

What is State significant development and how are applications assessed and determined?

INTRODUCTION

This fact sheet provides information about State significant development (SSD), including procedures for lodging development applications, public exhibition, assessment and determination of applications.

WHAT IS STATE SIGNIFICANT DEVELOPMENT

For the purposes of the *Environmental Planning and Assessment Act 1979* (the Act), SSD is development that is:

- Declared to be SSD by the State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP), or
- Otherwise called-in by the Minister as SSD.

Development declared by the SRD SEPP

The SRD SEPP declares development to be SSD if it:

- Is, by operation of another environmental planning instrument, permissible with development consent; and
- Is also included in Schedule 1 or 2 of the SRD SEPP.

Schedule 1 of the SRD SEPP identifies classes of development which are SSD. Each class includes thresholds, such as capital investment value or some other quantifiable criteria or location requirement.

Schedule 2 of the SRD SEPP lists sites which have been identified as State significant. Development that meets the relevant criteria within these sites is SSD.

The classes of development and specified sites are also listed in the fact sheet - *State significant assessment system: an overview*.

Development called-in by the Minister

The Minister may declare development to be SSD, but only if he has first obtained advice from the Planning Assessment Commission (the Commission) on the State or regional planning significance of the development, and made this publicly available.

In providing advice, the Commission considers general issues relating to State or regional planning significance that the Minister has requested be considered. A guideline outlining the procedures for call-in and matters to be considered by the Commission is available on the department's website.

Prohibited development

The SSD system allows consent to be granted for development that is partly prohibited by an environmental planning instrument, but precludes granting consent for development that is wholly prohibited.

Where a proposed development is wholly prohibited, the applicant can submit a concurrent rezoning proposal with the development application. An applicant may also seek a rezoning where the development is only partly prohibited.

Where a concurrent rezoning is sought, the Director-General may undertake the functions of the relevant planning authority, which would involve preparing and submitting a planning proposal.

A development application for SSD that is wholly or partly prohibited, and the relevant planning proposal, will generally be exhibited at the same time. If the proposed development is wholly prohibited, the Commission, not the Minister, will determine whether to make the LEP and will also determine the development application.

An applicant for SSD should seek advice and consult with the department at an early stage about the permissibility of a proposed development to ensure the proper process for the development application is followed.

ENVIRONMENTAL ASSESSMENT REQUIREMENTS

A development application for SSD must be accompanied by an environmental impact statement (EIS), prepared in accordance with the *Environmental Planning and Assessment Regulation 2000* (the Regulation).

Requesting Director-General's requirements

Before preparing an EIS, an applicant must request Director-General's environmental assessment requirements (DGRs) for the proposed development.

The request should be made online via the department's website and include particulars of the location, nature and scale of the proposed development.

DGRs typically require the following matters to be addressed in an EIS:

- Issues specific to the proposed development (such as traffic, noise, environmental impacts);
- Technical assessment guidelines relevant to the proposed development;
- Any standard requirements;
- Consultation with the council, government agencies and local community.

Issuing DGRs

The department will consult with relevant public authorities, including local councils, to obtain input when preparing the DGRs.

The department may hold a planning focus meeting, depending on the nature of the proposal and the extent of its likely environmental, social and economic impacts. A planning focus meeting may be held where a proposal requires input from multiple agencies, is complex, of high potential impact or is unusual.

DGRs will be issued within 28 days of lodgement. This period may be extended by the Director-General where further particulars are requested from the proponent.

Once issued, DGRs are made public on the department's website.

Standard DGRs

The department is working to introduce standard DGRs for particular classes of SSD (such as health and education developments).

The Director-General can only issue these standard DGRs where:

- No other approval or concurrence is required from any state or local authority; and
- The development does not otherwise fall into a category of 'designated development'.

When standard DGRs are issued, the applicant should prepare the EIS in accordance with the standard requirements as published on the department's website.

An applicant must still register the proposed development with the department, and information on the development will be available on the department's website. The applicant must still consult with the department, the relevant council and the community when preparing the EIS.

Preparing an EIS

The applicant must ensure the EIS is prepared in accordance with the DGRs in addition to the form and content requirements set out in Schedule 2 of the Regulation.

As a minimum, the EIS must include:

- A full description of the development and the site;
- Consideration of the development's permissibility;
- The objectives and justification for the development;
- Analysis of any feasible alternatives;
- The impacts of the development and measures to mitigate these impacts; and
- Other required approvals.

In preparing the EIS, the department requires applicants to consult with relevant State and local authorities and engage with the local community. This may include the distribution of information about the proposed development, seeking community feedback and/or holding community meetings.

The EIS must also include:

- Details of the consultation undertaken by the applicant;
- A response to any issues raised during the consultation process; and
- An outline of changes to the proposed development to address any key issues.

DOCUMENTS MADE PUBLICLY AVAILABLE

The Government is working to deliver a clear and transparent planning system where communities and stakeholders understand the planning process and how decisions are made.

The department places a range of documents on its website, including:

- An applicant's request for DGRs;
- DGRs issued by the department;
- The development application and accompanying EIS lodged with the department;
- Submissions received during the exhibition period;
- The applicant's response to issues raised in submissions;
- The Director-General's assessment report; and
- The notice of determination and any conditions of consent.

All planning decisions will be posted on the website within five days of determination.

An RSS (Rich Site Summary) feed has also been added to the planning website to allow applicants and the public to receive updates on particular projects or types of projects as soon as their status changes.

APPLICATIONS FOR STATE SIGNIFICANT DEVELOPMENT

An applicant must ensure the proposed development meets the description in one of the classes of SSD identified in the SRD SEPP (or otherwise is called-in by the Minister) when the application is lodged. If the development does not meet the description of any of the classes, the department will reject the application within 14 days after lodgement, even if DGRs have been issued to the applicant.

The department may also reject a DA for SSD that is not accompanied by an EIS prepared in accordance with the DGRs and the Regulation.

Capital investment value

Details of the cost of carrying out the proposed development must be provided at the time of lodgement. A quantity surveyor's report must be provided to confirm the value of the development where the development is SSD because of its capital investment value.

Fees

Fees must be paid on lodgement of a development application for SSD. The maximum fees for an SSD application are prescribed under Part 15, Division 1AA of the Regulation. Additional fees are also payable where the Commission holds a public hearing on the proposed development.

Landowner's consent

A development application for SSD may be made by:

- The owner of the land to which the application relates; or
- Any other person, with the written consent of the owner of that land.

Landowner's consent is not required for:

- Applications lodged by public authorities;
- Mining or petroleum production developments; or
- Applications for development on land with multiple owners, as designated by the Director-General.

Where landowner's consent is not required for lodgement, the applicant must:

- Provide written notice to the owner of the land before the development application is made; or
- Publish an advertisement in a local newspaper within 14 days of making the development application.

Requesting additional information

The department will review the information provided by the applicant to ensure that adequate detail is available on the proposal for members of the community and other stakeholders to understand the proposal and its potential impacts.

The department may request additional information from the applicant at any time.

If that request is made within 25 days of lodging the development application, the 90-day deemed refusal period stops until that request has been fulfilled.

SSD proposals are not 'integrated development' and State authorities are therefore not able to stop the clock.

Public exhibition

A development application for SSD must be exhibited for at least 30 days. This period is extended if it coincides with school holidays.

Public exhibition involves:

- Publication on the department's website;
- Advertisement in a local newspaper; and
- Written notice to the council of the area in which the proposed development is located.

The department must also give notice to owners or occupiers of land immediately next to the land to which the development application relates, and to owners or occupiers within an additional area determined by the department (on a case-by-case basis).

However, for some applications which are large in scale, such as mining proposals, it will not be possible to provide individual notice given the practical difficulty of notifying so many people.

In these cases the department will advertise the exhibition of the application in the newspaper and on the department's website only.

As with other DAs under Part 4 of the Act, any person can make a written submission about a proposed development (including objecting with reasons). Submissions by members of the public are an important part of the assessment of a DA. The department may also require the applicant to provide a written response to any issues raised in submissions.

Assessment

The process of assessing an SSD development application is very similar to how a council assesses a development application.

The matters outlined in section 79C of the Act are considered in the determination of a development application for SSD. They include:

- The provisions of relevant environmental planning instruments (such as LEPs, SEPPs and proposed instruments);
- Planning agreements under section 93F of the Act;
- Likely impacts of the development (including environmental, social, and economic impacts);
- Site suitability;
- Submissions received; and
- The public interest.

A range of prescribed matters must also be considered in the assessment of development applications, including:

- The Coastal Policy;
- The relevant Australian Standard for demolition; and
- The fire protection, adequacy of egress and structural capacity for certain development.

Planning controls in LEPs and DCPs

Development standards in local environmental plans (such as height and floor space ratios) are relevant for the assessment and determination of a development application.

As with other development applications under Part 4 of the Act, there is some flexibility to determine development applications for SSD which do not comply with local development

standards. An applicant may lodge an objection to strict compliance with the development standard under State Environmental Planning Policy No. 1 – Development Standards or clause 4.6 of Standard Instrument LEPs.

Development control plans do not apply to SSD. This is because development control plans are generally concerned with local or specific issues and do not provide appropriate planning controls for large, complex developments of importance to the State or region.

However in responding to a development application, a local council can identify controls within a development control plan that relate to a proposed development and can request that they be addressed in the EIS.

DETERMINATION AND CONDITIONS OF CONSENT

A development application for SSD is determined under section 80 of the Act. The power to impose conditions on development consents is outlined in section 80A of the Act.

The Minister has delegated the function of determining certain DAs for SSD to the Commission and senior officers of the department (refer to Planning Circular – *Determination of State significant applications*).

The Commission determines larger and more controversial applications lodged by private applicants.

Senior officers of the department determine DAs where:

- Less than 25 public objections are received;
- The relevant local council has not objected to the proposed development; and
- No reportable political donation is made.

The Minister generally determines other SSD applications made by public authorities.

FURTHER INFORMATION

Department of Planning & Infrastructure website: www.planning.nsw.gov.au

The following fact sheets are available on the department's website:

- *State significant assessment system: an overview,*
- *Consolidated assessment process for State significant assessment,*
- *Appeals against the determination of applications, and*
- *What is State significant infrastructure, and how are applications assessed.*

The following planning circulars are also available:

- *Assessment of State significant development and infrastructure, and*
- *Determination of State significant applications*

Alternatively, 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.