Department of Planning, Housing and Infrastructure

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Guidelines for Crown Development Applications under the EP&A Act – Local and Regionally Significant Development

May 2025

Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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1 Introduction

NSW government agencies play a major role in providing essential services and infrastructure that is needed by communities. This includes education, health, social and affordable housing, transport, emergency response, legal and justice services. Crown development is designed and funded by the state government to deliver community benefits, as well as local jobs and infrastructure in locations that need it.

These guidelines cover proposed Crown developments under Part 4, Division 4.6 of the NSW *Environmental Planning and Assessment Act 1979* (EP&A Act) that are considered either 'local development' or 'regionally significant development'.[1]

These development applications are made by or on behalf of the Crown (termed 'Crown development applications' under section 4.32 of the EP&A Act) and are determined either by the council or a Sydney District or Regional Planning Panel (planning panel).[2] These guidelines do not apply to State significant development (SSD), State significant infrastructure (SSI) or development that doesn't require consent and is assessed under Part 5, Division 5.1 of the EP&A Act. Other guidelines apply to these types of development.

The Crown is defined and is prescribed in section 294 of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation) for the purposes of Part 4, Division 4.6 of the EP&A Act to include:

- a public authority other than a council
- an Australian university, within the meaning of the NSW *Higher Education Act 2001*
- a TAFE establishment, within the meaning of the NSW *Technical and Further Education Commission Act 1990*
- a Crown cemetery operator, within the meaning of the NSW *Cemeteries and Crematoria Act 2013*.

Examples of Crown agencies include Schools Infrastructure, Health Infrastructure, Public Works, Department of Communities and Justice, Transport for NSW, Transport Asset Holding Entity, Crown Lands, Landcom, Land and Housing Corporation, Aboriginal Housing Office, universities and TAFEs, Crown cemeteries, Essential Energy, Hunter Water Corporation, WaterNSW, Sydney Water Corporation and Forestry Corporation.

[1] See section 2.1 of these guidelines for an explanation of these types of development.

[2] Note in some areas and cases, the Minister may be the approver.

A public authority is defined in section 1.4 of the EP&A Act to include a public or local authority constituted by or under an Act, a public service agency, a statutory body representing the Crown and a statutory state-owned corporation and its subsidiaries and included authorities.

1.1 Purpose of the Guidelines

The guidelines are for Crown agencies, local councils, planning panels and the community. They provide a broad range of information about the Crown development process.

The purpose of these guidelines is to:

- guide Crown agencies to provide best practice development applications to enable the consent authority to efficiently assess the application in accordance with the role of the Crown in Appendix A.
- encourage consent authorities to assess Crown DAs in an efficient manner and in accordance with the regulatory framework of the EP&A Act and the EP&A Regulation and in accordance with the role of consent authorities in Appendix A.
- provide information about mechanisms designed to reduce delays in the assessment process
- promote increased communication between Crown agencies and consent authorities at the start of and throughout the process
- ensure proposed consent conditions are fit for purpose
- detail the provisions in the EP&A Act that apply to Crown development applications

The overall aim of these guidelines is to help facilitate the delivery of essential services and infrastructure to the local community.

2 Crown development types and pathways

Planning pathways for Crown development differ depending on the size and complexity of the proposed development. Crown development must be permissible under an environmental planning instrument (EPI), being a Local Environmental Plan (LEP) or a State Environmental Planning Policy (SEPP).

2.1 Development types the guidelines apply to

These guidelines apply to Crown development that requires consent under Part 4, Division 4.6 of the EP&A Act for 'local development' or 'regionally significant development'. These development types are explained below.

Local development is development under Part 4 of the EP&A Act that requires development consent from a consent authority, typically a local council, under a LEP or SEPP (such as *State Environmental Planning Policy (Transport and Infrastructure) 2021*) and is not considered to be either regionally or State significant development.

Local development also includes designated development listed in Schedule 3 of the EP&A Regulation 2021. A LEP or SEPP can declare certain types of development as designated development.

Regionally significant development is development identified as regionally significant in an EPI. Schedule 6 to the *State Environmental Planning Policy (Planning Systems) 2021* includes categories of regionally significant development and identifies Crown development over $5 million as being regionally significant. Consent is required from the planning panel for this type of development. [3]

2.2 Development types the guidelines do not apply to

These guidelines do not apply to:

- exempt and complying development

[3] Section 2.19 of the *SEPP (Planning Systems) 2021* excludes development within the area of the City of Sydney and development for which a person or body other than council is a consent authority.

- development without consent
- State significant development (SSD)
- State significant infrastructure (SSI).

2.2.1 Exempt and complying development

Some Crown development may be 'exempt' or 'complying' under an EPI provided the development meets certain standards.

Exempt development is development that has a minor impact and does not require consent. Complying development is a combined planning and construction approval for straightforward development that can be determined through a fast-tracked assessment by a council or private certifier.

The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* includes different categories of exempt and complying development. In addition, other SEPPs contain provisions for exempt and complying development, such as the *State Environmental Planning Policy (Transport and Infrastructure) 2021,* which contains several exempt and complying development categories for Crown infrastructure.

The guidelines do not apply to Crown development that is exempt or complying development.

2.2.2 Development without consent

Some Crown activities can be self-assessed under Part 5, Division 5.1 of the EP&A Act as they are 'development without consent'. *State Environmental Planning Policy (Transport and Infrastructure) 2021* includes Crown infrastructure activities that may be undertaken without consent.[4]

Our website has more information on development without consent. The environmental assessment requirements can be found in the Guidelines for Division 5.1 assessments (PDF 2.87 MB).

The guidelines do not apply to Crown activities that can be self-assessed under Part 5.

2.2.3 State significant development and State significant infrastructure

Larger Crown developments can be defined as either SSD or SSI. The guidelines do not apply to Crown developments that are SSD or SSI, however an overview of these development types is provided below. You can find further information and guidance on the processes that apply to SSD

[4] *State Environmental Planning Policy (Transport and Infrastructure) 2021* also includes planning provisions for infrastructure works requiring consent.

and SSI in our State Significant Development Guidelines (PDF 1.29 MB) and State Significant Infrastructure Guidelines (PDF 2.20 MB).

SSD is development that is important to the state for economic, environmental or social reasons. SSD can be either private development or development by a public authority. It can include social infrastructure such as education facilities, health and correctional centres, as well as cultural, recreation and tourist facilities, transport facilities (air, rail, ports) and non-linear utility development (electricity, water, sewerage and waste facilities).

Under the EP&A Act, development can become SSD in two ways:

1. By being declared as State significant in a SEPP.[5] For example, the *State Environmental Planning Policy (Planning Systems) 2021* (Planning Systems SEPP) declares certain classes of development to be SSD based on their scale, nature and economic value.[6] It also declares development on certain sites with strategic planning significance (e.g. Barangaroo, Darling Harbour, Sydney Olympic Park and Western Sydney Parklands) to be SSD.[7]
2. Through a declaration in an order made by the Minister.[8] Specifically, the Minister may declare specified development on specified land to be SSD if the Minister has obtained advice from the Independent Planning Commission and made it publicly available.[9]

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

Similar to SSD, development can become SSI in two ways under the EP&A Act:

1. By being declared as State significant in a SEPP.[10] Development declared in this way is identified in Schedule 3 of the Planning Systems SEPP 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*.

[5] See section 4.36(2) of the EP&A Act.

[6] See section 2.6 and schedule 1 of the Planning Systems SEPP.

[7] See section 2.6 and schedule 2 of the Planning Systems SEPP.

[8] The Minister may declare specified development on specified land to be SSD if the Minister has obtained advice from the Independent Planning Commission and made this publicly available. See section 4.36(3) of the EP&A Act for full details.

[9] See section 4.36(3) of the EP&A Act for full details of the requirements for making a Ministerial planning order under this section.

[10] See section 5.12(2) of the EP&A Act.

2. Through a declaration in an order made by the Minister.[11] Specified development on specified land may be declared SSI by a SEPP or by the Minister making an order that amends a SEPP.[12] Development declared in this way is identified in Schedule 4 of the Planning Systems SEPP and includes, for example, development worth over $30 million in the Northern Beaches Hospital Precinct and the Albion Park Rail Bypass

The Minister may also declare development that is SSI to be Critical State significant infrastructure (CSSI)[13] if it is considered essential for the State for economic, environmental or social reasons. A list of CSSI projects is provided in schedule 5 of the Planning Systems SEPP.

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

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

[13] See section 5.13 of the EP&A Act.

3 Overview of processes and provisions for local development and regionally significant development

3.1 The process for local development

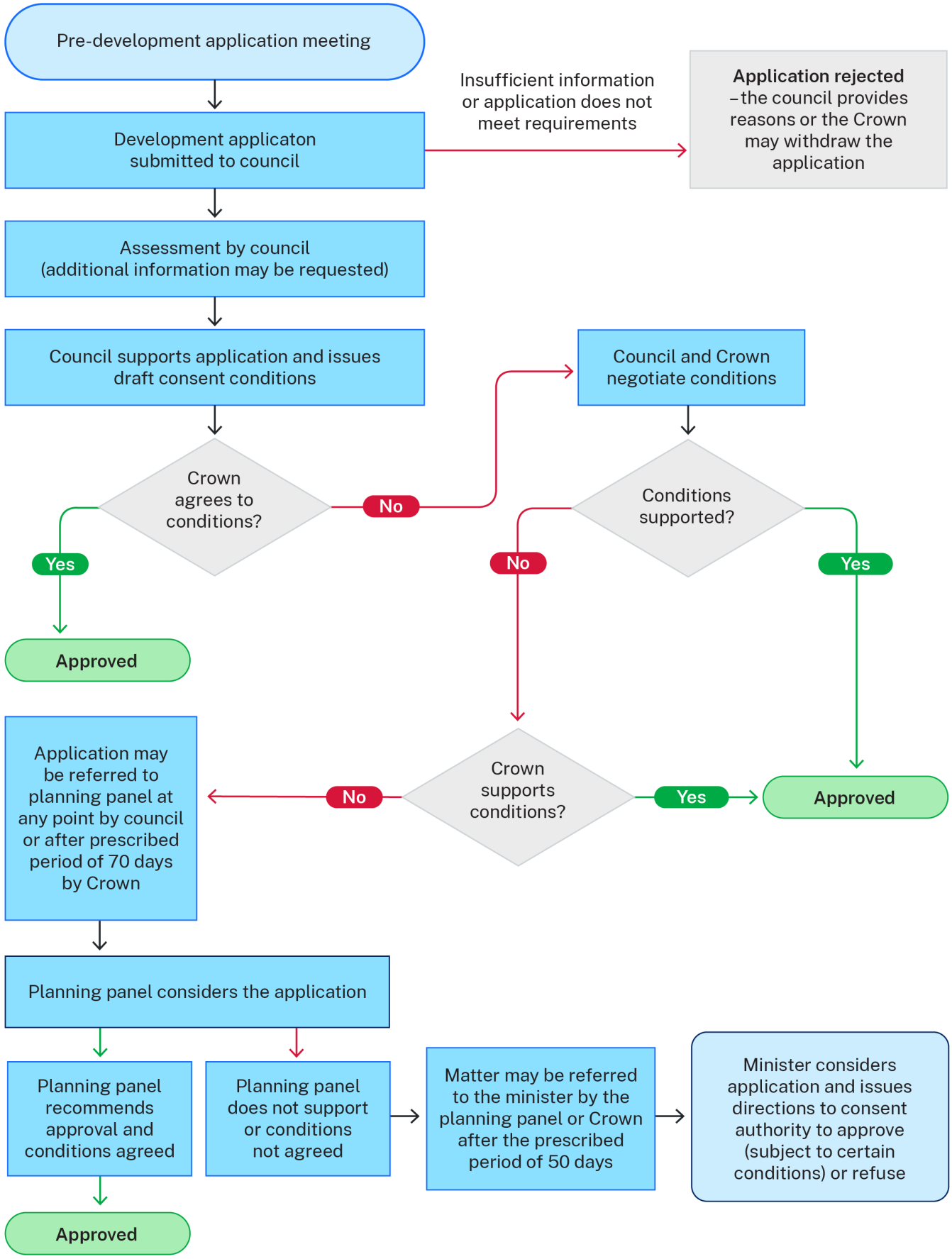
Councils are the consent authority for 'local development' under Part 4 of the EP&A Act and consider Crown developments less than $5 million.[14] A Crown application typically follows the standard development application process. However, the applicant must agree to consent conditions and the council cannot refuse an application, except with the approval of the Minister. Applications are referred to the planning panel where a council does not support a Crown development application and where conditions can not be agreed upon.

Planning panels consider Crown local development referred to them by the council and by the applicant if the application is not determined within the prescribed period. Where the Panel does not support the application, agreement can not be reached on consent conditions or the matter exceeds the prescribed period for assessment, the application may be referred from the planning panel to the Minister who will issue directions to the consent authority relating to the application.

The Crown process for local development is outlined in Figure 1.

[14] In some areas, the Minister may be the consent authority.

Figure 1. Process for Crown development applications (less than $5 million)



3.2 The process for regionally significant development

Crown development that is regionally significant development (Crown development over $5 million) will be assessed by the council and determined by the Sydney District or Regional Planning Panel (planning panel). The Crown agency will lodge its application with the council, and the council will then register the application with the planning panel.

A kick-off briefing with the Panel may be scheduled with the applicant, council officials and the regionally significant development case manager or project officer. At the meeting, the Crown agency can outline the development and provide initial comments.

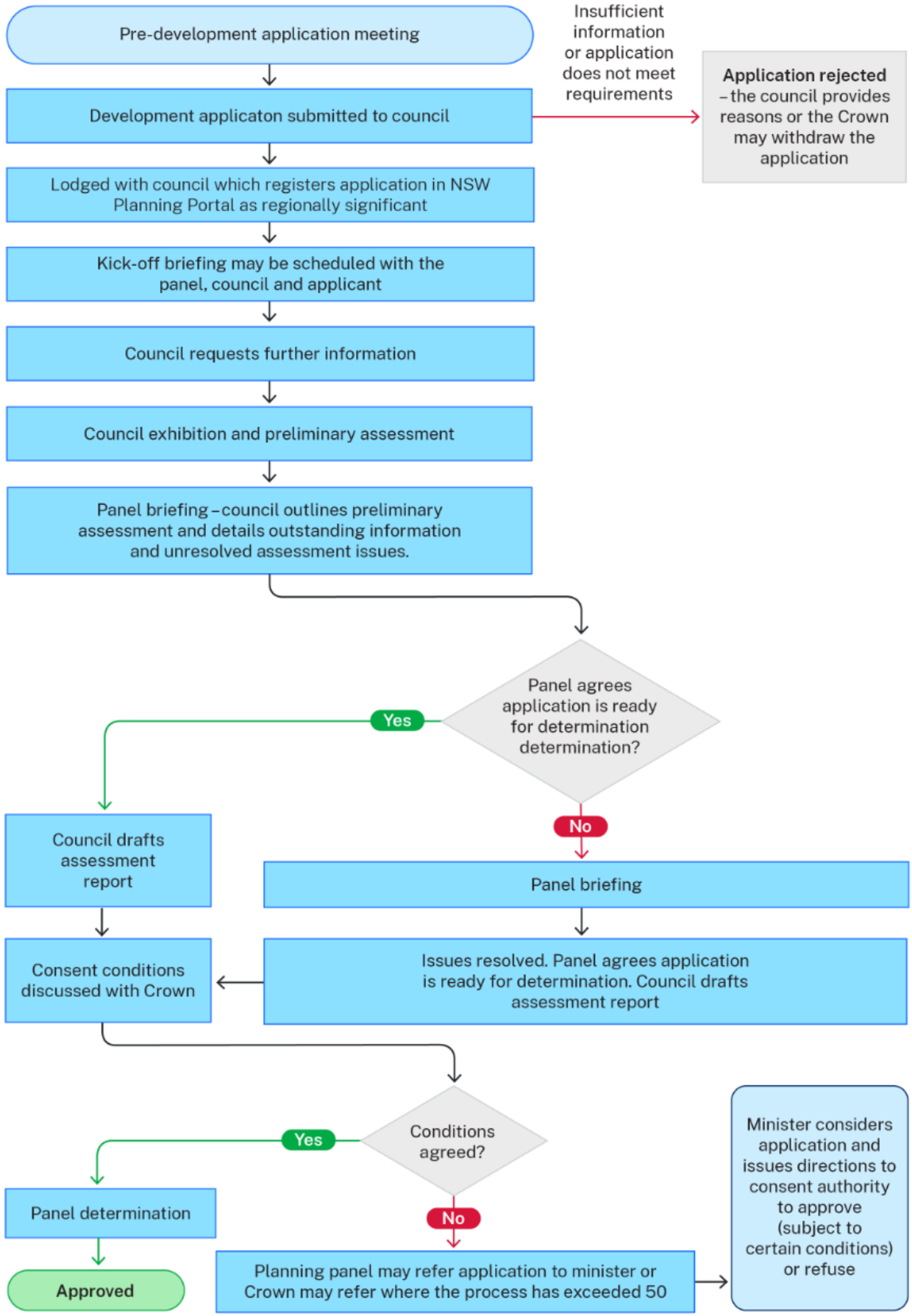
The council must exhibit the development application and issue requests for further information if required. The Crown agency should respond to the request for information as soon as possible. The panel briefing will then be scheduled, where the council will outline their preliminary assessment of the development proposal and detail any outstanding information or unresolved assessment issues.

The Crown agency will have the opportunity to comment on consent conditions and provide its approval of the draft conditions. Another panel briefing may be required when issues require further resolution.

The council will draft the Final Assessment Report for the Panel Determination. The Panel will consider the Final Assessment Report and makes its decision. Following the Panel decision, a final Determination Statement of Reasons will be issued, and the Council will issue a Notice of Determination to the Crown agency.

A summary of the process is outlined in Figure 2. You can find further information on this process on the planning panel's website.

Figure 2. Process for Crown regionally significant development (more than $5 million)



3.3 Key provisions applying to local development and regionally significant development

Part 4, Division 4.6 of the EP&A Act provides different provisions for Crown development applications for local development or regionally significant development. Some provisions which apply specifically to these Crown development applications are:

- **the conditions must be agreed**: a consent authority must not impose a condition of consent, except with the approval of the applicant (i.e. the Crown agency) or the Minister (s 4.33 of the EP&A Act)
- **Crown development applications cannot be refused** : a consent authority other than the Minister must not refuse consent, except with the approval of the Minister (s 4.33 of the EP&A Act)
- **there are different prescribed times**: these Crown development applications may be referred from the council to the applicable planning panel or from the planning panel to the Minister if they are not determined within the prescribed time. The prescribed period for a consent authority to determine a Crown development application is 70 days. If the council fails to determine a development application within this period and the application is referred to a planning panel, the prescribed period for the planning panel is 50 days, after which the application may be referred to the Minister (s 95 of EP&A Regulation)
- **the Minister may direct the consent authority to approve the development application**: the Minister may direct the consent authority to approve the application, with or without specified conditions, or refuse it (s 4.34 of EP&A Act)
- **Crown development applications are not subject to review**: Crown applications are not subject to review under Division 8.2 of the EP&A Act
- **Crown development applications are not integrated development**: Division 4.8 Integrated development of the EP&A Act does not apply to Crown development applications, other than development that requires a heritage approval (s 4.44 of the EP&A Act)
  - while Crown developments are not considered integrated development, Crown agencies must still obtain approvals, as required by other Acts before development occurs
  - despite an integrated approval not being required for Crown development, concurrence and referrals still apply to these applications
- **Some building-type certificates are not required:** the requirements for the following certificates do not apply to Crown development applications:

  - construction certificates (s 6.7(2)(b) of the EP&A Act)
  - occupation certificates (s 6.9(2)(iv) of the EP&A Act) – although there is no regulated process before occupation, most Crown developments still obtain a Building Code of Australia completion statement as a means of mitigating any risk before occupation. This is a statement from a suitably qualified person confirming the completed development complies with the BCA, but it is not issued under any specific legislative clause
  - subdivision works certificates (s6.13(2)(b) of the EP&A Act)
  - Crown building work must still comply with the BCA and work cannot commence unless the Crown building work is certified to comply with the code (s 6.28 of the EP&A Act)
- **a principal certifying authority is not required**: the appointment of a principal certifying authority is not required for a Crown development application (s 6.6(5)) of the EP&A Act).

Other legislation also contains different requirements for Crown development applications. Section 69 of the *Local Government Act 1993* provides that section 68 of the Act does not require the Crown to obtain the approval of a council to do anything incidental to the erection or demolition of a building for approvals required under the *Local Government Act 1983*.

Section 138 of the *Roads Act 1993* does not require a public authority or network operator under the *Gas Supply Act 1996* or the *Electricity Supply Act 1995* to obtain a roads authority's consent to exercise their functions in, on or over an unclassified road other than for a Crown road.[15]

Application of Crown development provisions to joint Crown and private development

Where a joint private–public development is proposed, the consent authority must determine whether the development application is being made by or on behalf of the Crown. Considerations may include whether:

- the development is primarily for the purposes of development by the Crown
- other uses are ancillary to Crown use
- the lease and future ownership arrangements indicate long-term Crown use.

Where the development is not made by and on behalf of the Crown, the Crown provisions within Division 4.6 of the EP&A Act would not apply. Where the other uses are ancillary to Crown use, the application may be considered under the Crown development application provisions.

Relevant considerations in determining whether the application is being made by or on behalf of the Crown include:

[15] Clause 5(1) of Schedule 2 of the *Roads Act 1993*

- whether there are elements of control, supervision or direction by the public authority
- whether the subcontractor is a servant or agent of the public authority
- who owns the land? Is the public authority an incidental beneficiary?
- whether there an agreement between the two parties and, if so, what the terms of the agreement are.

4 Application requirements

4.1 Before submitting a development application

We recommend Crown agencies hold preliminary meetings with consent authorities to discuss the appropriateness of the site for the proposed development and any foreseeable issues. Crown agencies should also consult with other agencies about likely infrastructure requirements and any other approvals that may be needed.

We recommend having these discussions before submitting a development application to identify any potential issues and lodgement requirements early, including any studies required. Meetings should include Crown agencies, consultants, and council staff.

The meetings can clarify matters such as:

- the appropriateness of the site for the proposed development taking into account the planning framework and development controls
- whether the development is permissible on the site and which provisions of any EPI, draft EPI or development control plan apply
- the compatibility of the proposed development with surrounding land uses
- key development constraints and how issues can be addressed
- potential infrastructure impacts and how they should be addressed
- studies required
- any other potential issues.

Refer to the Development Assessment Best Practice Guide (PDF 1.4 MB) for further information on the pre-development application process.

Lodging an 'assessment-ready' development application allows the assessment officer to focus on assessing and determining the application rather than liaising with the applicant to get the application to a standard where it can be assessed. Better quality information also allows the assessment officer to have a thorough appreciation of the proposal and its built form and environmental implications.

4.2 Consultation

4.2.1 Consideration of Country

The concept of Country is the core of many Aboriginal peoples' identities and sense of belonging. All public land in NSW is on Country. Acknowledging and valuing Aboriginal cultural knowledge when planning, managing and developing public land, community facilities and infrastructure can strengthen the connection to culture and identity and create healing.

Where appropriate, engage with Aboriginal stakeholders to ensure considerations of Country are incorporated into the planning, design and delivery of the development. For more information, refer to Better Placed: Connecting with Country (PDF 5.45 MB).

4.2.2 Consultation relating to infrastructure upgrades and other approvals required

While Crown development applications are not integrated development under the EP&A Act, concurrence and referral provisions still apply. Crown agencies should consult with other agencies to ensure all necessary permits and approvals are obtained before development occurs and to make the development application assessment consistent and efficient. This consultation should occur early in the process.

Our Development Referrals Guide (4.2 MB) gives information on approvals that may be required by other legislation. It also provides information on concurrence and consultation provisions. While our Development Referrals Guide relates to integrated development, it outlines the types of separate approvals that may be required and the consultation and concurrence provisions that may also apply to a Crown development application.

We recommend the Crown agency liaise early with other agencies where infrastructure upgrades may be needed to service the proposed Crown development. Crown agencies should ensure the project budget includes funding for any infrastructure upgrades that may be required.

4.2.3 Community and stakeholder consultation

The document Implementing Good Design: Implementing Better Placed design process into projects (PDF 1.76 MB) considers how engagement with the community and stakeholders can inform the design process. Urban environments require thoughtful planning, design and management to ensure places have character and communities at their heart.

Depending on the scale and potential impacts of a project, early and ongoing engagement with the community and stakeholders can help to identify issues early and result in improved outcomes that are in line with community interests and meet the requirements of the users.

4.3 Design considerations

The following guidance documents prepared by the NSW Government Architect can help Crown agencies during the design stage of a project:

- Better Placed: An integrated design policy for the built environment of NSW (PDF 2.58 MB)
- Better Placed Design Guide for Schools (PDF 1.22 MB)
- Better Placed Design Guide for Health (PDF 1.9 MB)
- Good Design for Social Housing (PDF 3.56 MB)
- Design Guide for Heritage (PDF 4.17 MB)
- Better Placed: Connecting with Country (PDF 5.45 MB)
- Greener Places (3.4 MB)
- Implementing Good Design (PDF 1.76 MB)

When considering access and transport, the NSW Movement and Place Framework takes a place-based approach to the planning, design, delivery and operation of transport networks. It recognises the network of public spaces formed by roads and streets and the spaces they adjoin and impact and seeks to optimise these to maximise social and economic benefits. Crown agencies should use the framework when preparing and designing developments.

4.4 Development application requirements

Along with the development application, Crown agencies must submit a statement of environmental effects or an environmental impact statement (for designated development), [16] and any supporting studies based on site constraints, issues and impacts. They must also address the requirements of the council's local environmental plan and development control plan.

The application must be submitted via the NSW Planning Portal and ensure the development is identified as a Crown development by selecting the appropriate category of Crown development. Application fees must be paid in accordance with Part 13 and Schedule 4 of the EP&A Regulation.

[16] Designated development is development that is declared to be designated development by an environmental planning instrument or the regulations. See section 4.10 of the EP&A Act and Schedule 3 of the EP&A Regulation for more details.

Our application requirements lists mandatory documents and drawings that are required for development applications. The lists are not exhaustive, and the specific items needed will depend on the proposal and the site. The degree and level of information required for a Crown development application will correspond to the potential level of impact.

We recommend you discuss the issues and studies that are required in the pre-development application meeting, noting any controls that may apply in the EPI or development control plan.

The Crown agency should provide an 'assessment-ready' application. This will help improve assessment timeframes and the faster delivery of State infrastructure.

Where approvals are required under other legislation by other state agencies, such as approvals under the *Roads Act*, Crown agencies must consult with these state agencies on the detail and information required to support the approval.

Where a development application is submitted to the consent authority and the application does not contain the information and documents that are required in the approved form or by the EP&A Act or EP&A Regulation, the consent authority may reject the application. The consent authority must provide the Crown agency with the reasons for the rejection. The Crown agency should use this advice to resubmit an assessment-ready application. Alternatively, the Crown agency can withdraw the application.

4.4.1 Statement of environmental effects

When a statement of environmental effects is required, it should be prepared considering all the likely impacts of the development and measures proposed to reduce impacts.

The statement should include:

- the environmental impacts of the development
- how the environmental impacts of the development have been identified
- the steps to be taken to protect or to lessen the expected harm to the environment
- any matters required to be indicated by any guidelines issued by the Planning Secretary
- drawings of the proposed development in the context of surrounding development, including the streetscape
- development compliance with building heights, building height planes, setbacks and building envelope controls (if applicable) marked on plans, sections, and elevations
- drawings of the proposed landscape area, including species selected and materials to be used, presented in the context of the proposed building or buildings and the surrounding development and its context

- if the proposed development is within an area in which the built form is changing, statements of the existing and likely future contexts
- photomontages of the proposed development in the context of surrounding development
- a sample board of the proposed materials and colours of the facades
- detailed sections of proposed facades
- if appropriate, a model that includes the context.

The statement of environmental effects should also take into account any relevant government policies.

4.4.2 Environmental impact statement – designated development

Where a Crown development is designated development, an environmental impact statement must be prepared and publicly exhibited. The statement must address the Planning Secretary's requirements for the environmental assessment.

We have prepared some guidelines for environmental impact statements on our website for different categories of designated development.

4.5 Crown consent

4.5.1 People who can make development applications

Development applications can be made by the owner of the land or by another person who has the written consent of the owner of the land.[17]

Where a development application is made on behalf of the Crown, written consent from a Crown agency is required.

4.5.2 Development applications over dedicated or reserved Crown land

A lessee of Crown land may make a development application over Crown land only with the consent of the Crown. A development application lodged for development on Crown land is not a Crown development application, unless the applicant is the Crown.

For certain activities over dedicated or reserved land, the responsible Minister is taken to have given written consent on behalf of the Crown (as the owner of dedicated or reserved Crown land) for the

[17] Section 23 of the *Environmental Planning and Assessment Regulation 2021*, noting there are exception provisions within section 23(2).

Crown land manager or holder of a lease or licence to make a development application. These activities are listed in section 2.23 of the *Crown Land Management Act 2016* and include:

- the repair, maintenance, restoration or renovation of an existing building (provided the footprint of the building is not altered by more than one square metre, the height does not change, and the project does not involve excavation),
- the erection, repair, maintenance or replacement of a fence or signage with the manager's approval
- the use of the land for:
    - a purpose for which the land may be used under the Act; or
    - a purpose for which a lease or licence was granted under the Act
- temporary structures and services
- the erection or repair of a building or other structure on the land permitted under a lease, a toilet block or structure for the protection of the environment
- the carrying out of any other development prescribed by regulation or permitted under a plan of management.

Landowner's consent from the Minister for Lands and Property is not required for a development application on Crown land administered under the *Crown Land Management Act 2016* for SSD or a development application lodged by, or on behalf of, a public authority.18 However, for applications made by a public authority or for public notification development applicants are still required to notify the Minister for Lands and Property in accordance with the requirements outlined in Section 23(2)–(4) of the EP&A Regulation.

Aboriginal land or native title claims

Where development occurs on Crown land, applicants should confirm that consideration has been given to any rights and interests that may exist under the *Native Title Act 1993* (Cth) and the *Aboriginal Land Rights Act 1983* on that land. Applicants need to ensure that, in preparing a development application, those rights and interests are identified and an appropriate pathway and/or agreement for the development to proceed is available before lodgement.

[18] Section 69A of the *Crown Land Management Regulation 2024*

5 Assessment and determination

The determination of a Crown development differs from that of a standard development application. A consent authority (other than the Minister) must not refuse its consent to a Crown development application made under Part 4, Division 4.6 of the EP&A Act, except with the approval of the Minister.

5.1 Consent authority

If a crown development is considered 'local development', the **council** will be the consent authority.[19]

If a Crown development is 'regionally significant development', the **planning panel** will be the consent authority .[20] Chapter 2: State and Regional Development of the Planning Systems SEPP provides that these are Crown developments with a capital investment value of more than $5 million.

Planning Panels may also consider and determine Crown development referred to them if the application is not determined within the prescribed period or is referred by the council.

The Minister will also consider applications that are referred from the planning panel. The Minister will issue directions to the consent authority to either approve or refuse these applications, which the consent authority must abide by.

5.2 Consent conditions

A consent authority (other than the Minister) must not impose a condition on its consent to a Crown development application, except with the approval of the applicant or the Minister.

Consent conditions for a Crown development application should be similar to those that would be imposed on any other equivalent development application. The consent authority must ensure:

- there is a direct nexus between the development and the conditions;
- the conditions are for a planning purpose; and

[19] See section 4.5 of the EP&A Act. Also note that the Minister may be the consent authority in some areas and cases.

[20] See section 4.5 of the EP&A Act.

- the conditions are reasonable.

Further guidance on the principles that apply to drafting consent conditions is contained in our Guide to writing conditions of consent (PDF 368 KB).

Both the consent authority and the Crown agency need to consider the reasonableness of any conditions that are drafted. Conditions of consent cannot be tied to certificates, such as construction and occupation certificates or subdivision works certificates, or contain requirements relating to a principal certifying authority, as these are not requirements for Crown development applications.

Appendix B contains example conditions and demonstrates how the department's standard conditions of consent should be modified for Crown development applications.

5.3 Infrastructure contributions for Crown development applications

Certain categories of Crown development are infrastructure for the community and are unlikely to generate demand for public amenities or public services in the same way as private development. Further guidance on contributions for Crown development are contained within the Practice Note – Exempting certain development from contributions.

5.4 Referral of Crown development applications

If a consent authority fails to determine a Crown development application within 70 days, the applicant or the consent authority may refer the application to:

- the Minister if the consent authority is not a council; or
- the applicable planning panel if the consent authority is a council.

Where a Crown development application is referred to a planning panel and the Panel fails to determine it within 50 days, the applicant or the Panel may refer the development application to the Minister for determination.

A consent authority may also refer the matter to a Panel or the Minister at any time. Typically, this will happen where there are significant issues that cannot be resolved, and it is likely either the development will be refused or there are consent conditions that cannot be agreed upon. The department can assist in connecting agencies to achieve positive development outcomes.

When a development application is referred to a planning panel or the Minister, the party requesting the referral should notify the other party.

The consent authority should submit the following to the panel or the Minister within 7 days:

- a copy of the development application
- details of its proposed determination of the development application
- the reasons for the proposed determination
- any reports of another public authority.

The Crown agency should respond to the planning panel or Minister regarding the issues raised by the council and/or planning panel within 14 days.

5.5 Planning Panel or Minister determination for referred Crown applications

In determining an application referred under section 4.33(2), the planning panel and/or Minister will consider the development application and any reports by the council or planning panel.

If an application has been referred to the Minister, the Minister may issue directions to the consent authority. This can include directions to approve, conditions to be imposed or grounds to refuse the application and the timeframe in in which the consent authority must act. The consent authority must comply with these directions.

Referral to the Minister is likely to result in longer timeframes for assessment and consent. We recommend that the parties seek to achieve approval through the council or planning panel and refer applications to the Minister as a last resort.

6 After the determination

6.1 Reviews and appeals

A determination of a Crown development application cannot be subject to a review under Division 8.2 of the EP&A Act, though appeal rights under Division 8.3 of the EP&A Act do apply.

If the Minister exercised the functions of the council as consent authority in relation to a determination or decision that is appealed, the council will be the respondent to the appeal. In these circumstances however:

- the council is to give notice of the appeal to the Minister

- the council will be subject to the control and direction of the Minister in connection with the conduct of the appeal.

6.2 Modifications

Section 4.35 of the EP&A Act provides that Crown development applications can be modified under the provisions of section 4.55 of the EP&A Act.

7 Crown building and subdivision work

Crown building work applies to development (other than exempt development) or an activity by the Crown that is subject to environmental impact assessment under Division 5.1 of the EP&A Act. This comprises anything related to erecting or demolishing a building.

Crown building work must comply with the Building Code of Australia (BCA) and building work cannot commence unless the Crown building work is certified to comply with the BCA[21]. However, Crown building and subdivision work is not subject to the same requirements as other developments with respect to requirements for construction certificates[22], occupation certificates[23] and subdivision works certificates[24]. Additionally, it is not necessary to appoint a principal certifying authority for Crown development[25].

7.1 Definition of 'the Crown' for the purposes of Crown building work?

Section 121 of the *Environmental Planning and Assessment (Development Certification and Fire Safety Regulation) 2021* (DCFS Regulation) defines 'the Crown' for the purposes of section 6.1 of the EP&A Act to mean any of the following:

a) the NSW Government, and

b) a Minister of the Crown in right of NSW, and

c) a public authority (other than a council),

d) an Australian university (within the meaning of the *Higher Education Act 2001*),

e) a TAFE establishment (within the meaning of the *Technical and Further Education Commission Act 1990)*,

f) a Crown cemetery operator (within the meaning of the *Cemeteries and Crematoria Act 2013)*.

[21] Section 6.28 of the EP&A Act

[22] Section 6.7(2)(b) of the EP&A Act

[23] Section 6.9(2)(b)(iii) of the EP&A Act

[24] Section 6.13(2)(b) of the EP&A Act

[25] Section 6.6(5) and section 6.12(5) of the EP&A Act

For the purposes of section 4.32(2)(a) of the EP&A Act, the following are prescribed entities for Crown building work under section 6.28 of the EP&A Act:

- if development consent is required under the Act – the Luna Park Reserve Trust
- if the work is an activity within the meaning of Part 5 of the Act:
    - a determining authority that is a proponent (within the meaning of Part 5 of the Act) of the activity
    - a company State-owned corporation (within the meaning of the *State Owned Corporations Act 1989*) that is the subject of a certificate under section 37A of that Act for the activity.

7.2 Before starting Crown building work

The Crown must be satisfied that Crown building work meets certain conditions such as the requirements of the EP&A Act, EPIs, the development consent and the BCA.

Section 6.28(2) of the EP&A Act provides that Crown building work cannot begin unless it is certified by or on behalf of the Crown to comply with the BCA in force:

- when the invitation for tenders to carry out the work was issued, or,
- in the absence of tenders, the date on which the Crown building work commences.

While section 6.28 of the EP&A Act does not require a certificate to be issued before works occur, in practice, a 'Crown certificate' (in the form of a Crown building works certification) is issued to address the requirements of section 6.28(2).

The Crown agency undertaking the building work may contract a council or an accredited certifier to undertake the BCA assessment of the proposed building. The agency can then self-certify the building, relying on this advice.

For buildings erected by or on behalf of the minister, there are provisions in the EP&A Regulation that allow the Minister (by a ministerial planning order) to determine that a specified provision of the BCA does not apply, or that it applies with specified exceptions and modifications.[26] These provisions are used sparingly.

[26] Section 6.28(3) and (4) of the EP&A Act

7.3 During Crown building work

The requirement to erect signs showing contact details of the principal certifier and contractor while building work, subdivision work or demolition work occurs does not apply to Crown building work that has been certified to comply with the BCA.[27]

7.4 After the completion of Crown building work

While no regulatory provisions apply relating to occupation, most Crown developments still obtain a BCA Completion Statement or a Crown Completion Certificate as a means of mitigating any risk prior to occupation. This is a statement from a suitably qualified person confirming the completed development complies with the BCA.

7.5 Class 2, 3 and 9c building work

While a certifier is not required for Crown building work, the *Design and Building Practitioners Act 2020* (DBP Act) imposes obligations on certain practitioners responsible for the design, engineering and build of class 2 buildings and certain work on class 3 and 9c buildings.

This includes a requirement for the registered Building Practitioner to lodge regulated designs[28] and design compliance declarations[29] on the NSW Planning Portal before building work can commence.

Only a registered Design Practitioner can prepare the regulated designs and design compliance declarations. These are required for designs involving a performance solution or a 'building element', which generally relate to the building structure, fire safety, the building enclosure, waterproofing and building services required by the BCA[30].

The design compliance declaration requires the registered design practitioner to declare matters such as whether:[31]

[27] Section 70(4)(b) and 149(5)(b) of the EP&A Regulation

[28] Section 5, DBP Act, clause 16 Design and *Building Practitioners Regulation 2021* (DBP Reg)

[29] Section 8, DBP Act

[30] Section 6, DBP Act

[31] Section 8, DBP Act

- the regulated design complies with the BCA and other requirements
- other standards, codes or requirements have been applied in preparing the design
- the design integrates details of other aspects of building work to which the design relates, and other regulated designs, including designs prepared by other registered design practitioners
- any building products referred to in the design, if used in a way consistent with the design, achieve compliance with the BCA
- the design involves a performance solution
- the design accords with the guidance material for regulated designs approved by the Planning Secretary
- specialist advice was sought and considered in preparing the design.

Once building work begins, the registered building practitioner must build in accordance with the regulated designs.

If variations are needed, these must be designed and declared by a registered design practitioner and lodged by the registered building practitioner on the NSW Planning Portal within a day of work commencing on the variation.[32]

Within 7 days of completing building work, the registered building practitioner must provide a building compliance declaration for the building work, contractor documentation and other required documents.[33] This documentation must be lodged on the NSW Planning Portal and include a statement of variations that did not require a new regulated design. This documentation must also be provided to the person for whom the work was carried out.

The building compliance declaration will include declarations on whether:

- the building work complies with the BCA and other applicable requirements, and if the work does not comply, the steps required to be taken to ensure compliance
- where a regulated design was used for the work, whether the design was prepared by a registered design practitioner and the building work was built in accordance with the design
- whether a design compliance declaration was obtained for the regulated designs used
- whether a principal design practitioner was appointed and if so, whether a principal compliance declaration was obtained for the regulated designs used.

The DBP Act was expanded to cover work on Class 3 and 9c buildings on 3 July 2023. The *Design and Building Practitioners Regulation 2021* (DBP Regulation) contains saving and transitional provisions relating to Crown building work carried out on Class 3 and 9c buildings before 1 July 2023.[34]

[32] Clause 17, DBP Reg

[33] Clause 19A of the DBP Regulation

[34] Division 3B of the DBP Regulation

The DBP Act also requires that registered professional engineers must carry out certain work relating to the design, construction, production, operation and maintenance of buildings to which the DBP Act applies.

The DBP Act applies to the areas of civil, electrical, fire safety, geotechnical, mechanical and structural engineering.

If the engineer carrying out professional engineering work in one of the above areas is not registered, they must be directly supervised by a registered engineer.

More information on the DBP Act is available on the NSW Fair Trading website.

Appendix A: The roles of the Crown and consent authorities for Crown DAs

For efficient planning, assessment and delivery of essential community services and infrastructure, the Crown and consent authorities should undertake their functions in accordance with the principles outlined in this appendix.

Role of Crown agencies

The Crown agency should act as a model proponent in the development process and conduct environmental impact and other assessments in an exemplary manner. The Crown agency should:

- show a genuine commitment to balancing the economic, environmental and social outcomes in the scoping, design, assessment and delivery of the project
- apply accepted and best-practice techniques and procedures, including adherence to government policies and guidelines, throughout all stages of the process
- give appropriate and meaningful consideration of the governments and the public's concerns arising from the project
- strongly commit to a high standard of ongoing community engagement and reporting on project delivery
- strive to submit assessment-ready development applications and include a high standard of design and a quality statement of environmental effects addressing all impacts and mitigation measures
- promptly provide any additional information or undertake additional studies required to inform the assessment process
- be transparent and rapidly disclose to regulators key issues arising from the project and respond to compliance, enforcement and other performance issues as they arise and in a timely way
- promptly and reasonably respond to draft conditions proposed by the consent authority as part of finalising the recommendation to the decision maker
- where a matter is referred to a planning panel, respond to the council assessment within 14 days to support the panel's assessment of the development application.

For all stages of projects, the Crown agency should:

- collaborate constructively to resolve issues and achieve the efficient and timely determination of projects
- provide information, documentation, advice and responses within the timeframes requested
- proactively identify and resolve any issues during the process where a delay is occurring.

Where another party (developer/consultant) is managing the application on the behalf of the Crown, the Crown is still expected to comply with these principles and is also responsible for ensuring the party acting on their behalf acts in accordance with these principles.

Role of the consent authority

The consent authority will:

- encourage pre-development application meetings with Crown agencies and identify issues that require resolution and the likely studies required to support the application
- request additional information and assess the application in an efficient and timely manner
- actively engage and consult with the Crown agency to assist with the early identification of issues and consent conditions
- seek to resolve issues where a delay is occurring and involve the department where necessary to help facilitate outcomes
- provide the draft consent conditions to the Crown as soon as possible to allow sufficient time for the Crown to review and provide feedback
- actively progress the determination of the Crown development application to facilitate the delivery of services and infrastructure for the community
- where a matter is being determined by a planning panel, refer the council report to the panel within 7 days and provide any required documentation to support the panel's assessment of the development application.

Appendix B: Crown standard development application conditions

This appendix contains example standard conditions of consent that are recommended for use for Crown development applications. For all other conditions of consent, councils/planning panels should use our standard conditions of development consent with the amendments as detailed under each part of the appendix, alongside site-specific, bespoke conditions as required.

The EP&A Act provides some specific provisions for Crown development applications under Part 4, Division 4.6 for local and regionally significant development. Conditions for Crown development applications must not be linked to requirements relating to the appointment of a principal certifying authority or construction, occupation or subdivision works certificates.

Part A – General conditions

Table 1. General conditions examples

Applies to	Condition
All Crown development consents	For Crown Development Consents, use Part A standard conditions that are relevant unless bespoke conditions are required for site-specific issues that are not addressed by the standard conditions or if the standard conditions are not available.

Part B – Before certification that Crown building works comply with the Building Code of Australia

Table 2. Example conditions for Building Code of Australia certification

Applies to	Condition

All Crown development consents	**Certification that Crown building works comply with the BCA (s 6.28 of EP&A Act)**
	A certification issued by a suitably qualified person is to be provided to the Crown prior to commencement of any building work on the site.
	Note
	Where the proponent of building works is the Crown, the building work must comply with the BCA under s 6.28 of the EP&A Act prior to the commencement of works.
	S 6.28 of the EP&A Act states:
	• Crown building work cannot be commenced unless the Crown building work is certified by or on behalf of the Crown to comply with the technical provisions of the State's building laws in force as at:
	  ○ the date of the invitation for tenders to carry out the Crown building work, or
	  ○ in the absence of tenders, the date on which the Crown building work commences, except as provided by this section.
	Therefore, a suitably qualified person needs to certify that the Crown building works comply as required by s 6.28 prior to the commencement of Crown building works. There is no format required for such a certification.
	A construction certificate (s 6.7(2)(b)) and a principal certifying authority (s 6.6(5)) are not required for Crown building works where the works were determined by a council via a development consent.

All Crown development consents	For Crown development consents, use Part B standard conditions that are relevant (except for the certification condition above) unless bespoke conditions are required for site-specific issues that are not addressed by the standard conditions or if the standard conditions are not available. For Crown development applications, all relevant Part B standard conditions must be amended as follows. Delete the words 'before the issue of the construction certificate or before the issue of a subdivision works certificate)' wherever they occur and replace them with 'before certification that Crown building works comply with the Building Code of Australia'.

Part C – Before building work commences

Table 3. Example conditions for before commencing building work

Applies to	Condition
All Crown development consents	For Crown development consents, use Part C standard conditions that are relevant unless bespoke conditions are required for site-specific issues that are not addressed by the standard conditions or if the standard conditions are not available.

Part D – During building work

Table 4. Example conditions for during building work

Applies to	Condition
All Crown development consents	For Crown development consents, use Part D standard conditions that are relevant unless bespoke conditions are required for site-specific issues that are not addressed by the standard conditions or if the standard conditions are not available.

Part E – Prior to occupation or use

Table 5. Example conditions for before occupation or use

Applies to	Condition
All Crown development consents	**Building Code of Australia Completion Statement** Prior to commencement of occupation or use of the whole or any part of a new building or an altered portion of or an extension to an existing building, a Building Code of Australia completion statement must be completed by an appropriately qualified person appointed by the Crown. (This is an optional condition that requires the Crown to agree that it be included in the conditions of consent). **Note** Occupation certificates are not required for the occupation or use of a new building that has been erected by or on behalf of the Crown (refer to s 6.9(2)(iv) of the EP&A Act). Although there is no regulated process prior to occupation, most Crown developments still obtain a Building Code of Australia completion statement as a means of mitigating risk prior to occupation. The statement is from a suitably qualified person confirming the completed development complies with the BCA but is not issued under any specific legislative clause.

Applies to	Condition
All Crown development consents	For Crown development consents, use Part E standard conditions that are relevant (except for the Building Code of Australia completion statement condition above) unless bespoke conditions are required for site-specific issues that are not addressed by the standard conditions or if the standard conditions are not available. Please amend each condition by deleting the words 'before the issue of an occupation certificate/subdivision certificate' and 'principal certifying authority'.

Part F – Occupation and ongoing use

Table 6. Example conditions for after occupancy of for ongoing use

Applies to	Condition
All Crown development consents	For Crown development consents, use Part F standard conditions that are relevant unless bespoke conditions are required for site-specific issues that are not addressed by the standard condition, or if the standard conditions are not available.