

Department of Planning, Housing and Infrastructure

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Submissions policy

For State significant project applications and other development applications that are exhibited by the Department of Planning, Housing and Infrastructure

April 2024



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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More information

Development Assessment and Infrastructure

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1. Introduction

The NSW Department of Planning, Housing and Infrastructure has prepared this policy to explain how people can have their say on a State significant project application or other development application that the department is exhibiting. This is through a ‘duly made’ submission during the public exhibition period. This policy also sets out how the department will manage and consider those submissions.

To find out what a ‘duly made’ submission is, refer to the section called ‘*Duly made’ submissions*.

Public participation

Public participation is vital in assessing State significant project applications and other development applications. This is embedded in the *Environmental Planning and Assessment Act 1979* (the EP&A Act), *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation) and environmental planning instruments.

The EP&A Act sets out mandatory community participation requirements for:

- public exhibition of these projects
- notifying the public
- and the giving of reasons for decisions¹.

Under the EP&A Act, the department must also prepare a community participation plan.² This sets out how and when the department will involve the community when it exercises relevant planning functions.

Community participation is integral to assessing the merits of projects. It can improve the design of projects, reduce environmental impacts and promote ecologically sustainable development.

¹ Section 2.22 and Schedule 1 of the EP&A Act.

² Division 2.6 and Schedule 1 of the EP&A Act.

When this policy applies

This policy applies to submissions about proposed development for which the Minister for Planning, Planning Secretary or Independent Planning Commission is the consent authority and submissions about proposed state significant infrastructure, made during a public exhibition period.

This includes submissions about the following State significant project applications and other development applications that are exhibited by the department:

- state significant development applications, including those where the Independent Planning Commission is the consent authority
- applications for approval of state significant infrastructure
- development applications for non-state significant development under Part 4 of the EP&A Act where the Minister for Planning or Planning Secretary is the consent authority
- applications to amend a development application or modify a development consent where the Minister for Planning, Planning Secretary or Independent Planning Commission is the consent authority
- applications to amend an application for approval of state significant infrastructure or modify a state significant infrastructure approval.

This policy **does not apply** to:

- advice the Department of Planning, Housing and Infrastructure receives from government agencies taking part in the planning led, whole of government assessment of state significant projects (refer to section 2 of this policy '*Asking for advice from agencies*')
- people submitting feedback in response to consultation on:
 - planning proposals
 - draft regional or sub-regional plans or master plans
 - any explanation of intended effect or draft environmental planning instruments prepared under Part 3 of the EP&A Act
- applications where the Independent Planning Commission is carrying out the public exhibition, whether as the consent authority, or as delegate for the Minister or Planning Secretary as consent authority.

Review period

The department will review this policy from time to time to ensure it is up to date and is consistent with our objectives for community participation.

Related documents

The following departmental documents support this policy:

- [Submissions Disclaimer and Declaration](#)³
- [Privacy Statement](#)⁴
- [Privacy Management Plan](#)⁵
- [Community Participation Plan](#)⁶
- [Have your say online.](#)⁷

³ Available at www.planningportal.nsw.gov.au/major-projects/help/disclaimer-and-declaration

⁴ Available at www.planning.nsw.gov.au/privacy

⁵ Available at www.planning.nsw.gov.au/privacy

⁶ Available at www.planning.nsw.gov.au/policy-and-legislation/environmental-planning-and-assessment-act-1979/community-participation-plans

⁷ Available at www.planningportal.nsw.gov.au/major-projects/have-your-say

2. Submissions as part of the broader engagement process

Relationship to the Community Participation Plan

The department's [Community Participation Plan](#) sets out our objectives for community participation. It explains how and when the community may take part in the planning process.

The plan highlights the different ways community members can stay informed about planning matters and explains how they can have their say on projects.

Engagement during the environmental assessment process

The department expects proponents⁸ to undertake proportionate and appropriate engagement with the community and government agencies. Proponents should do this throughout the environmental assessment process.

The department also engages with the community and government agencies at various stages of the development process. We do this to better understand the views of the community and other agencies.

The [Undertaking Engagement Guidelines for State Significant Projects](#) gives detailed information about engagement on state significant projects, its purpose, expectations for it, and its benefits. Under the guidelines, proponents for state significant projects must engage with people who may have an interest in or be affected by the project. This engagement happens throughout the process of developing, assessing, and implementing a state significant project, rather than only at select points.

When the department will ask for submissions

The department exhibits applications when there is a legal requirement to do so, or when it is best practice to formally engage the community. During a public exhibition, the department invites the

⁸ Under the EP&A Act, an 'applicant' applies for a development consent under Part 4 and a 'proponent' applies for a state significant infrastructure approval under Division 5.2 of Part 5. For this policy, we use 'proponent' to refer to both types of applicant.

community to make submissions to share their views on the project. Mandatory minimum timeframes for public exhibition are set out in [Schedule 1 of the EP&A Act](#).

Environmental impact statements

The exhibition of an environmental impact statement means certain rights and responsibilities apply.

This includes:

- a requirement for the department to make information publicly available for a minimum timeframe, which is set by legislation
- a requirement for people making submissions to declare any reportable political donations
- in some cases, allowing for people who have made submissions to appeal the decision.

There are also specific requirements for how:

- the department publishes submissions
- the proponent responds to the issues raised in submissions
- the decision-maker considers submissions.

Requesting advice from agencies

The department may ask for advice from government agencies as part of the whole of government assessment of state significant projects. This advice will be within their areas of expertise or where these agencies may regulate the effects of a project.

The department asks agencies to give advice within agreed timeframes and to operate within established engagement principles. Responses to such requests are considered 'advice' to the department rather than a 'submission' on the project. Agencies do not have to send the submissions disclaimer and declaration when giving advice.

This policy **does not apply** to handling advice the department receives from these agencies.

How submissions influence the decision-making process

The department expects proponents to carefully consider the issues raised in submissions. Proponents may choose to amend the project or propose additional or revised mitigation measures to reduce its impacts.

For state significant projects, the Planning Secretary may require the proponent to submit a submissions report to respond to the issues raised in submissions.

For state significant infrastructure applications, the department can also require the proponent to submit a preferred infrastructure report. This outlines changes to the state significant infrastructure to minimise its environmental impact.

Consent or approval authority

When people make a submission, the department asks them to state if they support or object to a project or are simply giving comments. The number of submissions by way of objection received during the public exhibition period can determine who the consent authority will be for an application.

For state significant development applications, either the Independent Planning Commission or Minister for Planning is the consent authority. This depends on several factors, including the number of objections the department receives.

For some non-state significant development applications under Part 4 of the EP&A Act, the Minister for Planning is the consent authority.

For state significant infrastructure applications, the Minister for Planning is the approval authority.⁹

In some cases, the Minister for Planning has delegated their decision-making functions to senior officers in the department.¹⁰ For more information, visit the [Delegated Decisions](#) page on the NSW Planning Portal.

When determining an application, the decision-maker must consider the issues raised in submissions, no matter who submitted them, or how many submissions the department received. The decision-maker must also give reasons for the decision, including how they considered submissions.

⁹ Section 5.15(1) EP&A Act

¹⁰ Under section 2.4(3) of the EP&A Act, the Minister for Planning cannot delegate the function of determining an application for approval to carry out Critical state significant infrastructure.

3. Submissions

What is a submission?

For this policy, a submission is a response from an individual or organisation. It is submitted to the department through the NSW Planning Portal, during the public exhibition of an application, including the exhibition of an environmental impact statement, a statement of environmental effects, an amendment report, a preferred infrastructure report or a modification report. This includes submissions from:

- **the community** - anyone affected by or interested in the project, including:
 - individuals
 - community groups
 - Aboriginal and Torres Strait Islander communities
 - culturally and linguistically diverse communities
 - peak bodies and businesses
- **councils**
- **organisations that are not advising the department** in its whole of government assessment of state significant projects (for example, development corporations and state-owned corporations such as Water NSW, Sydney Water, Landcom and Port Authority of NSW).

Duly made submissions

For a submission to be duly made, the submission should:

- be made through the NSW Planning Portal to comply with sections 287 and 287A of the EP&A Regulation
- be received by midnight on the closing date of the exhibition period
- include the following information:
 - the full name and address of the submitter (person or organisation making a submission)
 - the name of the application and the application number
 - whether the submitter supports, objects to, or is providing comment on the project.

You must also disclose all [reportable political donations](#) made in the previous 2 years when making a submission¹¹.

You must also acknowledge and accept the department's [disclaimer and declaration](#), published at www.planningportal.nsw.gov.au/major-projects/help/disclaimer-and-declaration. This includes acknowledging that you have read and understood the department's [privacy statement](#), published at www.planning.nsw.gov.au/Privacy.

Help using the NSW Planning Portal

The department is committed to supporting users of the NSW Planning Portal. We understand that some people may have difficulty using the portal to make a submission. There are [help and resources](#) on the portal including a step-by-step guide on [how to make a submission](#) and answers to [frequently asked questions](#).

For more help, call Service NSW on 1300 305 695.

If you think you'll need help making a submission using the portal, it's a good idea to contact Service NSW sooner rather than later. Ensure you give yourself plenty of time to make a submission before the project's exhibition end date.

Feedback

During the assessment process, the department may still consider material that it receives outside of a public exhibition period or through channels other than the NSW Planning Portal. We refer to this material as feedback.

Why must I give my personal information?

You must give the department your full name and address when making a submission. This is to support ongoing communication and participation. It also encourages people to take responsibility for the content of their submission.

In certain circumstances, there may be merit appeal rights for a person who makes a submission if they object to a development application for designated development and some state significant

¹¹ Under section 10.4 of the EP&A Act, the person making the submission, or any associate of that person must disclose all reportable political donations (if there were any) made within the period starting 2 years before the submission is made and ending when the application is determined.

development projects¹². To exercise those merit appeal rights in the Land and Environment Court, the submitter and their duly made submission must be identifiable.

Why must I acknowledge and accept a standard declaration?

You must agree to a standard declaration when you lodge a submission. The declaration explains how the department intends to use the information you give in your submission. It also addresses potential legal issues that may arise from the publication of:

- personal information
- defamatory, offensive, false or misleading statements
- commercial-in-confidence material,

The declaration confirms that:

- you allow the department to use, reproduce and publish your submission on its website
- you have read and understood the department's [privacy statement](#) and agree to the department using your submission in the ways it describes
- the content of your submission is factually correct and otherwise contains expressions of opinions which you honestly hold
- you have not provided any false or misleading information
- your submission does not contain offensive, threatening, defamatory or inappropriate content
- your submission does not contain personal information which can be used to identify another person without their consent
- you acknowledge the department's [disclaimer](#) and accept responsibility for the content of their submission
- you have declared any reportable political donations.

¹² Under section 8.8 of the EP&A Act, an objector can make a merit appeal to the Land and Environment Court against the determination of an application for development consent for designated development (including a State significant development that would be designated development but for section 4.10(2) of the EP&A Act).

4. Practices for submissions

The department will follow the practices below when calling for, handling, publishing, counting and reporting on submissions.

Calling for submissions

When the department calls for submissions, we will clearly explain why we are doing this. This will include:

- any statutory provision (if relevant)
- the requirements with which submissions must comply
- how the issues raised in submissions will be considered when assessing and determining the application.

The department will exhibit all applications we receive on the NSW Planning Portal. We will also advertise in newspapers where there is a statutory requirement to do so. For example, we will advertise in newspapers if the application is being assessed under the Commonwealth Bilateral Assessment or if we feel advertising is necessary to reach more people.

Handling submissions

When you make a submission on the NSW Planning Portal, you will receive an automated acknowledgment receipt from the department.

The department will manage all personal information you give in accordance with the department's [privacy management plan](#) and [privacy statement](#). The department will only use personal information for the purposes for which we collected it.

Publishing submissions

The department has an obligation to publish submissions on the NSW Planning Portal in their complete form. This means if you make a submission, you must take responsibility for its content as set out in the [disclaimer and declaration](#) and [privacy statement](#) on the NSW Planning Portal. This includes making sure you do not include any defamatory content or personal information in the main

body of your submission. By defamatory content, we mean content that harms the reputation of a person or organisation. In cases where a submission contains potentially defamatory material, the department may choose to redact the submission or choose not to publish the submission.

Privacy

If you do not want the department to publish your name in the list of submitters on the NSW Planning Portal, you must tick the box in the online submissions form indicating you'd like your name to be withheld. In these cases, the Planning Portal will display 'NAME WITHELD'. However, the department will publish the submission in full, even if it includes personal information in the submission.

Counting and reporting on submissions

The department will classify and count submissions consistently to identify the consent authority for the application. (See section 2 of this policy '*How submissions influence the decision-making process?*').

We count submissions in accordance with [section 2.7\(6\)](#) of the *State Environmental Planning Policy (Planning Systems) 2021*. This means that petitions or any submissions that contain the same or substantially the same text are counted as one submission.

Assessment report

The department's assessment report will summarise the issues raised in submissions. The report will outline how we have considered these issues when assessing the project.

The department will publish the assessment report on the NSW Planning Portal.

Determination of applications

The decision-maker will advise the public:

- of the decision
- the reasons for the decision
- how we considered community views in making the decision.

The department will publish a 'notice of decision' on the NSW Planning Portal when the Minister for Planning is the consent authority or approval authority.

When the Independent Planning Commission is the consent authority, it will publish a 'statement of reasons' on its website, www.ipcn.nsw.gov.au.