

State significant assessment system: an overview

INTRODUCTION

While the vast majority of development applications in New South Wales are assessed and determined by local councils, there are a small number of projects whose scale, significance or potential impacts mean they are of regional or State, rather than just local, significance.

The State's planning system has, for more than 30 years, allowed for such projects to be dealt with by the NSW Government.

This long-standing feature continues under the new State significant assessment system which will commence on 1 October 2011.

The system establishes two separate assessment frameworks for State significant development (SSD) and State significant infrastructure (SSI). Projects that fall within these categories will be assessed by the Department of Planning and Infrastructure (the department) and determined by the Minister, the Planning Assessment Commission (PAC) or senior departmental staff.

This is an interim assessment system which will be reviewed as part of the ongoing review of the NSW planning system.

Consultation with councils

Under the new assessment framework, the Department will consult with local councils throughout the assessment of applications.

Public availability of documents

As well, the department will make available on its website a comprehensive range of

documents relating to each and every stage of the assessment of every project.

STATE SIGNIFICANT DEVELOPMENT (SSD)

The SSD assessment system has been established to guide planning decisions on:

- Large-scale industrial, resource and other proposals in 24 different development classes; or
- Development in precincts identified as important for the State by the NSW Government.

Development classes

A project will be SSD if it falls into one of the following classes listed in Schedule 1 of the State and Regional Development State environmental planning policy (SEPP):

- Intensive livestock agriculture
- Aquaculture
- Agricultural produce industries and food and beverage processing
- Timber milling, timber processing, paper and pulp processing
- Mining
- Petroleum (oil and gas)
- Extractive industries
- Geosequestration
- Metal, mineral and extractive material processing
- Chemical, manufacturing and related industries
- Other manufacturing industries
- Warehouses or distribution centres
- Cultural, recreation and tourist facilities
- Hospitals, medical centres and health research facilities
- Educational establishments

- Correctional centres
- Air transport facilities
- Port facilities and wharf or boating facilities
- Rail and related transport facilities
- Electricity generating works and heat or co-generation
- Water storage or water treatment facilities
- Sewerage systems
- Waste and resource management facilities
- Remediation of contaminated land

These projects may be lodged either by private or public applicants, but will generally be lodged by private applicants. If the project falls into one of the above classes and meets set criteria (such as exceeding a specified capital investment value), then it will be assessed under the SSD system.

The criteria have been set so that only the largest, most intensive or significant proposals of their type in the State are assessed by the NSW Government, with most SSD projects in a development class worth at least \$30 million.

There will be almost a 50% reduction in the number of applications that will be State significant when compared with the previous Part 3A system.

For example, residential, commercial and retail projects will now only be assessed if they are located within specific large scale urban renewal sites (see below) unlike the Part 3A system under which all residential, commercial and retail projects worth more than \$100 million came to the department. Furthermore, marinas and coastal subdivisions have been excluded as a development class under the new SSD system.

The thresholds for many classes have been simplified and made more consistent, and others have been increased compared to the Part 3A system. For example, the threshold for what is considered a State significant warehouse and distribution centre has increased from \$30 million to \$50 million and chemical manufacturing and related industries from \$20 million to \$30 million.

Specified sites

Schedule 2 of the State and Regional Development SEPP identifies a number of sites as being of State significance.

All developments on these sites with a capital investment value (CIV) of more than \$10 million will be assessed as SSD:

- Barangaroo (and certain subdivisions)
- Bays Precinct site
- Darling Harbour site
- Broadway (CUB) site
- Fox Studios, Moore Park Showgrounds and Sydney Sports Stadiums site (and all non-sporting events)
- Honeysuckle site
- Luna Park site
- Redfern-Waterloo sites
- Royal Randwick Racecourse (and all non-race day events)
- Sydney Olympic Park site
- Taronga Zoo site
- The Rocks (and all development in the Rocks that does not comply with the planning scheme), and
- Western Sydney Parklands.

Development on the following sites will also be assessed under the SSD system:

- All development on the Sydney Opera House site
- Retail premises having a floor space area of more than 5,000 square metres and a CIV of more than \$10 million at Warnervale Town Centre
- Extraction, rehabilitation or lake formation at Penrith Lakes site
- Development carried out by or on behalf of the NSW Land and Housing Corporation, identified as a NSW Land and Housing Corporation site, and
- Establishment of certain principal subdivisions at North Penrith site and North Ryde Station Precinct site.

Other sites may be added to the SEPP should their genuine strategic importance to the State be established in the future.

Reserve 'call-in' powers

The Minister does have a reserve ability to 'call-in' a project as SSD. The Ministerial 'call-in' power has existed in NSW planning law for at least 30 years. However, under the SSD system, there is for the first time a constraint on these powers. The Minister can only 'call-in' in a development as SSD where he/she:

- Receives advice from the PAC about the State or regional planning significance of the project (the PAC is a NSW Government body made up of independent planning experts); and
- Makes that advice publicly available.

Assessment pathway

The process for SSD projects largely reflects the current process used by local councils when assessing development applications under the existing Part 4 of the Environmental Planning & Assessment Act.

Under the SSD system, applicants lodge an environmental impact statement (EIS). Before preparing an EIS, applicants must apply to the Director-General of the department for environmental assessment requirements (DGRs). The department will then consult with relevant public authorities, including local councils, to provide input into the preparation of the DGRs. The department will issue the DGRs which specify the range of matters to be addressed in the EIS. The department will issue DGRs within 28 days of receipt of the request, unless otherwise agreed between the Director-General and the applicant.

The applicant is to ensure that the EIS complies with any DGRs issued for the SSD proposal, including adequate community consultation and that the form and content of the EIS is consistent with the requirements of the EP&A Regulation.

The applications are publicly exhibited for a minimum of 30 days. To ensure that the

community is given adequate notice of any development proposal, there will be extended exhibition periods over the Christmas and New Year period and the April, July and September/October school holidays.

The department may also consider extending exhibition periods in other circumstances or for particular development types.

The SSD system represents an integrated approach to development assessment with the department assessing matters that would otherwise require a concurrence or subsequent approval from a number of other Government agencies.

Unlike the former Part 3A system, development standards in council local environmental plans such as height and floor space ratio must be considered in determining an SSD application.

However, as is the case with development applications lodged with local councils under Part 4, there is some flexibility to consider applications which exceed relevant local development standards under the provisions of *State environmental planning policy No. 1 – Development Standards (SEPP 1)*.

Local council development control plans (DCPs) do not apply to SSD as they are typically not prepared with major, complex classes of development in mind and often do not provide appropriate planning provisions for the types of projects that are of genuine State significance. However, relevant provisions will be considered on a case by case basis.

Development that is wholly prohibited cannot be approved under the SSD system. However, the SSD assessment system does allow for rezoning proposals to be concurrently assessed with the development application. Under these circumstances, the SSD system requires that the PAC (and not the Minister) must determine the rezoning and any associated development application.

Staged proposals

As is the case with Part 4 applications considered by local councils, SSD applications may be 'staged'. For example an applicant may seek approval for an overall proposal with or without seeking approval to commence the first stage of the development.

Where a staged proposal is approved, future stages may be returned to the local council for assessment or they may remain with the NSW Government as SSD depending on the size and nature of each stage.

Other provisions, including the requirements for integrated development approvals and concurrences that relate to staged proposals under Part 4 will also apply to SSD staged proposals that are returned to councils. The requirements of DCPs will not apply (as outlined above) regardless of who is the determining authority for each stage.

Determining authority

The Minister has delegated his decision-making authority for all SSD applications lodged by private developers.

The PAC will determine larger and more controversial applications, while senior officers of the department will determine applications which have attracted fewer than 25 submissions by members of the public objecting to the proposal and where the local council has not objected. The PAC will also determine all SSD applications where a reportable political donation has been made.

The Minister will continue to determine SSD applications lodged by Government agencies.

STATE SIGNIFICANT INFRASTRUCTURE (SSI)

The SSI assessment system has been established to allow planning decisions on major infrastructure proposals, in particular linear infrastructure (such as roads, railway lines or pipes which often cross a number of council

boundaries) or development which doesn't require consent but which could have a significant environmental impact (such as a port facility).

Development classes

The following SSI development classes have been listed in Schedule 3 of the State and Regional Development SEPP along with relevant criteria such as CIV thresholds:

- Infrastructure or other development for which the proponent is also the determining authority, and which would significantly affect the environment.
- Port facilities and wharf or boating facilities by or on behalf of a public authority.
- Rail infrastructure by or on behalf of the Australian Rail Track Corporation.
- Water storage or water treatment facilities (not including desalination plants) carried out by or on behalf of a public authority.
- Development for the purpose of desalination plants by or on behalf of a public authority.
- Pipelines for which a licence is required under the *Pipelines Act 1967*.
- Submarine telecommunication cables.
- Certain development in reserved land under the *National Parks and Wildlife Act 1974*.

Proposals that meet both the SSI and SSD criteria will generally default to the SSD process, to ensure that the use of the SSI process is restricted mainly to public authorities undertaking infrastructure projects.

Reserve 'call in' powers

Like for SSD, the Minister has a reserve ability to 'call-in' a specific project as SSI.

Both the PAC and Infrastructure NSW are also able to make a recommendation to the Minister that a specific project be called-in as SSI.

Assessment pathway

The assessment process for SSI projects has a number of similarities with the SSD process.

Once a proposal has been received by the department, it will consult with relevant public authorities including local councils to provide input to the preparation of the DGRs for an EIS. Given the nature of SSI proposals, the department may also hold a Planning Focus Meeting with key agencies prior to finalising the DGRs.

The proponent must adequately address the DGRs in the EIS.

The department will publically exhibit the proposal for a minimum of 30 days, and advertise the exhibition in a locally distributed newspaper. As with SSD applications, the exhibition period may be extended at certain times of the year to allow adequate opportunity for the community to comment.

All relevant documentation, including the public submissions, the department's assessment report and the reasons for determination, will be made publicly available. The provisions in local and State planning instruments will not apply for SSI, however may be considered on a case by case basis as appropriate.

Staged proposals

The new SSI process allows for the approval of infrastructure proposals to be staged. Under this process, an applicant may receive approval for an initial concept proposal, with subsequent stages of the infrastructure requiring separate applications and approvals.

Critical public infrastructure

The Minister can declare certain SSI projects as 'critical public infrastructure' if, in the opinion of the Minister, it is essential for the State for economic, environmental or social reasons.

A critical infrastructure declaration delivers a streamlined assessment process and can include restrictions on the availability of merit appeals.

There is no ability under the new assessment system to declare SSD as critical infrastructure.

Determining authority

Generally the Minister will determine SSI proposals (or the PAC if the proponent is a private developer), with proposals to be determined by senior officers of the Department of Planning and Infrastructure if there are fewer than 25 submissions by members of the public objecting to the proposal and the relevant local council does not object to the proposal.

AVAILABILITY OF DOCUMENTS

The department will, for each major project application, make the following documents available on the website:

- Request for DGRs (only applicable for SSD)
- DGRs and any amended DGRs
- Application, EIS and any supporting documents
- Submissions received during the exhibition period
- Response to submissions
- Any amended application for SSD or the Preferred Infrastructure Report for SSI applications
- Director General's assessment report, and
- Notice of determination and conditions of approval.

Reports prepared by the PAC will be made available on its website.

FURTHER INFORMATION

More information is available at www.planning.nsw.gov.au

Alternatively, you could contact 1300 305 695 or email information@planning.nsw.gov.au

© State of NSW through NSW Department of Planning & Infrastructure
23-33 Bridge Street, Sydney NSW 2000. GPO Box 39, Sydney NSW 2001

T 02 9228 6333 F 02 9228 6555 E information@planning.nsw.gov.au
www.planning.nsw.gov.au

Disclaimer: While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.