

Strategic planning instruments under Part 3 set a vision for an area that incorporates environmental, social and economic objectives. They include:

- regional strategic plans made by the Planning Secretary that set the long-term 20-year direction for strategic planning and land use in a region (DPHI 2024f)
- district strategic plans made by the Planning Secretary for a district in the Six Cities Region and by the Minister for Planning and Public Spaces for a district outside the Six Cities Region, which identify planning priorities and actions in the context of the specific economic, social and environmental matters of the districts
- LSPSs made by local councils that set the 20-year vision for land use in a local area.

Environmental planning instruments (EPIs) include SEPPs and LEPs made under the EP&A Act. EPIs may have several purposes including land zoning, assessing and regulating development, and managing environmental impacts associated with development through specific development control provisions. Each type of EPI is described in further detail below. Note that in some instances, SEPPs and LEPs may have inconsistencies, in which case SEPPs override LEPs (EP&A Act s 3.28), unless otherwise stated in the EPI.

DCPs provide detailed guidance in supporting the aims of a LEP. DCPs contain detailed provisions at a local scale, some of which can relate to the objectives of preventing and mitigating air quality impacts associated with certain activities. DCPs do not have the same legislative status as LEPs so legislative compliance is not strictly required. To be legally binding, any provisions for preventing and mitigating air pollution would need to be referred to in an LEP or be a condition of development consent.

There are a number of strategic planning tools to minimise the risk of land-use conflict from air or odour emissions, including locating activities such as light-commercial areas, that have low air emissions and are less sensitive, in intervening areas, and separating sensitive receivers from higher emission-generating activities.

Examples of strategic planning initiatives to promote better air quality outcomes include:

- Appropriately locate land uses to avoid land-use conflict, by identifying activities that emit air pollutants and locating these away from sensitive uses. Ensure zones and permissible development within those zones consider adjacent land uses and methods to control compatibility at the boundary of land zones. Appropriate separation between high air pollutant emitting land uses and sensitive land uses will reduce the potential for air quality related land-use conflicts.

- Consider cumulative impacts where a grouping of industries in a location is likely to occur or where there is an existing history of air pollution issues (supported by monitoring or other data and/or complaints), in the strategic planning stage. When an airshed is already constrained, introduction of new potential sources of air quality impacts should be carefully evaluated.
- When changing land-use zones to a more sensitive use, consider proximity to existing industry, infrastructure or industrially zoned land to ensure the strategic planning decision does not impact on the future operation of existing land uses in the area.
- If subdivision development has started in an area where there is a potential air pollution impact, and there is no opportunity for any flexibility in land use, consider introducing controls on building design, so air pollution impact is minimised.
- To avoid unrealistic expectations of air quality amenity in affected areas, inform members of the public moving into air pollutant affected areas through public consultation, LEP provision or a s 10.7 planning certificate (see Table 2).

## 4.1 State Environmental Planning Policies

SEPPs are prepared for the purpose of environmental planning by the state to address matters of state, regional or district environmental planning significance. SEPPs can identify permissible land uses, development standards and controls, as well as the type of environmental assessment that is required.

During the development of a SEPP, local councils can provide input at any public consultation phase, if this is held, and are thereafter required to implement and comply with the SEPPs within their area. Key SEPPs and associated guidelines that include air quality considerations are listed in Table 2.

Further information about SEPPs is available on the *State Environmental Planning Policies* webpage (DPHI 2024g).

## 4.2 Local environmental plans

LEPs outline the planning controls in LGAs through zoning, permissible land uses, development standards and other controls (DPHI 2024d). LEPs allow councils to manage land use within an LGA, including provisions and controls to manage air quality and land-use conflict.

The *Local Environmental Plan Making Guideline* (DPE 2023b) provides a detailed explanation of the steps involved in the LEP making process to assist and guide councils and proponents. This also includes how to make a planning proposal, which explains the intended effect and justification of a proposed LEP or amendment to an LEP in a document with supporting information.

Attachment B to the guideline (see DPE 2023b) provides referral criteria identifying where matters should be referred to other agencies before a planning proposal is submitted (i.e. in the 'pre-lodgement' phase). This ensures relevant authorities are informed of potential land-use conflicts so they can advise council accordingly. For example, the criteria state that if the planning proposal seeks approval for residential uses and/or sensitive land uses on land within proximity to:

- notified or regulated contaminated sites
- existing heavy industrial uses
- other existing activities that have a current environmental protection licence to operate

then the proposal must be referred by council or the proponent to the EPA for pre-lodgement engagement.

## Example 'air quality' section in a council DCP

**Principle:** Minimising air pollution caused by a new development and achieving the National Environment Protection Measure air quality criteria locally and regionally to the extent that is possible for a local council.

**Rationale:** Air quality in the major metropolitan areas is influenced by many factors. Wherever possible, local councils should attempt to reduce air pollution by reducing the processes and equipment that contribute to it. The EPA *Approved methods for the modelling and assessment of air pollutants in NSW* (EPA 2022b) should be used as a tool when considering air quality in the consent assessment process for developments with air pollution potential for which council is the ARA. Council should also consider cumulative impacts on the air quality impact assessment criteria set out in the approved methods when exercising its planning powers and when granting multiple consents (e.g. in industrial areas).

**Guidelines:** The operation of any new premises and any machinery or plant to be installed, or any process to be used, must not cause emissions contrary to the POEO Act and the Clean Air Regulation. Applicants will need to demonstrate that these requirements are met. General terms of approval and environment protection licences may also be required from the EPA for some types of development.

Machinery and operations should be designed to minimise the emission of air impurities. This includes minimising vehicular movements to and from the site. Restricting the hours of operation may reduce any emissions to an acceptable level.

**Controls:** All development must comply with the provisions of the POEO Act and the Clean Air Regulation.

## 4.3 Best practice air quality considerations in strategic planning

Table 2 gives examples of best practice air quality considerations across strategic planning processes.

**Table 2 Best practice air quality considerations in strategic planning**

Document	Description	Local council role	Best practice examples
State Environmental Planning Policies (SEPPs)	Address matters of state, regional or district environmental planning significance	<p><b>Influence</b></p> <p>Councils have a role in SEPP development by providing input at any public consultation phase and to implement the SEPPs in their area.</p>	<p>Key SEPPs and associated guidelines that include air quality considerations:</p> <ul style="list-style-type: none"> <li>• Transport and Infrastructure SEPP and <i>Development near rail corridors and busy roads – interim guideline</i> (DoP 2008)</li> <li>• Transport and Infrastructure SEPP and <i>Child care planning guideline</i> (DPIE 2021)</li> <li>• Design quality of residential flat development SEPP (SEPP 65) and <i>Apartment design guide</i> (DPE 2015)</li> <li>• Primary production SEPP</li> <li>• Resilience and hazards SEPP</li> <li>• Industry and employment SEPP</li> <li>• Resources and energy SEPP</li> </ul>
Local environmental plans (LEPs)	Guide planning decisions for LGAs through zoning and development controls	<p><b>Control/influence</b></p> <p>Councils may initiate an LEP amendment or new LEP by submitting a planning proposal. They may also provide input to planning proposals for LEPs initiated by other parties.</p>	<p>Best practice examples of LEPs:</p> <ul style="list-style-type: none"> <li>• Camden LEP 2010, clauses 7.8 and 7.12</li> <li>• Blacktown LEP 2015, clause 7.9</li> <li>• Wollondilly LEP 2011, clause 7.7</li> <li>• Wagga Wagga LEP 2010, clause 7.8</li> </ul>
Regional strategic plans and district plans	State-led strategic planning documents that set out the vision and direction for strategic planning and land use within a region, and plan for future needs	<p><b>Influence</b></p> <p>Councils can influence the development of these plans but can also use their supporting planning priorities and actions on sustainability, which includes air quality considerations, to help inform planning decisions.</p>	<p>Some best practice examples include:</p> <ul style="list-style-type: none"> <li>• Hunter Regional Plan, p. 76 and references throughout</li> <li>• Central Coast Regional Plan, p. 68 and references throughout</li> <li>• Draft Southeast and Tablelands Regional Plan, pp. 94, 95; Strategies 10.4, 17.1, 17.2, 19.1 and other references throughout</li> <li>• Greater Sydney Region Plan – A Metropolis of Three Cities and associated district plans</li> </ul>

Document	Description	Local council role	Best practice examples
Local strategic planning statements (LSPSs)	Determine the priorities for the local area, informed by and consistent with other applicable strategic plans	<p><b>Control</b></p> <p>The development of LSPSs should take into account any applicable strategic plans and council community strategic plans.</p> <p>A council's planning processes must be consistent with strategic plans, however, local policies can add greater detail to assist in achieving the intent of these plans.</p>	<p>Some best practice examples include:</p> <ul style="list-style-type: none"> <li>• Burwood Council LSPS</li> <li>• Campbelltown Council LSPS</li> <li>• City of Sydney LSPS</li> <li>• Muswellbrook Council LSPS</li> <li>• Sutherland Shire Council LSPS</li> <li>• Blacktown City Council LSPS</li> <li>• Newcastle City Council LSPS</li> </ul>
Development control plans (DCPs)	Provide detailed planning and design guidelines to support the planning controls in a LEP or SEPP	<p><b>Control</b></p> <p>Councils must prepare and implement a DCP.</p>	<p>Separation distances:</p> <ul style="list-style-type: none"> <li>• Wilton Growth Area Development Control Plan 2021, clause 3.1.2. Based on the principles set out in Wilton 2040 to minimise air quality impacts on sensitive land uses.</li> </ul> <p>Wood heater controls:</p> <ul style="list-style-type: none"> <li>• Waverley Development Control Plan 2022 (Amendment 3), clause 2.3</li> <li>• Blacktown City Council Growth Centre Precincts Development Control Plan 2010, clause 4.1.3</li> <li>• Box Hill Growth Centre Precincts Development Control Plan 2018, clause 4.1.3</li> <li>• North Kellyville Precinct Development Control Plan 2018, clause 4.1.3</li> <li>• Oran Park Precinct Development Control Plan, clause 8.1</li> <li>• Turner Road Growth Centre Precincts Development Control Plan 2018, clause 8.1</li> </ul>



Document	Description	Local council role	Best practice examples
Planning certificates	Planning certificates under s 10.7 of the EP&A Act have a role to notify of potential air quality impacts on a piece of land	<p><b>Control</b></p> <p>Councils must issue planning certificates on application. Information on the s 10.7(2) planning certificate includes the zoning of the property, any relevant planning controls and other matters specified in Schedule 2 to the EP&amp;A Regulation. A s 10.7(2) and (5) certificate may also include other relevant matters affecting the land such as air quality issues. Other relevant matters could further limit the use of the land and be something a purchaser of the land should be aware of.</p>	Wollondilly Shire Council <i>Development in odour buffer areas fact sheet</i> , which states certain types of development cannot be undertaken on land identified as being within an ‘odour buffer area’. This information is included on the s 10.7 planning certificate.
Special activation precincts (SAPs)	Areas identified for streamlined planning and investment to facilitating job growth and economic activity	<p><b>Learn</b></p> <p>Planning for SAPs can provide best practice examples for the management of air quality and land-use conflict.</p> <p><b>Influence</b></p> <p>SAPs are prepared by the state government in collaboration with local government and as such can be influenced by the relevant local council and those in surrounding LGAs. Council has a very important role in SAPs as a consent or certifying authority for industrial activities that may be emissions-intensive. It is important that councils adequately consider air quality impacts when performing this function.</p>	<p>Wagga Wagga SAP and rural activity zoning to minimise air quality impacts from commercial and industrial uses within the precinct</p> <p>Parkes SAP Master Plan provides the criteria for environmental considerations such as air quality (Section 3.2.5 of master plan)</p>

Document	Description	Local council role	Best practice examples
Priority growth areas and precincts and state significant precincts	<p>Priority growth areas and precincts are areas where there is a particular focus on initiatives for improving housing, jobs, etc.</p> <p>State significant precincts are areas with state or regional planning significance due to their social, economic or environmental characteristics</p>	<p><b>Learn</b></p> <p>Planning for priority growth areas and precincts can provide best practice examples for the management of air quality and land-use conflict.</p> <p><b>Influence</b></p> <p>Priority growth areas, precincts and state significant precincts are prepared in collaboration with local government and as such can be influenced by the relevant local council and those in surrounding LGAs.</p>	<p>Wilton 2040, the land use and infrastructure plan that is guiding the Wilton growth area and includes planning principles on air quality (p. 29)</p>

## 5. Development assessment and approval

This chapter summarises the NSW planning framework (as applicable to local government) and the statutory requirements for local councils as consent authorities in the assessment of air quality impacts in DAs.

Statutory planning provides a pathway to assess and manage potential environmental impacts associated with a proposed development, including any potential air quality impacts.

Local councils have different roles to play in the assessment and approval of some DAs depending on the type of development. Information on the developmental stages of land-use planning is also in Section 3.3 of this guidance note.

### 5.1 Development assessment processes

The EP&A Act provides various assessment pathways for all development in New South Wales. The assessment and approvals pathway are determined by the type of development, location of the development and who proposes to carry it out. The main parts of the EP&A Act that relate to development assessment and approval are Part 4 (development assessment) and Part 5 (infrastructure and environmental impact assessment), as discussed below. Figure 5 is a summary of the major planning pathways described in this section.

Generally, the type of land uses where air quality is a key consideration fall into the planning pathways as outlined below. This is generally due to the nature of these developments and the potential to impact surrounding land uses.

#### Local development

The most common type of development in New South Wales is local development, with projects ranging from home extensions to medium-sized commercial, retail and industrial developments.

A development is considered local development if both:

- a LEP or SEPP states that development consent is required before the development can take place
- it is not considered to be either regionally or state significant development.

The *NSW Planning Portal Spatial Viewer* (DPHI 2024e) allows you to put in an address to see what planning constraints and zoning rules, including EPIs apply. The level of environmental assessment that must be provided with the DA will vary depending on the size and likely impacts of the development. Local development categories include designated development and integrated development, which are discussed below. Further information can be found on the Department of Planning, Housing and Infrastructure's *Local development* webpage (DPHI 2024c).

#### Part 4 of the EP&A Act

Local councils and local planning panels are the consent authorities for multiple categories of local development, which may include designated development and integrated development (as well as nominated integrated development). The Sydney district or regional planning panels are the consent authority for regionally significant development. Councils or registered certifiers are responsible for issuing complying development certificates (CDCs). The Independent Planning Commission or the Minister are the consent authorities for state significant development (SSD).

A development could sometimes be categorised as both integrated development and designated development, and is therefore subject to special requirements to ensure adequate assessment.

For all Part 4 developments, in deciding to either grant or refuse development consent, the consent authority has a duty to take environmental impacts into account. Section 4.15 of the EP&A Act establishes a general duty for a consent authority to consider: draft and made EPIs, DCPs and planning agreements; EP&A Regulations; likely impacts of development (including environmental impacts); suitability of the site; submissions; and the public interest.

In carrying out an assessment, the consent authority can and should refer development to specialists (internal or external) to consider impacts outside of its expertise, including air quality. In some instances, the consent authority can undertake the assessment itself or may request proponents to undertake their own specialist studies for their review. There are a few important aspects for local government to consider when overseeing external consultants' air quality (or odour) assessment and dispersion modelling studies, to make sure the best outcome is achieved. These are included in Chapter 6 of the Local Government Air Quality Toolkit – *Resource pack*.

After considering the environmental impacts, the consent authority can then either approve or refuse the DA. Module 4, Chapter 10 provides information on how to use development consent conditions to manage air impacts.

### **Designated development**

Designated development refers to developments that are high-impact developments or are in or near an environmentally sensitive area. There are 2 ways a development can be categorised as 'designated development':

- the class of development can be listed in Schedule 3 of the EP&A Regulation as being designated development
- a LEP or SEPP can declare certain types of development to be designated.

If a DA is categorised as designated development, the application:

- must be accompanied by an EIS and the EIS must be prepared in accordance with the Planning Secretary's Environmental Assessment Requirements (SEARs)
- will require public notification for at least 28 days
- can be the subject of a merits appeal to the NSW Land and Environment Court by objectors
- requires approval under Division 4.3 of the EP&A Act.

SEARS ensure projects are subject to a comprehensive assessment in accordance with government plans, policies and guidelines. They also require applicants to engage with local councils, the local community and key agencies while preparing their EIS, consistent with the department's community participation objectives.

### **Integrated development**

Specific types of DA are referred to a relevant NSW Government agency for their general terms of approval before determination can be made by a local council. When the development requires one of the approvals listed in s 4.46 of the EP&A Act in order to be carried out, the planning approvals pathway is considered integrated development. Integrated DAs require approval under Division 4.8 of the EP&A Act.

When an integrated development proposal requires an environment protection licence in order for the development to be carried out, the DA is referred to the EPA for general terms of approval (GTAs). In deciding whether to grant GTAs in relation to the development, the EPA will assess any air quality impacts of the proposal and supporting air quality impact assessment (AQIA). Council should review an AQIA even when the DA has been referred to the EPA, in order to understand the potential air quality impacts and proposed mitigation measures. The assessment and dispersion modelling checklist in Chapter 6 of the Local Government Air Quality Toolkit – *Resource pack* could be useful when planning or reviewing an AQIA.

### **Nominated integrated development**

Nominated integrated development is integrated development that requires an approval under separate legislation, including, but not limited to:

- s 58 of the Heritage Act 1977
- ss 89, 90 and 91 of the *Water Management Act 2000*
- a provision of the POEO Act specified in s 4.46(1) of the EP&A Act.

### **State significant development**

A proposal is considered to be SSD if it triggers certain criteria, including if it:

- is over a certain size or threshold
- is in a sensitive environmental area
- will exceed a specific estimated development cost or capital investment value.

Part 2.2 and Schedules 1 and 2 of the *State Environmental Planning Policy (Planning Systems) 2021* identifies types of developments and development on certain sites that are SSD. This includes major industrial and warehousing projects, primary industries and resources and site-specific large-scale urban developments.

The Minister for Planning and Public Spaces may also ‘call in’ development proposals if a proposal is considered to be of state significance.

Local councils are usually consulted if the development is in their LGA. Councils should be consulted over SSD assessment and be able to comment on the EIS if it is publicly exhibited.

Some projects have specific SEARs; see the Streamlining major project assessment webpage (DPHI 2024k). These are streamlined requirements for developments that are consistent with their underlying land-use zoning and that have impacts that are predictable, well understood and can be mitigated. For projects that require project-specific SEARs, the Department of Planning, Housing and Infrastructure (DPHI) will typically refer the scoping report to the local council for review. The council’s comments will accompany project-specific SEARs issued by DPHI. These SEARs will usually require the proponent to undertake further consultation with key authorities prior to the lodgement of any EIS with DPHI.

All SSD applications are exhibited for at least 28 days. During the exhibition period, anyone can make a written submission on the DA. Community participation is integral to assessing the merits of SSD projects, leading to improved project design, reduced environmental impacts and ecologically sustainable development.

For further information about SSDs please refer to the DPHI State significant development webpage (DPHI 2024h) and the *State significant development guidelines* (DPHI 2024i).



While SSD projects are assessed through NSW State Government Processes, Councils have an important role in guiding the assessment and outcomes. In particular, the *Undertaking engagement guidelines for state significant projects* (DPHI 2024l) recognises the need to demonstrate engagement with local councils where councils can raise issues such as air quality concerns.

## Exempt and complying development

Minor works that are considered low impact, like building works to houses, shops or businesses, are exempt from requiring a DA.

Complying development is a fast-tracked combined planning and construction approval determined by a local council or a private certifier.

It is noted that some development is complying development in special activation precincts (SAP) under the *State Environmental Planning Policy (Precincts-Regional) 2021*. In this instance an activity requiring an environment protection licence may be complying development within the SAP, and the EPA may require the applicant to provide an AQIA for the purpose of assessing air quality impacts of the proposal and imposing suitable licence conditions.

The installation of oil or solid fuel heating appliance (e.g. wood fired heaters) is not considered exempt or complying development and requires approval from the local council under s 68 of the LG Act.

For further information about exempt and complying development, see the DPHI *Exempt and complying development policy* webpage (DPHI 2024b).

## Part 5 of the EP&A Act

There are 2 divisions under Part 5, development permissible without consent and state significant infrastructure (SSI), both of which require different types of consideration of environmental issues.

### Development permissible without consent

Development undertaken by a public authority or on behalf of a public authority may be permitted without consent. The public authority can be the proponent and the determining authority.

Section 5.5 of the EP&A Act states a determining authority shall examine and take into account all matters affecting or likely to affect the environment by reason of that activity. This impact assessment is typically undertaken in the form of a review of environmental factors (REF) and can be accompanied by specialist studies, where relevant.

In situations where the local council is not the proponent of the activity, permissions may be required from the council and there may be requirements to notify council about the works should they impact on council assets or infrastructure.

In instances where the determining authority considers that the activity is likely to significantly affect the environment, an EIS is required. Importantly, the requirement to consider impacts via an EIS can be a trigger for SSI, where the Minister for Planning and Public Spaces is the approval authority for the development (EP&A Act s 5.14 and Schedule 3 of the Planning systems SEPP).

For further information about development without consent refer to the DPHI *Development without consent* webpage (DPHI 2024a) and the *Guidelines for Division 5.1 assessments* (DPE 2022).

### State significant infrastructure

SSI includes transport and services developments with effects beyond local areas, such as:

- rail infrastructure
- road infrastructure
- water storage and treatment plants
- wharves and boating facilities
- pipelines
- some developments in national parks.

Any of these types of infrastructure are considered state significant if they are either:

- a certain type of development, or above a certain size or estimated development cost
- in a sensitive environmental location.

Schedules 3 and 4 of Chapter 4 of the Planning systems SEPP identifies developments and sites that would be considered SSI. During the assessment of SSI applications, feedback from local councils may be a consideration in the environmental assessment report.

While SSI projects are assessed through the DPHI, local councils have an important role in guiding the assessment and outcomes. The *Undertaking engagement guidelines for state significant projects* recognise the need to demonstrate engagement with local councils where councils can raise issues such as air quality concerns (DPHI 2024I).

## 5.2 Development application determination

Decisions for a DA are made by a delegated officer, local council, the Minister or a planning panel, depending on the type of development.

Planning panels are independent bodies that strengthen decision-making on local and regionally significant DAs and other planning matters including certain planning proposals such as council related developments over a certain estimated development cost.

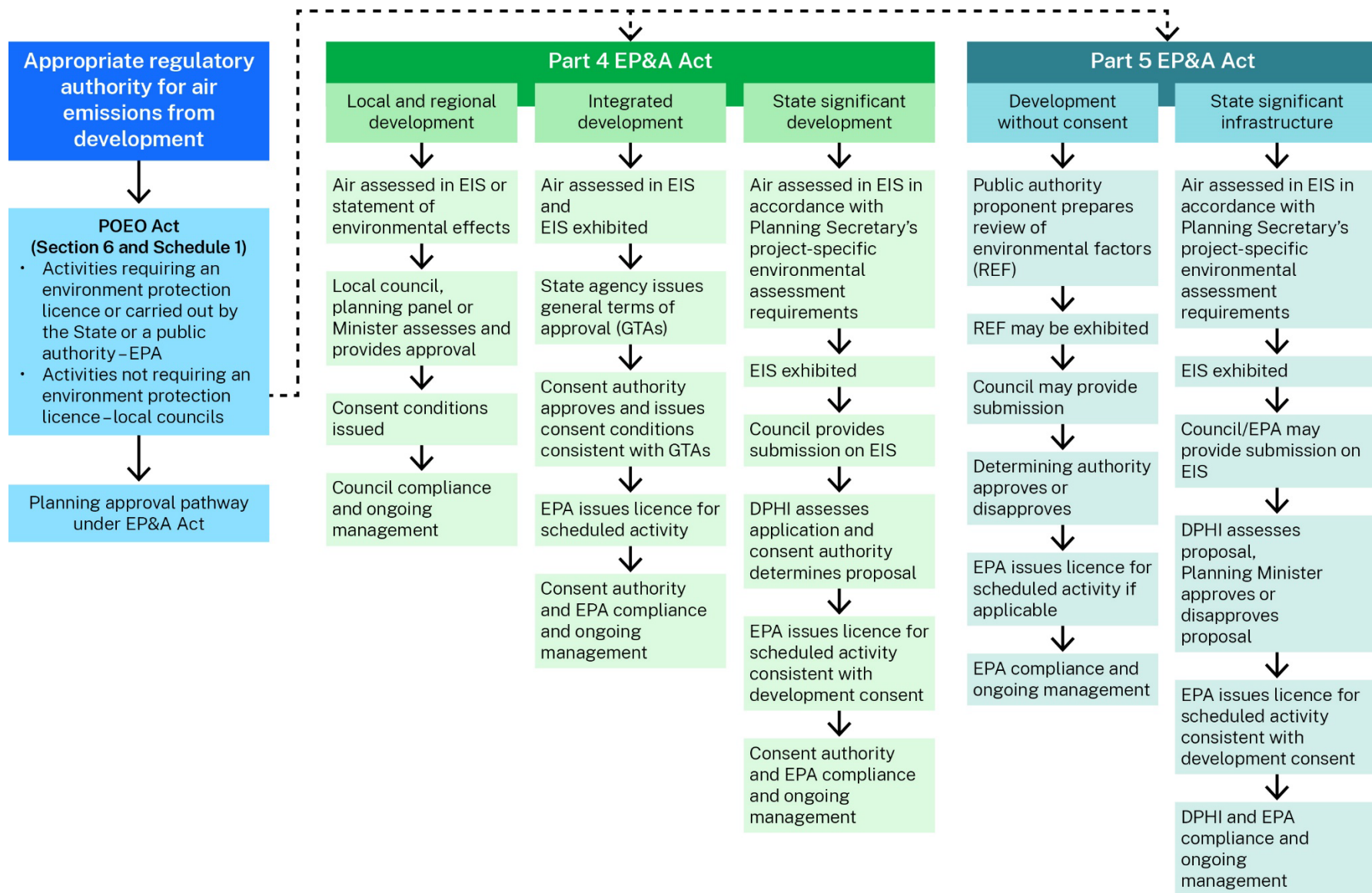
Local councils have an important role to play even when they are not the decision-maker for a DA. They can provide pre-lodgement advice, review the assessment and make recommendations to the consent authority. This can be the time to highlight any air quality concerns or potential impacts.

### Certification

Part 6 of the EP&A Act establishes a certification system to ensure certain steps in the planning and development process are certified by professionals and completed in a timely manner. Certificates include construction certificates, occupation certificates and compliance certificates.

A development consent may require other things to be done before a certificate can be issued; for example, requiring an environmental management plan with air quality management considerations before a construction certificate is issued.

The certificates listed above can be issued by a local council or a certifier accredited by NSW Fair Trading (NSW Fair Trading n.d.). A certifier is accredited as an individual and may be employed by a local council, a private business or self-employed as a sole trader.



**Figure 5 Summary of major planning pathways for air quality**

## 6. References and other resources

All documents and webpages that are part of the Local Government Air Quality Toolkit are available from the EPA website.

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DPE (2023a) Development referrals guide: A guide for applicants and consent authorities on integrated development approvals, concurrences and consultation referrals for development applications, NSW Department of Planning and Environment, Parramatta NSW, [www.planning.nsw.gov.au/policy-and-legislation/planning-reforms/concurrence-and-referral-reforms#development-referrals-guide](http://www.planning.nsw.gov.au/policy-and-legislation/planning-reforms/concurrence-and-referral-reforms#development-referrals-guide).

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## 6.1 State Environmental Planning Policies

- *State Environmental Planning Policy (Industry and Employment) 2021* (Industry and employment SEPP)
- *State Environmental Planning Policy (Planning Systems) 2021* (Planning systems SEPP)
- *State Environmental Planning Policy (Precincts – Regional) 2021*
- *State Environmental Planning Policy (Primary Production) 2021* (Primary production SEPP)
- *State Environmental Planning Policy (Resilience and Hazards) 2021* (Resilience and hazards SEPP)
- *State Environmental Planning Policy (Resources and Energy) 2021* (Resources and energy SEPP)

- [State Environmental Planning Policy \(Sustainable Buildings\) 2022](#) (Sustainable buildings SEPP)
- [State Environmental Planning Policy \(Transport and Infrastructure\) 2021](#) (Transport and Infrastructure SEPP)
- [State Environmental Planning Policy no 65 – Design quality of residential apartment development](#) (Design quality of residential flat development SEPP)

## 6.2 Local environmental plans

- [Blacktown Local Environmental Plan 2015](#)
- [Camden Local Environmental Plan 2010](#)
- [Wagga Wagga Local Environmental Plan 2010](#)
- [Wollondilly Local Environmental Plan 2011](#)

## 6.3 Regional plans

- [Hunter Regional Plan 2041](#)
- [Central Coast Regional Plan 2041](#)
- [Draft Southeast and Tablelands Regional Plan 2041](#)
- [Greater Sydney Region Plan – A Metropolis of Three Cities](#)

## 6.4 Local strategic planning statements

- [Blacktown Local Strategic Planning Statement](#)
- [Burwood Local Strategic Planning Statement](#)
- [Campbelltown Local Strategic Planning Statement](#)
- [City of Sydney Local Strategic Planning Statement](#)
- [Muswellbrook Local Strategic Planning Statement](#) [PDF 1.5 MB]
- [Newcastle Local Strategic Planning Statement](#) [PDF 10.4 MB]
- [Sutherland Local Strategic Planning Statement](#)

## 6.5 Development control plans

- [Wilton Growth Area Development Control Plan 2021](#)
- [Waverley Development Control Plan 2022](#)
- [Blacktown City Council Growth Centre Precincts Development Control Plan 2010](#)
- [Box Hill Growth Centre Precincts Development Control Plan 2018](#)
- [North Kellyville Precinct Development Control Plan 2018](#)
- [Oran Park Precinct Development Control Plan](#)
- [Turner Road Growth Centre Precincts Development Control Plan 2018](#)

## 6.6 Special activation precincts

- [Wagga Wagga Special Activation Precinct](#)
- [Parkes Special Activation Precinct Master Plan](#)

## 6.7 Priority growth area plans

- [Wilton 2040](#)