State Significant Development Guidelines

NSW GOVERNMENT

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dpie.nsw.gov.au

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Contents

1. Introduction

The State government has always played a major role in assessing and determining projects that are important to the State for economic, environmental or social reasons.

These functions are carried out under the *Environmental Planning & Assessment Act 1979* (EP&A Act).

1.1 State significant development

Under the EP&A Act, development may be declared State significant development (SSD). This declaration may be made by a State Environmental Planning Policy (SEPP) or by the Minister for Planning (the Minister) and is generally based on the scale, nature, location and strategic importance of the development to the State.

All SSD projects require development consent from either the Independent Planning Commission or the Minister before they may proceed.

Prior to determination, they are subject to a comprehensive assessment with extensive community participation. The Department of Planning and Environment (the Department) co-ordinates this assessment.

All SSD projects are determined on their merits, having regard to their economic, environmental and social impacts and the principles of ecologically sustainable development.

1.2 Purpose of these guidelines

These guidelines provide a detailed explanation of the assessment of SSD in NSW, describing each step of SSD assessment.

They seek to ensure all SSD projects are subject to a comprehensive assessment in accordance with government legislation, plans, policies and guidelines and that this assessment is proportionate to the scale and impacts of the project.

They introduce new requirements to ensure all environmental assessment reports submitted to the Department are succinct, easy to understand, technically robust, reflect community views and provide a justification and evaluation of the SSD project as a whole.

In particular, they identify the information that the applicants of SSD projects must submit to the Department with their applications and the matters that the consent authority must consider in determining any SSD application.

The guidelines encourage greater community participation in SSD assessment by identifying the information that must be provided by applicants at each stage in the assessment and highlighting how the community can have a say on the merits of SSD projects.

The guidelines set clear expectations for everyone involved in SSD assessment – including applicants, the community, councils and government agencies – by outlining how SSD assessment should work and what must be considered in the assessment of any SSD project.

This will strengthen the assessment of SSD projects, help reduce delays and encourage ecologically sustainable development in NSW.

1.3 Application of these guidelines

The Environmental Planning & Assessment Regulation 2021 (EP&A Regulation) requires certain SSD documents – such as environmental impact statements (EISs) – to be prepared having regard to the State Significant Development Guidelines[1].

This document is taken to be the State Significant Development Guidelines.

The following documents also form part of the State Significant Development Guidelines:

- State Significant Development Guidelines – Preparing a Scoping Report
- State Significant Development Guidelines – Preparing an Environmental Impact Statement
- State Significant Development Guidelines – Preparing a Submissions Report
- State Significant Development Guidelines – Preparing an Amendment Report
- State Significant Development Guidelines – Preparing a Modification Report.

1.4 Supporting material

The guidelines are supported by detailed guidance on:

- encouraging community participation in SSD assessment (see the Department's Community Participation Plan and Undertaking Engagement Guidelines for State Significant Projects)
- setting industry-specific environmental assessment requirements for SSD projects that are wholly permissible on the site, would not meet the criteria for designated development (if it was not SSD)[2], and is not for a concept DA[3]. Examples of these types of development include schools, hospitals and warehouses
- requiring an EIS for SSD projects to include a declaration in respect of completeness, accuracy, quality and clarity of the information in the EIS before it is submitted to the Department[4]. The declaration must be made by suitably skilled, experienced and qualified practitioners before it is submitted to the Department (see the Registered Environmental Assessment Practitioner Guidelines)
- strengthening the assessment of cumulative impacts (see the Cumulative Impact Assessment Guidelines for State Significant Projects).

1 The Dictionary to the EP&A Regulation defines State Significant Development Guidelines to mean the State Significant Development Guidelines prepared by the Planning Secretary as in force from time to time and published on the Department's website.

2 Development may be declared designated development by an environmental planning instrument or the EP&A Regulation. For examples of development being declared designated development by an environmental planning instrument, see section 2.7 of the Resilience and Hazards SEPP, sections 5.28 and 5.40 of the Precincts – Central River SEPP, and Division 3 of Part 2.5 of the Primary Production SEPP.

3 A concept DA sets out concept proposals for the development of a site. The detailed development of the site will then be the subject of a subsequent DA or DAs.

4 As of 1 July 2022, declarations will need to be provided by a REAP, and information required to be provided under the Registered Environmental Assessment Practitioner Guidelines will need to form part of the declaration.

2. What is State significant development?

SSD is development that is important to the State for economic, environmental or social reasons.

Under the EP&A Act, development can become SSD in two ways: through a declaration in a SEPP or through a declaration in an order made by the Minister.

2.1 Declaration by SEPP

A SEPP may declare any development, or any class or description of development, to be SSD[5].

The State Environmental Planning Policy (Planning Systems) 2021[6] declares certain classes of development to be SSD based on their scale, nature and economic value.

This includes types of development that meet the criteria in schedule 1 of the State Environmental Planning Policy (Planning Systems) 2021[7], such as certain:

- mining, extractive industries, intensive agriculture, industrial processing and manufacturing facilities
- warehouses, distribution centres and data centres
- cultural, recreation and tourist facilities
- social infrastructure (education, health and correctional centres)
- transport facilities (air, rail, ports)
- non-linear utility development (electricity, water, sewerage and waste facilities).

The State Environmental Planning Policy (Planning Systems) 2021 also declares development on sites with strategic planning significance[8] – such as Barangaroo, Darling Harbour, the Sydney Opera House, Sydney Olympic Park and Western Sydney Parklands – to be SSD.

Further, chapter 5 of the State Environmental Planning Policy (Transport and Infrastructure) *2021* declares certain types of development on port land to be SSD[9].

2.2 Declaration by Minister

The Minister may declare specified development on specified land to be SSD by Ministerial planning order[10].

However, prior to making such an order the Minister must first obtain and make publicly available advice from the Independent Planning Commission about the State or regional planning significance of the development[11].

In providing this advice to the Minister, the Independent Planning Commission will consider several factors, including the strategic importance, public benefits and impacts of the development; whether the development crosses over multiple council or other jurisdictional boundaries; and whether the assessment of the development is likely to be complex and require specialist expertise or State coordinated assessment[12].

2.3 Development consent

Under the EP&A Act, all SSD projects require development consent from either the Independent Planning Commission or the Minister before they may proceed[13].

5 See section 4.36(2) of the EP&A Act.
6 State Environmental Planning Policy (Planning Systems) 2021.
7 See section 2.6 and schedule 1 of the Planning Systems SEPP.
8 See section 2.6 and schedule 2 of the Planning Systems SEPP.
9 See section 5.27 of the Transport and Infrastructure SEPP.
10 See section 4.36(3) of the EP&A Act.
11 See section 4.36(3) of the EP&A Act and section 278 of the EP&A Regulation.
12 See the Ministerial 'call in' for State significant development policy statement and guideline, published in June 2011.
13 See section 4.38 and 4.5 of the EP&A Act and section 2.7 of the Planning Systems SEPP.

2.4 Partly prohibited development

Development consent may be granted for an SSD project even if the development is partly prohibited by an environmental planning instrument[14].

While this allows the development application (DA) for the project to be assessed on its merits, the fact that the project is partly prohibited may be a key factor for the consent authority to consider in determining the project.

2.5 Wholly prohibited development

Development consent may not be granted for an SSD project that is wholly prohibited under an environmental planning instrument[15].

However, an SSD project that is wholly prohibited may be assessed on its merits provided this is done in conjunction with assessing a planning proposal to rezone the land and make the project permissible with development consent[16].

When this happens, only the Independent Planning Commission may rezone the land and determine the project[17].

2.6 Partly SSD

The related components are permissible without development consent

If part of a single project is SSD and the other related part may be carried out without development consent, then the whole project is taken to be SSD and requires development consent[18].

However, this will usually depend on the circumstances (including the description of the project).

For example, if the project involves building a large industrial complex with a long transmission line to connect the industrial complex to the electricity grid, and the industrial complex is SSD and permissible with development consent and the transmission line is permissible without development consent, then the whole project is taken to be SSD and requires development consent under division 4.7 of the EP&A Act. However, if the industrial complex and the transmission line are treated as separate but related projects, then the industrial complex will be classified as SSD and require development consent under division 4.7 of the EP&A Act whereas the transmission line will be classified as development that is permissible without development consent. The transmission line will then be subject to a separate assessment under part 5 of the EP&A Act.

The related components are permissible with development consent

If the project is permissible with development consent but only part of the project is SSD, then the other part of the project is taken to be SSD[19].

However, if some or all of the non-SSD part is not sufficiently related to the SSD part then the Planning Secretary may exclude that development from being incorporated into the DA for the project.

Whether the non-SSD part is sufficiently related or not will depend on the specific circumstances of the project, having regard to the physical, functional or other relationships between the different parts of the project.

For example, if the project involves developing a single mixed-use building with a recreational and cultural facility that is SSD and an office block on top of the facility that is not SSD, then the whole project could be taken to be SSD. However, if the recreational and cultural facility and the office block were to be located in separate buildings on the same site or on different sites, then the relationship between the two parts is not as obvious, and the applicant would need to demonstrate that the SSD and non-SSD parts of the project are sufficiently related before the whole project could be taken to be SSD.

14 See section 4.38(3) of the EP&A Act.
15 See section 4.38(2) of the EP&A Act.
16 See section 4.38(5) of the EP&A Act.
17 See section 4.38(6) of the EP&A Act.
18 See section 4.38(4) of the EP&A Act and section 2.6 of the Planning Systems SEPP.
19 See section 2.6(2) of the Planning Systems SEPP.

3. SSD assessment

3.1 Introduction

All SSD projects require development consent from either the Independent Planning Commission or the Minister (or his delegate) before they may proceed[20].

Prior to determination, they are subject to comprehensive assessment with extensive community participation under the EP&A Act. The main steps in this assessment are shown in Figure 1 and explained in more detail in sections 4 to 13 of these guidelines.

Although SSD projects may require approvals under other legislation – in addition to development consent – they all go through an integrated assessment under the EP&A Act before these approvals may be granted.

While all SSD projects undergo the same comprehensive assessment, the scale and impacts of these projects can vary significantly. Consequently, it is important to ensure that the level of community engagement and assessment required for each project is proportionate to the scale and impacts of the project.

All SSD projects are determined on their merits, having regard to their economic, environmental and social impacts and the principles of ecologically sustainable development.

3.2 Integrated assessment

Some SSD projects require approvals under other legislation in addition to development consent under the EP&A Act.

This includes environment protection licences under the *Protection of the Environment Operations Act 1997*, mining leases under the *Mining Act 1992*, petroleum production leases under the *Petroleum (Onshore) Act 1991*, pipeline licences under the *Pipelines Act 1967*, road work consents under the *Roads Act 1993*, and aquaculture permits under the *Fisheries Management Act 1994*.

The assessment of all relevant matters relating to these approvals is fully integrated into the SSD assessment. Consequently, these projects only require a single assessment under the EP&A Act before these other approvals may be granted. This approach promotes consistent decision-making across all levels of government.

First, SSD projects are exempt from several approvals normally required under NSW legislation[21]. Instead, the relevant matters relating to these approvals are considered in the SSD assessment and regulated under the SSD development consent.

Second, several other NSW approvals are formally integrated into the SSD assessment, and if the SSD project is approved then these approvals cannot be refused, and the approvals must be consistent with the SSD development consent[22].

Third, although some NSW approvals cannot be formally integrated into the SSD assessment – such as water access licences under the *Water Management Act 2000*, which relate to water rights that can be traded on the open water market – the relevant matters relating to these approvals are still fully considered in the SSD assessment. This is to determine at an early stage whether there are any constraints that may prevent these approvals from being granted if the SSD project is approved.

Finally, if the SSD project requires Commonwealth approval under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) in addition to any State approvals, the State will co-ordinate the assessment of Commonwealth matters during the SSD assessment under the EP&A Act. The Department will coordinate this assessment under the current assessment bilateral[23], and provide a detailed assessment report to the Commonwealth Minister for the Environment for decision-making under the EPBC Act.

20 See section 10 of these guidelines.
21 See sections 1.7 & 4.41 of the EP&A Act.
22 See section 4.42 of the EP&A Act.
23 See https://www.environment.gov.au/protection/environment-assessments/bilateral-agreements/nsw.

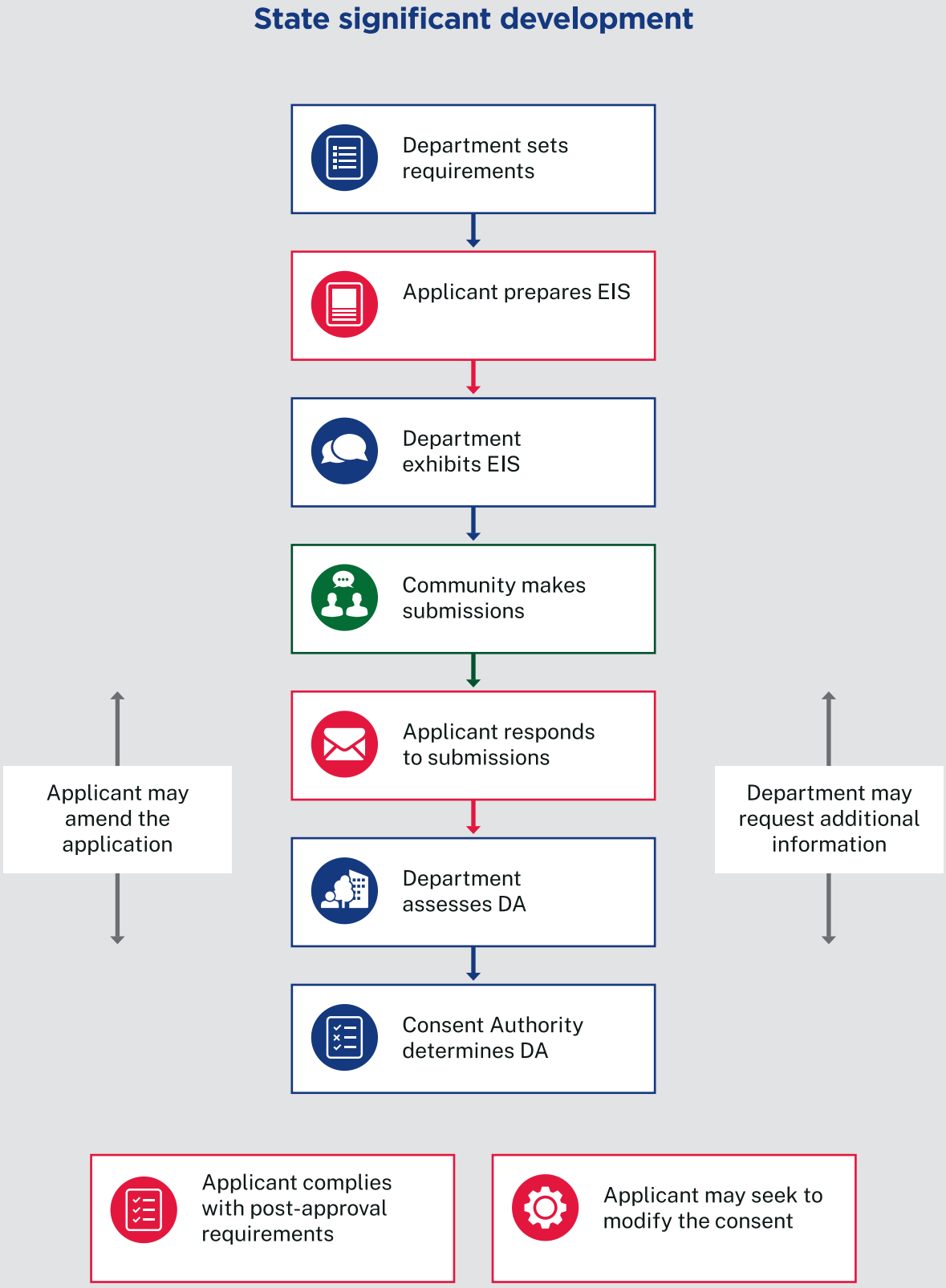

Figure 1: SSD assessment steps

3.3 Proportionate assessment

While all SSD projects are subject to the same comprehensive assessment, the scale and impacts of these projects can vary significantly. Consequently, it is important to ensure that the level of community engagement and assessment carried out for each project is proportionate to the scale and likely impacts of the project.

At one end of the spectrum, there are the smaller-scale and lower-impact SSD projects. This includes schools, hospitals, warehouses, data centres, recreational and cultural facilities, and urban development on strategically important sites such as Barangaroo.

In general, these projects tend to:

- be consistent with the strategic planning framework for the site
- be located on sites with detailed planning controls
- only attract a moderate level of community interest
- generate impacts that are well understood, relatively easy to predict using standard methods, and can be mitigated to comply with the relevant planning controls and standards.

Consequently, the Department has prepared industry-specific environmental assessment requirements (SEARs) for these types of development. These SEARs are tailored to the specific industry and focus on the key assessment matters common to that industry. They also require applicants to engage with the community, councils and key government agencies.

At the other end of the spectrum, there are the larger-scale and higher-impact SSD projects. This includes mines, extractive industries, wind farms, hazardous waste facilities, remediation of contaminated land posing significant risks of harm and major industrial complexes.

It also includes projects that are partly or wholly prohibited on the site or require further strategic planning, such as concept DAs[24] to master-plan strategically important sites.

In general, these projects:

- tend to attract major community interest
- are more likely to result in significant economic, environmental or social impacts – including cumulative impacts – and would be classified as designated development if they were not SSD[25]
- often require complex technical assessment, involving several uncertainties (data collection, feasibility of mitigation measures or adaptive management, methods used to predict impacts, criteria for evaluating the acceptability of impacts).

Consequently, these projects require project-specific SEARs. SEARs are set by the Planning Secretary having regard to the specific circumstances of the project.

24 See section 4.37 & division 4.4 of the EP&A Act.

25 Development may be declared designated development by an environmental planning instrument or the EP&A Regulation. For examples of development being declared designated development by an environmental planning instrument, see section 2.7 of the Resilience and Hazards SEPP, sections 5.28 and 5.40 of the Precincts–Central River City SEPP, and Division 3 of Part 2.5 of the Primary Production SEPP. For development being declared designated development by the EP&A Regulation, see schedule 3.

3.4 Role of the Independent Planning Commission

The Independent Planning Commission plays an important role in SSD assessment, helping to build community confidence in the NSW planning system. It is an independent body under the EP&A Act that is not subject to the direction or control of the Minister or Department and carries out several key functions relating to the more controversial SSD projects.

These functions include:

- providing advice to the Minister on the State or regional planning significance of any proposal to "call in" specified development on specified land and declare it to be SSD[26]
- being the consent authority for project if the council has objected to the project, there are at least 50 public objections, or the applicant has disclosed a reportable political (other than from a council) donation[27]
- determining applications to modify SSD development consents if the applicant has disclosed a reportable political donation[28]
- holding public hearings at the request of the Minister for Planning into the carrying out of certain SSD projects prior to determining the project[29]
- rezoning land to allow a wholly prohibited SSD project to be permissible with development consent and then determining the project under delegation from the Minister[30].

The Independent Planning Commission has detailed information on its website (www.ipcn.nsw.gov.au) about its role, policies, processes as well as the SSD applications that have been determined or are currently under assessment.

3.5 Role of the Department

The Department co-ordinates the assessment of all SSD projects under the EP&A Act.

This includes:

- carrying out all relevant administrative functions, including receiving applications, publishing all information on the major projects website, exhibiting applications, publishing submissions and issuing public notices about the determination of applications
- co-ordinating the detailed assessment of SSD projects with key State and Commonwealth agencies – such as the Environment Protection Authority, Transport for NSW, Regional NSW, and the Commonwealth Department of Agriculture, Water and the Environment – in accordance with Government legislation, plans, policies and guidelines
- working closely with councils to ensure local and regional issues are fully considered in the detailed assessment of SSD projects
- encouraging community participation on SSD projects in accordance with the Department's Community Participation Plan and Undertaking Engagement Guidelines for State Significant Projects
- preparing a detailed whole-of-government assessment report, including any recommended conditions of consent, on the merits of SSD projects for the consent authority
- providing expert advice to the Independent Planning Commission and the Minister to assist with any decision-making on SSD projects
- monitoring compliance with any conditions of consent if the SSD project is approved and taking regulatory action where necessary to address any non-compliances.

26 For more information on this, see section 2 of these guidelines.
27 See section 2.7(1) of the Planning Systems SEPP.
28 See section 2.7(3) of the Planning Systems SEPP.
29 See section 10 of these guidelines.
30 See section 2 of these guidelines.

3.6 Role of government agencies

Government agencies work with the Department in a whole-of-government assessment of State significant projects. The Department seeks to make the best use of agency advice by ensuring requests are directed to the relevant government agency and establish clear timeframes for providing a response.

Government agencies that are involved in administering or regulating the impacts of State significant projects provide advice in response to requests from the Department. The Department may seek advice from relevant government agencies at various stages through the assessment, including the preparation of SEARs, assessment of applications and consideration of post-approval matters where requested.

Applicants should also consult with government agencies as needed in the preparation of the development application or as required by the Department.

3.7 Role of the applicant

The applicant is responsible for developing SSD projects, applying for development consent, providing the Department with the information it needs to assess the application; and if development consent is granted, implementing the project in accordance with any conditions of consent.

In doing this, the applicant should:

- consult with the Department early during the development of the project to clarify the assessment requirements
- encourage community participation at all stages of the project, having regard to the Department's Undertaking Engagement Guidelines for State Significant Projects
- start any community engagement as soon as possible during the development of the project
- strive for good project design – including choosing a suitable site, developing a robust layout and adopting measures to mitigate impacts – having regard to the sensitivity of the site, strategic planning context, community views and the likely impacts of the project
- carry out a robust assessment of the impacts of the project in accordance with relevant Government legislation, plans, policies and guidelines and the SEARs for the project
- ensure the project complies with any relevant standards and performance measures; and if this is not possible, justify why any non-compliances should be allowed
- provide a justification and evaluation of the project as a whole, integrating the findings of any community engagement or the detailed assessment of the impacts of the project
- prepare all environmental assessment documents – such as EISs – to a high standard, having regard to the Department's detailed guidelines for these reports (see Appendices A-E of these guidelines)
- respond quickly to requests from the Department to address the issues raised in public submissions or provide additional information on outstanding matters
- keep the community informed about the progress, performance and compliance of the project.

3.8 Community participation

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

Under the EP&A Act, all DAs must be exhibited for at least 28 days, and anyone can make a submission on the DA during the public exhibition[31].

Following public exhibition, the Department will publish all submissions on the major projects website and ask the applicant to respond to the issues raised in submissions. Once completed, this response will be also be published on the major projects website.

In some cases, the Minister may ask the Independent Planning Commission to hold public hearings into the carrying out of an SSD project prior to determining the project. These hearings give the community an opportunity to comment on the findings and recommendations of the Department's detailed assessment report and raise any residual concerns about the project with the Independent Planning Commission before the project is determined.

Finally, the consent authority is required to consider all relevant issues raised in submissions before making a decision on the DA, and to publish a notice setting out how community views were taken into account during decision-making.

The Department also seeks to promote community participation during SSD assessment by:

- publishing detailed information on the major projects website about SSD projects and all the Government legislation, plans, policies and guidelines that are relevant to assessing the merits of projects
- encouraging applicants of SSD projects to start their community engagement as soon as possible during the development of the project, having regard to the Undertaking Engagement Guidelines for State Significant Projects
- using its statutory powers to require applicants to undertake effective community engagement during the development, assessment and implementation of SSD projects
- where necessary, undertaking its own community engagement on SSD projects, which may include holding community information sessions and carrying out targeted engagement (site visits, meetings and workshops) with key people or groups to get a better understanding of community concerns
- considering relevant issues raised by the community in the detailed assessment of the merits of SSD projects
- keeping the community informed about the progress, performance and compliance of SSD projects, mainly through the major projects website.

3.9 Design review

Certain SSD projects are subject to design review by the State Design Review Panel as set out in the NSW State Design Review Panel Terms of Reference. Additionally, any project may be referred to the SDRP by the Minister or delegate for advice.

Projects that are subject to design review should engage early with the SDRP and may be reviewed a number of times during the project lifecycle, including pre-approval design stages, during the assessment and, in some cases, through to construction. This enables initial evaluation of concept options to identify the preferred approach, evaluation of the developed option and evaluation of formal and functional issues as required.

31 See clause 9 of schedule 1 of the EP&A Act.

3.10 Major projects website

The major projects website (https://www.planningportal.nsw.gov.au/major-projects) is a source of information for all matters relating to SSD assessment.

First, the website is the primary tool for ensuring effective engagement between everyone involved in the assessment of SSD projects, including applicants, the community, councils and government agencies.

It supports all key actions associated with SSD assessment, including:

- lodging all SSD applications and post-approval requirements with the Department
- making all information on SSD projects publicly available
- seeking feedback from the community on projects
- making and publishing submissions on SSD applications
- requiring and receiving additional information
- publishing all decisions
- keeping the community informed about the assessment, determination and compliance of SSD projects, including providing electronic alerts on the status of projects.

Second, the website contains detailed information on the assessment of SSD projects, including:

- guidance on each step of the SSD assessment
- the government legislation, plans and strategies that set the strategic planning context for SSD projects
- the government plans, policies and guidelines that govern the assessment and determination of SSD projects
- guidance on how to use the major projects website, including how to lodge applications, make a submission and get regular updates on SSD projects
- detailed information on SSD projects, including all applications, environmental assessment reports, submissions, decisions, post-approval requirements, and reporting on environmental performance and compliance.

4. Setting the requirements for the EIS

4.1 Introduction

Under the EP&A Act, all DAs for SSD projects must be accompanied by an EIS that addresses the environmental assessment requirements (SEARs) for the project[32].

The SEARs identify the information that must be provided in the EIS, including the matters that require further assessment in the EIS and the community engagement that must be carried out during the preparation of the EIS.

The SEARs seek to ensure the level of assessment and community engagement required for each project is proportionate to the scale and likely impacts of the project. They also seek to ensure the EIS focuses on the key matters for decision-making.

If an SSD project is wholly permissible on the site, would not meet the criteria for designated development (if it was not SSD)[33], and is not for a concept DA[34], then it will be eligible for industry-specific SEARs.

These SEARs are tailored to the specific industry and focus on the key assessment matters that are common to that industry. They also require applicants to engage with the community, councils and key government agencies during the preparation of the EIS.

All other projects will require project-specific SEARs. These SEARs are set by the Planning Secretary having regard to the specific circumstances of the project.

The steps for setting the SEARs for SSD projects is shown in Figure 2.

4.2 Applying for SEARs

To obtain the SEARs for an SSD project, the applicant must submit an application to the Department in the approved form on the major projects website[35]. The Department will check the application to confirm whether the project is SSD; and if it is SSD, whether the project is eligible for industry-specific SEARs or whether it requires project-specific SEARs. Applicants should consult with the Department prior to lodging their application to confirm whether their project is eligible for industry-specific SEARs.

If the project requires project-specific SEARs, the applicant must submit a scoping report to the Department on the major projects website along with its SEARs application.

The scoping report must be prepared to a high standard, having regard to the Department's State Significant Development Guidelines – Preparing a Scoping Report (see Appendix A).

4.3 Industry-specific SEARs

If the project is eligible for industry-specific SEARs, the Department will issue the relevant industry-specific SEARs for the project within 7 days after the application is made. A scoping report is not required for industry-specific SEARs.

32 See section 4.12 of the EP&A Act and section 191 of the EP&A Regulation.

33 Development may be declared designated development by an environmental planning instrument or the EP&A Regulation. For examples of development being declared designated development by an environmental planning instrument, see section 2.7 of the Resilience and Hazards SEPP, sections 5.28 and 5.40 of the Precincts – Central River City SEPP, and Division 3 of Part 2.5 of the Primary Production SEPP. For development being declared designated development by the EP& A Regulation, see schedule 3.

34 A concept DA sets out concept proposals for the development of a site. The detailed development of the site will then be the subject of a subsequent DA or DAs.

35 See section 173(2) the EP&A Regulation.

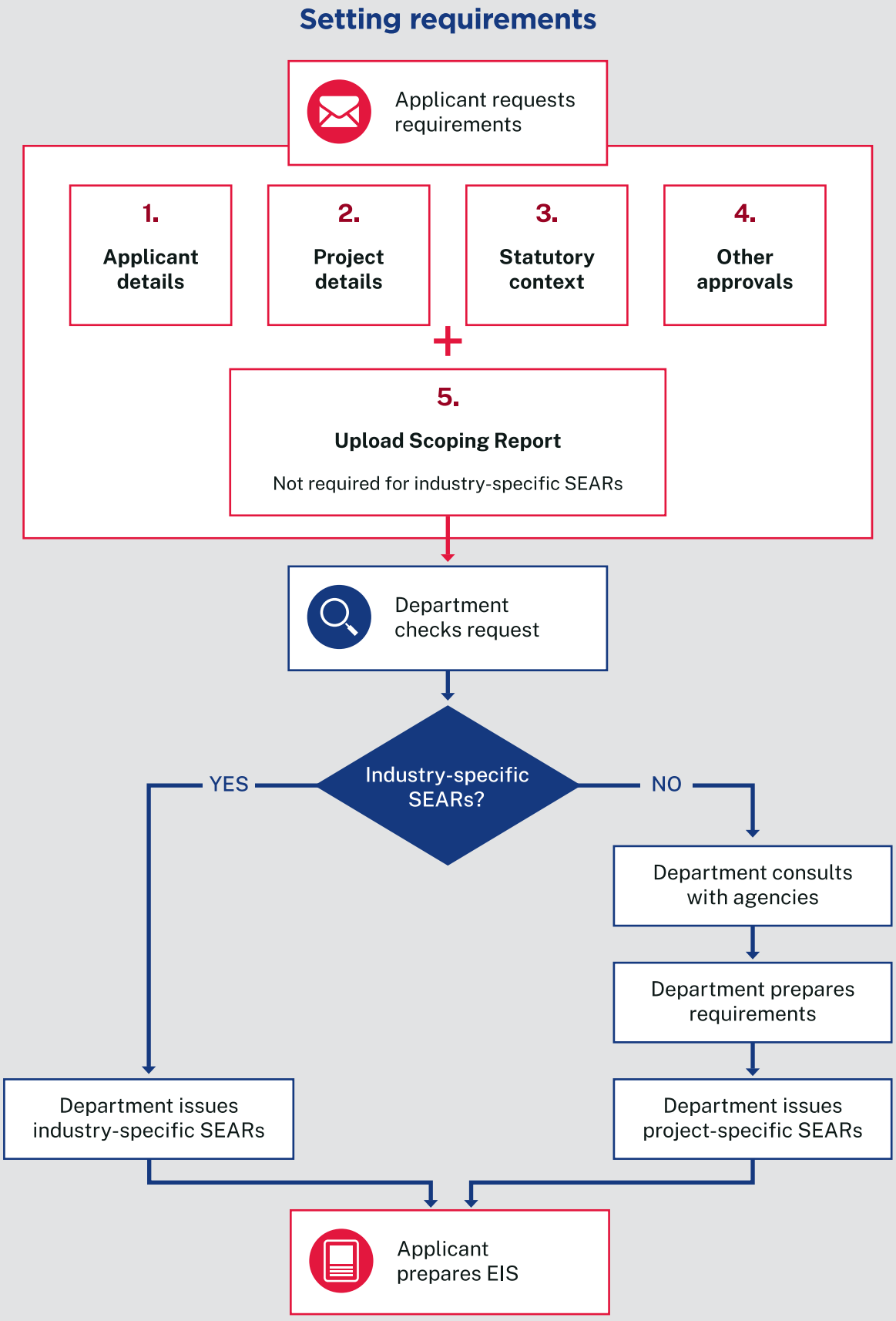

Figure 2: Setting requirements

4.4 Project-specific SEARs

If the project requires project-specific SEARs, the Planning Secretary will issue the SEARs for the project within 28 days after the application is made. If the Planning Secretary has requested further particulars, SEARs will be issued within 28 days after those particulars have been provided, or within further time as agreed between the Planning Secretary and the applicant[36].

Once the SEARs are issued, the applicant must prepare the EIS in accordance with the SEARs.

The scoping report will inform the setting of the SEARs for the project, and must:

- describe the project in simple terms
- include an analysis of feasible alternatives considered having regard to the objectives of the development, and identify the alternatives that will be investigated further in the EIS
- give an early indication of community views on the project and identify what engagement will be carried out during the preparation of the EIS
- identify the key matters requiring further assessment in the EIS and the proposed approach to assessing each of these matters having regard to any relevant Government legislation, plans, policies or guidelines.

Following receipt, the Department will publish the scoping report on the major projects website.

This will give the community a chance to read the scoping report and get a good understanding the project. It will also allow the community to identify how it can engage with the applicant during the preparation of the EIS.

The Department will consult with key government agencies, including the relevant council, during the preparation of the SEARs and may also visit the site and surrounds.

Once completed, the SEARs will be published on the major projects website.

4.5 Expiry of the SEARs

The SEARs will expire if the EIS is not submitted to the Department within 2 years of the setting of the SEARs[37]. If the SEARs expire, the applicant will need to reapply for the SEARs for the project.

This is to ensure the SEARs remain up to date and to discourage applicants from delaying the preparation of the EIS.

The applicant may request an extension to the SEARs expiry date. This request must be made prior to the SEARs expiry date on the major projects website.

The Planning Secretary may extend the expiry date of the SEARs so long as the total period of extension does not exceed two years.

36 See section 176 of the EP&A Regulation.

37 See section 177 of the EP&A Regulation.

5 Preparing an EIS

5.1 Introduction

The applicant must ensure the EIS[38] for the project addresses the SEARs for the project and the relevant requirements in the EP&A Regulation[39].

The purpose of the EIS is to assess the economic, environmental and social impacts of the project and to help the community, councils, government agencies and the consent authority to get a better understanding of the project and its impacts so they can make informed submissions or decisions on the merits of the project.

5.2 Preparing the EIS

The time taken to prepare the EIS for an SSD project will depend on the SEARs issued for the project, which set out the matters requiring further assessment in the EIS and the community engagement that must be carried out during the preparation of the EIS.

Preparing an EIS typically involves:

- community engagement
- undertaking detailed technical studies to assess the impacts of the project in accordance with any relevant Government legislation, plans, policies and guidelines
- refining the design of the project to avoid or minimise the impacts of the project.

The applicant must then integrate the findings of these key activities into a justification and evaluation of the project as a whole.

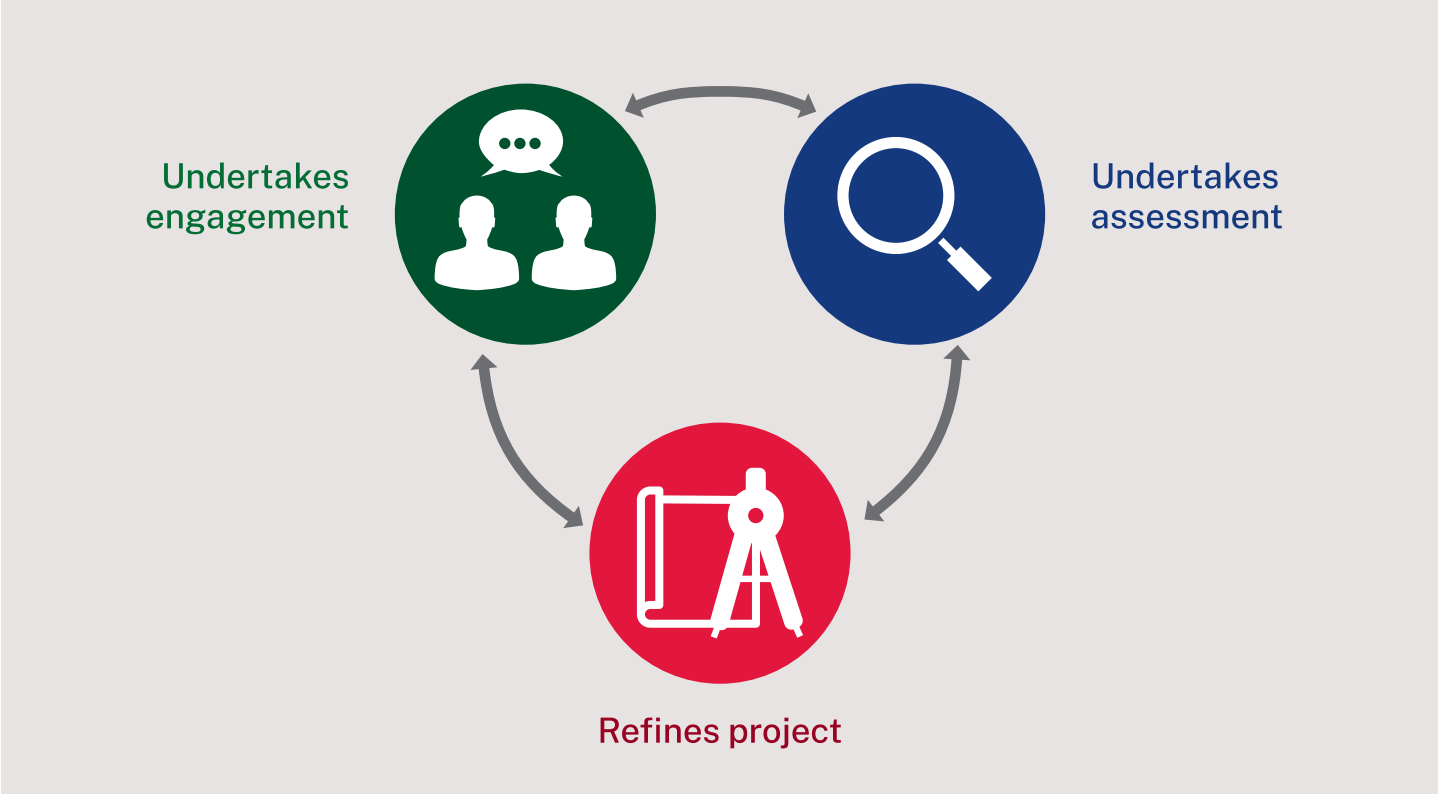

Figure 3: Preparing an EIS

38 See section 4.12 of the EP&A Act and section 24 of the EP&A Regulation.
39 See Divisions 2 and 5 of Part 8 of the EP&A Regulation.

5.3 High standard

The EIS must be prepared to a high standard, having regard to the Department's State Significant Development Guidelines – Preparing an Environmental Impact Statement (see Appendix B), and should:

- be as succinct as possible and easy to understand
- reflect community views
- contain a technically robust assessment of the impacts of the project
- provide a justification and evaluation of the project as a whole, having regard to the economic, environmental and social impacts of the project and the principles of ecologically sustainable development.

5.4 Declaration

To ensure the EIS is prepared to a high standard, a registered environmental assessment practitioner (REAP) must provide a declaration in respect of completeness, accuracy, quality and clarity of the information in the EIS before it is submitted to the Department[40].

This declaration must be made to the effect that:

- the EIS has been prepared in accordance with the EP&A Regulation
- the EIS contains all available information relevant to the environmental assessment of the development, activity or infrastructure to which the EIS relates
- the information contained in the EIS is neither false nor misleading
- it contains information required to be provided under the Registered Environmental Assessment Practitioner Guidelines in relation to EISs for SSD projects[41].

The information required to be provided under the Registered Environmental Assessment Practitioner Guidelines are that the EIS:

- addresses the SEARs for the project
- identifies and addresses the relevant statutory requirements for the project, including any relevant matters for consideration in environmental planning instruments
- has been prepared having regard to the Department's State Significant Development Guidelines – Preparing an Environmental Impact Statement
- contains a simple and easy to understand summary of the project as a whole, having regard to the economic, environmental and social impacts of the project and the principles of ecologically sustainable development
- contains a consolidated description of the project in a single chapter of the EIS
- contains an accurate summary of the findings of any community engagement
- contains an accurate summary of the detailed technical assessment of the impacts of the project as a whole
- A pro forma declaration has been provided in the State Significant Development Guidelines – Preparing an Environmental Impact Statement. A signed copy of this declaration should be included as a page within each EIS.

40 See clauses 6(1)(f) and 6(3) of the EP&A Regulation. REAPs are persons who are registered or certified under a professional scheme in the Accredited Registered Environmental Assessment Practitioner (REAP) Schemes published on the NSW Planning Portal on 1 July 2021.

41 See section 190(3) of the EP&A Regulation.

5.5 Submitting the EIS

Once the EIS is completed, the applicant must submit the DA to the Department in the approved form on the major projects website along with the EIS[42].

The applicant will need to provide certain information in order to fill out the approved form, including:

- the applicant's details
- project details, such as:
  - whether the DA is a concept or staged DA
  - the industry and development type
  - a description of the development
  - the intended community and public benefits
  - an estimated capital investment value
  - the indicative number of jobs created by the project (both operational and construction)
- the statutory context, such as:
  - the reason why the project is State significant
  - the permissibility of the proposal
  - whether approval under the *Environment Protection and Biodiversity Conservation Act 1999* is required
  - whether the project is designated development
  - whether the land is critical habitat
  - whether the development is likely to significantly affect threatened species, populations or ecological communities, or their habitats
  - whether the development is biodiversity compliant
- the land owner's consent, if required
- whether the project would require any approvals noted under section 4.41 (but for the EP&A Act) or section 4.42 of the EP&A Act
- whether the proponent has made any reportable political donations in the previous two years
- any attachments, such as:
  - a site map
  - scoping report (if required)
  - a quantity surveyor report
  - GIS data.

The complete information requirements are identified in the online form on the major projects website.

5.6 Checking the EIS

The Department will carry out a high-level check of the EIS, which includes reviewing the REAP's required declaration before putting it on public exhibition. If the EIS is incomplete, the Department will reject the DA within 14 days of the submission and notify the applicant as to why it was rejected via the major projects website[43].

42 See section 4.12 of the EP&A Act and section 24 of the EP&A Regulation.

43 See section 39 of the EP&A Regulation.

6. Exhibiting an EIS

6.1 Exhibition

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

All DAs are exhibited for at least 28 days[44].

This gives the community a right to have a say on the merits of these projects before any final decision is made.

As soon as practicable after the DA is submitted, the Department will:

- publish the DA and EIS on the major projects website
- give public notice of the exhibition in accordance with the requirements in the EP&A Regulation[45].

6.2 Department engagement

Where necessary, the Department may also hold a community information session during the exhibition period to explain the steps in the SSD assessment of the merits of the project and to get a better understanding of community views on the project.

6.3 Making a submission

During the exhibition period, anyone can make a written submission on the DA.

These submissions should be submitted to the Department on the major projects website. This will allow submitters to save submissions in progress, view a history of any submissions made and stay up-to-date with the progress of the application via electronic alerts.

If anyone is unable to use the major projects website, they can still send a written submission to the Department by post (Locked Bag 5022, Parramatta NSW 2124) or hand-deliver a submission to one of the Department's offices.

These submissions must be sent within the specified exhibition period, and should include:

- the name and address of the submitter
- the name of the application and application number
- a statement on whether the submitter supports, comments or objects to the project
- the reasons why the submitter supports, comments or objects to the project
- a declaration of any reportable political donations made in the previous two years (if relevant)
- a statement that the submitter agrees to the Department's terms and conditions set out on the major projects website, covering matters associated with the publication of submissions such as:
  - protecting people's personal or commercial-in-confidence information
  - confirming that the submission represents their own views
  - refraining from making any defamatory, offensive, or false or misleading statements[46].

6.4 Personal information

The Department will publish some of the personal information provided by submitters on the major projects website[47], including:

- the submission
- the name of the submitter (unless they specifically ask for it to be withheld)
- their suburb
- any political donations disclosure statement.

The Department will also publish any personal information included in the submission, so submitters should avoid including any personal information in their submissions if they do not want this information to be published on the major projects website.

44 See the community participation requirements in schedule 1 of the EP&A Act.

45 See division 5, part 3 of the EP&A Regulation.

46 For more information on the standard declaration form, see https://www.planningportal.nsw.gov.au/major-projects/about/disclaimer-and-declaration.

47 For more information, view the Department's Privacy at https://www.planning.nsw.gov.au/Privacy.

7. Responding to submissions

7.1 Introduction

Following the exhibition of the EIS, the Department will publish all the submissions it receives on the major projects website and ask the applicant to respond to the issues raised in submissions[48].

The purpose of this request is to:

- give the applicant a right of reply to the issues raised in submissions
- ensure the community gets feedback from the applicant on the issues it raised in submissions
- help the consent authority to evaluate the merits of the project.

The steps for responding to submissions are shown in Figure 4.

7.2 Timeliness of response

While the time it takes to respond to submissions will depend on the scale and nature of the issues raised in submissions and the actions taken to address these issues, the applicant should submit the response to the Department as quickly as possible.

To avoid unnecessary delays, the Department will set a timeframe for the submission of the response and publish it on the major projects website. This timeframe may be adjusted by agreement between the applicant and the Department.

7.3 Submissions report

The applicant must document its response to submissions in a submissions report.

The submissions report must be prepared to a high standard, having regard to the Department's State Significant Development Guidelines – Preparing a Submissions Report (see Appendix C), and should:

- be as succinct as possible and easy to understand
- accurately summarise the issues raised in submissions
- carefully consider and provide a response to these issues
- update the justification and evaluation of the project as a whole, having regard to the detailed findings in each section of the submissions report and the principles of ecologically sustainable development.

The submissions report should identify any amendments to the application made in response to issues raised in submissions and refer to the detailed description and assessment of these amendments in the relevant amendment report.

7.4 Submitting the submissions report

Once it is completed, the applicant must submit the submissions report to the Department on the major projects website.

The Department will not accept the staged submission of a submissions report.

7.5 Publishing the submissions report

As soon as it is received, the Department will publish the submissions report on the major projects website and proceed to complete its assessment of the application.

7.6 Requiring additional information

While completing its assessment, the Department may require the applicant to provide additional information to clarify or expand on the issues addressed in the submissions report.

This information should be provided to the Department as quickly as possible and will be published on the major projects website.

48 See section 59(2) of the EP&A Regulation.

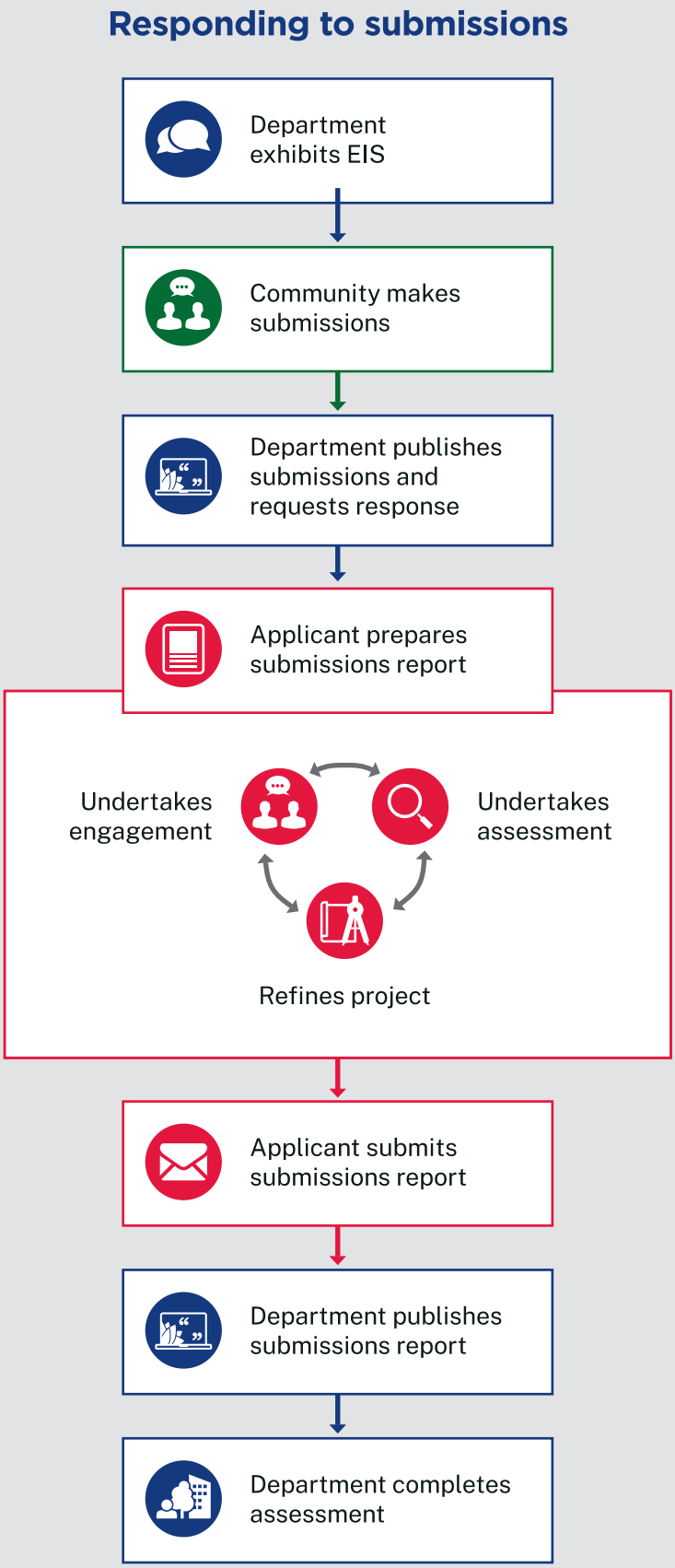

Figure 4: Responding to submissions

8. Amending a DA

8.1 Introduction

Under the EP&A Regulation, the applicant of an SSD project may – with the agreement of the Planning Secretary – amend or vary a DA at any time before it is determined[49].

Amendments to a DA are only required if the applicant wants to change what it is seeking consent for and needs to amend the project description in the EIS.

These amendments may be necessary to:

- improve the design of the project
- respond to advice provided by government agencies or issues raised in submissions by the community
- further mitigate the impacts of the project.

Refinements are separate to amendments, being changes that fit within the limits set by the project description and do not change what the applicant is seeking consent for or require an amendment to the project.

When the applicant amends a DA to address advice or issues raised in submissions, it should submit the amendment report to the Department when it submits the submissions report. This will enable the Department and the community to get a full appreciation of the applicant's response to submissions.

The steps for amending a DA are shown in Figure 5.

8.2 Seeking agreement

To seek the Planning Secretary's agreement for any amendments to a DA, the applicant must submit a request to the Department in the approved form on the major projects website, describing the proposed amendments.

If the Planning Secretary agrees to the proposed amendments being submitted, the applicant must submit an amendment report to the Department on the major projects website, which includes any particulars of the nature of the proposed amendments to the application.

If the Planning Secretary does not agree to the proposed amendments being submitted, the applicant may either withdraw the DA or ask the Department to finalise its assessment of the DA without the amendments.

8.3 Amendment report

The amendment report must be prepared to a high standard, having regard to the Department's State Significant Development Guidelines – Preparing an Amendment Report (see Appendix D), and should:

- be as succinct as possible and easy to understand
- describe the amendments
- reflect community views on the amendments
- contain a technically robust assessment of the amendments
- provide a justification and evaluation of the amended project as a whole, having regard to the economic, environmental and social impacts of the amended project and the principles of ecologically sustainable development.

A consolidated, detailed description of the amended project (i.e. an updated project description chapter reflecting the amended project) must be included as an appendix to the amendment report.

49 See section 37 of the EP&A Regulation.

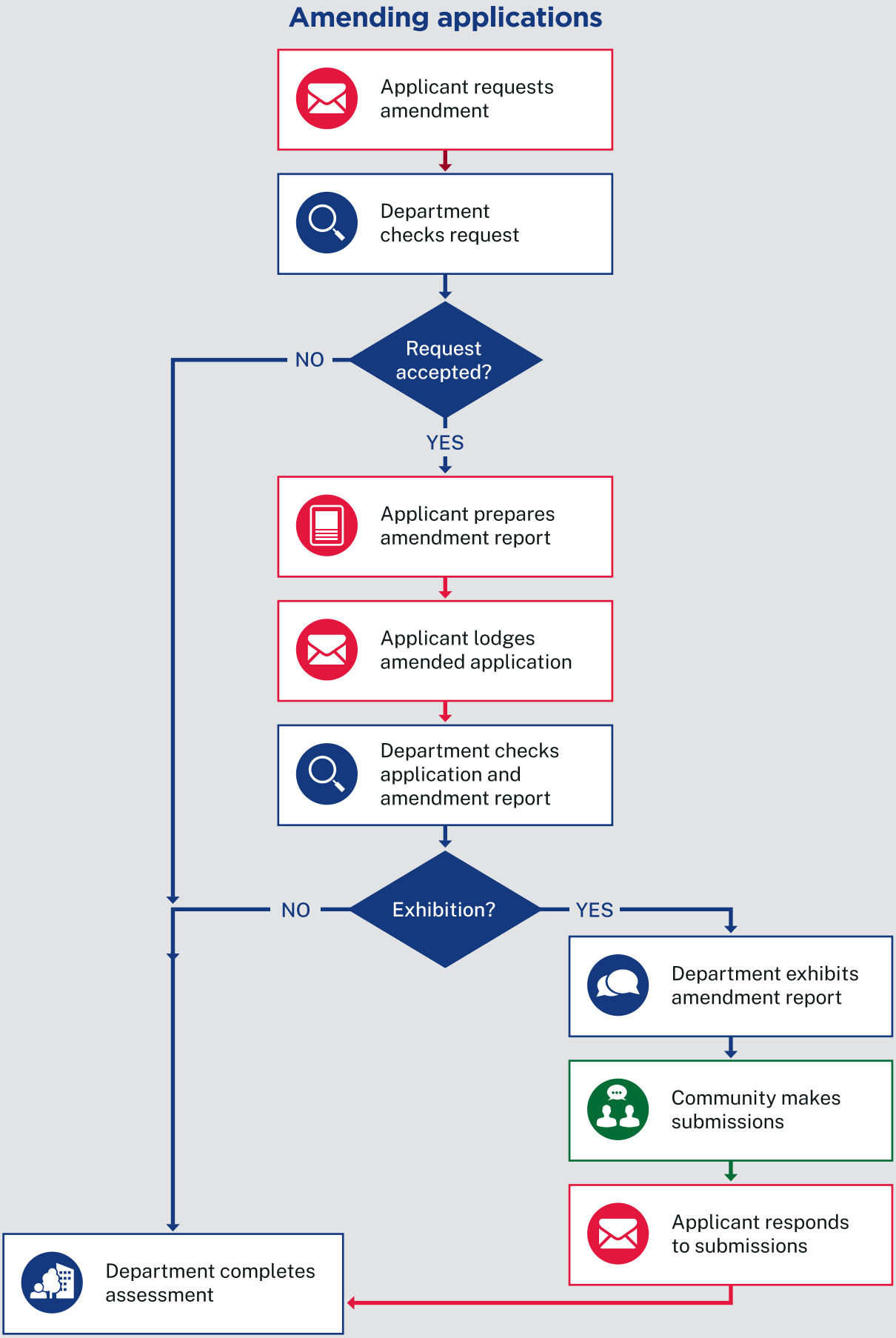

Figure 5: Amending applications

8.4 Timeliness of submitting the amendment report

While the time it takes to prepare the amendment report will depend on the scale and nature of the amendments and the actions required to assess the impacts of these amendments, the applicant should submit the amendment report to the Department as quickly as possible. This is particularly relevant where an amendment report is being prepared to respond to issues raised in submissions.

As is the case with a submissions report, the Department will set a timeframe for the submission of the amendment report and publish it on the major projects website. This timeframe may be adjusted by agreement between the applicant and the Department.

8.5 Submitting the amendment report

Once it is completed, the applicant must submit the assessment report to the Department on the major projects website.

8.6 Publishing the amendment report

The Department will carry out a high-level check of the amendment report before publishing it on the major projects website and proceed to complete its assessment of the application.

8.7 Exhibiting the amendment report

The Department will need to consider if there is a material environmental impact beyond the impacts expected by the initially proposed project in determining whether the amendment report will be publicly exhibited. If the amendment report is to be publicly exhibited, the Department will do so for at least 14 days before completing its assessment. This is to give the community an opportunity to read the amendment report and make a submission on the merits of the amended project.

If the amendment report is exhibited, the Department will publish all the submissions it receives on the major projects website and ask the applicant to respond to the issues raised in submissions.

The steps for responding to submissions are the same as in section 7.

9. Assessing a DA

After publishing the submissions report (and if relevant the amendment report), the Department will complete its assessment of the merits of the project in accordance with any relevant Government legislation, plans, policies and guidelines.

9.1 Assessment

In completing its assessment, the Department will typically:

- review the design of the project
- consider whether the project is compatible with the strategic context
- visit the site and surrounds
- check whether the project complies with any relevant statutory requirements
- analyse the issues raised in submissions and the applicant's response to submissions
- carry out targeted community engagement where necessary to investigate key concerns
- seek advice from government agencies and independent technical experts
- assess the impacts of the project against relevant government standards and criteria
- evaluate the merits of the project as a whole, having regard to the economic, environmental and social impacts of the project and the principles of ecologically sustainable development.

9.2 Requiring additional information

While completing its assessment, the Department may require the applicant to provide additional information to address any outstanding issues.

This information should be submitted to the Department as quickly as possible and will be published on the major projects website.

9.3 Whole-of-government assessment report

The Department will summarise the findings of its detailed assessment of the SSD project in a whole-of-government assessment report, which may include recommended conditions of consent for the project.

Once it is completed, the Department will publish the assessment report on the major project website and ask the consent authority to determine the project.

10. Determining a DA

10.1 Consent authority

The Independent Planning Commission[50] will determine the DA if:

- the council of the area in which the development is to be carried out has objected to the DA
- there are at least 50 objections (other than from a council) to the DA (where petitions and submissions that contain substantially the same text count as one objection)
- the applicant has disclosed a reportable political donation.

It will also determine the DA under delegation from the Minister if the DA is wholly prohibited under an environmental planning instrument and requires a rezoning before it may be determined[51].

Prior to determining these DAs, the Independent Planning Commission may hold a public meeting[52].

In all other cases, the Minister (or delegate[53]) will determine the DA.

10.2 Holding public hearings

In some circumstances, the Minister may ask the Independent Planning Commission to hold public hearings into the carrying out of the project[54].

These hearings will be held prior to determining the DA for the project once the Department has published its whole-of-government assessment report of the project on the major projects website.

The Independent Planning Commission has published detailed guidelines on holding public hearings on its website (see www.ipcn.nsw.gov.au – under processes).

Public hearings give the community a chance to have a say on the findings and recommendations of Department's detailed assessment report and raise any residual concerns about the project with the Independent Planning Commission before it determines the DA.

10.3 Evaluating the merits of the DA

In determining the DA, the consent authority is required to evaluate the merits of the project as a whole, having regard to the relevant matters in[55]:

- part 7 of the *Biodiversity Conservation Act 2016*
- part 7A of the *Fisheries Management Act 1994*
- section 4.15 of the EP&A Act, including:
- the provisions of any existing or draft environmental planning instrument, planning agreement, prescribed matters in the EP&A Regulation and any coastal management program under the *Coastal Management Act 2016*
- the likely impacts of the development, including the environmental impacts on both the natural and built environments, and the social and economic impacts in the locality
- the suitability of the site for the development
- any submissions made in accordance with the EP&A Act
- the public interest, including the objects of the EP&A Act and the principles of ecologically sustainable development.

10.4 Making the decision

The consent authority may determine the DA by:

- granting consent to the DA subject to modifications or conditions
- refusing consent to the DA[56].

50 See section 2.7 of the Planning Systems SEPP.
51 See section 4.38(6) of the EP&A Act.
52 For further guidance on public meetings, see the guidelines published on www.ipcn.nsw.gov.au – under processes.
53 The current delegations are published on the Department's website (see https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Planning-Approval-Pathways/Delegated-Decisions).
54 See section 2.9(d) of the EP&A Act.
55 See sections 1.7, 4.15 and 4.40 of the EP&A Act.
56 See section 4.38 of the EP&A Act.

10.5 Publishing the decision

After the DA is determined, the Department will:

- publish the decision on the major projects website
- notify everyone who made a submission about the decision
- publish a notice setting out the reasons for the decision and how community views were taken into account in making the decision[57].

10.6 Judicial review

Within three months of the determination of the DA, any person may commence proceedings in the Land and Environment Court seeking a judicial review of the decision[58].

Judicial review proceedings are heard by judges and consider the legality or validity of the decision, not the merits of the decision. They may focus on the determination of the DA as well as the steps leading to the decision.

10.7 Deemed refusal appeals

Within 90 days of submitting the DA, an applicant may appeal to the Land and Environment Court against the failure of the consent authority to determine the DA or the "deemed refusal" of the DA[59].

The Court will hear these appeals on their merits.

Despite the appeal, the consent authority may still determine the DA.

10.8 Merit appeals

If the Independent Planning Commission holds a public hearing prior to determining a DA, there are no merit appeal rights for the DA[60].

Otherwise, the applicant has six months to appeal to the Land and Environment Court against the merits of the decision[61]. Third-party objectors have 28 days to appeal, provided the DA meets the relevant criteria for designated development[62].

These proceedings involve remaking the decision and are generally heard by commissioners of the Court. Sometimes, however, they may be heard by judges.

An SSD development consent continues to have effect while the appeal is heard[63].

10.9 Merit reviews

If a DA is determined under delegation by Departmental staff (excluding the Planning Secretary), the applicant may request a review of the merits of the decision[64]. However, the merits of the decision cannot be reviewed once the six-month merit appeal period[65] has lapsed (if no appeal was lodged) or after the Land and Environment Court has disposed of any merit appeal against the decision.

In requesting the review, the applicant may also amend the DA provided the amended DA is substantially the same as the determined DA.

The Independent Planning Commission, or a more senior officer of the Department, will carry out the review and re-evaluate the merits of the DA before either confirming or changing the decision.

10.10 Lapsing of an SSD consent

An SSD consent will lapse after five years unless the development is physically commenced during that period[66].

57 See clause 20 of schedule 1 of the EP&A Act.
58 See clause 59.10 of the Uniform Civil Procedure Rules.
59 See section 8.11 of the EP&A Act and section 91 of the EP&A Regulation.
60 See section 8.6(3)(a) of the EP&A Act.
61 See section 8.7 and section 8.10(1) of the EP&A Act. Due to COVID-19, the period has been extended to 12 months for decisions on DAs published between 25 March 2020 and 25 March 2022.
62 See section 8.8 and section 8.10(2) of the EP&A Act. Due to COVID-19, the period has been extended to 56 days for decisions on DAs published between 25 March 2020 and 25 March 2022.
63 See section 8.13 of the EP&A Act.
64 See division 8.2 of part 8 of the EP&A Act.
65 Due to COVID-19, the period has been extended to 12 months for decisions on DAs published between 25 March 2020 and 25 March 2022.
66 See section 4.53 of the EP&A Act. Due to COVID-19, if a development consent commenced operation before and had not lapsed at 25 March 2020, then it will lapse 2 years after the date it was due to lapse.

11. Post-approval

If consent is granted to an SSD project, the applicant must comply with the conditions of the development consent for the project.

11.1 Post-approval requirements

The conditions of development consent for SSD projects typically require the applicant to address several matters prior to carrying out any development on the site or during the implementation of the project (see the conceptual post-approval framework in Figure 6).

This may include:

- establishing a Community Consultative Committee[67] for the project
- setting up a website and complaints handling system for the project
- surrendering old development consents
- finalising voluntary planning agreements
- forming independent advisory panels to provide advice on preparing and implementing of certain management plans for the project
- submitting management plans and strategies to the Department for approval
- monitoring and publicly reporting on the performance and compliance of the project.

The Department co-ordinates the assessment of all post-approval requirements with the relevant government agencies via the major projects website.

11.2 Obligations for applicants

To ensure all post-approval requirements are processed quickly by the Department, applicants must:

- submit all relevant documents to the Department on the major projects website
- comply with the requirements of the relevant conditions of consent
- complete any consultation required under the conditions of consent
- document any issues raised during this consultation and explain how these issues were taken into account during the preparation of the relevant post-approval documents
- ensure all post-approval documents are prepared to a high standard.

For complex matters, the applicant must also include a conditions compliance table identifying the relevant conditions of consent and how they have been addressed in the document.

If the applicant is submitting a revised post-approval document to the Department for approval, it must clearly identify all the revisions that have been made, either by highlighting the relevant sections where changes have been made or showing tracked changes.

11.3 Requiring additional information

While reviewing post-approval matters, the Department may ask the applicant to provide additional information to address outstanding issues or require the applicant to make changes to the submitted documents. This information should be provided to the Department as quickly as possible on the major projects website.

67 For more information on community consultative committees, see the Department's Community Consultative Committee guide.

11.4 Other approvals

If consent is granted for an SSD project, the applicant may be required to obtain several other approvals in addition to the development consent before it may carry out the project.

This includes any "consistent approvals"[68] that cannot be refused and must be consistent with the SSD development consent, such as an environment protection licence, mining lease, petroleum production lease, mine subsidence approval, road works consent, pipeline licence and aquaculture permit (see Figure 6).

It may also include other approvals that were not formally integrated with the decision on the project but that were considered in the SSD assessment, such as water licences or approvals under the Commonwealth EPBC Act[69] (see Figure 6).

Once these approvals are issued, the applicant must comply with the conditions of these approvals as well as the conditions of the development consent.

The Department works closely with the government agencies responsible for overseeing these approvals to:

- coordinate the assessment of any post-approval requirements for the project
- minimise the duplication of any requirements
- ensure compliance with any conditions of consent or approval (see Figure 6).

11.5 Community

The Department will publish copies of any approved management plans or post-approval decisions on the major projects website.

This will allow the community to:

- track the progress of the project
- identify any additional obligations that the applicant must comply with in addition to the conditions of the development consent, such as the requirements in approved management plans
- review the performance and compliance of the project
- make complaints to the Department where necessary.

68 See section 4.42 of the EP&A Act.

69 See section 3 of these guidelines.

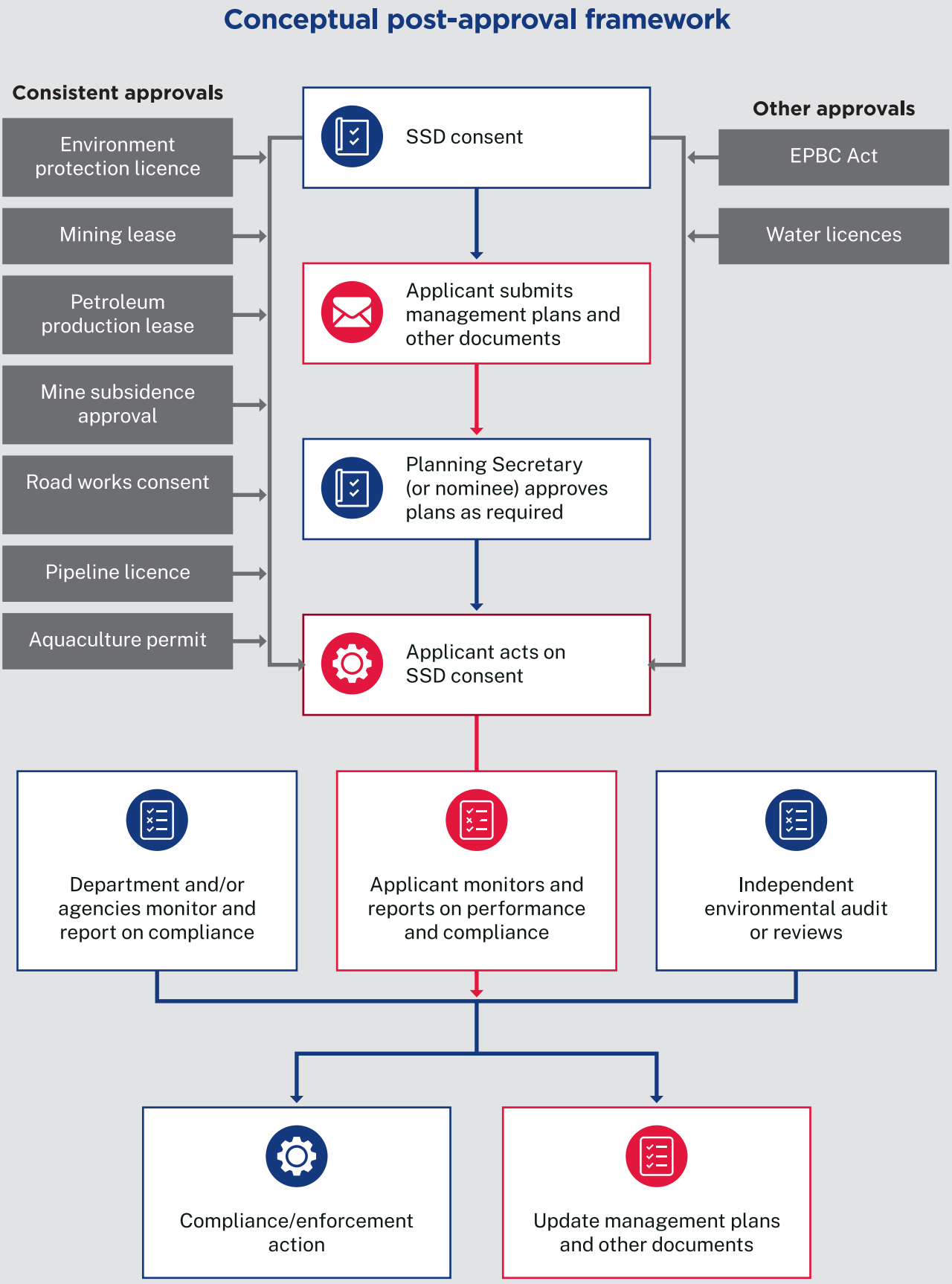

Figure 6: Conceptual post-approval framework

12. Modifying an SSD development consent

12.1 Introduction

Under the EP&A Act, a consent authority may modify an SSD development consent provided the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted[70].

Modifications may be necessary to improve the design of the project or to change the conditions of the development consent.

These modifications will fall into one of the following three categories[71]:

- modifications involving minor error, misdescription or miscalculation
- modifications involving minimal environmental impact
- modifications involving greater than minimal environmental impact.

The steps for seeking to modify an SSD development consent are shown in Figure 7.

12.2 Applying for modifications

To seek consent for modifications to an SSD development project, the applicant must submit a modification application to the Department in the approved form on the major projects website[72]. This application must be accompanied by a modification report, which includes any particulars of the proposed modifications or variations to the development consent.

12.3 Modification report

The modification report must be prepared to a high standard, having regard to the Department's State Significant Development Guidelines – Preparing a Modification Report, and should:

- be as succinct as possible and easy to understand
- describe the proposed modifications including any conditions of consent to be modified
- provide a discussion on how the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted
- contain a technically robust assessment of the impacts of the modifications
- evaluate the modified project as a whole, having regard to the economic, environmental and social impacts of the modified project and the principles of ecologically sustainable development.

A consolidated, detailed description of the modified project (i.e. an updated project description chapter reflecting the modified project) must be included as an appendix to the modification report.

The level of detail required in a modification report should reflect the category of modification. There should be a proportionate level of detail for modifications involving minor error, misdescription or miscalculation, increasing for modifications involving minimal environmental impact and other modifications.

70 See section 4.55 and 4.56 of the EP&A Act. For "transitional part 3A projects" that were transitioned to SSD following the repeal of part 3A of the EP&A Act, the substantially the same development test is to be applied relative to the development authorised by the consent when it was transitioned to SSD. See clause 3BA (6) of schedule 2 of the EP&A (Savings, Transitional and Other Provisions) Regulation 2017.

71 See sections 4.55 and 4.56 of the EP&A Act.

72 See section 99(1) of the EP&A Regulation.

Modifying applications

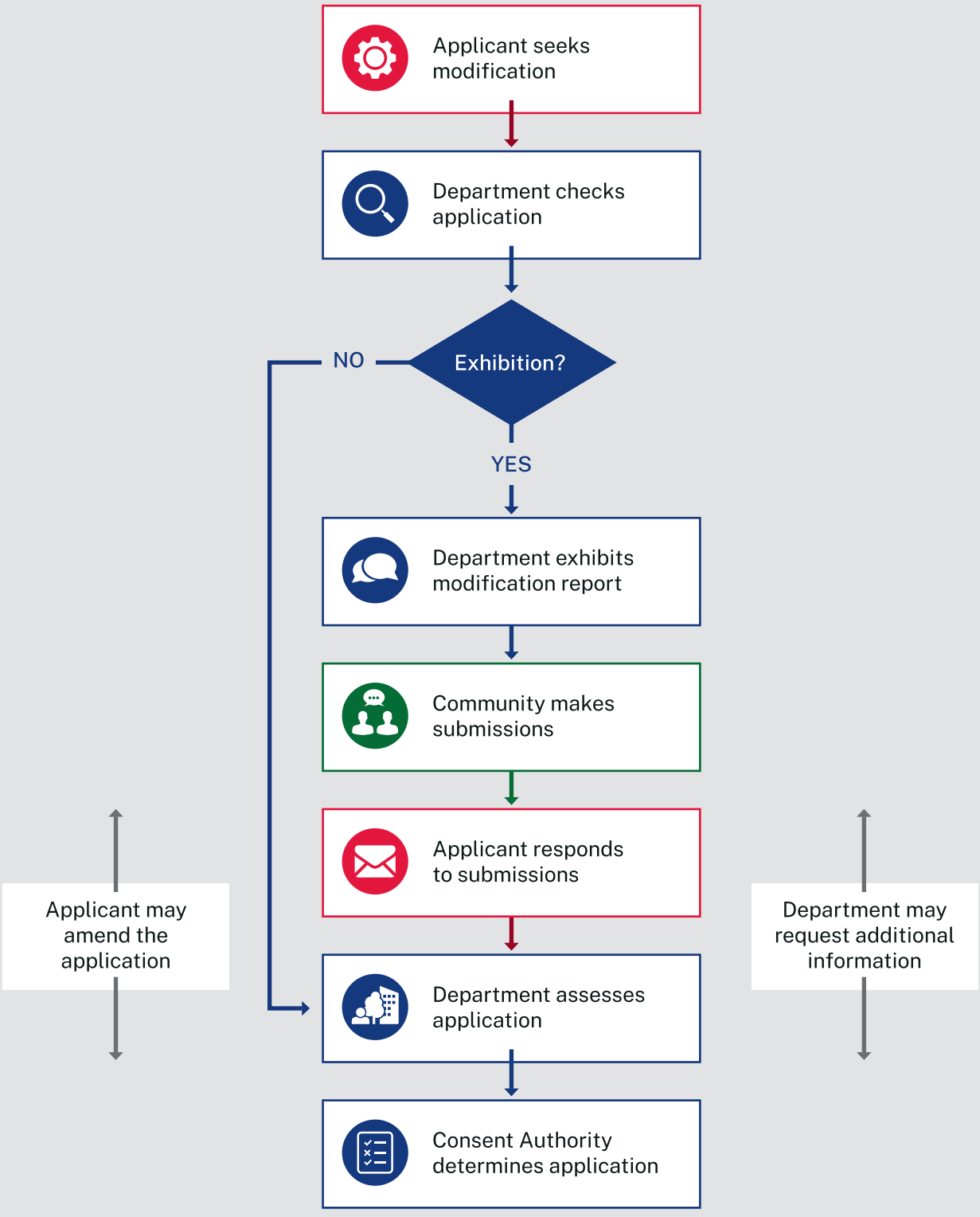

Figure 7: Modifying applications

12.4 Checking the application

The Department will carry out a high-level check of the application to:

- confirm that the proposed modifications comply with the substantially the same development requirements of the EP&A Act
- categorise the nature of the modifications (see section 12.1 above)
- determine whether the application is complete.

If the modification application is incomplete or does not contain the information required by the form, the EP&A Act or the EP&A Regulation, the Department will reject the application with 7 days of submission and notify the application as to why it was rejected via the major projects website[73].

Otherwise, the Department will publish the modification report on the major projects website.

12.5 Exhibiting the modification report

As soon as it is received, the Department will publish the modification report on the major projects website[74] and proceed to complete its assessment of the application.

The Department is required to exhibit an application seeking to modify an SSD development consent under either section 4.55(2) or section 4.56(1) of the EP&A Act, for at least 14 days prior to completing its assessment of the application. This is to give the community an opportunity to read the modification report and make a submission on the merits of the modified project. The Department will also give public notice of the exhibition in accordance with any relevant statutory requirements[75].

If the modification report is exhibited, the Department will publish all submissions on the major projects website and ask the applicant to respond to the issues raised in submissions.

The steps for responding to submissions are the same as in section 7.

12.6 Amending a modification application

The applicant for an SSD modification may – with the agreement of the Planning Secretary – amend or vary the modification application at any time before it is determined.

The steps for amending an SSD modification application are the same as in section 8.

12.7 Assessing a modification application

After publishing the modification report (and if relevant the submissions report and/or amendment report), the Department will complete its assessment of the merits of the modifications in accordance with any relevant Government legislation, plans, policies and guidelines.

This will typically involve:

- reviewing the modifications
- considering whether the modified project is compatible with the strategic context
- visiting the site and surrounds
- checking whether the modified project complies with any relevant statutory requirements
- analysing any issues raised submissions and the applicant's response to submissions
- carrying out targeted community engagement where necessary to investigate key concerns
- seeking advice from government agencies and independent technical experts
- requesting additional information from the applicant
- assessing the impacts of the modifications against relevant government standards and criteria
- evaluating the merits of the modified project as a whole, having regard to the economic, environmental and social impacts of the modified project and the principles of ecologically sustainable development.

73 See section 114(2) of the EP&A Regulation.
74 See section 59(6) of the EP&A Regulation.
75 See sections 4.55 & 4.56 of the EP&A Act and section 106 of the EP&A Regulation.

The Department will summarise the findings of its detailed assessment of the modification application in a whole-of-government assessment report, which will include any recommended changes to the existing conditions of the SSD development consent.

Once it is completed, the Department will publish this assessment report on the major projects website and ask the consent authority to determine the modification application.

12.8 Consent authority

The Independent Planning Commission will determine the modification application if the applicant has disclosed a reportable political donation[76].

Otherwise, the application will be determined by the Minister (or his delegate[77]).

12.9 Evaluating the merits of the modification application

In determining an SSD modification application, the consent authority is required to evaluate the merits of the modified project as a whole having regard to the relevant matters in[78]:

- part 7 of the *Biodiversity Conservation Act 2016*
- part 7A of the *Fisheries Management Act 1994*
- section 4.55 of the EP&A Act as relevant to the category of modification
- section 4.15 of the EP&A Act, including:
- the provisions of any existing or draft environmental planning instrument, planning agreement, prescribed matters in the EP&A Regulation and any coastal management program under the *Coastal Management Act 2016*
- the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality
- the suitability of the site for the development
- any submissions made in accordance with the EP&A Act
- the public interest, including the objects of the EP&A Act which include facilitating the development of ecologically sustainable development.

It is also required to consider the reasons given by the consent authority for granting the consent that is sought to be modified[79].

12.10 Making the decision

The consent authority may:

- modify the SSD development consent subject to modifications or conditions
- refuse to modify the SSD development consent.

12.11 Publishing the decision

After the modification application is determined, the Department will:

- publish the decision on the major projects website
- notify everyone who made a submission of the decision (if the application was publicly exhibited)
- publish a notice setting out the reasons for the decision and how community views were taken into account in making the decision[80].

76 See section 2.7(3) of the Planning Systems SEPP.
77 The current delegations are published on the Department's website (see https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Planning-Approval-Pathways/Delegated-Decisions).
78 See sections 1.7, 4.15 and 4.40 of the EP&A Act.
79 See sections 4.55(3) and section 4.56(1A) of the EP&A Act.
80 See clause 20 of schedule 1 of the EP&A Act.

12.12 Judicial review

Within three months of the public notification of the determination of an SSD modification application, any person may commence proceedings in the Land and Environment Court seeking a judicial review of the decision[81].

Judicial review proceedings are heard by judges and consider the legality or validity of the decision, not the merits of the decision. They may focus on the determination of the modification application as well as the steps leading to the decision.

12.13 Deemed refusal appeals

If the consent authority fails to determine the SSD modification application within 40 days, an applicant may appeal to the Land and Environment Court against the "deemed refusal" of the application[82].

The Court will hear these appeals on their merits.

Despite the appeal, the consent authority may still determine the modification application.

12.14 Merit appeals

The applicant has six months to appeal to the Land and Environment Court against the merits of the determination of an SSD modification application[83].

These proceedings involve remaking the decision and are generally heard by commissioners of the Court; but sometimes, they may be heard by judges[84].

12.15 Merit reviews

If an SSD modification application is determined under delegation by Departmental staff (excluding the Planning Secretary), the applicant may request a review of the merits of the decision[85]. However, the merits of the decision cannot be reviewed once the six-month merit appeal period[86] has lapsed (if no appeal was lodged) or after the Land and Environment Court has disposed of any merit appeal against the decision.

In requesting the review, the applicant may also amend the application provided the amended application is substantially the same as the determined application.

The Independent Planning Commission, or a more senior officer of the Department, will carry out the review and re-evaluate the merits of the modification application before either confirming or changing the decision.

81 See clause 59.10 of the Uniform Civil Procedure Rules.
82 See section 8.11 of the EP&A Act and section 119 of the EP&A Regulation.
83 See sections 8.9 & 8.10(1) of the EP&A Act. Due to COVID-19, the period has been extended to 12 months for decisions on DAs published between 25 March 2020 and 25 March 2022.
84 See sections 8.14 & 8.15 of the EP&A Act.
85 See division 8.2 of part 8 of the EP&A Act.
86 Due to COVID-19, the period has been extended to 12 months for decisions on DAs published between 25 March 2020 and 25 March 2022.

13. Compliance

The Department is responsible for checking compliance with the conditions of any SSD development consent and taking regulatory action to ensure compliance where necessary87.

It also works closely with the government agencies responsible for ensuring compliance with any other approvals for the SSD project to ensure all compliance activities are properly coordinated.

13.1 Regular compliance activities

In checking compliance with the conditions of an SSD development consent (see Figure 6), the Department will typically:

- monitor compliance against the conditions of consent
- require applicants to report any non-compliances
- require regular independent environmental audits to be carried out
- oversee the independent reviews of potential non-compliances
- investigate complaints
- undertake regular inspections of projects
- undertake strategic audits (of particular industries, specific environmental matters, or the cumulative impacts of projects in certain regions).

13.2 Regulatory action

In some circumstances, the Department may decide to take regulatory action against an applicant to address any non-compliances with the conditions of the consent.

This may include:

- issuing warnings and official cautions
- issuing orders or directions to prevent or remedy breaches
- accepting enforceable undertakings
- imposing penalties on applicants, such as fines
- prosecuting offences.

The Department has strong enforcement powers under the EP&A Act[88] to support these regulatory actions and has developed clear policies and guidelines to ensure any actions taken are fair, reasonable and proportionate to the significance of any breaches (see the Department's Compliance Policy, Enforceable Undertaking Guideline and Prosecution Guidelines at https://www.planning.nsw.gov.au/Assess-and-Regulate/About-compliance).

13.2 Complaints

The community can review key information relating to the performance and compliance of all SSD projects on the major projects website. This includes the details of inspections carried out and any formal enforcement action.

The community can also make complaints or raise concerns about the compliance of an SSD with the Department at any time via the major projects website. The Department will investigate these complaints thoroughly before providing feedback to the complainant on the findings of the investigation and whether any regulatory action was taken.

87 The Environment Protection Authority is responsible for ensuring compliance with the conditions of consent for petroleum projects.

88 See part 9 of the EP&A Act.

14. Glossary

Term	Meaning
Amendment	A change in what the applicant is seeking consent for during the assessment. It requires changes to the project description in the EIS or modification report and amendments to the associated DA or modification application. Applications can only be amended with the agreement of the Planning Secretary.
Amendment report	A report prepared by the applicant to support amendments to a development application or modification application (see the State Significant Development Guidelines – Preparing an Amendment Report).
Applicant	The applicant of an SSD project seeking consent for a DA or modification application.
Concept DA	A DA that sets out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent DA or DAs.
Consent authority	The consent authority for a DA or modification application. This will be the Independent Planning Commission, the Minister, or the Minister's delegates in the Department.
Declaration	A REAP may declare the EIS, for a State significant project are in accordance with the EP&A Regulation and the Registered Environmental Assessment Practitioner Guidelines before they are submitted to the Department.
Department	Department of Planning and Environment.
Designated development	Development declared to be designated development by an environmental planning instrument or the EP&A Regulation. In general, it is development that could result in significant environmental impacts. In particular, see schedule 3 of the EP&A Regulation.
Determination	A decision by the consent authority of a DA to either grant consent to the application subject to modifications or conditions or refuse to consent to the application.
Development application (DA)	A development application seeking consent for SSD under division 4.7 of the EP&A Act.
Environmental assessment reports	Reports required to be submitted to the Department by an applicant seeking consent for a DA or modification application. These reports include scoping reports, EISs, submissions reports, amendment reports and modification reports.
Environmental impact statement (EIS)	An environmental impact statement prepared by or on behalf of the applicant to accompany a DA (see the State Significant Development Guidelines – Preparing an Environmental Impact Statement).
Environmental planning instrument	An environmental planning instrument (including a SEPP or Local Environmental Plan) made under part 3 of the EP&A Act.
EP&A Act	*Environmental Planning and Assessment Act 1979*.
EP&A Regulation	Environmental Planning and Assessment Regulation 2021.
Industry-specific SEARs	SEARs issued for SSD projects that are wholly permissible with development consent, would not meet the criteria for designated development (if they were not SSD), and are not for a concept DA. These SEARs have been tailored to the specific industry and identify the information that must be included in the EIS for these projects and the community engagement that must be carried out during the preparation of the EIS.
Major projects website	www.planningportal.nsw.gov.au/major-projects

Term	Meaning
Matter	An element of the environment that may be affected by an SSD (e.g. air, amenity, biodiversity, economic, social).
Minister	The Minister for Planning.
Mitigation	Actions or measures to reduce the impacts of the project.
Modification	Changing the scope or terms of an SSD development consent, including revoking or varying a condition of consent. A modification requires consent under the EP&A Act.
Modification application	An application seeking to modify an SSD development consent under section 4.55 or section 4.56 of the EP&A Act.
Modification report	A report prepared by the applicant to support a modification application (see the State Significant Development Guidelines – Preparing a Modification Report).
Planning proposal	A document that explains the intended effect of making an environmental planning instrument under division 3.4 of the EP&A Act and sets out the justification for making the instrument.
Planning Secretary	The Secretary of the Department.
Project	Refers to State significant development (SSD).
Project-specific SEARs	SEARs issued for SSD projects which are wholly or partly prohibited, would meet the criteria for designated development (if they were not SSD), or are for a concept DA having regard to the specific circumstances of the project.
Refinement	A change that fits within the limits set by the project description and does not change what the applicant is seeking approval for or require an amendment to the DA for the project.
Registered Environmental Assessment Practitioner (REAP)	A person who is registered or certified under a professional scheme that is specified as a registered environmental assessment practitioner scheme in the Accredited Registered Environmental Assessment Practitioner (REAP) Schemes published on the NSW Planning Portal.
Scoping	The process of identifying the matters that require further assessment in an EIS.
Scoping report	A report prepared by the applicant to inform the setting of project-specific SEARs for an SSD project (see the State Significant Development Guidelines – Preparing a Scoping Report).
SEARs	The Planning Secretary's environmental assessment requirements for the preparation of an EIS for an SSD project.
SEPP	State Environmental Planning Policy.
State significant development (SSD)	Development that is declared to be State significant development under section 4.36 of the EP&A Act.
Submission	A written response from an individual or organisation, which is submitted to the Department during the public exhibition of an EIS, amendment report or modification report for State significant development.
Submissions report	A report prepared by the applicant to respond to the issues raised in submissions (see the State Significant Development Guidelines – Preparing a Submissions Report).

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