

Undertaking Engagement Guide

Guidance for State Significant Projects

Exhibition Draft

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1. Purpose of the Guideline

This guideline sets out the expectations of the Department of Planning, Industry and Environment (the department) for early and effective engagement on State significant projects¹ in NSW. It provides a framework for carrying out engagement that is meaningful and tailored to the needs of the community, local councils and government agencies. Effective engagement underpins a transparent and fair environmental assessment.

This guideline applies to all applications for State significant development (SSD) and State significant infrastructure (SSI).

1.1 Relationship to other guidelines

This guideline should be read in conjunction with the department's *Community Participation Plan* and relevant specialist guides, including the draft *State Significant Development Guide*, the draft *State Significant Infrastructure Guide* and the draft *Social Impact Assessment Guideline*.

The department's *Community Participation Plan* is an overarching document which describes the community participation activities undertaken by the department on behalf of the Minister for Planning and Public Spaces and the department's Secretary under the *Environmental Planning and Assessment Act 1979* (EP&A Act). The department's *Community Participation Plan* explains how and when the community can participate in planning, and sets out best practice community participation objectives. It also provides important information about mandatory community participation requirements for public exhibition, including minimum exhibition timeframes.

The department's *Community Participation Plan* does not apply to other NSW planning authorities, such as the Independent Planning Commission, which determines some State significant projects. This is because the Commission undertakes engagement in accordance with its own Community Participation Plan.

This guideline complements the *Community Participation Plan* by providing more detailed information about the purpose and expectations for engagement on State significant projects, and the benefits that can result.

Information on how to make of a submission as well as appeal rights are included in the *State Significant Development Guide*.

¹ In this guideline, the term State significant projects refers to both State significant development (SSD) and State significant infrastructure (SSI) projects. For the purposes of this guideline, references to SSI includes critical State significant infrastructure (CSSI).

2. Engagement in State significant projects

A proponent as well as the department undertakes engagement for a State significant project.

Engagement includes informing, consulting and involving those who are interested or affected by proposed changes to an area, and obtaining expert advice from relevant public authorities. It can involve informal, casual and innovative processes as well as formal processes required under legislation to ensure procedural fairness.

Careful consideration of diverse viewpoints can help achieve good planning outcomes and avoid unintended negative impacts to communities, the environment, the economy or Government.

On a State significant project, engagement with the community, local councils and government agencies should take place when conceptualising, scoping, preparing, exhibiting and assessing a proposal. This engagement at a project level builds on the comprehensive engagement which is carried out through early strategic planning processes, for example, through regional, district and local planning. A focus on up front strategic planning means that the department, Councils and proponents often have opportunities to engage with each other about land use change before specific projects are put forward for assessment.

3. Effective engagement

High quality planning outcomes rely on effective engagement.

Effective engagement occurs when the community, local councils and government agencies have the information they need to understand a project and its impacts, and are given the opportunity to participate in a meaningful way.

When engagement is carried out in an effective and meaningful way, productive working relationships can be established. These relationships provide the foundation for important conversations between all parties with an interest in a proposal.

While this does not guarantee consensus, effective engagement means the community acknowledges the assessment was fair and transparent and understands how various and diverse views and concerns were considered, and how those views shaped the final design of the project.

Engagement is most effective when it commences in the early formation or scoping phases of a project. Early input allows the identification of potential issues, such that they can be avoided or managed without significant costs or changes in expectations.

When early engagement has been done effectively in State significant projects, there are fewer delays and less costs associated with revising project documentation.

3.1 Innovative engagement

The way people are engaging with news and media is rapidly changing.

The department encourages innovative approaches to engagement which enable participation from a broad spectrum of community members. This can include the use of multiple media such as traditional print, in person and digital. The department also encourages proponents to maximise engagement through current and emerging platforms.

Digital forms of engagement through the Major projects website and many other platforms such as social media, private websites and online meetings will continue to become increasingly important.

3.2 Best practice engagement: community participation objectives

Effective engagement can only be achieved if the engagement strategy is underpinned by principles which reflect best practice. The department has developed the following community participation objectives to embed best practice engagement in all its planning functions.

The department believes engagement should be:

- open and inclusive
- easy to access
- relevant
- timely, and
- meaningful.

The department's *Community Participation Plan* provides further information about these principles and includes examples of actions the department will undertake to achieve these objectives.

The department applies these objectives when engaging with the community during the environmental assessment of State significant projects.

The department expects proponents to use these same community participation objectives when they are engaging on State significant projects, given the importance of these projects to the State and the broader community.

3.3 How proponent can implement the community participation objectives

State significant projects, by their very nature, are likely to impact or attract interest from a diverse range of groups.

A proponent will engage effectively if they:

- identify upfront the people or groups who are interested in or are likely to be affected by the proposal
- involve the community, interested groups, agencies and Council early in the development of the proposal, to enable their views to be considered in project planning and design
- are innovative in their engagement approach and tailor engagement activities to suit the:
 - context (e.g. sensitivity of the site and surrounds)
 - scale and nature of the project and its impacts
 - level of interest in the project
- provide clear and concise information about what is proposed and the likely impacts for the relevant person/s or group they are engaging with
- clearly outline how and when in the process, the community can be involved
- make it easy for the community to access information and provide feedback
- seek to understand issues of concern for all affected people and groups and respond appropriately to those concerns.

More detailed information on the expectations for engagement at each phase in the environmental assessment is provided in **Appendix A**.

3.4 Proportionate engagement

The proposed engagement activities for a State significant project should be proportionate to the scale of the project, the likely impacts of the project and the likely interest the community might have in the project.

Proportionate engagement is important so that the engagement is meaningful, prevents consultation fatigue and ensures reasonable costs and time implications.

4. Requirements to engage

It is an object of the EP&A Act that opportunities for community participation are provided in planning and assessment. This object is supported by a series of statutory requirements embedded in the EP&A Act and the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation), including specific requirements relating to environmental assessment.

There are statutory requirements that set minimum standards and expectations for procedural fairness as well as statutory tools that give the department the ability to compel proponents to undertake certain engagement activities for the purpose of facilitating a better planning outcome. These requirements and the tools the department can use to drive better engagement are described in more detail below.

4.1 Statutory requirements

Making information publicly available

The EP&A Act and EP&A Regulation include provisions to make important project documents publicly available on the Major projects website. This ensures the community have access to the information they need to understand the project and its impacts.

The department publishes the Secretary's environmental assessment requirements (SEARs), the environmental impact statement (EIS), submissions made by the public, the proponent's response to submissions, the department's assessment report, the decision to approve or refuse the project and any conditions of approval for all State significant projects on the Major projects website. The department must also publish the reasons for the decision.

Mandatory public exhibition timeframes

The EP&A Act requires an EIS for a State significant project to be publicly exhibited on the Major projects website for a minimum period of 28 days. In some cases, adjoining land owners or occupiers must also be notified.

During this period, the community is invited to make written submissions on the project. The department publishes these submissions on the Major projects website.

Consideration of community views

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

Coordinating input from key stakeholders and weighing up the merits of the project

During the assessment, the department seeks feedback from key government agencies, local councils, as well as the community. It is the department's role to consider all of the information provided and evaluate the merits of the project. In undertaking this evaluation, consideration is given to all relevant matters, including the likely impacts of the proposal, and the issues raised in submissions.

The department documents its findings in its Assessment Report and makes a recommendation to the decision-maker.

The department follows the Interagency Engagement Framework when engaging with other government authorities to ensure efficient and effective collaboration.

4.2 Statutory tools

Secretary's Environmental Assessment Requirements (SEARs)

The SEARs identify the information that must be provided and the issues that must be assessed in the EIS. For most projects, the SEARs specify engagement requirements or require the proponent to prepare and implement an engagement strategy.

Requiring a response to submissions

After the public exhibition period, the department asks the proponent to respond to the issues raised in submissions. The Submissions Report analyses the issues raised and describes the actions that have been taken to address those issues.

Requesting additional information

The department can ask the proponent to provide additional information if that information is needed for the proper assessment of the project. The proponent may need to undertake additional engagement to respond to these requests.

Conditions of approval

The conditions of approval can require the proponent to conduct further engagement during detailed design, construction, operation, decommissioning and/or rehabilitation of the project, as relevant. The proponent may be required to establish a community consultative committee (CCC).

4.3 Commonwealth Environmental Matters

Certain developments also require approval under the Australian Government's *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The NSW and Australian Governments have entered into a bilateral agreement that establishes a one-stop shop for environmental assessment. This removes duplication by allowing the state to conduct environmental assessments on behalf of the Australian Government.

All State significant projects, including minor modifications, being assessed on behalf of the Australian government, are required to undergo public exhibition for at least 28 days and be advertised in a State and nationally circulating newspaper.

The department and the Australian Government are required to jointly seek advice from the *Independent Expert Scientific Committee* (IESC) for all large coal mining and coal seam gas developments. The department may also seek advice from other expert advisory bodies established under the EPBC Act or from the Australian Government. This includes guidance in relation to assessing the impacts on Ramsar wetlands, world and national heritage areas and migratory species etc.

5. Glossary

EP&A Act	Environmental Planning and Assessment Act 1979.
Application	This may mean an application seeking development consent for a State significant development project under Part 4 of the EP&A Act, an application to modify an approved State significant development consent under sections 4.55 or 4.56 of the EP&A Act, an application seeking approval for a State significant infrastructure project under Division 5.2 of the EP&A Act, a request to modify an approved State significant infrastructure project under section 5.25 of the EP&A Act, or a request to modify an approved concept plan for a Transitional Part 3A project under the former section 75W of the EP&A Act.
Community	Anyone affected by or interested in State significant projects in NSW, including: individuals, community groups, Aboriginal and Torres Strait Islander communities, culturally and linguistically diverse communities, peak bodies, businesses.
Council	The relevant Council where the project is located.
Decision-maker	The consent authority for a State significant development application, the approval authority for a State significant infrastructure project application, or the approval authority for a Transitional Part 3A application. This may include the Minister or the Independent Planning Commission.
Department	Department of Planning, Industry and Environment.
Engagement	The act of informing the community about the project and giving them the opportunity to have their say.
Environmental Impact Statement (EIS)	An Environmental Impact Statement prepared having regard to this Guideline by the proponent for a State significant application.
Feedback	Material that is provided to the department or proponent outside of a public exhibition period, including material received through social media or other public forums.
Mitigation	Actions or measures to reduce the impacts of a State significant project.
Modification	Changing the terms of an approved State significant project, including revoking or varying a condition of approval or imposing additional conditions. A modification requires approval under the EP&A Act.
Planning Secretary	The Secretary of the department (or his/her delegate).
Project	Development that is the subject of a State significant development application, infrastructure that is the subject of a State significant infrastructure application. In some circumstances, it refers to a proposal to modify an approved State significant project or an approved concept plan for a Transitional Part 3A project.

EP&A Act	Environmental Planning and Assessment Act 1979.
Proponent	The applicant seeking development consent for a State significant development project or to modify an approved State significant development project under Part 4 of the EP&A Act, the proponent seeking approval for a State significant infrastructure project or to modify an approved State significant infrastructure project under Division 5.2 of the EP&A Act, or the proponent seeking to modify an approved concept plan for a Transitional Part 3A project with an approved concept plan under the former section 75W of the EP&A Act.
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
Scoping	The process of identifying the matters that require detailed assessment in an Environmental Impact Statement (EIS) and informing the setting of SEARs for State significant projects.
SEARs	The Planning Secretary's environmental assessment requirements for the preparation of an EIS for a State significant project.
State significant development (SSD)	Development that is declared to be State significant development under section 4.36 of the EP&A Act.
State significant infrastructure (SSI)	Infrastructure that is declared to be State significant development under section 5.12 of the EP&A Act.
State significant project	Refers to both State significant development (SSD) and State significant infrastructure (SSI) projects. For the purposes of this guideline, a reference to SSI includes critical State significant infrastructure (CSSI).
Submissions	A formal response from an individual or organisation, including a government agency, that is submitted to the department during the public exhibition of a State significant project.

Appendix A - Expectations for engagement

Table outlines what the proponent is expected to do at each phase of the environmental assessment to engage with the community. The actions the department will take and the opportunities for the community to participate at each phase are also set out.

Table 1 Expectations for engagement at each phase in the environmental assessment

Phase	Expectation
Project is being scoped	
Project Design/ Scoping	<p>The proponent is expected to:</p> <ul style="list-style-type: none"> • identify the individuals, special interest groups, local councils and government agencies with an interest in or likely to be affected by the project • plan how they intend to engage with the community • inform the community about the project • establish working relationships and open lines of communication between the project team and the community • give the community the opportunity to voice their concerns or share local knowledge • enable the community's views to be considered early on in the planning, design and assessment process • inform the community about the opportunities to participate during the preparation of the EIS • explain how community feedback will be considered and documented. <p>The community is able to:</p> <ul style="list-style-type: none"> • take up any early engagement opportunities to understand the project • provide feedback to the proponent about aspects of the project which they support, do not support, or wish to be adjusted • provide clear reasons for any concerns to enable the proponent to consider possible alternative approaches to address the issues • alert the proponent to any matters they feel have not have been considered.
Application for SEARS	<p>The department will:</p> <ul style="list-style-type: none"> • consult with government agencies and local councils (as required) when preparing SEARs, including any requirements for engagement during the preparation of the EIS.
SEARs are issued and EIS is being prepared	

Phase	Expectation
Preparing the EIS	<p>The proponent is expected to:</p> <ul style="list-style-type: none"> keep the community informed with up-to-date information on the project implement any engagement activities required by the SEARs consider the community's views when making project refinements accurately reflect the community's views and how they have been addressed in EIS documentation. <p>The community is able to:</p> <ul style="list-style-type: none"> seek clarification about the project and its impacts provide timely feedback to the proponent about aspects of the project which they support, do not support or wish to be adjusted provide clear reasons for any concerns to enable the proponent to consider possible alternative approaches to address the issues.
EIS is lodged	
The EIS is lodged	<p>The department will</p> <ul style="list-style-type: none"> advise the proponent if additional information is required in the EIS, prior to exhibition coordinate a whole of government assessment and refer the EIS to government agencies to review or enact their referral or concurrence requirements.
EIS is exhibited	
Formal Exhibition	<p>The department will:</p> <ul style="list-style-type: none"> publish the EIS and supporting documentation on the Major Projects website notify the public exhibition in accordance with the requirements in the EP&A Act and the EP&A Regulation in some cases, arrange for a community information session during the exhibition period to explain the assessment and submission process and to listen to community views on the project. <p>The community is able to:</p> <ul style="list-style-type: none"> make a submission in support of the project, commenting on aspects of the project or objecting to the project.
Exhibition Closed	<p>The department will:</p> <ul style="list-style-type: none"> publish any submissions received during the exhibition phase on the Major projects website provide the submissions to the proponent for consideration.
Proponent responds to submissions	
Proponent's response to submissions	<p>The proponent is expected to:</p> <ul style="list-style-type: none"> carefully consider and respond to the issues raised in submissions <p>The department will:</p> <ul style="list-style-type: none"> publish the Submissions Report on the Major projects website.

Phase	Expectation
EIS is assessed	
Assessment	<p>The department will:</p> <ul style="list-style-type: none"> prepare an assessment report which includes consideration of agency feedback, submissions received, the proponent's response to submissions and legislative requirements request additional information from the proponent, seek further advice from agencies or seek advice from independent experts (if required)
Project is determined	
Decision	<p>The decision-maker will:</p> <ul style="list-style-type: none"> prepare conditions of consent which may include requirements for further community engagement during post approval outline the reasons for the decision, including how community feedback was considered in reaching the decision. <p>The department will:</p> <ul style="list-style-type: none"> publish the decision notify the proponent of the decision notify everyone who made a submission during the exhibition period of the decision, as required by the legislation give public notice of the reasons for the decision and how community views were taken into account in making the decision. <p>The proponent is expected to:</p> <ul style="list-style-type: none"> seek clarification from the department about any aspects of the approval that are unclear. <p>The community is able to:</p> <ul style="list-style-type: none"> seek clarification from the department about any aspects of the approval that are unclear.
Post approval	<p>Where a project is approved the proponent is required to:</p> <ul style="list-style-type: none"> continue to engage with the community during the pre-construction, construction, operation and decommissioning of the project (and/or rehabilitation of the site) in line with the conditions of approval. <p>The community is able to:</p> <ul style="list-style-type: none"> raise any post approval concerns with the proponent and/or contractor alert appropriate authorities including the department if concerns are not addressed or warrant urgent action such as cases where there is an imminent risk of harm to people or the environment. <p>The department will:</p> <ul style="list-style-type: none"> investigate and respond to any complaints made during construction, operation or decommissioning of the project.