

TP10:
**Role of regulators
for tunnel projects**

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Summary

The NSW Government manages the assessment, determination, and compliance of significant road tunnels (and associated ventilation systems) as follows:

- The Department of Planning and Environment (DP&E) assesses proposals under the *Environmental Planning and Assessment Act 1979* (EP&A Act) in consultation with relevant State government agencies. The assessment process is public and transparent, with formal opportunities for agencies, local government and the public to provide comment.
- The Minister for Planning is the approval authority for complex infrastructure proposals, including road tunnels. If approved by the Minister, a significant road tunnel will be regulated by a project approval, typically containing limits for both in-tunnel air quality and stack emissions and monitoring requirements.
- The Minister for Planning and DP&E regulate the construction and operation of the project in accordance with the project approval. These functions are generally delegated to the Secretary of DP&E (or his or her nominee) under the approval.
- The Environment Protection Authority licenses construction under the *Protection of the Environment Operations Act 1997* and provides technical advice to DP&E on operational air quality impacts during the assessment and determination process.
- NSW Health advises DP&E on air quality health impacts, including appropriate health assessment methodologies for in-tunnel and ambient air quality.

State significant assessment system

The State significant assessment system comprises of two separate assessment pathways known as State significant infrastructure (SSI) and State significant development (SSD). Projects that fall into these categories are assessed by the Department of Planning and Environment (DP&E), and the Minister for Planning (the Minister) is the approval authority. Fact sheets and planning circulars describing the State-significant assessment system are available on the DP&E website (www.planning.nsw.gov.au/Development/DevelopmentAssessmentSystems/Statesignificantassessment/tabid/517/Default.aspx).

Infrastructure projects are generally delivered by, or on behalf of, a public authority, and do not normally require development consent. Major infrastructure projects, however, may have the potential for significant environmental impact, and therefore require assessment and approval from the Minister for Planning. In particular, linear infrastructure – such as roads, railway lines or pipelines – which often cross a number of council boundaries will generally be considered as SSI. A full list of SSI development types can be found in Schedule 3 of the State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP).

The Minister has delegated her approval authority for complex SSD proposals (predominantly private proposals) to the independent Planning Assessment Commission, but has retained her authority to determine SSI proposals (predominantly public proposals). For less complex SSI and SSD proposals, the Minister has delegated her authority to senior officers of DP&E. The current delegations for State significant assessments are available on the DP&E website (www.planning.nsw.gov.au/en-us/developmentproposals/delegateddecisions.aspx).

From time to time, an SSI project may be considered to be essential to the State for economic, social or environmental reasons. These projects can be declared to be ‘critical State significant infrastructure’ (CSSI). The CSSI provisions:

- ensure the timely and efficient delivery of essential infrastructure projects.
- allow the Government and the planning system to rapidly and readily respond to the changing needs of the State.
- provide certainty in the delivery of these projects.
- provide for rigorous scrutiny to ensure environmental outcomes are appropriate.
- focus on delivering outcomes that are essential to the NSW community.

The Minister may declare a project to be CSSI by amending the SRD SEPP. The NorthConnex project is both an SSI and a CSSI project.

The assessment pathway is the same for SSI and CSSI projects. However, two key differences apply to the determination and compliance procedures. The Minister cannot delegate her decision-making function for a CSSI project; as a result, the Minister is the determining authority for all CSSI projects. Further, limited third party judicial review appeal rights apply to CSSI projects.

The assessment process for SSI/CSSI projects is discussed further below and is summarised in Figure 1.

Regulatory functions of the Environment Protection Authority

The Assessment, Determination and Compliance Process for SSI/CSSI Projects

The NSW Environment Protection Authority (EPA) provides advice to DP&E and the Minister regarding SSI projects, including significant road tunnel proposals, during the assessment and determination process, and regulates construction activities in accordance with the *Protection of the Environment Operations Act 1997* (POEO Act). An overview of the EPA's input to the assessment and determination process and its regulatory responsibilities, is provided below.

Input to the assessment process

The EPA's primary role in the management of tunnel air quality is to provide advice during the assessment process. The EPA is often involved in the early stages of the process through participation in, and input to, planning focus meetings and strategic joint agency groups. Further discussion of the assessment and determination process for SSI projects is provided below.

Environment Protection Licences under the Protection of the Environment Operations Act 1997

Tunnel construction is required to be licensed by the EPA if it meets the licensing triggers in Schedule 1 of the POEO Act, or constitutes scheduled development work under section 47(3) of the POEO Act, prior to commencement of construction. The EPA will usually issue an environment protection licence (EPL) for tunnel construction to the project's primary construction contractor. EPLs issued for tunnel construction primarily focus on noise mitigation, stormwater and groundwater management, and community engagement.

The assessment, determination and compliance process for SSI projects is shown below and in Figure 1. As discussed above, it should be noted that the process does not change once an SSI project has been declared CSSI.

SSI application

Roads and Maritime Services lodges an SSI application and supporting documents, which includes a preliminary assessment of the environmental impacts of the project. The request is then placed on the DP&E major project register website (majorprojects.planning.nsw.gov.au/).

Secretary's environmental assessment requirements (SEARs)

DP&E prepares and issues the Secretary's environmental assessment requirements (SEARs – formerly known as Director-General's requirements (DGRs)). In preparing the SEARs, State government agencies and local authorities are consulted to identify key issues and environmental assessment requirements. This consultation is conducted through written correspondence and inter-agency meetings, and may include a planning focus meeting held following acceptance of the SSI application. The SEARs, as issued, are placed on the DP&E major project register website.

Environmental Impact Statement

Roads and Maritime Services prepares and submits the Environmental Impact Statement (EIS). The EIS must include an environmental impact assessment consistent with the SEARs. The SEARs require RMS to consult with relevant government agencies and members of the community during preparation of the EIS, and document the process in the EIS. This requirement may be satisfied through written correspondence or inter-agency meetings.

The Assessment, Determination and Compliance Process for SSI/CSSI Projects

Consistency assessment

DP&E determines whether the EIS is consistent with the SEARs. This consistency assessment is conducted in consultation with State government agencies.

EIS exhibition

DP&E exhibits the EIS (for a minimum of 30 days), which provides opportunity for government authorities and members of the community to make submissions on the project. All project documentation is made available on the DP&E major project register website.

All submissions are provided to the RMS within 10 days of the close of exhibition and uploaded onto the DP&E major project register website.

Response to submissions/preferred infrastructure report

Roads and Maritime Services prepares and submits a response to submissions/preferred infrastructure report, which includes a detailed response to all submissions received during the exhibition, and details of any changes to the project (where applicable). The response to submissions/preferred infrastructure report is placed on the DP&E major project register website and, depending on any significant changes, may be exhibited.

Secretary's environmental assessment report

DP&E prepares the Secretary's environmental assessment report, which details DP&E's assessment of the environmental impacts of the project and DP&E's recommendation for determination.

If DP&E recommends the project be approved, DP&E will consult with relevant government authorities in relation to the draft recommended conditions of approval.

Recommendation

The Secretary's environmental assessment report and draft recommendation for determination is placed on the DP&E major project register website for a minimum of seven days before it is determined by the Minister for Planning. Any submissions received during this period are assessed in an addendum report, which is provided for the consideration of the Minister.

Determination

The Minister for Planning approves (with or without conditions) or refuses the project.

Environment Protection Licence

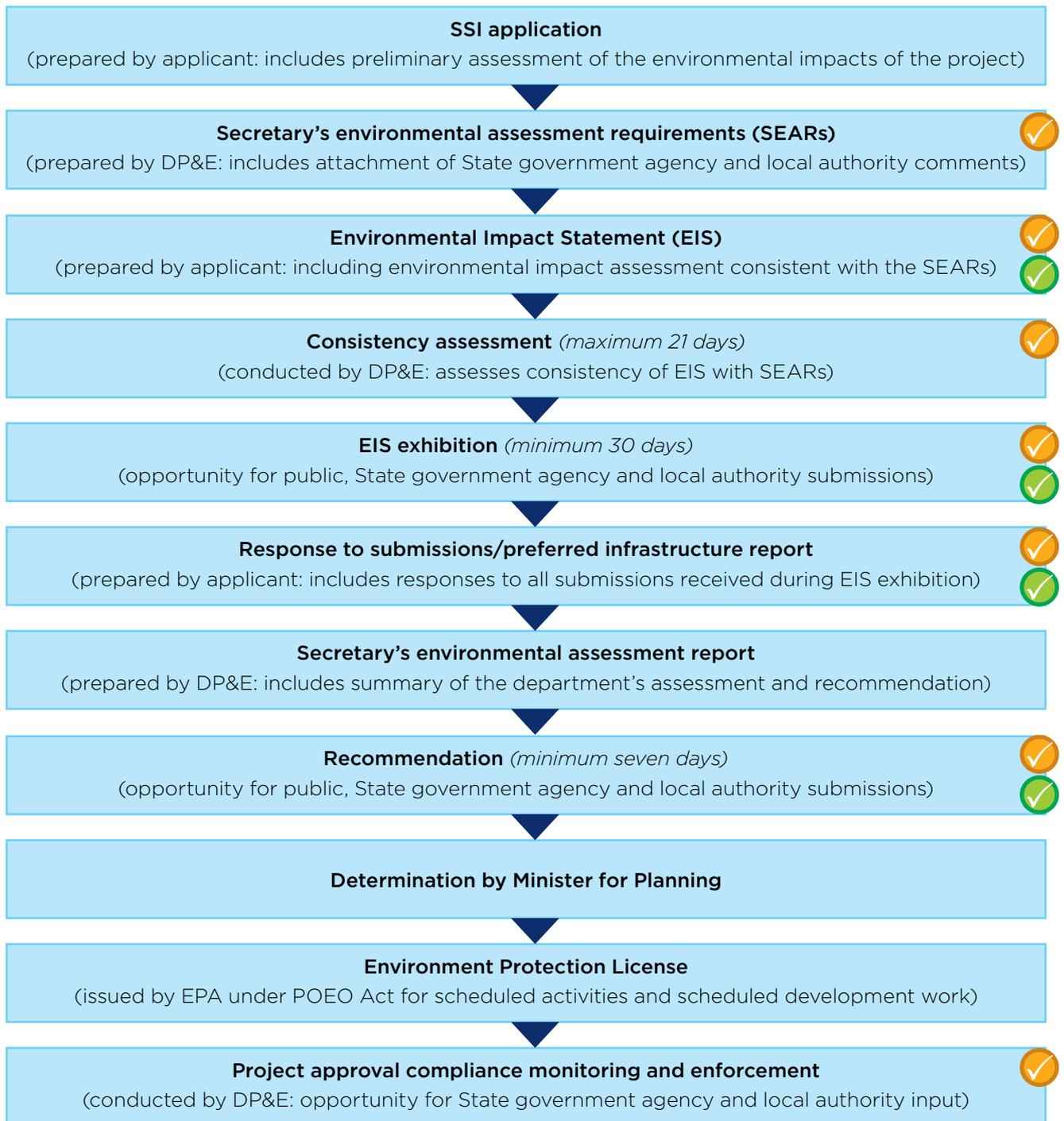
The EPA issues an EPL for the project, generally to the primary construction contractor. An EPL must not be inconsistent with the conditions of approval. All EPLs are available on the EPA website (www.epa.nsw.gov.au/licensing/).

Infrastructure approval compliance monitoring and enforcement

The Minister for Planning and Secretary of DP&E retain ongoing roles in regulating compliance with the infrastructure approval. These functions are generally delegated to the Secretary (or his or her nominee) under the approval. Infrastructure approvals generally require ongoing consultation with State government agencies and local government, including requirements for the review of management plans, and participation in interagency meetings and inspections.

The contractor must comply with the conditions of its EPL and undertake monitoring where required by the EPL. The EPA reviews compliance with the conditions of the EPL and conducts site inspections when required.

Figure 1: Assessment process for State Significant Infrastructure (SSI) projects (including opportunities for government authority and community input)



-  Opportunity for State government agency and local authority input
-  Opportunity for community input

