

Department of Planning and Environment

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# Submissions policy

For development applications submitted to the Department of Planning and Environment

July 2023



# Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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## More information

NSW Planning, Development assessment

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# 1. Introduction

The importance of public participation in the assessment of development applications<sup>1</sup> is embedded in the *Environmental Planning and Assessment Act 1979* (the EP&A Act), *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation) and environmental planning instruments.

The EP&A Act sets out mandatory community participation requirements in relation to public exhibition, public notification and the giving of reasons for decisions<sup>2</sup>.

The EP&A Act also requires the Department of Planning and Environment (the department) to prepare a Community Participation Plan<sup>3</sup> which sets out how and when the department will undertake community participation when exercising relevant planning functions.

Community participation is integral to assessing the merits of projects, leading to improved design of projects, reduced environmental impacts and ecologically sustainable development.

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## Purpose

This policy has been prepared to set out how people can have their say on a development application by way of a 'duly made' submission during the public exhibition period and how the department will manage and consider those submissions.

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## Applicability of this policy

This policy applies to submissions on applications that are exhibited and assessed by the department, including:

- development applications for State significant development (SSD) and applications for State significant infrastructure (SSI) – these are collectively referred to as State significant projects in this policy
- development applications for non-SSD projects under Part 4 of the EP&A Act where the Minister is the consent authority
- applications where the assessment is undertaken by the department, however the Independent Planning Commission is the consent authority
- applications to amend projects
- preferred infrastructure reports

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<sup>1</sup> Under the EP&A Act, a 'development application' must be submitted when seeking development consent under Part 4 whereas an 'application' is submitted when seeking approval for State significant infrastructure under Division 5.2 of Part 5. For the purposes of this policy, 'development application' is used to refer to both categories of application.

<sup>2</sup> Section 2.22 and Schedule 1 of the EP&A Act.

<sup>3</sup> Division 2.6 and Schedule 1 of the EP&A Act.

- applications to modify approved projects.

This policy **does not apply** to:

- advice received from government agencies that take part in the planning-led, whole of government assessment of State significant projects (refer to section 2 of this policy '*Requesting advice from agencies*').
- submitters responding to consultation on planning proposals, regional or sub-regional plans or master plans or any other environmental planning instruments prepared under Part 3 of the EP&A Act.

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## Review period

This policy will be reviewed prior to 1 April 2024, which is when the EP&A Regulation will require all submissions for development requiring consent under Part 4 of the EP&A Act, where the Minister, the Planning Secretary or the IPC is the consent authority, and all submissions about State significant infrastructure to be made through the NSW planning portal<sup>4</sup>.

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## Associated documents

This policy is supported by the following documents published by the department:

- [Submissions Disclaimer and Declaration](#)
- [Privacy Statement](#)
- [Privacy Management Plan](#)
- [Community Participation Plan](#)
- [Have your say online.](#)

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<sup>4</sup> Sections 287 and 287A of the EP&A Regulation.

## 2. Context of submissions in the broader engagement process

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### Relationship to the Community Participation Plan

The department's [Community Participation Plan](#) sets out the department's community participation objectives and explains how and when the community may participate in the planning process. The plan highlights the different ways community members can stay informed about planning matters and explains how they can have their say on proposals.

### Engagement during the environmental assessment process

The department expects proponents<sup>5</sup> to undertake proportionate and appropriate engagement with the community and government agencies throughout the environmental assessment process. The department also undertakes engagement at various stages of the development process so it can better understand the views of the community and government agencies.

The [Undertaking Engagement Guidelines for State Significant Projects](#) provides detailed information about the purpose and expectations for engagement on State significant projects and the benefits that can result. It requires proponents for State significant projects to engage with people who may have an interest in the proposal throughout the process of developing, assessing, and implementing a State significant project, rather than only at select points.

### When does the department seek submissions?

The department exhibits development applications when there is a statutory requirement to do so, or when current best practice supports a formal community engagement process. During a public exhibition, the department invites the community to make submissions to share their views on the proposal. Mandatory minimum public exhibition timeframes are set out in [Schedule 1 of the EP&A Act](#).

The exhibition of an EIS invokes certain rights and responsibilities, including a requirement for the department to make information publicly available for a statutory minimum timeframe, a requirement for submitters to declare any reportable political donations and, in some cases, the provision of third-party appeal rights for submitters, amongst other things.

There are also specific requirements relating to how submissions are published by the Planning Secretary, responded to by the proponent and considered by the Minister for Planning or the Independent Planning Commission as decision-makers.

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<sup>5</sup> Under the EP&A Act, an 'applicant' applies for a development consent under Part 4 and a 'proponent' applies for an SSI approval under Division 5.2 of Part 5. For the purposes of this policy, 'proponent' is used to refer to both categories of applicant.

## Requesting advice from agencies

Government agencies that support the department in the whole of government assessment of State significant projects may be asked to provide advice to the department on issues that they have expertise in or where they may be involved in regulating the impacts of a proposal. Agencies are asked to provide advice within agreed timeframes and to operate within established engagement principles. Feedback provided to such requests is typically considered 'advice' to the department rather than a 'submission' on the project. Agencies are not required to submit the submissions disclaimer and declaration when providing advice.

This policy **does not apply** to the handling of advice received from these agencies.

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## How can submissions influence the decision-making process?

Proponents are expected to carefully consider and respond to issues raised in submissions and may choose to amend the project or propose additional or revised mitigation measures in response to those submissions. For SSI applications the department can also require the proponent to submit a preferred infrastructure report that outlines changes to the SSI to minimise its environmental impact.

The number of unique objections received during the public exhibition period can determine who the consent authority is for an application. For SSD applications, the Independent Planning Commission is the consent authority if the proponent is not a public authority (or the application is not made on behalf of a public authority) and:

- the local council has objected to the application
- there are at least 50 unique objections to the application, or
- the proponent has disclosed a reportable political donation<sup>6</sup>.

For all other SSD applications and some non-SSD Part 4 applications, the Minister for Planning is the consent authority. For SSI applications, the Minister for Planning is the approval authority<sup>7</sup>. However, in some cases, the Minister for Planning has delegated their decision-making functions to senior officers in the department<sup>8</sup>. For further information, visit the [Delegated Decisions](#) page on the NSW planning portal.

When determining an application, the decision-maker is required to consider the issues raised in submissions, regardless of who the submitter is, or the number of submissions received. The decision-maker must also provide reasons for the decision, including how submissions were taken into account.

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<sup>6</sup> Section 2.7 State Environmental Planning Policy (Planning Systems) 2021

<sup>7</sup> Section 5.15(1) EP&A Act

<sup>8</sup> Under section 2.4(3) of the EP&A Act, the Minister cannot delegate the function of determining an application for approval to carry out Critical SSI.

# 3. Submissions

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## What is a submission?

For the purposes of this policy, a submission is a written response from an individual or organisation, which is submitted to the department during the public exhibition of a developing application, including the exhibition of an EIS, amendment report, preferred infrastructure report or modification report. This includes submissions from:

- the community - anyone affected by or interested in the proposal, including individuals, community groups, Aboriginal and Torres Strait Islander communities, culturally and linguistically diverse communities, peak bodies and businesses
- councils
- organisations that are not providing advice to the department as part of the planning-led whole of government assessment of State significant projects such as Development Corporations and State-Owned Corporations (for example, Water NSW, Sydney Water, Landcom and Port Authority of NSW).

**For a submission to be duly made, the submission should:**

- be in writing, unless prior agreement has been obtained to accept an oral submission
- be received by midnight on the closing date of the exhibition period
- be submitted to the department:
  - online via the NSW planning portal - this is the department's preferred channel for receiving submissions
  - by written correspondence
- include the following information:
  - the full name and address of the submitter<sup>9</sup>
  - the name of the application and the application number
  - whether the submitter supports, comments on or objects to the proposal (preferably, in the title or first paragraph of the submission).

In addition, submitters must disclose all reportable political donations made in the previous two years when making a submission<sup>10</sup>. If no statement is provided, the department will assume the submitter does not need to declare a reportable donation.

Submitters who lodge their submission on the NSW planning portal will be prompted to provide the information requirements outlined above. They will also be asked to acknowledge and accept the

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<sup>9</sup> Provision of an email address may be acceptable for the purposes of accepting a submission

<sup>10</sup> Under section 10.4 of the EP&A Act, the person making the submission or any associate of that person must disclose all reportable political donations (if any) made within the period commencing 2 years before the submission is made and ending when the application is determined



department's [disclaimer and declaration](#), including that they have read and understood the department's [privacy statement](#). Submitters who do not use the NSW planning portal are encouraged to include a statement indicating their acknowledgement and acceptance of the disclaimer and declaration in their submission, however, this is not mandatory. If no such statement is included in their submission, the department will assume the submitter acknowledges and accepts the disclaimer and declaration published at [www.planningportal.nsw.gov.au/major-projects/help/disclaimer-and-declaration](http://www.planningportal.nsw.gov.au/major-projects/help/disclaimer-and-declaration).

**Note:** From 1 April 2024, the EP&A Regulation will require all submissions for development requiring consent under Part 4 of the EP&A Act, where the Minister, the Planning Secretary or the IPC is the consent authority, and all submissions for State significant infrastructure to be submitted through the portal.

## Feedback

Material that is provided to the department outside of a public exhibition period or through other forums, such as social media, may still be considered in the assessment process. However, it is not afforded the same status and objector rights as a duly made submission and will not be counted for the purposes of determining whether the Independent Planning Commission is the consent authority.

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## Why are submitters required to provide their personal information?

To facilitate ongoing communication and participation, and to encourage submitters to take responsibility for the content of their submission, submitters must provide their full name and address (or email address) to the department.

In certain circumstances, there may be merit appeal rights for a person who makes a submission objecting to a development application for designated development and some SSD projects<sup>11</sup>. In order to exercise those merit appeal rights in the Land and Environment Court, the submitter and their duly made submission will need to be identifiable.

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## Why are submitters required to sign a standard declaration when making a submission via the NSW planning portal?

To clearly communicate how the department intends to use the information provided in a submission and to address potential legal issues which may arise from the publication of personal information, defamatory, offensive, false or misleading statements, or commercial-in-confidence

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<sup>11</sup> Under section 8.8 of the EP&A Act, an objector can make a merit appeal to the Land and Environment Court against the determination of an application for development consent for designated development (including a State significant development that would be designated development but for section 4.10(2) of the EP&A Act).

material, submitters are required to agree to a standard declaration when they lodge their submission via the NSW planning portal. The declaration confirms that:

- they allow the department to use, reproduce and publish their submission on its website
- they have read and understood the department's [privacy statement](#) and agree to the department using their submission in the ways it describes
- the content of their submission is factually correct and otherwise contains expressions of opinions which they honestly hold
- they have not provided any false or misleading information
- their submission does not contain offensive, threatening, defamatory or inappropriate content
- their submission does not contain personal information which can be used to identify another person without their consent
- they acknowledge the department's [disclaimer](#) and accept responsibility for the content of their submission
- they have declared any reportable political donations.

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## Oral submissions

In exceptional circumstances the department may agree to accept an oral submission. This is to allow members of the public that would otherwise not be able to make a written submission, such as people living with disabilities, to participate in the assessment process. Oral submissions will not be accepted from people who are able to make a written submission but would prefer not to. People looking to submit an oral submission are required to contact the department during the exhibition period so that appropriate arrangements can be made to receive their oral submission before the exhibition period ends. Transcripts of oral submissions will be published on the NSW planning portal, along with all other submissions received.

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## Late submissions

Written or oral communication received after the exhibition closes will not be considered a duly made submission. It is important that submissions are received by the end of the exhibition period to help ensure the timely assessment of applications, and to allow the department and the proponent to understand the issues of concern for the community. The department will also be able to ascertain the number of duly made submissions by way of objection, which can affect who can determine an application (see section 2 of this policy '*How can submissions influence the decision-making process*').

# 4. Practices for seeking, publishing, counting and reporting on submissions

The department will undertake the following practices when seeking, publishing, counting and reporting on submissions.

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## Calling for submissions

When inviting submissions, the department will clearly explain why submissions are being sought, including under what statutory provision (if relevant), the requirements that must be complied with when making a submission and how the issues raised in submissions will be taken into account in the assessment and determination of the application.

The department will exhibit all development applications submitted to the department on the NSW planning portal. Newspaper advertisements will also be placed where there is a statutory requirement to do so; for example, if the application is being assessed under the Commonwealth Bilateral Assessment or if the department feels advertisements are needed to increase coverage.

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## Handling submissions

Submitters that lodge a submission on the NSW planning portal will automatically receive an acknowledgement receipt. When submissions are received by other means the department will acknowledge receipt of submissions where practical.

**Note:** *All duly made submissions, including transcripts of any oral submissions, will be published on the NSW planning portal regardless of whether a personal acknowledgement of receipt of the submission is sent.*

All personal information provided by submitters will be managed in accordance with the department's [privacy management plan](#) and [privacy statement](#). Personal information will only be used for the purposes for which it was collected.

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## Publishing submissions

The department has an obligation to publish submissions on the NSW planning portal in their complete form. The onus is on the submitter to take responsibility for the content of their submission as set out in the [disclaimer and declaration](#) and [privacy statement](#) on the NSW planning portal. This includes ensuring they do not include any defamatory content or personal information in the main body of their submission.

**Note:** If a submitter does not want their personal information to be published on the NSW planning portal they must explicitly ask for their name to be withheld; by ticking the relevant box in the online submission form or by including their personal information in a separate cover sheet when making a submission via written correspondence. In these cases, the planning portal will display “NAME WITHELD’ however the submission will be published in full, regardless of whether any personal information is contained in the submission.

In cases where a submission contains potentially defamatory material, the department may choose to redact or withhold the submission from publication.

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## Counting and Reporting on Submissions

The department will classify and count submissions in a consistent manner to identify the consent authority for the application (see section 2 of this policy ‘*How can submissions influence the decision-making process?*’).

Submissions are counted in accordance with [section 2.7\(6\)](#) of the *State Environmental Planning Policy (Planning Systems) 2021*, which means a petition or any submission that contains the same or substantially the same text is counted as one submission.

Submitters are responsible for identifying whether they support, object or are commenting on a proposal. This is a mandatory step in the online submission form. For submissions received as written correspondence, where the submitter has not expressly identified their position, the department will classify the submission based on the content of the submission.

The department’s assessment report will summarise the issues raised in submissions and outline how these issues have been considered in the assessment of the proposal. The assessment report will be published on the NSW planning portal.

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## Determination of development applications

The public will be advised of the decision, the reasons for the decision and how community views were taken into account in making the decision. A ‘notice of decision’ will be published on the NSW planning portal when the Minister for Planning is the consent authority. When the Independent Planning Commission is the consent authority, it will publish a ‘statement of reasons’ on its website.