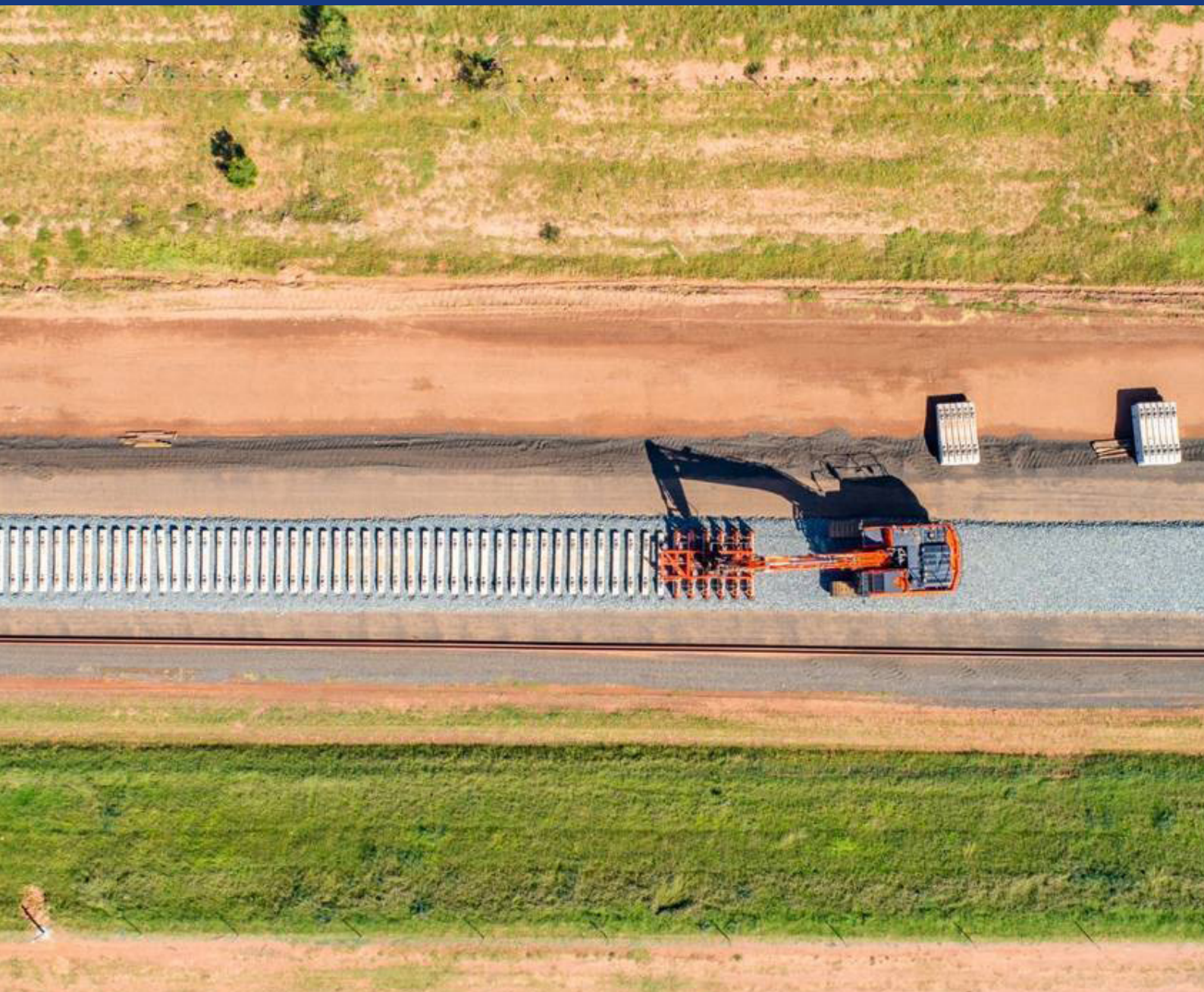


State Significant Infrastructure Guidelines



March 2024

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Title: State Significant Infrastructure Guidelines

First published: July 2021

Acknowledgements

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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 infrastructure

Under the EP&A Act, development may be declared State significant infrastructure (SSI). SSI are projects of State significance that primarily involve the delivery of infrastructure, such as transport, and other linear infrastructure and utilities (e.g. gas and water pipelines, energy transmission, telecommunication networks etc) along with environmental services.

All SSI projects require approval from the Minister for Planning (the Minister) or the Minister's delegate within the Department of Planning, Housing and Infrastructure (the Department) under Division 5.2 of the EP&A Act before they may proceed. Prior to determination, they must go through a comprehensive assessment with extensive community participation.

All SSI 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 SSI in NSW, describing each step of the SSI assessment.

They seek to ensure all SSI 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. The guidelines also seek to ensure that 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 SSI project as a whole.

In particular, they identify the information that proponents of SSI projects must submit to the Department with each SSI application and the matters the approval authority must consider in determining SSI applications.

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

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

This will strengthen the assessment of SSI 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 SSI documents – such as environmental impact statements (EISs) – to be prepared having regard to the State Significant Infrastructure Guidelines¹.

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

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

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

1.4 Supporting material

The guidelines are supported by additional detailed guidance on:

- encouraging community participation in SSI projects (see the Department’s Community Participation Plan and Undertaking Engagement Guidelines for State Significant Projects)
- requiring an EIS for SSI 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 Department². 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 of the EP&A Regulation defines State Significant Infrastructure Guidelines to mean the State Significant Infrastructure Guidelines prepared by the Planning Secretary as in force from time to time and published on the Department’s website.

2 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 infrastructure?

SSI is infrastructure that is important to the State for economic, environmental or social reasons.

Under the EP&A Act, development can become SSI in two ways: a declaration in a State environmental planning policy (SEPP)³ or a declaration in an order⁴ made by the Minister (the Minister).

The Minister may also declare development that is SSI to be CSSI⁵ if it is considered essential for the State for economic, environmental or social reasons.

2.1 Declaration by SEPP

A SEPP may declare any development, or any class or description of development, to be SSI⁶ provided the SEPP also provides that the development may be carried out without development consent under Part 4 and, the development is:

- infrastructure⁷, or
- other development that would be an activity for which the proponent is also the determining authority and would, in the opinion of the proponent, require an EIS to be obtained (this does not apply where the proponent is a council, county council or joint organisation under the *Local Government Act 1993*)⁸.

Development declared in this way is identified in Schedule 3 of the State Environmental Planning Policy (Planning Systems) 2021 and includes:

- activities by public authorities where the proponent is also the determining authority and the activity is likely to have a significant impact on the environment
- large-scale port, rail, water storage or water treatment facilities by or on behalf of public authorities
- pipelines either with or requiring a licence under the *Pipelines Act 1967*.

2.2 Declaration by ministerial order

Specified development on specified land may be declared SSI by a SEPP or by the Minister making an order that amends a SEPP⁹. Such development is identified in Schedule 4 of the State Environmental Planning Policy (Planning Systems) 2021 and includes, for example, development worth over \$30 million in the Northern Beaches Hospital Precinct and the Albion Park Rail Bypass.

2.3 Critical State significant infrastructure (CSSI)

The Minister may declare any SSI to be CSSI if the Minister considers it is of a category that, in the opinion of the Minister, is essential to the State for economic, environmental or social reasons.

Schedule 5 of the State Environmental Planning Policy (Planning Systems) 2021 has a list of CSSI projects, and includes (for example):

- major transport projects such as the Pacific Highway Upgrade, WestConnex, the Sydney Metro Rail, Inland Rail and the F6 Extension
- major energy projects such as Snowy Hydro 2.0, Shoalhaven Pumped Hydro Expansion and Newcastle Gas-Fired Power Station.

Further information on the declaration of SSI and CSSI can be found in the Department's Declaration of SSI and CSSI guide.

3 See section 5.12(2) of the EP&A Act.

4 See section 5.12(4) of the EP&A Act.

5 See section 5.13 of the EP&A Act.

6 Section 5.12 (2) and (3) of the EP&A Act.

7 As defined in section 5.11 of the EP&A Act.

8 See section 5.12(3) of the EP&A Act.

9 See section 5.12(4) of the EP&A Act.

2.4 Key features of SSI and CSSI

SSI projects are largely public sector led, make an important contribution to the economic and social development of the State and enable other public and private development. To support the assessment of SSI, some aspects of the EP&A Act and other legislation do not apply (or apply in limited circumstances) or must be applied consistently:

- Part 3 (Planning Instruments) of the Act does not apply to or in relation to SSI except in limited circumstances¹⁰. While this means that Environmental Planning Instruments such as SEPPs have limited application, it is still relevant to consider these instruments to the extent they are relevant to a project being assessed as SSI
- certain approvals and authorisations required under other legislation either do not apply¹¹ or must be substantially consistent with the approved SSI/CSSI¹²
- Landowners consent is not required for certain SSI projects¹³.

The following additional features apply to CSSI:

- a development control order, for example a stop work order, cannot be given in relation to CSSI¹⁴
- certain directions, orders or notices under other legislation cannot be made or given so as to prevent or interfere with the carrying out of approved CSSI¹⁵
- the Minister cannot delegate his function of determining an application for approval of CSSI¹⁶.

10 See section 5.22(2) of the EP&A Act.

11 Section 5.23 of the EP&A Act.

12 Section 5.24 of the EP&A Act.

13 Section 181 of the EP&A Regulation.

14 Section 5.22(4) of the EP&A Act.

15 Section 5.23 (3) of the EP&A Act.

16 Section 2.4 (3) of the EP&A Act.

3. SSI assessment

3.1 Introduction

All SSI projects require the approval of the Minister under Division 5.2 of the EP&A Act before they may proceed¹⁷.

Prior to determination, they are subject to comprehensive assessment with extensive community participation under the EP&A Act. The main steps in the assessment are shown in Figure 1 and explained in more detail in sections 4 to 14 of these guidelines.

While all SSI 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 SSI 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 SSI projects require approvals under other legislation in addition to approval under the EP&A Act.

Approvals that cannot be refused¹⁸ if they are necessary for carrying out approved SSI include environmental protection licences under the *Protection of the Environment Operations Act 1997*, a consent under the *Roads Act 1993* and a licence under the *Pipelines Act 1967*. These approvals must be substantially consistent with the SSI approval.

The assessment of all relevant matters relating to these approvals is fully integrated into the SSI 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.

Other approvals that do not apply to approved SSI¹⁹ include a permit under sections 201, 205 or 209 of the *Fisheries Management Act 1994*, an approval under Part 4, or an excavation permit under section 139 of the *Heritage Act 1997* and a bushfire safety authority under section 100B of the *Rural Fires Act 1997*.

If the SSI project requires Australian Government 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 SSI assessment under the EP&A Act. The Department will coordinate this assessment under the current assessment bilateral²⁰ and provide a detailed assessment report to the Commonwealth Minister for the Environment for consideration during decision-making under the EPBC Act.

17 See section 5.14 of the EP&A Act.

18 See Section 5.24 of the EP&A Act for the full list of approvals that must be applied consistently to approved SSI.

19 See Section 5.23 of the EP&A for a full list of the approvals that do not apply.

20 See <https://www.environment.gov.au/system/files/pages/43badfb2-b8be-4a10-a5b9-feab2d38a5d2/files/nsw-bilateral-agreement-amending-agreement.pdf>

State significant infrastructure

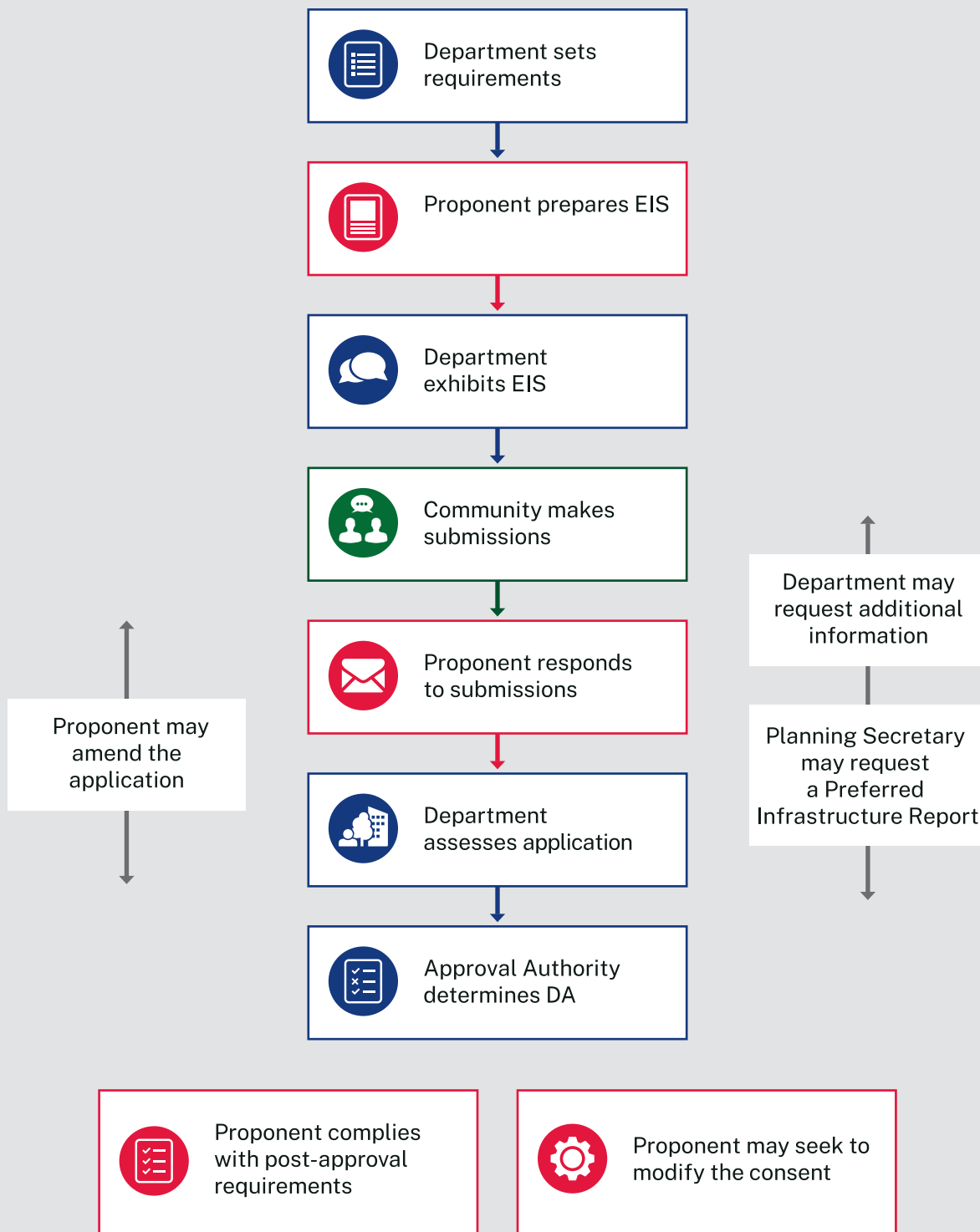


Figure 1: SSI assessment steps

3.3 Proportionate assessment

While all SSI 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.

The Secretary's environmental assessment requirements (SEARs) will confirm the matters to be assessed in the EIS and the level of assessment, taking into consideration the proponent's scoping report and input from government agencies.

A detailed level of assessment will be required for those matters that are complex or where assessment is needed to design project specific mitigation, with a lower level of assessment required for those matters that are straightforward or where the approach to mitigation is well understood.

3.4 Role of the approval authority

The Minister is the approval authority for all CSSI applications and cannot delegate this function to anyone else under the EP&A Act.

While the Minister is also the approval authority for SSI applications, the Minister has delegated this function to senior officers in the Department for applications where:

- the council of the area within which the project is located has not objected to the project
- less than 50 submitters have objected to the project
- the proponent has not made a reportable political donation.

3.5 Role of the Department

The Department co-ordinates the assessment of all SSI projects under the EP&A Act. This includes:

- carrying out all relevant administrative functions, including receiving applications, publishing all information on the major projects website²¹, exhibiting applications, publishing submissions and issuing public notices about the determination of applications
- co-ordinating the detailed assessment of SSI projects with key State & Australian Government agencies – such as the Environment Protection Authority, Transport for NSW, Regional NSW, and the Australian Government Department of Climate Change, Energy, the Environment and Water – in accordance with Government legislation, plans, policies and guidelines

- working closely with councils to ensure local and regional issues are fully considered during the detailed assessment of SSI projects
- encouraging community participation on SSI projects in accordance with the commitments in the Department's Community Participation Plan and Undertaking Engagement Guidelines for State Significant Projects
- preparing a detailed whole-of-government assessment report on the merits of SSI projects for the approval authority
- providing expert advice to the Minister and delegates to assist with any decision-making on SSI projects
- monitoring compliance with any conditions of approval if the SSI project is approved and taking regulatory action where necessary to address any non-compliances.

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 environmental assessment requirements, assessment of applications and consideration of post-approval matters where requested.

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

21 The major projects website forms part of the NSW Planning Portal

3.7 Role of the proponent

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

In doing this, the proponent 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 design – including choosing a suitable site/corridor, developing a robust layout and design and adopting measures to mitigate impacts – having regard to the sensitivity of the site/corridor, 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 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
- respond quickly to requests from the Department to respond to the issues raised in public submissions or provide additional information to address 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 SSI projects, leading to the improved design of projects, reduced environmental impacts and ecologically sustainable development.

Under the EP&A Act, all SSI EISs must be exhibited for at least 28 days, and anyone can make a submission on the EIS during the public exhibition²².

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

The approval authority for any SSI application will take into consideration all relevant issues raised in submissions before making a decision on the application.

The Department seeks to promote community participation during SSI assessment by:

- publishing detailed information on the major projects website about SSI projects and all Government plans, policies and guidelines that are relevant to assessing the merits of projects
- encouraging proponents of SSI 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 proponents to undertake effective community engagement during the development, assessment and carrying out of SSI projects
- where necessary and appropriate, undertaking its own community engagement on SSI projects, which may include holding community information sessions and carrying out targeted engagement (site visits, meetings and workshops) with key stakeholders to get a better understanding of community concerns and the matters raised in submissions
- considering relevant issues raised by the community in its detailed assessment of the merits of projects
- keeping the community informed about the progress, performance and compliance of SSI projects (which is generally done through the major projects website).

22 See section 12 of the Schedule 1 of the EP&A Act.

3.9 Major projects website

The major projects website (www.planningportal.nsw.gov.au/major-projects) provides a one-stop-shop for all SSI assessment documentation.

It is the primary tool for ensuring effective engagement between all stakeholders on SSI projects, and supports all key activities, including:

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

The website also contains detailed information on all matters relating to the assessment of projects, including:

- guidance on each step of the SSI assessment
- the government legislation, plans and strategies that set the strategic planning context for SSI projects
- the government plans, policies and guidelines that govern the assessment and determination of SSI projects
- guidance on how to use the major projects website, including how to lodge applications, make a submission and get regular updates on SSI projects
- detailed information on SSI 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, when an application is made for the Minister's approval for SSI, the Planning Secretary is to prepare environmental assessment requirements, or SEARs, in respect of the project²³. The EIS must address the SEARs for the project.

The SEARs identify the information that must be provided in the EIS, including the matters that require further assessment 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.

Assessment requirements provide certainty and create clear expectations about the issues to be addressed in an EIS, reducing the potential for additional assessment and associated delays at subsequent assessment stages, and focusing assessment effort on the key matters for decision-making.

4.2 Submitting an application

To obtain the SEARs for an SSI project, the proponent must submit an application for the Minister's approval of the SSI in the approved form on the major projects website.

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

- the proponent's details
- project details, such as:
 - whether the application is a concept or staged application
 - the infrastructure type
 - a description of the infrastructure
 - 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 a biodiversity assessment waiver is requested
 - whether approval under the Environment Protection and Biodiversity Conservation Act 1999 is required
- whether the project would require any approvals noted under section 5.23 (but for the EP&A Act) or section 5.24 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 or scoping report.

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

23 See Section 5.16 of the EP&A Act.

4.3 Setting requirements

The application must be accompanied by a scoping report to assist the Department in preparing SEARs. The Department will publish the scoping report online and consult with key government agencies, including the relevant council, during the preparation of the SEARs and may also visit the site and surrounds. The SEARs will be published online within 28 days of the publication of the scoping report.

In setting SEARs, the Department may impose SEARs by reference to relevant specified publications (for example, the Noise Policy for Industry, Approved Methods for Modelling and Assessment of Air Pollutants).

The SEARs will expire²⁴ if the EIS is not submitted to the Department within two years of the setting of the SEARs. If the SEARs expire, the proponent will need to apply for new SEARs for the project.

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

If the EIS will be ready for submission to the Department shortly after the SEARs expiry date, the proponent 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, on more than one occasion, extend the expiry date of the SEARs so long as the total period of the extension does not exceed two years²⁵.

The steps involved in setting requirements are shown in Figure 2.

4.4 Scoping report

The scoping report must include sufficient information about the project, the potential environmental impacts and the approach to assessing those impacts to allow the Department to set project specific assessment requirements in consultation with government agencies.

It must also identify the relevant approvals required, any consultation undertaken to date, and plans for consultation during subsequent stages. The scoping report should identify community views and how these will be addressed in the EIS and future consultation activities.

The scoping report must be prepared to a high standard, having regard to the Department's State Significant Infrastructure Guidelines – Preparing a Scoping Report.

24 See section 183 of the EP&A Regulation.

25 See section 183 of schedule 2 of the EP&A Regulation.

Setting requirements

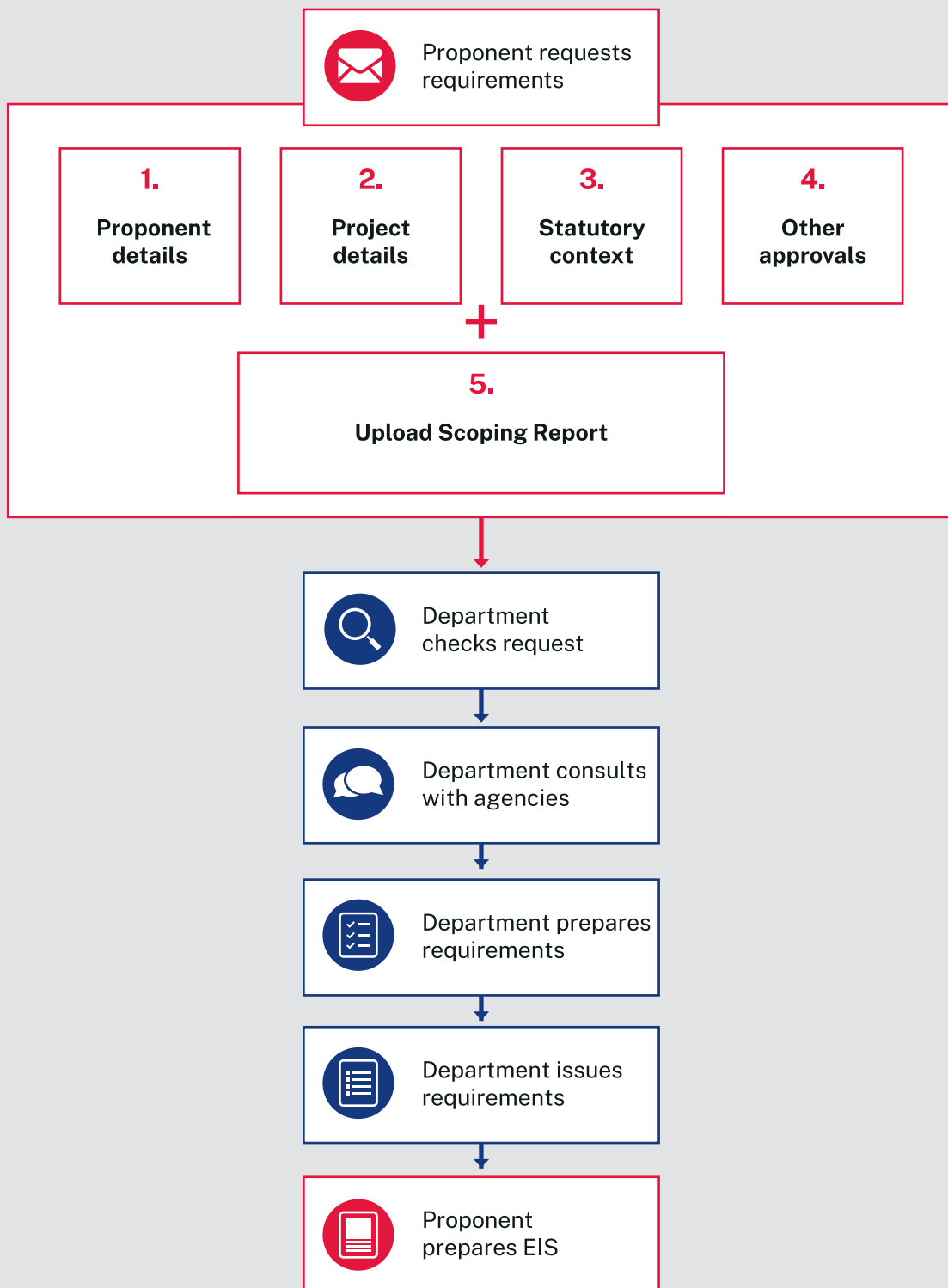


Figure 2: Setting requirements

5. Preparing an EIS

5.1 Introduction

The proponent must ensure the EIS for the project addresses the SEARs and the relevant requirements of the EP&A Regulation²⁶.

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 approval authority to get a better understanding of the project and its impact so that 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 SSI 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 preparation of the EIS involves an iterative process of impact assessment and design refinement, development of mitigation measures and consultation with community, stakeholders and government agencies as shown in Figure 3.

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

Once complete, the proponent must submit the EIS online through the Department's major projects website. The EIS is checked by the Department before being placed on public exhibition for a minimum period of 28 days.

5.3 High standard

The EIS must be prepared to a high standard, having regard to the Department's State Significant Infrastructure Guidelines – Preparing a Preferred Infrastructure Report, 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 Department²⁷.

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 SSI projects²⁸.

²⁶ See Division 5 of Part 8 of the EP&A Regulation.

²⁷ See section 190 of the EP&A Regulation. REAPs are suitably skilled, qualified and experienced practitioners that are members of a professional scheme that is accredited under the EP&A Regulation.

²⁸ See section 190 of the EP&A Regulation.

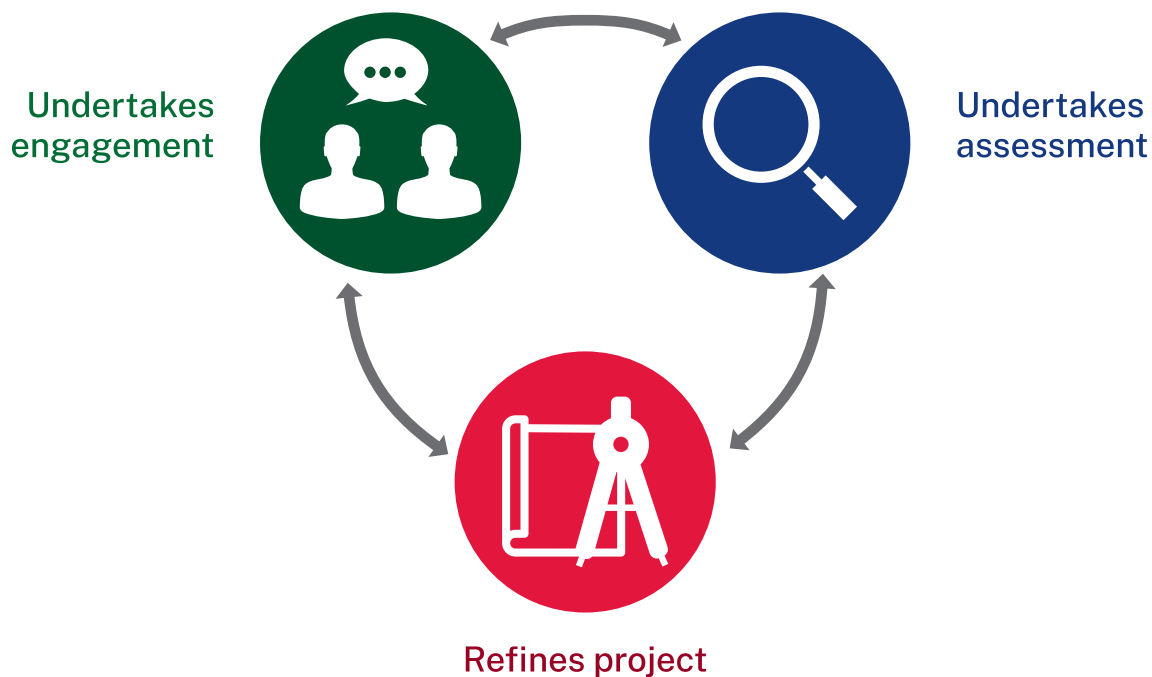


Figure 3: Preparing an EIS

The information required to be provided under the Registered Environmental Assessment Practitioner Guidelines is 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 Infrastructure 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.

5.5 EIS

The EIS must include a description of the project for which approval is sought including alternative designs or alignments considered and assessment of impacts and mitigation measures. It must also include a description of consultation undertaken, issues raised and how these issues have been addressed, an assessment of the need for the project, the relevant statutory context and justification and evaluation of the project as a whole.

The EIS must address the SEARs and the EIS form and content requirements in the EP&A Regulation.

The EIS must be prepared to a high standard, having regard to the Department’s State Significant Infrastructure Guidelines – Preparing an Environmental Impact Statement.

6. Exhibiting an EIS

6.1 Introduction

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

All EISs are exhibited for at least 28 days.

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 EIS is submitted, the Department will publish the EIS on the major projects website.

6.2 Exhibiting an EIS

Once the EIS is submitted by the proponent and checked by the Department, the EIS must be exhibited for at least 28 days. The Department may advertise the public exhibition of the EIS, notify relevant government agencies and meet with key stakeholders to get a better understanding of community views on the project.

Proponents may arrange information sessions during the exhibition period to explain the project and the EIS to assist the community in making informed submissions. The Department may also arrange information sessions to explain the purpose of the exhibition and how to make a submission, including how submissions are used in the assessment and determination of the application.

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

These submissions are required to be made through the NSW planning portal. This allows 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.

This also ensures submissions are duly made by requiring the following:

- the full name and address of the submitter
- the name of the application and application number
- a statement on whether the submitter supports, comments on 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 signed copy of the Department's standard declaration, which covers matters that may arise from the publication of submissions, including:
 - 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 statements²⁹.

6.3 Personal information

The Department will publish some of the personal information provided by submitters on the major projects website, 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.

In addition, anyone can subscribe to the Department for updates on the progress of the SSI application.

²⁹ For more information on the standard declaration form, see <https://www.planningportal.nsw.gov.au/major-projects/about/disclaimer-and-declaration>.

7. Responding to submissions

7.1 Introduction

Following the exhibition of the EIS, the Department will publish all the duly made submissions it receives on the major projects website and ask the proponent to respond to the issues raised in submissions³⁰.

The purpose of this request is to:

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

The Department may also require the proponent to respond to issues raised in agency advice or feedback provided to the Department in the submissions report.

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

7.2 Responding to issues raised in submissions

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 proponent should submit the response to the Department as quickly as possible.

The response to submissions is an opportunity for the proponent to explain how the issues raised in submissions have been addressed in the application. It helps the community and government agencies to understand how the issues they raised have been

addressed by the proponent and assists the approval authority to evaluate the merits of the project.

The guidance provided here relates to responding to EIS submissions. However, it can also be applied to responding to submissions that relate to other documents that may be exhibited by the Department, such as amendment reports, preferred infrastructure reports (PIRs) and modification reports.

In preparing the submissions report, the proponent may clarify how issues raised in submissions have been addressed in the EIS or undertake further assessment of impacts. The proponent may choose to undertake further community engagement to provide updates on the project or to explain the response to issues raised in submissions.

The proponent must lodge the submissions report online via the Department's major projects website. Following receipt, the Department will publish the submissions report on the major projects website.

7.3 Submissions report

The submissions report must include an analysis of the number and type of submissions and the issues raised, a response to those issues including any further environmental assessment or mitigation measures, and an updated justification and evaluation of the project. It must also document any additional community engagement undertaken since preparation of the EIS.

The submissions report must be prepared to a high standard, having regard to the Department's *State Significant Infrastructure Guidelines – Preparing a Submissions Report*.

30 See section 5.17(6) of the EP&A Act.

Responding to submissions

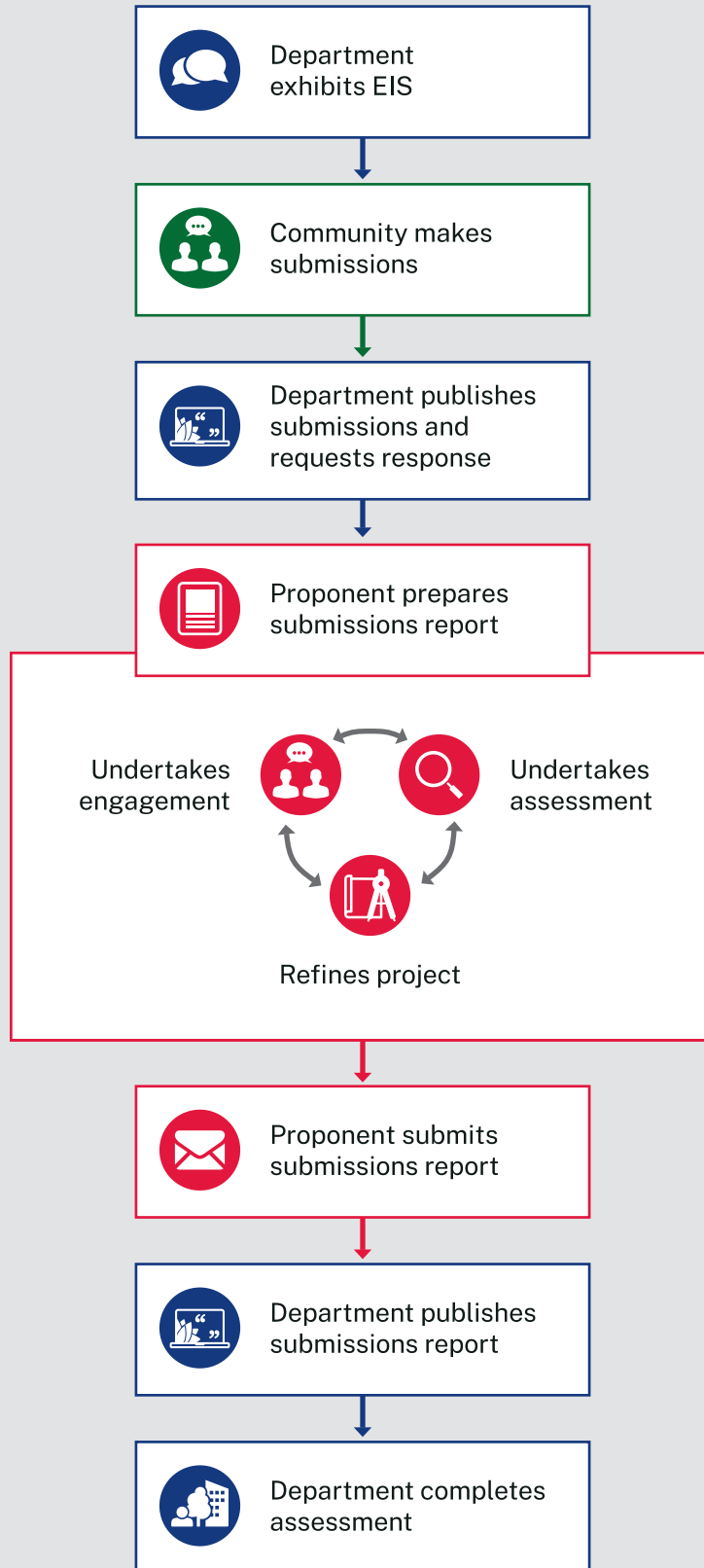


Figure 4: Responding to submissions

8. Amending an SSI application

8.1 Introduction

Under the EP&A Regulation, the proponent of an SSI project may, with the agreement of the Planning Secretary, amend or vary the infrastructure application at any time before it is determined³¹.

Amendments to an SSI application are only required if the proponent wants to change what it is seeking approval 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 issues raised in submissions or further community engagement
- reduce 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 proponent is seeking approval for or require an amendment to the project.

If the proponent wants to amend what it is seeking approval for, it must prepare an application to amend an SSI application, accompanied by an amendment report. The purpose of the amendment report is to outline the changes to the project and help the community, government agencies and the approval authority to understand the implications of these changes.

An amendment report may contain similar information to a PIR but amendments to an application are initiated by a proponent. A PIR is prepared at the request of the Planning Secretary and outlines any proposed changes to the SSI to minimise its environmental impact or to deal with any other issue raised during the assessment of the application.

The steps for amending an infrastructure application are shown in Figure 5.

In circumstances where amendments are proposed by the proponent and the Planning Secretary has requested a PIR, the amendments may be described in the PIR without the need for a separate amendment report. These amendments should be clearly described and identified as amendments initiated by the proponent, as distinct from any changes proposed to minimise environmental impact or deal with any issues raised during the assessment of the application.

8.2 Amending an SSI application

To seek the Planning Secretary's agreement for any proposed amendments to an SSI application, the proponent must lodge the amendment application and amendment report on the major projects website. The amendment application must be in the form approved by the Planning Secretary.

The Department will publish the amended SSI application and amendment report, and in some circumstances (for example, if there is a material environmental impact beyond the impacts expected by the initially proposed project), may exhibit and seek public submissions on the amendment report.

If the amendment report is exhibited, the Department will publish all submissions online and ask the proponent to prepare a duly made submissions report (note: this is separate from the submissions report prepared to respond to submissions made in relation to the EIS). The Department will assess the application based on the EIS, submissions and response to submissions as well as the amendment report and any related submissions and response to submissions.

31 Section 179(2) of the EP&A Regulation.

In preparing the amendment report, the proponent may:

- refine the design of the project
- undertake further engagement with the community and government agencies
- undertake further assessment
- update the justification and evaluation of the project to incorporate the findings of any further assessment or engagement.

8.3 Amendment report

The amendment report must contain a description of the proposed amendments, an assessment of their environmental impacts and a description of revised mitigation measures where relevant. It must also include an updated consolidated project description.

An application to amend an SSI application must be made in the approved form (available on the major projects website) and contain details of the amendment to the application.

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

Amending applications

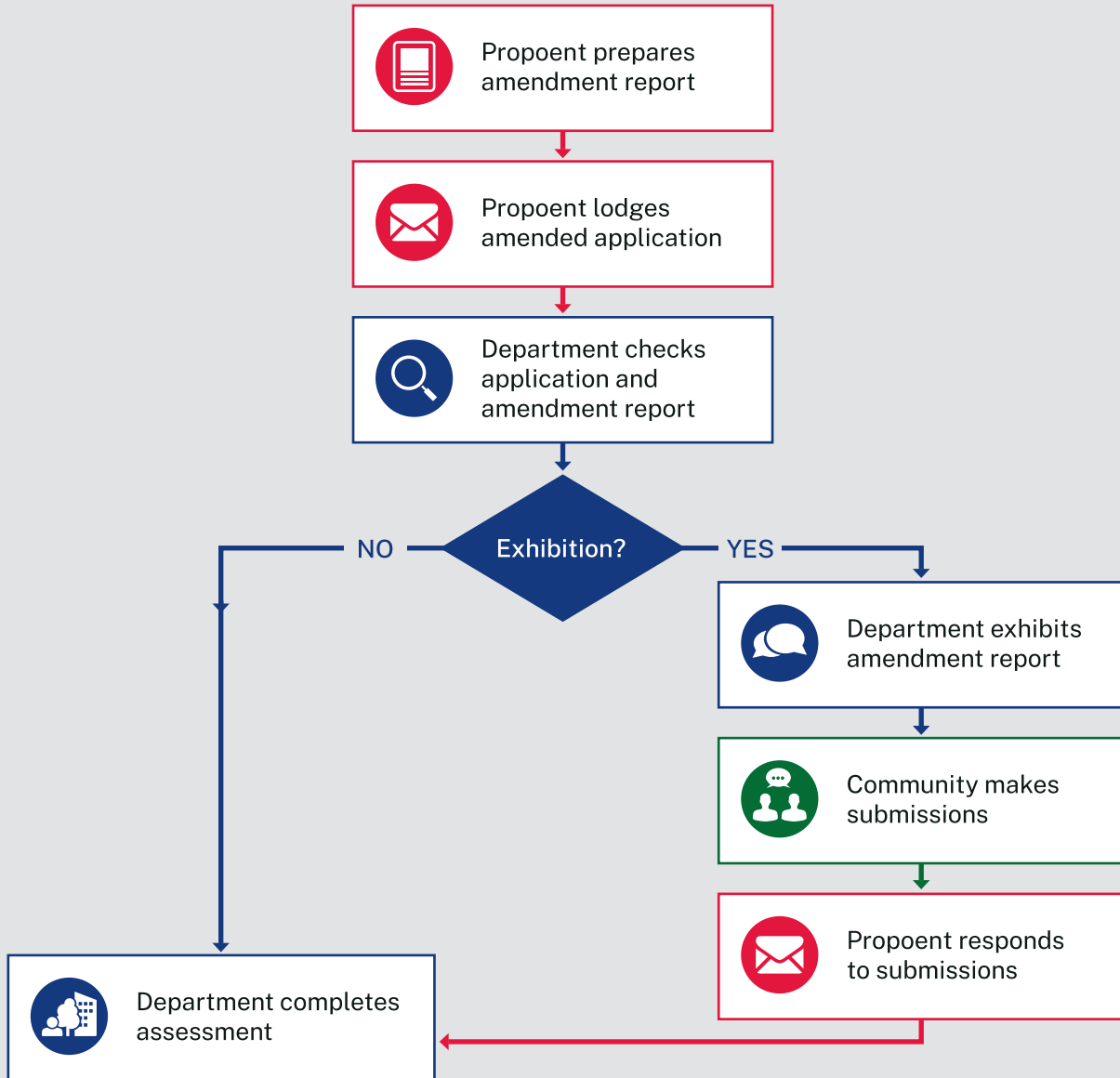


Figure 5: Amending applications

9. Preparing a PIR

9.1 Introduction

In certain circumstances, the Planning Secretary may require a proponent to submit a PIR for an SSI project that:

- outlines proposed changes to the SSI project to minimise its environmental impact
- deals with other assessment issues raised during the assessment of the application³².

The purpose of the PIR is to outline any changes to the project and to help the community, government agencies and the approval authority understand the implications of these changes. The PIR should contain similar information to an amendment report (but the difference is that an amendment report includes amendments initiated by a proponent).

A PIR is prepared at the request of the Planning Secretary and outlines any proposed changes to the State significant infrastructure. This would typically occur when the Department determines that an SSI project should be changed to address issues raised in submissions or identified during the detailed assessment of the merits of the project.

9.2 Preparing a preferred infrastructure report

The proponent prepares the PIR following similar steps for the preparation of an amendment report.

Once complete, the proponent must submit the PIR online and the Department may seek submissions on the report. If the PIR is exhibited, the Department will publish all submissions online and ask the proponent to prepare a submissions report.

In preparing the PIR, the proponent may:

- refine the design of the project
- undertake further engagement with the community and government agencies
- undertake further assessment
- update the justification and evaluation of the merits of the project to incorporate the findings of any further assessment or engagement.

9.3 Preferred infrastructure report

The PIR must include a description of the changes to the SSI, an assessment of the environmental impacts and a description of revised mitigation measures. It must also include an updated consolidated description of the project.

The PIR must be prepared to a high standard, having regard to the Department's State Significant Infrastructure Guidelines – Preparing a Preferred Infrastructure Report.

32 See section 5.17(6) of the EP&A Act.

Preferred infrastructure report

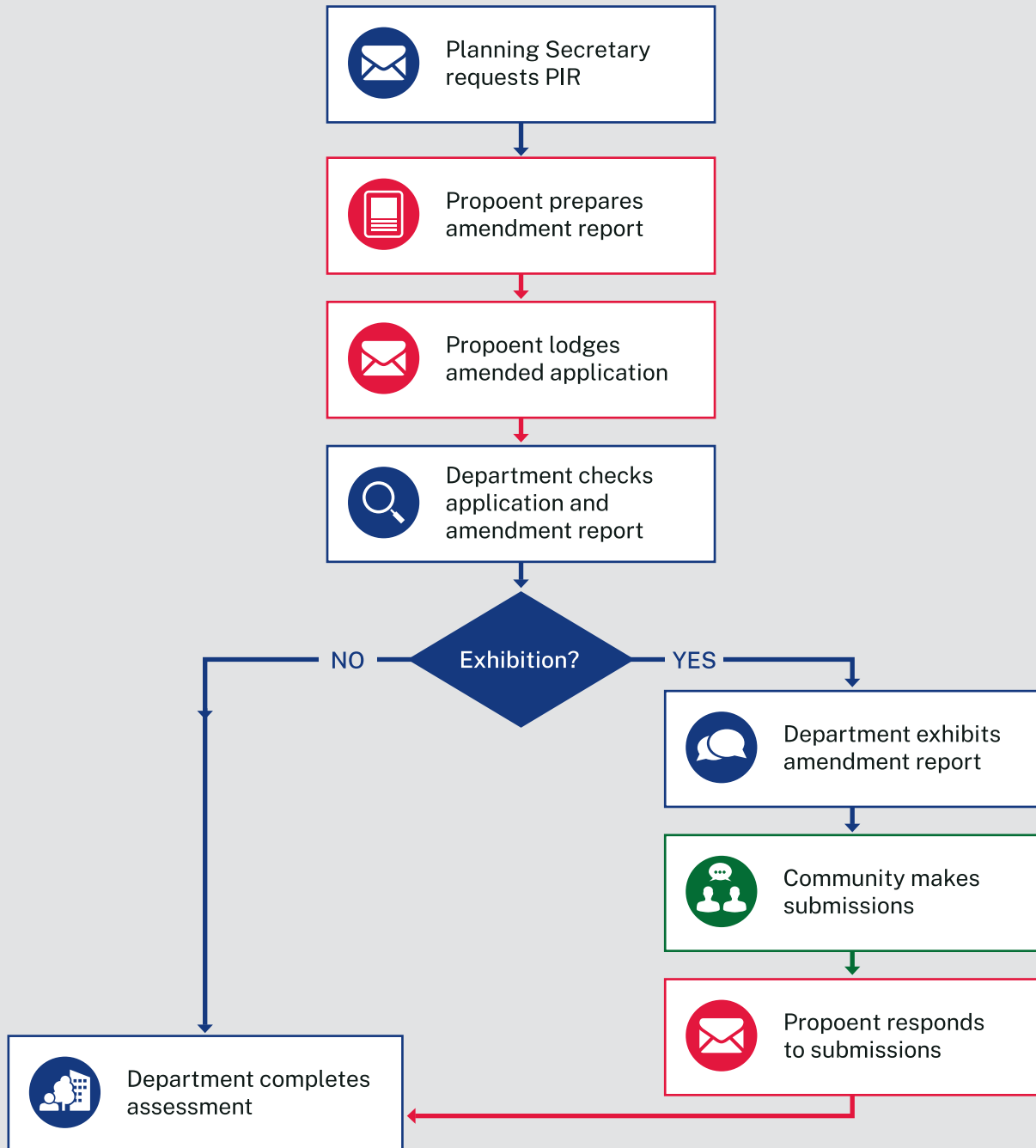


Figure 6: Preparing a preferred infrastructure report

10. Assessing an SSI application

10.1 Introduction

After publishing the submissions report (and if relevant, an amendment report and/or a PIR), the Department will complete its assessment of the merits of the project in accordance with Government legislation, policies and guidelines and prepare an assessment report.

10.2 Assessing an SSI application

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 proponent'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.

To assist with its assessment, the Department may request additional information from the proponent and seek advice from government agencies and independent experts.

Once complete, the Planning Secretary will give the Minister a copy of the assessment report for the purposes of the Minister's consideration of the application for approval to carry out the infrastructure.

10.3 Assessment report

The Department's assessment is documented in the Planning Secretary's report which must include:

- a copy of the proponent's EIS and any PIR
- any advice provided by government agencies on the SSI
- a copy of any report or advice of the Independent Planning Commission in respect of the State significant infrastructure
- any environmental assessment undertaken by the Planning Secretary or other matter the Planning Secretary considers appropriate.

11. Determining an SSI application

The Minister is the approval authority for all CSSI applications and cannot delegate this function to anyone else under the EP&A Act.

While the Minister is also the approval authority for SSI applications, this function has been delegated to senior officers in the Department for SSI applications where:

- the council of the area within the project is located has not objected to the project
- less than 50 submitters have objected to the project
- the proponent has not made a reportable political donation.

When determining an SSI application, the approval authority (which will be the Minister or delegate) must consider the matters in section 5.19 of the EP&A Act:

- the Planning Secretary's report on the infrastructure and the reports, advice and recommendations contained in the report
- any advice provided by the Minister having portfolio responsibility for the proponent
- any findings or recommendations of the Independent Planning Commission following a review in respect of the State significant infrastructure.

The approval authority may approve the carrying out of the project, subject to modifications or conditions, or disapprove.

After the determination of an SSI application, the Department will:

- publish the decision online
- give public notice of the reasons for the decision and how community views were taken into account in making the decision³³.

11.1 Judicial review and appeals

Judicial review

While all decisions on SSI applications are subject to judicial review by the Land and Environment Court³⁴, decisions on CSSI projects are only subject to judicial review with the approval of the Minister³⁵.

This is because CSSI projects are considered to be essential for NSW and should proceed as quickly as possible subject to the conditions in the Minister's approval.

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

Any person may commence these proceedings within three months of the public notice of the determination of the application.

Merit appeal

SSI and CSSI approvals are not subject to merit appeal.

33 See section 20 of Schedule 1 of the EP&A Act.

34 See section 5.26 of the EP&A Act.

35 See section 5.27(2) of the EP&A Act.

12. Complying with post-approval requirements

If an SSI project is approved, the proponent must comply with the conditions of the approval.

12.1 Post-approval requirements

These conditions normally require the proponent to address several matters prior to defined stages such as commencement of construction or operation (see the conceptual post-approval framework in Figure 7).

This may include:

- establishing a Community Consultative Committee for the project
- setting up a complaint handling system and website for the project
- forming independent advisory panels to provide advice
- preparation and implementation of certain management plans
- submitting management plans and strategies to the Department for approval
- monitoring and publicly reporting on performance.

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

This includes publishing copies of any approved management plans or post-approval decisions on the major projects website.

This allows the community to track the progress of the project and make complaints to the Department if necessary.

12.2 Obligations for proponents

To ensure all post-approval requirements are dealt with quickly by the Department, proponents must:

- submit all relevant documents to the Department on the major projects website
- comply with the requirements of the relevant conditions of approval
- complete any consultation required under the conditions of approval
- 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 proponent should also include a conditions compliance table identifying the relevant conditions of approval and how they have been addressed in the document.

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

12.3 Requiring additional information

While reviewing post-approval matters, the Department may ask the proponent to provide additional information to address outstanding issues or require changes to the submitted documents.

This information should be provided to the Department as quickly as possible.

12.4 Other approvals

If an SSI project is approved, the proponent may be required to obtain other additional approvals before it may construct or operate the project.

This includes any “consistent approvals”³⁶ that cannot be refused and must be substantially consistent with the SSI approval, such as an environment protection licence.

It may also include other approvals that were not formally integrated with the development but that were considered in the SSI assessment, such as approvals under the Commonwealth EPBC Act.

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

- coordinate the assessment of any post-approval requirements
- minimise the duplication of any requirements
- ensure compliance with any conditions.

³⁶ See section 5.24 of the EP&A Act.

Conceptual post-approval framework

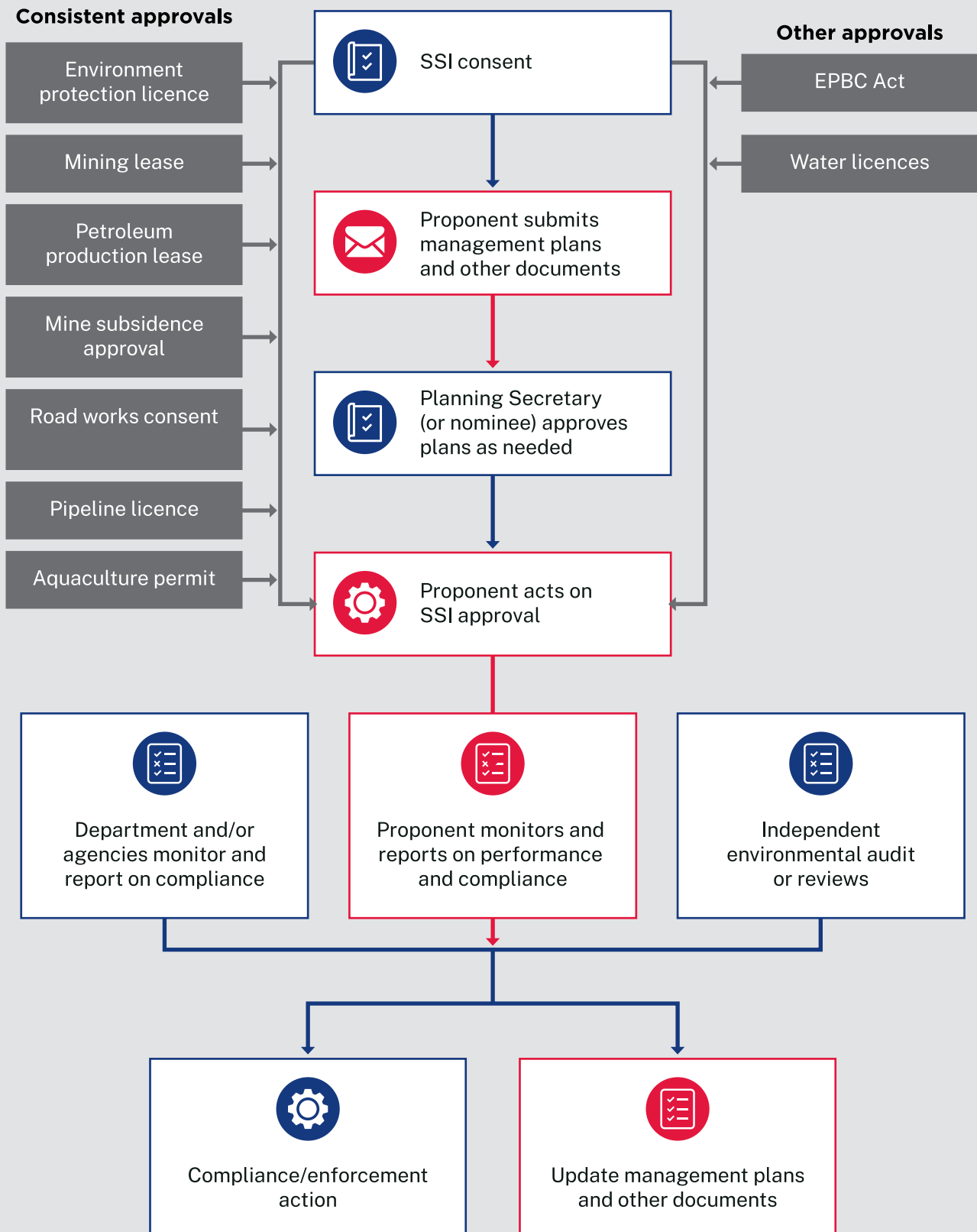


Figure 7: Conceptual post-approval framework

13. Modifying an SSI approval

13.1 Introduction

Under the EP&A Act, a proponent may request the Minister to modify the Minister's approval for State significant infrastructure. The Minister's approval for a modification is not required if the infrastructure as modified will be consistent with the existing approval³⁷.

These modifications may be necessary to improve the design of the project or change the conditions of approval.

13.2 Modifying an SSI approval

When a proponent lodges a request to modify an SSI approval, it is required to submit a modification report to the Department that assesses the impacts of the proposed modifications. Prior to submitting a request and modification report, the proponent should discuss the proposed modification with the Department to confirm the issues to be addressed and the approach to community consultation, if relevant.

The Department may issue environmental assessment requirements to provide certainty to the proponent regarding the scope of the request to modify the SSI approval.

The Department will publish the modification report on the major projects website.

The Department will need to consider if there is a material environmental impact beyond the impacts expected by the approved project in determining whether the modification report will be publicly exhibited. If the modification 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 modification report and make a submission on the merits of the modified project.

Following detailed assessment, the approval authority will determine the request and publicly notify the decision.

If the request is approved, the proponent must comply with the approval as modified.

13.3 Modification report

A modification request to modify an SSI approval must describe the proposed modification including a comparison to the approved project, explain why the proposal can be assessed and determined as a modification and describe any environmental assessment and community consultation undertaken to support the modification. It must also identify any conditions of approval to be modified, where relevant, and provide a justification and evaluation of the merits of the proposed modification.

A request to modify the Minister's approval for SSI must be made in the approved form (available on the major projects website), and contain details of the proposed modification to the approval having regard to these guidelines³⁸.

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

³⁷ See sections 5.25 of the EP&A Act.

³⁸ See section 180 of the EP&A Regulation.

Modifying applications

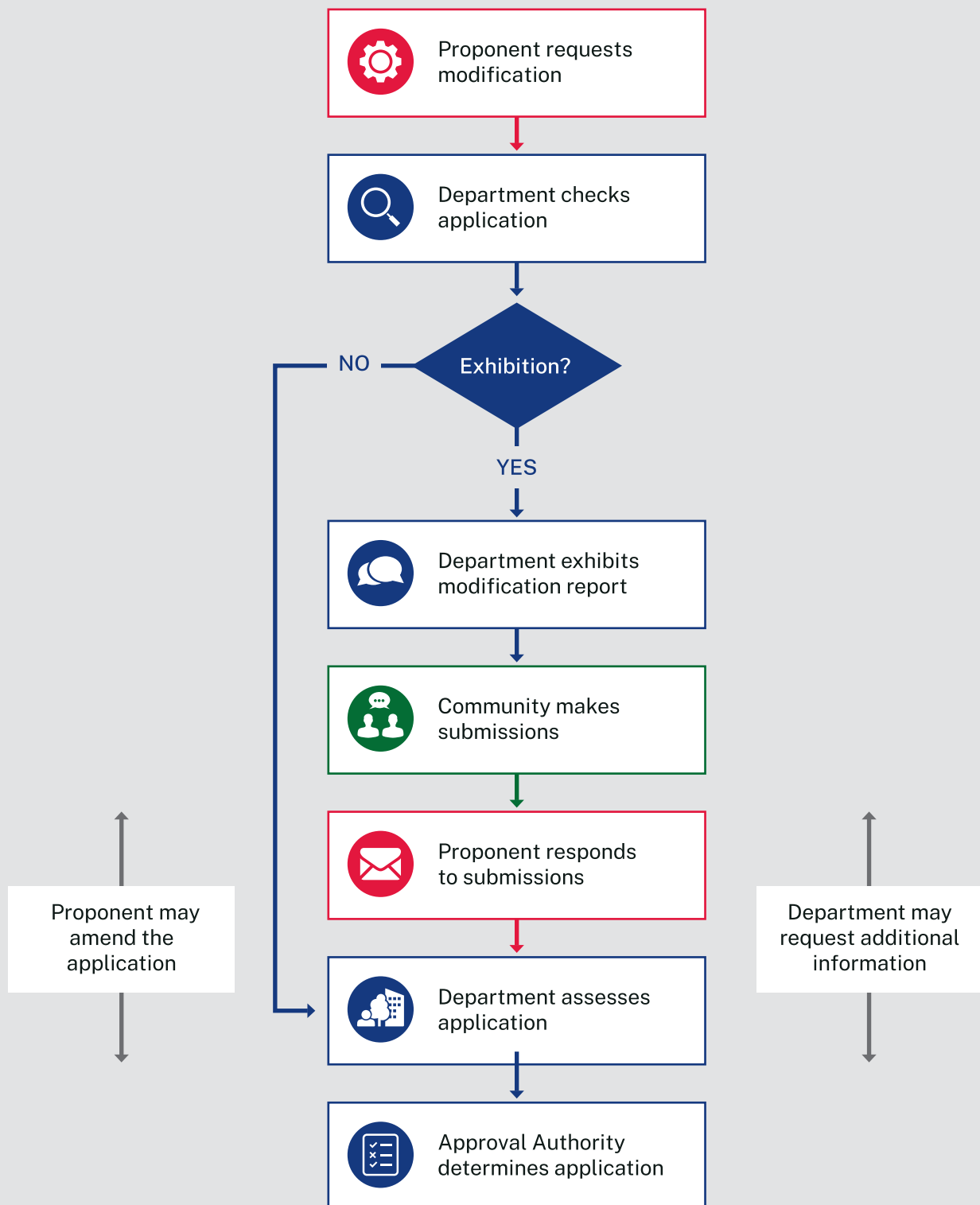


Figure 8: Modifying approvals

Initiating a modification

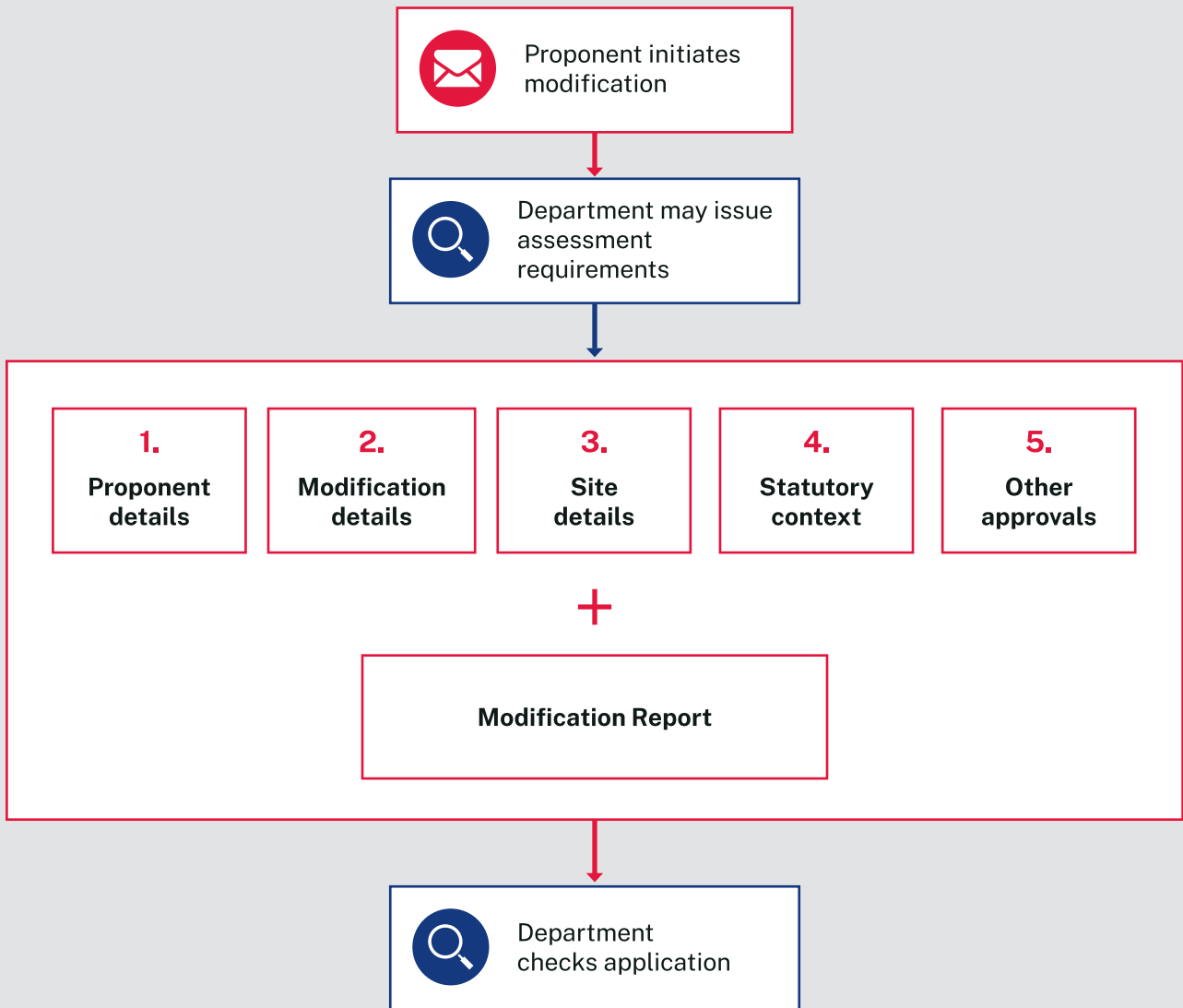


Figure 9: Initiating a modification

14. Compliance

The Department is responsible for checking compliance with the conditions of any SSI approval and taking enforcement action to ensure compliance if necessary.

It also works closely with the government agencies responsible for ensuring compliance with any other approvals for SSI projects, to ensure these activities are properly coordinated.

14.1 Regular compliance activities

To check compliance, the Department will typically carry out a range of compliance activities. These activities may include:

- monitoring compliance against the conditions of approval
- requiring proponents to report any non-compliances
- requiring regular independent environmental audits to be carried out
- overseeing the independent reviews of potential non-compliances
- investigating complaints
- undertaking regular inspections of projects.

14.2 Regulatory action

The Department has strong enforcement powers under the EP&A Act to support actions to address any non-compliances with the conditions of SSI approval and has developed clear policies and guidelines to ensure any actions taken are fair, reasonable and proportionate to the significance of any breaches.

14.3 Complaints

The community can review key information relating to the performance and compliance of all SSI projects on the major projects website.

The community can also make complaints or raise concerns about the compliance of an SSI with the Department at any time via the major projects website.

The Department will investigate all complaints thoroughly before providing feedback to the complainant on the findings of the investigation and whether any regulatory action was taken.

15. Glossary

Term	Meaning
Amendment	A change in what the proponent is seeking approval for during the assessment. It requires changes to the project description in the EIS or modification report and amendments to the associated infrastructure application or modification request. Applications can only be amended with the agreement of the Planning Secretary.
Amendment report	A report prepared by the proponent to support amendments to an infrastructure application or modification request (see the State Significant Infrastructure Guidelines – Preparing an Amendment Report).
Approval authority	The approval authority for an SSI application or SSI modification request. This will be the Minister.
Critical State significant infrastructure (CSSI)	Development that is declared to be critical State significant infrastructure under section 5.13 of the EP&A Act.
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, Housing and Infrastructure.
Determination	A decision by an approval authority for an SSI application to either approve the application subject to modifications or conditions or refuse the application.
Environmental assessment reports	Reports required to be submitted to the Department by a proponent seeking approval for an SSI application or modification request. These reports include scoping reports, EISs, submissions reports, amendment reports, preferred infrastructure reports and modification reports.
Environmental impact statement (EIS)	An environmental impact statement prepared by the proponent to support an SSI application (see the State Significant Infrastructure Guidelines – Preparing an Environmental Impact Statement).
Environmental planning instrument	Means an environmental planning instrument (including a SEPP or Local Environmental Plan) made under part 3 of the EP&A Act.
EP&A Act	<i>Environmental Planning and Assessment Act 1979.</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2021.
Major projects website	www.planningportal.nsw.gov.au/major-projects
Matter	An element of the environment that may be affected by an SSI (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 SSI approval, including revoking or varying a condition of approval. A modification requires approval under the EP&A Act.
Modification request	A request seeking to modify an SSI approval under section 5.25 of the EP&A Act.
Modification report	A report prepared by the proponent to support a modification request (see the State Significant Infrastructure Guidelines – Preparing a Modification Report).

Term	Meaning
Planning Secretary	The Secretary of the Department.
Preferred infrastructure report (PIR)	A report prepared by an SSI proponent at the request of the Planning Secretary that outlines any proposed changes to the SSI to minimise its environmental impact or to deal with any other issue raised during the assessment of the application concerned (see the State Significant Infrastructure Guidelines – Preparing a Preferred Infrastructure Report).
Project	Refers to State significant infrastructure (SSI).
Proponent	The proponent seeking approval for an SSI application or modification request.
Refinement	A change that fits within the limits set by the project description and does not change what the proponent is seeking approval for or require an amendment to the infrastructure application 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 proponent to inform the setting of SEARs for an SSI project (see the State Significant Infrastructure Guidelines – Preparing a Scoping Report).
SEARs	The Planning Secretary’s environmental assessment requirements for the preparation of an EIS for an SSI project.
SEPP	State Environmental Planning Policy.
State significant infrastructure (SSI)	Development that is declared to be State significant infrastructure under section 5.12 of the EP&A Act.
Submission	A response from an individual or organisation, which is made through the NSW planning portal during the public exhibition of a development application, including the exhibition of an EIS, amendment report, preferred infrastructure report or modification report.
Submissions report	A report prepared by the proponent to respond to the issues raised in submissions (see the State Significant Infrastructure Guidelines – Preparing a Submissions Report).

