

Seeking approval from the Department for the appointment of independent experts



Post approval guidance for Infrastructure Projects

Conditions of approval for State significant projects¹ sometimes require that an 'independent' expert must conduct a particular investigation, undertake a review or assume a particular role in relation to an approved project. Some of these conditions also require that the Department or Planning Secretary approves the appointment of this candidate prior to undertaking any work.

This document sets out the considerations that the Department will take into account when deciding on whether to approve a candidate as an independent expert.

What projects does this guidance apply to

This guidance applies to proponents of State significant projects that fall within the following categories of development:

- rail and rail related transport facilities
- roads
- port, water or boating facilities
- educational establishments
- hospitals, medical centres and health research facilities
- correctional centres and complexes
- water storage and treatment facilities, sewerage systems and associated pipelines.

This Guide does not apply to the appointment of independent roles that are defined within existing guidance and/or conditions of consent, such as an Environmental Representative or Acoustic Advisor.

Considerations taken into account by the Department when approving an independent expert

When approving the appointment of an independent expert, the Department will consider whether a candidate will be able to offer their genuine professional opinion and exercise their judgment, uninfluenced by pressure brought to bear by (or on behalf of) the proponent, while undertaking their task or role. The candidate will be expected to;

1. be a member of a relevant professional body.

Some professional bodies require members to be bound by a code of ethics, conduct or practice that ensures members are accountable for the professional standards they exhibit and the work they undertake. The organisation should be known and respected for the particular field and have appropriate structures and codes of practice

2. not have a close relationship with the proponent/contractor, including that of employer/employee, a business partnership, sharing a common employer, a contractual arrangement (outside the task in question), or that of a spouse, partner, sibling, parent, or child.

¹ In this Guideline, the term State significant project refers to both State significant development (SSD) and State significant infrastructure (SSI) projects. Although there are differences in the statutory regimes for SSD and SSI projects, and in the terms used in each these regimes (e.g. applicant/proponent, development consent/infrastructure approval), this Guideline focuses on the similarities and, for ease of reference, uses a single set of terms.

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Previous and existing relationships may threaten, or appear to threaten, the independence of an expert. For some projects it can be difficult to source experts in narrow professional fields that have had no prior involvement with the proponent, their contractor or the project. This will not automatically exclude the candidate, however the nature of the relationship will be considered and evaluated.

- 3. not have any pecuniary interest** in the project, proponent or related entities, including any known pecuniary interests of family or friends.

If there is a reasonable likelihood that the candidate (including their family or friend) will benefit from financial gain or loss, this may suggest that the expert's exercise of judgement may be influenced.

- 4. not accept any inducement or benefit** from the proponent, their employees or any interested party, or knowingly allow colleagues to do so (excluding apart from the payment for services undertaken to conduct the specific task or role in question); and
- 5. exercise their own independent, professional judgement** in relation to the task and undertake the task in an objective and professional manner at all times

A candidate's prior involvement with a proponent or the project, or the fact that the candidate receives payment from a proponent for undertaking a task or role, does not necessarily preclude the candidate from being able to undertake the task 'independently'. However, in some cases, the objectivity of the candidate may be compromised. This will be considered and evaluated by the Department

Submitting a request to the Department

Once the proponent has selected a preferred candidate the proponent should seek the Department's approval for the candidate via the **Major Projects Website**. Information must be provided on how the candidate meets the above criteria (1-5) and in particular provide the following details;

- The candidate's name/s
- The name of the relevant professional body that the candidate is a current member of, including membership number, details of level of membership and date of joining.
- Information on any prior or present relationships (both personal and professional) with the proponent/contractor/project and reasons why this will not affect their independence
- Attach a recent copy of the candidate's resume.

It should be noted that Sections 10.6 and 9.42 of the Environmental Planning and Assessment Act 1979 create offences for providing false or misleading information in connection with a planning matter and in relation to monitoring and environmental audits.

The Department will acknowledge this request and respond with a letter of approval or rejection within 14 days of submission.

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