

State Significant Infrastructure Guide

Exhibition Draft

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

1.1 State Significant Infrastructure

The EP&A Act sets out a process for declaring development 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 and Public Spaces (the Minister) or his / her delegate within the Department of Planning, Industry and Environment (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 this guide

This guide provides a detailed explanation of the assessment of SSI in NSW, describing each step of the SSI assessment.

It ensures 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 and that all environmental assessment reports submitted to the Department are succinct, easy to understand, technically robust, reflect community views and provide a comprehensive evaluation of the SSI project as a whole.

In particular, it identifies 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 guide encourages greater community participation in SSI assessment by requiring proponents to start engaging with the community early, making environmental assessment reports easier to read and understand, and highlighting how the community can have a say on the merits of SSI projects.

The guide sets clear expectations for everyone involved in SSI assessment—including proponents, the community, local councils and 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 this guide

The *Environmental Planning & Assessment Regulation 2000* (EP&A Regulation) will be amended to require proponents to prepare all environment assessment reports submitted to the Department

for SSI projects – such as Environmental Impact Statements (EISs) – having regard to any SSI guides prepared by the Planning Secretary.

This guide will be the guideline prepared by the Planning Secretary for the purposes of the EP&A Regulation when it is amended.

Proponents must have regard to this guide:

- when preparing an environmental impact statement¹
- when preparing an application to amend or vary an application for approval of the Minister to carry out SSI²
- when preparing a request to modify the Minister's approval for SSI under s 5.25(2) of the EP&A Act³

1.4 Supporting Material

The guide is supported by additional detailed guidance on:

- encouraging community participation in SSI projects (see the Department's *Community Participation Plan* and *Undertaking Engagement* guide)
- preparing environmental assessment reports to a high standard (see the guidance on *Preparing a Scoping Report, Environmental Impact Statement (EIS), Submissions Report, Amendment Report, Preferred Infrastructure Report and Modification Report* in Appendices A-F of this guide)
- requiring the EISs for all SSI applications to be certified by suitably skilled, experienced and qualified practitioners before they are submitted to the Department (see the *Registered Environmental Assessment Practitioner* guide).
- strengthening the assessment of cumulative impacts (see *Assessing Cumulative Impacts* guide)
- declaring development SSI or CSSI (see *Guideline on the declaration of State significant infrastructure and critical State significant infrastructure* in Appendix G).

The above mentioned Guidelines are also *State Significant Infrastructure Guidelines* for the purposes of the EP&A Regulations and proponents must also have regard to these in the circumstances note above in section 1.3.

¹ See cl 194(2) of the EP&A Regulations.

² See cl 192(2A) of the EP&A Regulations.

³ See cl 196A(c) of the EP&A Regulations.

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: through a declaration in a State Environmental Planning Policy (SEPP)⁴ or through a declaration in an order⁵ made by the Minister for Planning and Public Spaces.

The Minister may also declare development that is SSI to be critical State significant infrastructure⁶ (CSSI) if it is considered essential for the State for economic, environmental or social reasons.

2.1 Declaration by SEPP

A State Environmental Planning Policy (SEPP) may declare any development, or any class or description of development, to be SSI⁷ provided the SEPP also provides that the development may be carried out without development consent under Part 4 and, the development is:

- Infrastructure⁸, 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 Environmental Impact Statement (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)⁹.

Development declared in this way is identified in Schedule 3 of the State & Regional Development SEPP 2011¹⁰ 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 SEPP¹¹. Such development is identified in Schedule 4 of the State & Regional Development SEPP 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

The Minister may declare any SSI to be CSSI if he / she 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 & Regional Development SEPP 2011 has a list of CSSI projects, and includes (for example):

⁴ See section 5.12(2) of the EP&A Act.

⁵ See section 5.12(4) of the EP&A Act.

⁶ See section 5.13 of the EP&A Act.

⁷ Section 5.12 (2) and (3) of the EP&A Act.

⁸ As defined in section 5.11 of the EP&A Act.

⁹ See section 5.12(3) of the EP&A Act.

¹⁰ State Environmental Planning Policy (State and Regional Development) 2011 (NSW)

¹¹ See section 5.12(4) of the EP&A Act.

- 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 *Guideline on the declaration of State significant infrastructure and critical State significant infrastructure* in Appendix G.

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 circumstances¹². 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 apply¹³ or must be substantially consistent with the approved SSI / CSSI¹⁴
- Landowners consent is not required for certain SSI projects¹⁵.

The following additional features apply to CSSI:

- a development control order, for example a stop work order, cannot be given in relation to CSSI¹⁶
- 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 CSSI¹⁷
- the Minister cannot delegate his function of determining an application for approval of CSSI¹⁸.

¹² See section 5.22(2) of the EP&A Act

¹³ Section 5.23 of the EP&A Act.

¹⁴ Section 5.24 of the EP&A Act.

¹⁵ Clause 193 of the EP&A Regulation.

¹⁶ Section 5.22(4) of the EP&A Act.

¹⁷ Section 5.23 (3) of the EP&A Act.

¹⁸ 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 proceed.¹⁹

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 this guide.

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 refused²⁰ 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 and represents best practice.

Other approvals that do not apply to approved SSI²¹ 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 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 SSI assessment under the EP&A Act. The Department will coordinate this assessment under the current assessment bilateral²² and provide a detailed assessment report to the Commonwealth Minister for the Environment for consideration during decision-making under the EPBC Act.

¹⁹ See section 5.14 of the EP&A Act.

²⁰ See Section 5.24 for the full list of approvals that must be applied consistently to approved SSI

²¹ See Section 5.23 of the EP&A for a full list of the approvals that do not apply

²² See <https://www.environment.gov.au/system/files/pages/43badfb2-b8be-4a10-a5b9-feab2d38a5d2/files/nsw-bilateral-agreement-amending-agreement.pdf>

3.3 Proportionate Assessment

While all SSI projects go through 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 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 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 for Planning 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, he / she has delegated this function to senior officers in the Department for applications where:

- the local council 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 website, exhibiting applications, publishing submissions and issuing public notices about the determination of applications
- co-ordinating the detailed assessment of SSI projects with key State & 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 local 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* guide
- 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 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* guide
- 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 all reasonable and feasible avoidance and mitigation measures – 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
- evaluate 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 guides for these reports (see Appendices A-F of this guide)
- 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.

State Significant Infrastructure



Figure 1 | Assessment steps

3.7 Community Participation

Community participation is integral to assessing the merits of SSI projects, leading to the improved design of projects, reduced environmental impacts and 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 exhibition²³.

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* guide
- 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).

3.8 Major Projects Website

The Major Projects website (<https://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.

²³ See section 12 of the Schedule 1 of the EP&A Act.

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 project²⁴. The EIS must comply with 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.

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 Setting requirements

To obtain the SEARs for a 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 application must be accompanied by a Scoping Report to assist the Department in preparing SEARs.²⁵

The Department will publish the Scoping Report online and seek advice from relevant agencies about what should be included in the SEARs. It may also visit the site. The SEARs will be published online within 28 days of the publication of the Scoping Report.

In setting SEARs, the Department must have regard to the Scoping Report and 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*).²⁶

The SEARs will expire²⁷ if the EIS is not submitted to the Department within 2 years of the setting of the SEARs. If the SEARs expire, the proponent will need to reapply for the SEARs for the project.

This is to ensure the SEARs remain up to date and to discourage proponent 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 extend the expiry date of the SEARs by up to 3 months²⁸.

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

²⁴ See Section 5.16 of the EP&A Act.

²⁵ See clause 192(1) of the Regulation.

²⁶ See clause 194((1)(a) of the EP&A Regulation

²⁷ See clause 194(3) and (4) of the EP&A Act.

²⁸ See clause 3.7 of schedule 2 of the EP&A Regulation and the proposed amendment to this clause in the *Environmental Planning and Assessment Amendment (Major Projects) Regulation 2020*

4.3 Information to be provided

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 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 issues of concern to the community 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 *Preparing a Scoping Report* guide (see Appendix A).

Setting Requirements

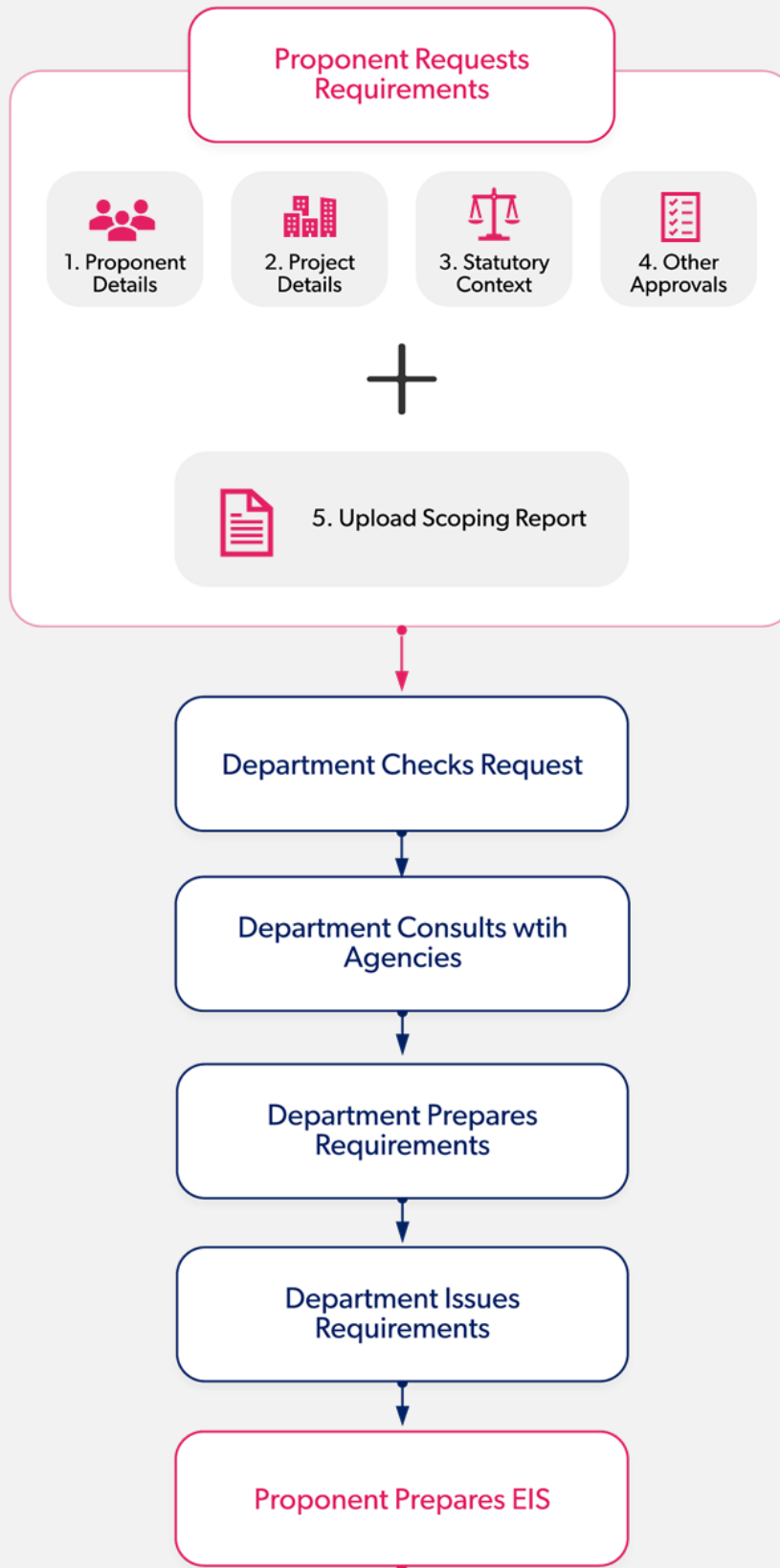


Figure 3 | Setting requirements

5. Preparing an EIS

5.1 Introduction

The proponent must ensure the EIS for the project complies with the SEARs and the relevant requirements of the EP&A Regulation²⁹.

The purpose of the EIS is to assess the economic, environmental and social impacts of the project and to help the community, local councils, 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 agencies as shown in Figure 3.

The proponent must then integrate the findings of these key activities into a comprehensive evaluation of the project as a whole, which includes objectively weighing up the positive and negative impacts of the project.

²⁹ See Schedule 2 of the *EP&A Regulation 2000*.



Figure 3 | Iterative process

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

The EIS must be prepared to a high standard, having regard to the Department's *Preparing an Environmental Impact Statement* guide (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
- evaluate the project as a whole, having regard to the economic, environmental and social impacts of the project and the principles of ecologically sustainable development.

The EIS must be certified by a registered environmental assessment practitioner (REAP) before it is submitted to the Department³⁰. Under the *Registered Environmental Assessment Practitioner* guide, the REAP must certify that the EIS:

- complies with the relevant EIS requirements in the EP&A Regulation
- has been prepared having regard to the Department's *Preparing an Environmental Impact Statement* guide
- contains all available information relevant to the assessment of the project
- contains no false or misleading information

³⁰ See proposed amendments to clauses 6(f) and 6(2) of the EP&A Regulation in the Environmental Planning and Assessment Amendment (Major Projects) Regulation 2020. REAPs are suitably skilled, qualified and experienced practitioners that are members of a professional scheme that is accredited under the EP&A Regulation.

- contains a consolidated description of the SSI project in a single chapter of the EIS
- addresses the SEARs for the project
- identifies and addresses the mandatory matters for consideration under all relevant legislation, including any relevant matters for consideration in environmental planning instruments
- includes an accurate summary of the findings of any community engagement and the detailed technical assessment of the impacts of the project
- contains a comprehensive 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.

5.3 Information to be provided

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

The EIS must comply with 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 *Preparing an Environmental Impact Statement* guide (see Appendix B).

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 SSI applications 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
- give public notice of the exhibition in accordance with the requirements in the EP&A Regulation.³¹

6.2 Exhibiting an EIS

Once the EIS is lodged 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 in newspapers, notify relevant 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.

The community, stakeholders and agencies have an opportunity to make online submissions on the merits of the SSI project in response to the EIS.

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 or objects to the project
- the reasons why the submitter supports 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

³¹ See clause 233 of the EP&A Regulation

- refraining from making any defamatory, offensive, or false or misleading statements³².

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.

³² 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 submissions it receives on the Major Projects website and ask the applicant to respond to the issues raised in submissions.

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 Responding to submissions

Following exhibition of an EIS, the Department will publish all the submissions it receives online and may ask the proponent to respond to the issues raised in the submissions³³.

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 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 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 Information to be provided

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

³³ See section 5.17(6) of the EP&A Act.

mitigation measures, and an updated evaluation of the project. It should 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 *Preparing a Submissions Report* guide (see Appendix C).

Responding to Submissions

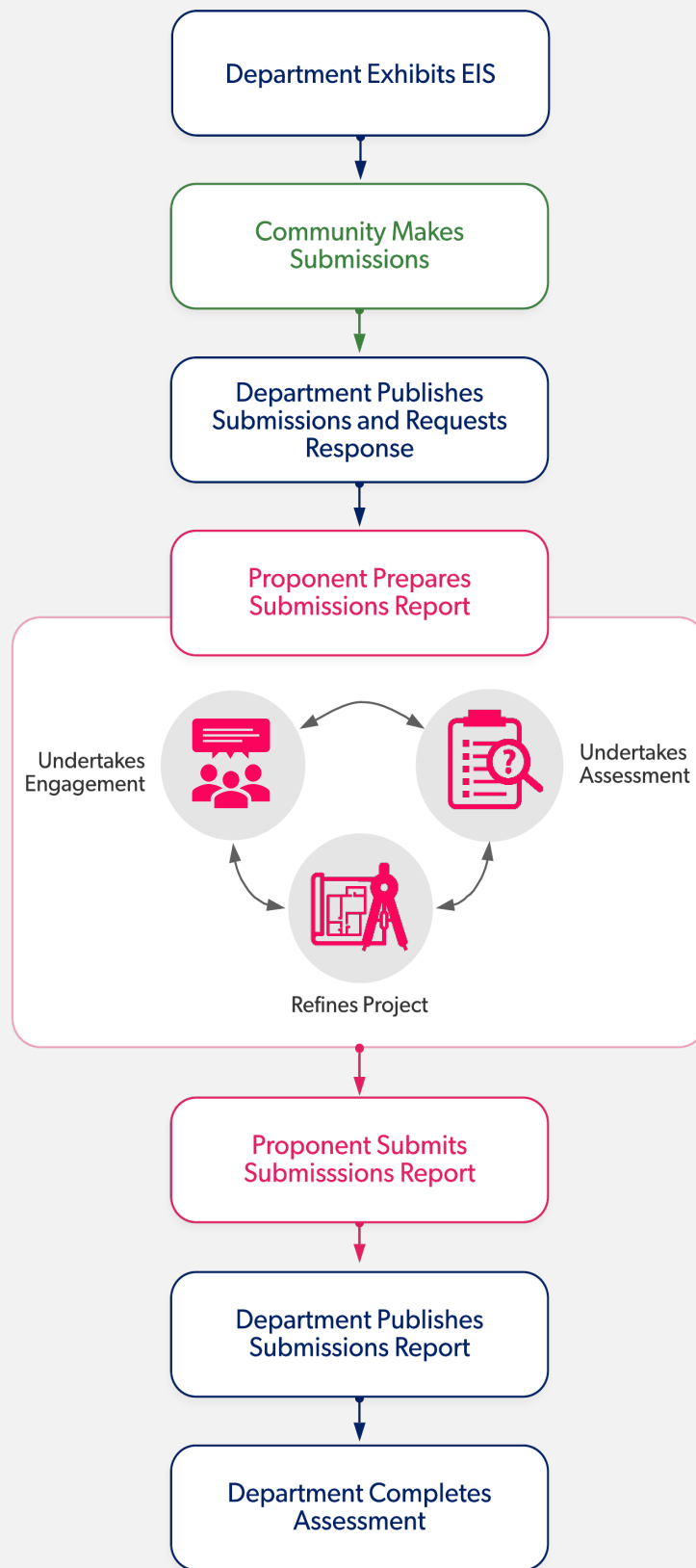


Figure 4 | Responding to submissions

8. Amending an SSI application

8.1 Introduction

Under the EP&A Regulation, the proponent of a SSI project may, with the agreement of the Planning Secretary, amend or vary the infrastructure application at any time before the application is determined.³⁴

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.

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, agencies and the approval authority to understand the implications of these changes.

An Amendment Report may contain similar information to a Preferred Infrastructure Report but amendments to an application are initiated by a proponent. A Preferred Infrastructure Report 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.

8.2 Amending an SSI application

To seek the Planning Secretary's agreement for any amendments to an SSI application, the proponent 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, the proponent 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.

The Department will publish the amended SSI application and Amendment Report; and in some circumstances (for example, where the amendments lead to new impacts), 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 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.

In preparing the Amendment Report, the proponent may:

- refine the design of the project
- undertake further engagement with the community and agencies

³⁴ Clause 192(2) of the EP&A Regulation.

- undertake further assessment
- update the evaluation of the merits of the project to incorporate the findings of any further assessment or engagement.

8.3 Information to be provided

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 form approved by the Planning Secretary and made available on the Major Projects website, and include any particulars of the nature of the proposed amendments to the infrastructure.

The Amendment Report must be prepared to a high standard, having regard to the Department's *Preparing an Amendment Report* guide (see Appendix D).

Amending Applications

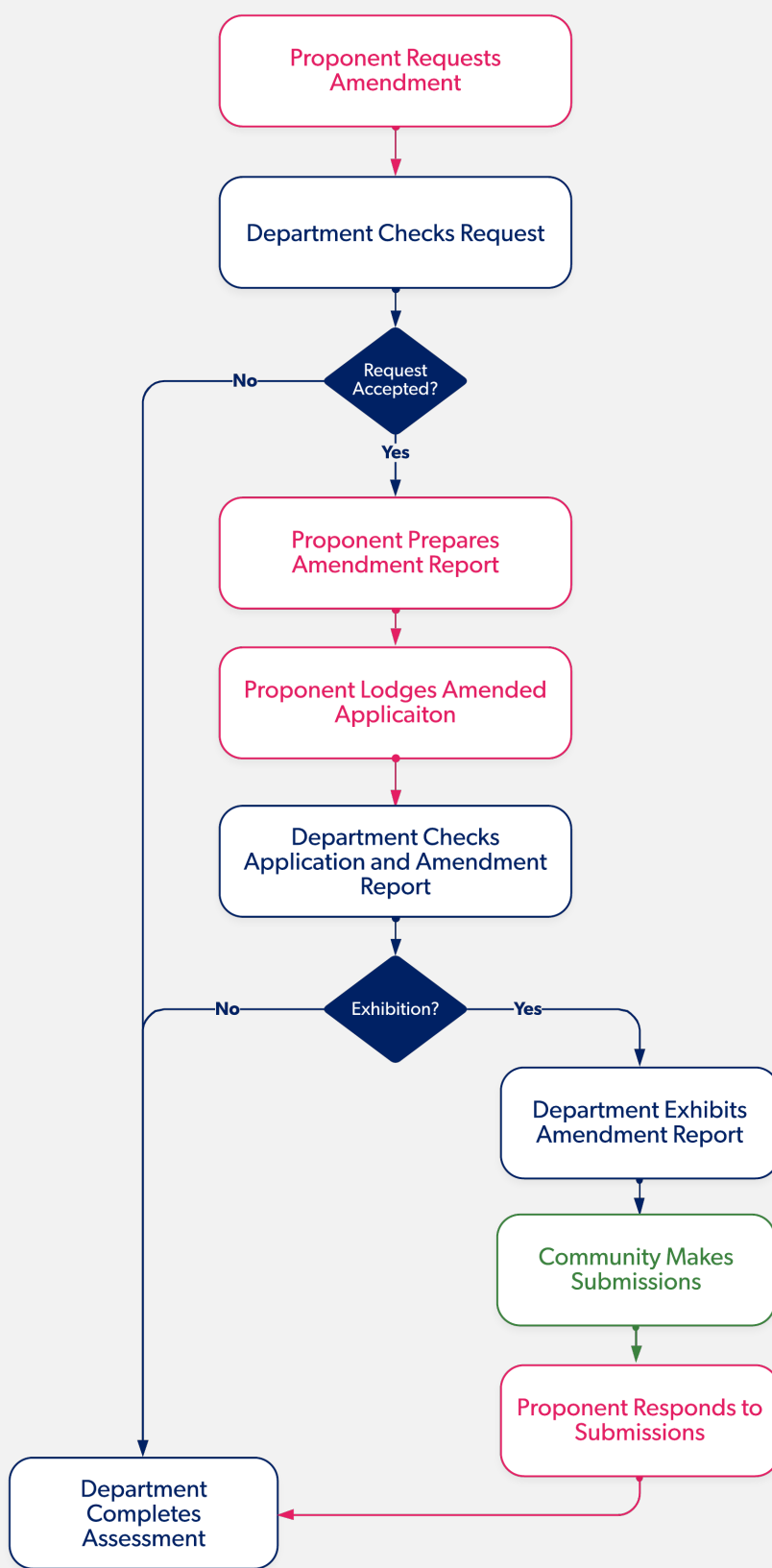


Figure 5 | Amending applications

9. Preparing a Preferred Infrastructure Report

9.1 Introduction

In certain circumstances, the Planning Secretary may require a proponent to submit a Preferred Infrastructure Report 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 application³⁵.

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.

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

A Preferred Infrastructure Report is prepared at the request of the Planning Secretary and outlines any proposed changes to the State significant infrastructure to minimise its environmental impact or to deal with any other issue raised during the assessment of the application.

9.2 Preparing a Preferred Infrastructure Report

The proponent prepares the Preferred Infrastructure Report following similar steps for the preparation of an Amendment Report.

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

In preparing the Preferred Infrastructure Report, the proponent may:

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

9.3 Information to be provided

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

The Preferred Infrastructure Report must be prepared to a high standard, having regard to the Department's *Preparing a Preferred Infrastructure Report* guide (see Appendix E).

³⁵ See section 5.17(6) of the EP&A Act.

Preferred Infrastructure Report

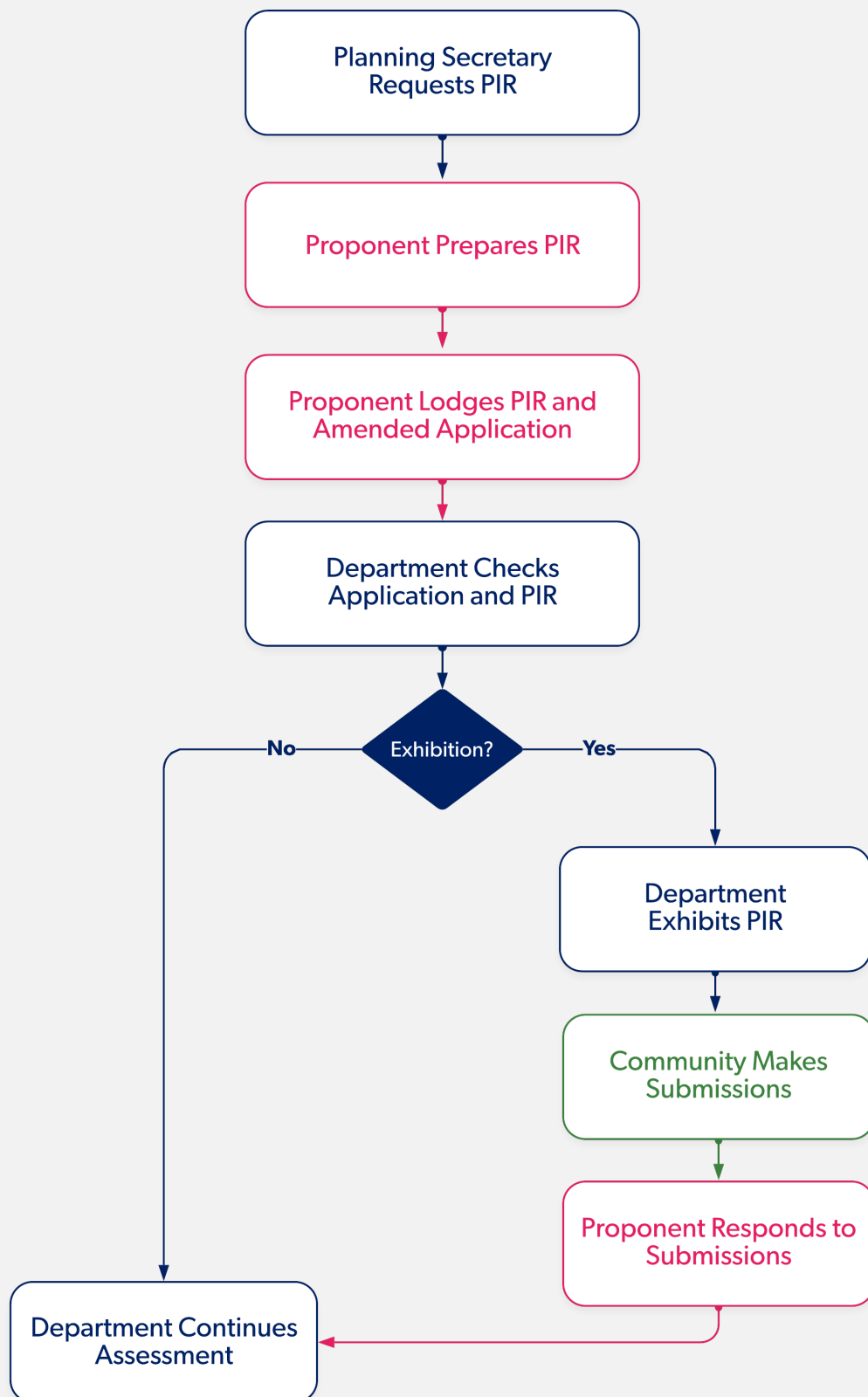


Figure 6 | Preparing a Preferred Infrastructure Report

10. Assessing an SSI application

10.1 Introduction

After publishing the Submissions Report (and if relevant, an Amendment Report and / or a Preferred Infrastructure Report), 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 applicant's response to submissions
- carry out targeted community engagement where necessary to investigate key concerns
- seek advice from 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 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 Information to be provided

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

- a copy of the proponent's Environmental Impact Statement and any Preferred Infrastructure Report
- any advice provided by 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 local council 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, and
- any advice provided by the Minister having portfolio responsibility for the proponent, and
- 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 of it.

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 decision.³⁶

11.1 Judicial review and appeals

Judicial Review

While all decisions on SSI applications are subject to judicial review by the Land and Environment Court under the EP&A Act³⁷, decisions on CSSI projects are only subject to judicial review with the approval of the Minister³⁸.

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.

³⁶ See section 20 of Schedule 1 of the EP&A Act.

³⁷ See section 9.45 of the EP&A Act

³⁸ 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 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”³⁹ 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 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.

³⁹ See section 5.24 of the EP&A Act.

Post Approval Framework

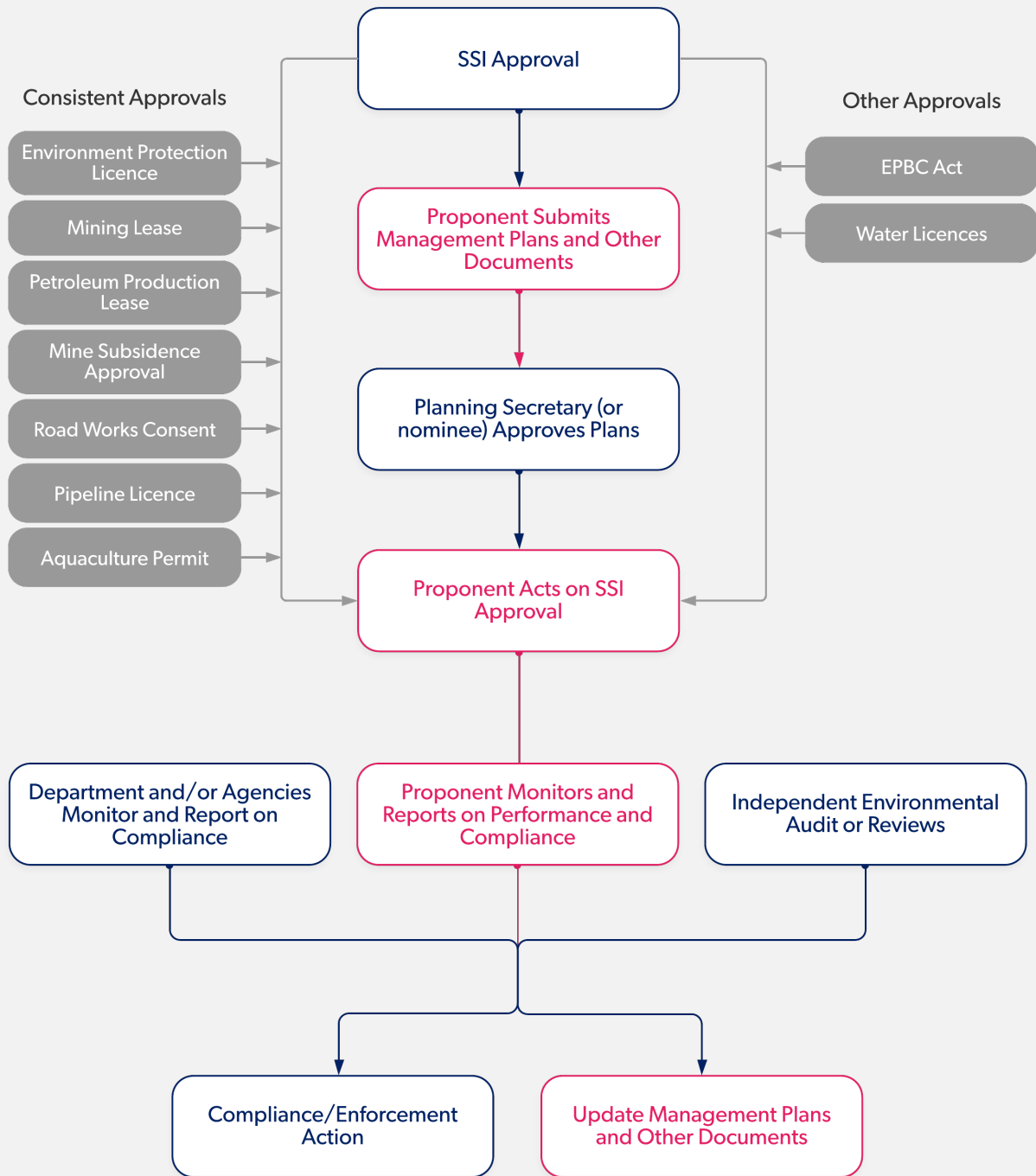


Figure 1 | Post-approved conceptual framework

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 approval.⁴⁰

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 applies to modify an SSI approval, it is required to submit a Modification Report to the Department that assesses the impacts of the proposed modifications⁴¹. Prior to submitting an application 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 application.

The Department will publish the Modification Report on the Major Projects website and seek public submissions if the modifications are likely to result in greater than minimal environmental impacts.

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

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

13.3 Information to be provided

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

A request to modify the Minister's approval for SSI must be made in the form approved by the Planning Secretary and made available on the NSW Planning Portal, and include any particulars of the nature of the proposed modification to the approval having regard to this guide.

The Modification Report must be prepared to a high standard, having regard to the Department's *Preparing a Modification Report* guide (see Appendix F).

⁴⁰ See sections 5.25 of the EP&A Act.

⁴¹ See clause 196A of the EP&A Regulation.

Modifying Approvals

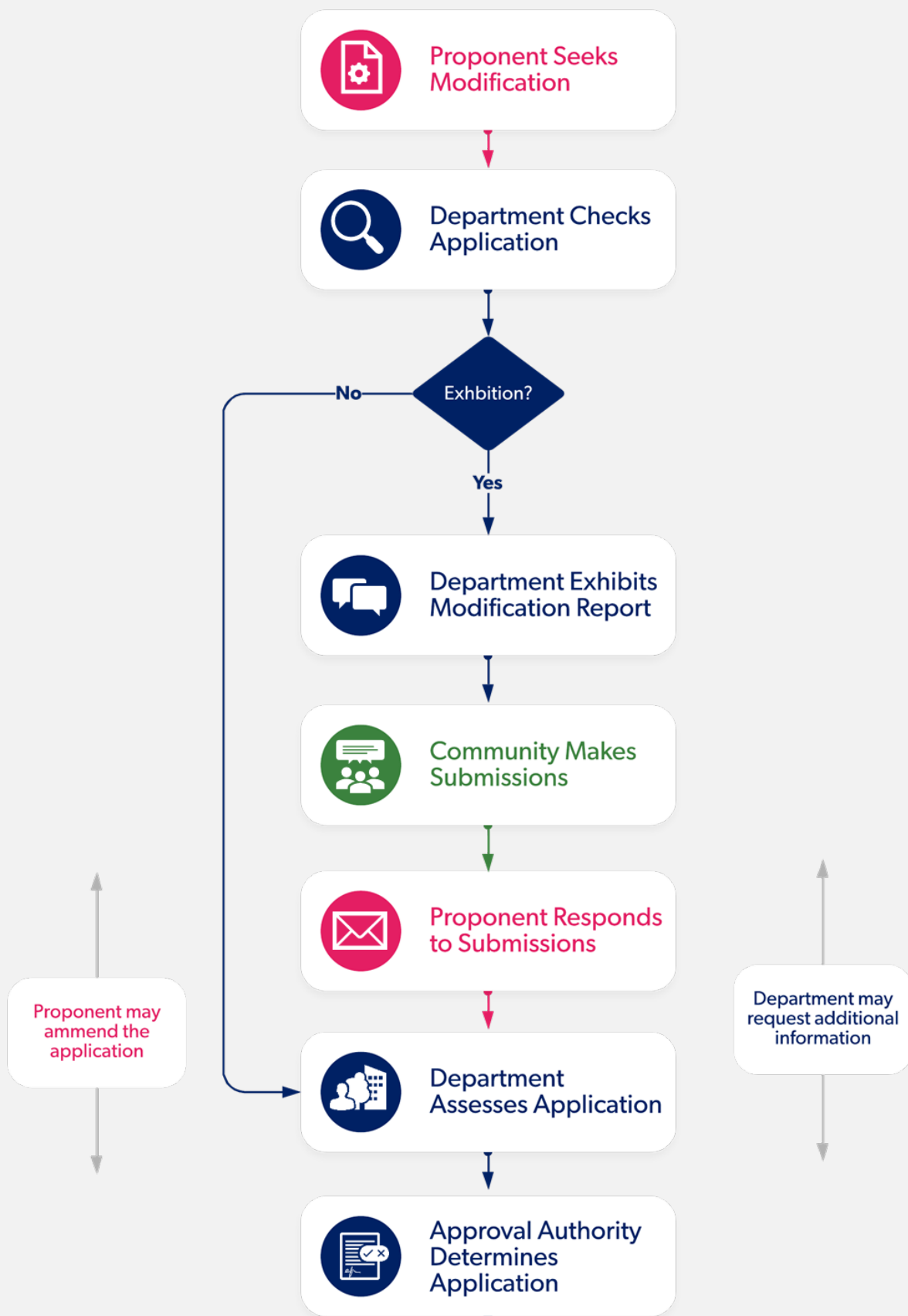


Figure 2 | Modifying approval

Initiating a Modification

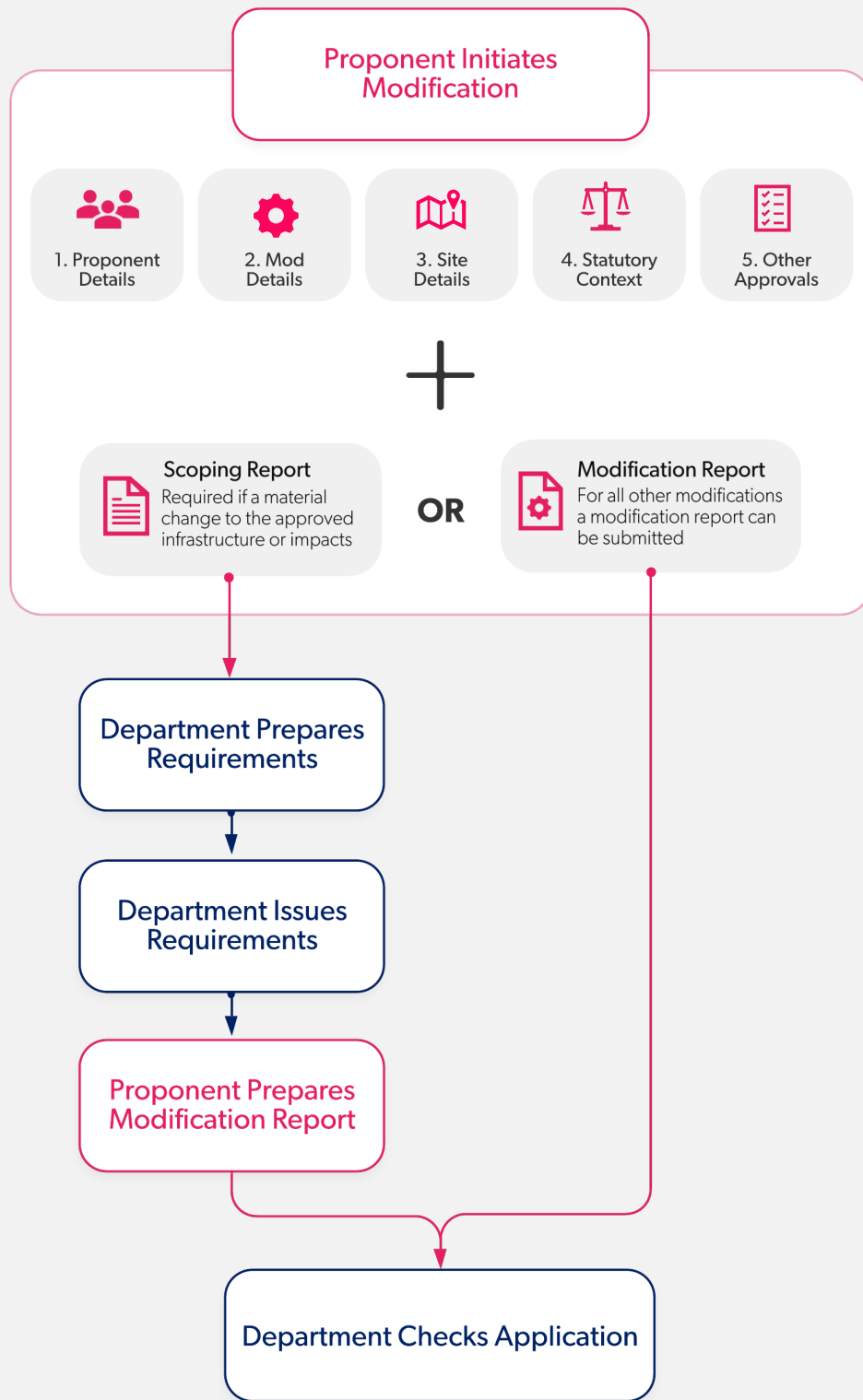


Figure 3 | Initiating a Modification

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 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. This 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

| | |
|-----------------------------------|--|
| Amendment | A change in what the proponent is seeking approval for during the assessment process. It requires changes to the project description in the EIS or Modification Report and amendments to the associated infrastructure application or modification application. 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 application (see the <i>Preparing an Amendment Report</i> guide). |
| Approval authority | The approval authority for an SSI application or SSI modification application. This will be the Minister or the Minister's delegates in the Department. |
| Certify | A REAP may certify an EIS for an SSI project and other environmental assessment reports required for SSI projects against the criteria in the <i>Registered Environmental Assessment Practitioner</i> guide before they are submitted to the Department. |
| Department | Department of Planning, Industry and Environment. |
| Determination | A decision by an approval authority for an SSI application to either approve the application subject to modifications or conditions or refuse to approve the application. |
| EIS | An Environmental Impact Statement prepared by the proponent to support an SSI application (see the <i>Preparing an EIS</i> guide). |
| Environmental assessment reports | Reports required to be submitted to the Department by a proponent seeking approval for an SSI application or modification application. These reports include Scoping Reports, EISs, Submissions Reports, Amendment Reports, Preferred Infrastructure Reports and Modification Reports. |
| 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 | <i>Environmental Planning and Assessment Regulation 2000.</i> |
| Major Projects website | www.majorprojects.planningportal.nsw.gov.au |
| 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 and Public Spaces. |
| Mitigation | Actions or measures to reduce the impacts of a 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 application | An application 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 application (see the <i>Preparing a Modification Report</i> guide). |
| Planning Secretary | The Planning Secretary of the Department |
| Preferred Infrastructure Report | 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 <i>Preparing a Preferred Infrastructure Report guide</i>). |
| Project | An SSI proposal, which is the subject of an infrastructure application or modification application. |
| Proponent | The proponent seeking approval for an SSI application or modification application. |
| REAP | A registered environmental assessment practitioner who is a member of a professional scheme that is accredited under the EP&A Regulation. REAPs may certify the EISs for SSI projects and other documents required for SSI projects before they are submitted to the Department (see the <i>Registered Environmental Assessment Practitioner</i> guide). |
| 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. |
| 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 <i>Preparing a Scoping Report</i> guide). |
| SEARs | The Planning Secretary's environmental assessment requirements for the preparation of an EIS for an SSI project. |
| SSI / CSSI | Development that is declared to be State significant infrastructure under section 5.12 of the EP&A Act and critical State significant infrastructure under section 5.13 of the EP&A Act. |
| SEPP | State Environmental Planning Policy. |

| | |
|--------------------|--|
| Submission | A written response from an individual or organisation, which is submitted to the Department during the public exhibition of an EIS, Amendment Report, Preferred Infrastructure Report or Modification Report for State significant infrastructure. |
| Submissions Report | A report prepared by the proponent to respond to the issues raised in submissions (see the <i>Preparing a Submissions Report</i> guide). |