

# Protocol on Critical State Significant Infrastructure Assessment Procedure (CSSI Protocol)

This document sets out a Protocol to assist the NSW Government in coordinating the assessment and determination of critical State significant infrastructure (CSSI) projects in NSW.

## Contents

**Protocol on Critical State Significant Infrastructure Assessment Procedures (CSSI Protocol) ..... 1**

1. Protocol – purpose & objectives.....2

2. Organisations subject to this Protocol.....2

3. Roles and responsibilities.....4

4. Process for Early Works Related to CSSI Projects .....10

5. Commencement and Transition.....11

6. Dispute Resolution.....11

7. Review and Termination .....11

**Appendix A – CSSI assessment procedures workflow .....12**

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## 1. Protocol – purpose & objectives

This Protocol outlines how the Department of Planning, Housing and Infrastructure (DPHI Planning) will lead the whole of government assessment process relating to critical State significant infrastructure (CSSI) projects<sup>1</sup>, to achieve faster and better assessment and determination of these applications. It includes the roles and responsibilities of DPHI Planning (for the Planning Secretary and the Minister for Planning and Public Spaces), Proponents and Advising Agencies.

The objectives of the Protocol are:

- to support DPHI Planning to lead a whole-of-government assessment of CSSI projects;
- to maintain interagency administrative arrangements that support the efficient and effective assessment of CSSI projects;
- to ensure timely processing of CSSI projects through improved communications, collaborative working relationships between agencies and early identification and resolution of assessment issues; and,
- to reduce the time and costs to taken by the whole-of-government assessment by standardising processes and requirements where possible.

The Protocol does not restrict or curtail in any way an agency's statutory functions under legislation or regulation it administers.

Implementation of the Protocol may also be supported by other arrangements such as Memoranda of Understandings (MoUs) between DPHI Planning and Proponents.

The Protocol should also be read in the context of [State Significant Infrastructure Guidelines](#) (DPHI, 2024).

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## 2. Organisations subject to this Protocol

This Protocol applies to development entities that have a declared<sup>2</sup> CSSI project under Division 5.2 of the NSW Environment Planning and Assessment Act 1979 (the EP&A Act). These development entities include NSW Government agencies and are referred to in this Protocol as the Proponent.

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<sup>1</sup> For the purposes of this protocol, the term 'project' is used to refer to declared critical State significant infrastructure proposals.

<sup>2</sup> [Declaration of SSI and CSSI \(DPE, 2021\)](#) sets out the general principles and key reasons for the Minister to declare development as SSI or CSSI. Declared CSSI projects are listed at [Schedule 5 of the State Environmental Planning Policy \(Planning Systems\) 2021](#).

This Protocol also applies to NSW public authorities that may have a role in providing input into the DPHI Planning-led whole-of-government assessment of CSSI project applications including those required under the EP&A Act or other legislation to provide an approval or authorisations necessary for a CSSI project to be carried out. These Government agencies are referred to in this Protocol as Advising Agencies.

Depending on the location and tenure of proposed infrastructure sites, there may be other agencies involved in the CSSI application process (e.g., proposals on certain Crown land). A reference to Advising Agencies in this Protocol is taken to also be a reference to Government agencies with specific custodian responsibilities for land that may be subject to an infrastructure proposal.

## 2.1 Model Proponent

The measures that are introduced by this Protocol to streamline and improve environmental assessments of CSSI projects - including the across-government collaboration encouraged and enabled by this Protocol - are based on the assumption that the Proponent organisations will act as a 'Model Proponent' throughout the process. Where a Proponent uses the services of another agency or the private sector in any aspect of the process, it is expected that they be engaged on terms which reflect the requirements of the Protocol.

In order to establish and maintain community confidence in the environmental impact assessment process, this Protocol relies on CSSI Proponents operating as Model Proponents.

A model proponent of a CSSI project conducts its business in relation to environmental impact assessment and the Planning-led whole-of-government assessment of the project, in the following manner:

- genuine commitment to balancing the economic, environmental and social outcomes in the scoping, design, assessment and delivery of infrastructure projects;
- application of accepted and best-practice techniques and procedures, including Government policies and guidelines, throughout all stages of the process;
- appropriate consideration of government and public commentary on concerns arising from the project;
- strong commitment to a high standard of ongoing community engagement and reporting on project progress and delivery;
- a willingness to respond to emerging issues and adjust project parameters to ensure environmental impacts are appropriately avoided and/or managed; and
- rapid disclosure to regulators of key issues arising from the project in a transparent manner and responds to compliance, enforcement and other performance issues as they arise in a timely way.

Consistent demonstration of Model Proponent behaviour is expected under this Protocol. Where proponents fail to meet these expectations, the dispute resolution mechanism outlined in Section 5 of this Protocol may be actioned.

## 2.2 Senior Officers Committees

The Senior Officers Infrastructure Assessment Committee (SOIAC) and the Senior Officers Energy and Industry Assessment Committee (EIC) are established by, and chaired by a senior member of DPHI Planning, and will comprise senior officers from agencies involved in the Planning-led whole-of-government assessment for major projects. The purpose of the Senior Officer (SO) committees is to address conflicts between agencies; improve timeframes for assessment decisions; achieve consistency in regulation of infrastructure proposals; and achieve a whole of government approach to assessments.

The relevant SO committee may be used at many of the stages in the process for assessing CSSI projects.

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## 3. Roles and responsibilities

This Protocol identifies six broad stages in the process: project development, impact assessment and studies, public exhibition, response to submissions and advice, assessment and determination, and project delivery. The roles and responsibilities of the agencies in each of these stages are outlined below. **Appendix A** provides a workflow for CSSI assessment procedures.

For all stages of CSSI projects, all organisations will:

- collaborate constructively to achieve the efficient and timely determination of CSSI projects and resolve issues, including through the relevant SO committee;
- provide information, documentation, advice and responses within the timeframes listed in this Protocol; and,
- proactively identify and action to resolve any issues during the process where a delay is occurring.

### 3.1 Stage 1 – Project development

The focus of this stage includes (but is not limited to):

- early identification of key technical, design and community based environmental issues;
- establishing the need for the proposed project;
- considering the best approach to engagement with the community and local government;
- preparation of a detailed scoping report;

- application lodgement and request for Secretary Environmental Assessment Requirements (SEARs).

#### 3.1.1 The Proponent will:

- make allowance (contingency) in budget and project timelines provided as a part of business case development, for additional studies or design changes that will arise as a result of public submissions or expert advice received during the Planning-led whole-of-government assessment process;
- consult with Advising Agencies and DPHI Planning in the preliminary stages of project inception including early business case development by means of scheduling site visits and planning focus meeting(s) and any other tools to assist with early identification of issues pertinent to the project;
- conduct consultation with the local community and local government (including industry, business and interested groups) to provide information on the project design and preliminary impacts of the project that may be known. This may involve attendance at a public meeting or other forms of public engagement;
- prepare the detailed scoping report to support the application and request for SEARs; and,
- inform the relevant SO committee of the progress of project.

#### 3.1.2 DPHI Planning will:

- refer the proposal application along with the associated documentation to the relevant Advising Agencies;
- outline the required community engagement approach, which may include a public meeting with interested community members if the Minister deems it necessary, to determine the key community concerns and any other issues that are required to be incorporated into the Planning Secretary's Environmental Assessment Requirements (SEARs) for the project;
- notify the Proponent of SEARs and publish them on the Planning Portal within 28 days of receipt of the project application and after the public meeting, if one is held; and,
- prepare an indicative assessment timetable for the project indicating key dates and milestones that must be met by the Proponent and Advising Agencies and circulate the assessment timeframe to relevant parties.

#### 3.1.3 Advising Agencies will:

- provide appropriate senior officer representation (and technical advisors where necessary) through the relevant SO committee;

- within 14 days of SEARs request, advise DPHI Planning and the Proponent of likely environmental, social, economic or other relevant assessment issues that should be addressed in the project application and whether the agency has significant concerns that the Proponent must address through design of the project and mitigation measures to be articulated in the Environmental Impact Statement (EIS); and,
- confirm what other approvals or authorisations are necessary for the project to be carried out.

## 3.2 Stage 2 – Impact Assessment and Studies

The purpose of this stage is to conduct an environmental assessment of the proposed project and to seek further community input. Strong interagency cooperation throughout this stage will ensure issues are addressed expediently and internal to government.

### 3.2.1 The Proponent will:

- undertake studies, assessments and design review necessary to address all SEARs in full;
- undertake community engagement during EIS preparation;
- consult with the advising agencies during EIS preparation to understand how the EIS should address all requirements;
- organise agency site visits, if required;
- engage suitably qualified expert/s (e.g., a Registered Environment Assessment Practitioner) to confirm that the draft EIS adequately addresses all requirements and contains information required to be provided under the Registered Environmental Assessment Practitioner Guidelines (DPE, 2022);
- submit a draft EIS to DPHI Planning, to confirm understanding of relevant matters for consideration, and identify any need for further assessment or study; and,
- inform the relevant SO committee of the expected date of EIS lodgement for exhibition;

### 3.2.2 DPHI Planning will:

- review draft EIS material and seek advice from the relevant advising agencies; and
- advise the Proponent of additional assessment or studies that may be required.

### 3.2.3 Advising Agencies will:

consult with the Proponent during EIS preparation, if required;

- attend site visits, if organised;

- review draft EIS material when requested to ensure that sufficient information has been submitted to adequately address the SEARs, and advise the Planning Secretary of any further requirements within 14 days of receipt of the draft material; and,
- inform the relevant SO committee if appropriate consultation has not been possible.

### 3.3 Stage 3 – Public Exhibition

#### 3.3.1 The Proponent will:

- submit an EIS that addresses the SEARs;
- engage a Registered Environment Assessment Practitioner (REAP) to certify that the EIS adequately addresses all requirements;
- present the project to the relevant SO committee, if requested: and,
- revise the EIS if necessary to address any matters notified by the Planning Secretary before EIS public exhibition.

#### 3.3.2 DPHI Planning will:

- after resolution of any identified matters with the EIS to the satisfaction of the Planning Secretary, publicly exhibit the EIS for a minimum of 28 days on the NSW Planning Portal;
- provide public submissions and agency advice to the Proponent and any other agency the Planning Secretary considers appropriate on a progressive basis during the public exhibition, and all remaining advice from Advising Agencies provided no later than 7 days after the end of exhibition period;
- review and consider all submissions received in response to exhibition of the EIS within 14 days after the end date of the exhibition period;
- request that the Proponent present the project to the relevant SO committee, if appropriate; and,
- make submissions and expert advice received during the exhibition period publicly available on the NSW Planning Portal.

#### 3.3.3 Advising Agencies will:

- assess the project and provide advice to DPHI Planning, of outstanding issues and recommended draft conditions of approval (where relevant) within 28 days of receipt of the EIS.

(Note: Advice on issues provided to DPHI Planning by the Advising Agencies should be authorised at a senior level of that agency and be primarily communicated to DPHI Planning and the Proponent as advice, in preference to a formal written submission made during the

public exhibition period to enable quicker and more direct resolution of issues. Written advice from agencies will be made publicly available on the NSW Planning Portal.)

### **3.4 Stage 4 – Response to submissions and advice**

The purpose of this stage is to update the proposed project design and environmental assessment following public exhibition.

#### **3.4.1 DPHI Planning will:**

- notify the Proponent of any matters to be addressed in an Amendment Report, Submissions Report and/or Preferred Infrastructure Report (PIR), including issues raised by the Advising Agencies and in public submissions within 28 days of the end of exhibition period;
- request that the Proponent present the project to the relevant SO committee, if appropriate; and,
- publish the Proponent's Amendment Report, Submissions Report and/or PIR (if requested) on the NSW Planning Portal, within 7 days of receipt.

(Note: DPHI Planning may exhibit a PIR if it proposes a significant change to the project.)

#### **3.4.2 The Proponent will:**

- review and consider all submissions and advice received in response to the public exhibition of the EIS;
- consult with Advising Agencies to understand how the Amendment Report, Submissions Report and/or PIR should address all issues raised in submissions and expert advice;
- undertake additional studies, assessments and design changes required to respond to submissions or expert advice, and prepare a response and (if requested by the Planning Secretary) a PIR;
- re-present the project to the relevant SO committee again for comment, if required; and
- revise the Amendment Report, Submission Report and/or PIR if necessary to address any matters notified by the DPHI Planning, prior to publication.

#### **3.4.3 Advising Agencies will:**

- review the Amendment Report, Submissions Report and/or PIR, if one is required, and advise the Proponent and DPHI Planning of any outstanding issues within 14 days of receipt of the reports.



### 3.5 Stage 5 – Assessment and recommendation

The purpose of this stage is for DPHI Planning to undertake the merit assessment of the proposed project and make a recommendation regarding the application.

#### 3.5.1 DPHI Planning will:

- finalise assessment of the application and provide an environmental assessment report to the Minister for consideration of the application for approval to carry out the proposed project within 75 days of receiving the Proponent's Submission Report, or within 75 days of receipt of a PIR if one is required

(Note: the 75 day 'clock' will not include time taken by the Proponent to respond to requests for further information)

- report to the relevant SO committee on progress and time taken during this stage;
- consult with the Proponent and Advising Agencies on the draft conditions of approval; and,
- issue a notice of determination within 7 days of the determination by the Minister.

#### 3.5.2 The Proponent will:

- promptly provide any additional information, undertake additional studies or design reviews requested by the Planning Secretary as necessary to inform the Planning-led whole of government assessment process; and,
- promptly and reasonably respond to draft conditions imposed by DPHI Planning as part of finalising the recommendation to the decision maker.

#### 3.5.3 Advising Agencies will:

- provide comments on draft conditions of approval within 7 days of request from DPHI Planning, if required.

### 3.6 Stage 6 – Project Delivery

The purpose of this phase is to ensure a commitment from Proponents to a high standard of ongoing public reporting on project delivery and compliance for approved projects.

#### 3.6.1 The Proponent will:

- secure all necessary licences, permits and other approvals required under other legislation prior to commencement of works;
- prepare all management plans, and any other documents, required by the approval, and be responsible for ensuring that any contractors carrying out the project adhere to the conditions of approval and the requirements of management plans;
- undertake any additional design review, where required by conditions of approval

- consult with Advising Agencies regarding the provisions contained within the conditions of approval, including any management plans where relevant, before the commencement of works;
- engage a suitably qualified expert or experts to conduct an independent audit of the adequacy of management plans required by the approval to address all issues identified in the EIS and assessment report, and respond to all findings of the audit engagement prior to commencement of works;<sup>3</sup> and,
- engage a suitably qualified expert or experts, to conduct an independent audit of the completion of actions identified in management plans required by the approval, post commencement, and promptly respond to all findings.

#### 3.6.2 DPHI Planning may:

- undertake to review performance of the project at any time after approval; and,
- commence enforcement action under the provisions of the *EP&A Act* to address any breaches of the approval.

#### 3.6.3 Advising Agencies will:

- work closely with the Proponent to process applications for necessary licences, permits and other approvals required under other legislation prior to commencement of works that are consistent with the project approval;
- where relevant, monitor the outcomes and impacts of the project throughout construction and operation;
- bring issues associated with the delivery of approved CSSI projects to the relevant SO committee, if required for interagency consultation and issue resolution; and
- undertake enforcement of compliance against contraventions of the conditions of the approval and any licences, permits or other approvals, if required under their respective legislation.

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## 4. Process for Early Works Related to CSSI Projects

Early investigative works such as the carrying out of surveys, testing, surveying or sampling undertaken for the purposes of responding to the SEARs and preparing an EIS for the proposed CSSI project are permitted to be carried out without separate approval prior to the approval of the CSSI project. Other preparatory works such as utility adjustments and compound establishment could be progressed early subject to excision from the critical SSI project definition and separate environmental assessment under the *EP&A Act*.

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<sup>3</sup> Further guidance regarding the engagement of an independent auditor can be found in the *Independent Audit Post Approval Requirements* (DPE, 2020).

The Proponent is required to advise the relevant Advising Agencies of these preparatory works that are not part of the declared project but are related to the project and provide those agencies with information relevant to their portfolio.

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## 5. Commencement and Transition

This Protocol is effective from the date of endorsement, October 2024, and operates until the Protocol is revised or terminated in accordance with clause 6 below.<sup>4</sup>

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## 6. Dispute Resolution

Where any dispute arises, including specific environmental assessment requirements, the adequacy of the EIS, and whether the design of the project and the proposed mitigation measures are satisfactory, the Proponent and DPHI Planning will take necessary steps to resolve the dispute expeditiously by mutual agreement, using the following pathway:

- initial discussions between senior officials of the Proponent and the relevant Advising Agency; and
- if not resolved, discussion of the issue at the relevant SO committee involving all Advising Agencies (and the Proponent, if invited); and
- if not resolved, then discussions between the Proponent CEO and relevant agency heads.

If CEO-level discussions fail to resolve the issue in a satisfactory and expedient manner, the Minister for Planning is the final arbiter as the consent authority for CSSI applications made under the *EP&A Act*.

During the construction and operation phases of the project, it is noted that any non-compliances with the conditions of the approval or conditions of other licences will be subject to compliance action available under relevant legislation.<sup>5</sup> This Protocol does not curtail any agency's statutory functions under their respective legislation.

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## 7. Review and Termination

DPHI Planning will be responsible for ensuring that this Protocol remains relevant. There will need to be annual updates to ensure that timeframes are current. Relevant agencies will be consulted before any substantive changes to the Protocol are proposed.

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<sup>4</sup> Further guidance regarding the engagement of an independent auditor can be found in the *Independent Audit Post Approval Requirements* (DPE, 2020).

<sup>5</sup> For example, the *Protection of the Environment Operations Act 1997*, the *Roads Act 1993* and the *Pipelines Act 1967*.

Termination of the Protocol will be effective by decision of the Minister for Planning and Public Spaces.

## Appendix A – CSSI assessment procedures workflow

