

Land Owner's Consent for State Significant Proposals

Introduction

Under NSW planning law, applications for State significant development proposals generally cannot be approved without land owner's consent. However, in certain circumstances land owner's consent is not required and compliance with notification requirements is sufficient.

This factsheet explains land owner's consent requirements for:

- applications for State significant development (SSD) and State significant infrastructure (SSI); and
- modifications of SSD consents and SSI approvals.

These requirements are set out in the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation).

Different requirements may apply in respect of local and regional development. In those cases you should contact [your local council](#) for more information.

Who is a land owner?

An "owner" includes:¹

- in relation to Crown land, the Crown and any lessee or purchaser of land from the Crown;
- the registered proprietor of the land;
- a person who is entitled to receive the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession, or otherwise;
- in the case of strata title, the owner's corporation;
- in the case of community title, the community association; and
- in relation to land the subject of a mining lease, the holder of the mining lease.

¹ Section 4 of EP&A Act imports the definition of "owner" from the *Local Government Act 1993*

What if there is more than one land owner?

Where land owner's consent is required, if there is more than one land owner, consent of all the land owners must be obtained.

Land owner's consent for SSD applications

Land owner's consent is required for an SSD application, if the application is made by a person who is not the owner of the land to which the application relates.²

However, land owner's consent is **not required** for an SSD application that is:

- made by a "public authority" (see definition below); or
- for "public notification development" (see definition below),

if the notification requirements set out below are met.³

Notification requirements – public authority development or public notification development

If an SSD application is made by a public authority or for public notification development, land owner's consent is not required but only if the applicant instead gives notice of the application:

- by written notice to the owner of the land before the application is made; or
- by advertisement published in a newspaper circulating in the area in which the development is to be carried out no later than 14 days after the application is made.⁴

Note: Land owner's consent is only not required if the notification requirements are met. If the notification requirements are not met, then land owner's consent is required.

Land owned by a Local Aboriginal Land Council

Any SSD application in respect of land owned by a Local Aboriginal Land Council must be accompanied by the consent of the NSW Aboriginal Land Council.⁵

Land owner's consent for SSI applications

Land owner's consent **is** required for SSI applications, **unless** the application relates to:

- SSI to be carried out by a public authority (see definition below);
- critical SSI (see definition below);
- linear transport infrastructure;
- utility infrastructure; or

² EP&A Regulation, clause 49(1)

³ EP&A Regulation, clause 49(2)

⁴ EP&A Regulation, clause 49(2)

⁵ EP&A Regulation, clause 49(3A)

- infrastructure on land with multiple owners as designated by the Secretary of the Department of Planning and Environment.⁶

Notification requirements apply to SSI applications where owner's consent is not required (see below).

Notification requirements for SSI applications that do not require land owner's consent

If land owner's consent is not required for an SSI application, the proponent **must** give notice of the application by:

- written notice to the owner of the land, before or no later than 14 days after the application is made; or
- an advertisement in a newspaper circulating in the area in which the infrastructure is to be carried out at least 14 days before the environmental impact statement (EIS) that relates to the infrastructure is placed on public exhibition.⁷

Land owned by a Local Aboriginal Land Council

Where the consent of a Local Aboriginal Land Council as land owner is required for an SSI application, the consent of the NSW Aboriginal Land Council must also be obtained.⁸

Land owner's consent for modifications of SSD and SSI

Modifications of SSD

The position in respect of land owner's consent is the same for a modification application as it was for the original application for consent. Therefore, if land owner's consent was required for the original application, it is also required for a modification of the consent.

If owner's consent was not required for the original application, the same notification requirements apply and must be satisfied if land owner's consent is not obtained for a modification of the consent.⁹

Modifications of SSI

If landowner's consent is not required for a modification request, notification requirements must be satisfied. These are the same as for an infrastructure application, except that if notification is given by way of an advertisement in a newspaper, it must be published no later than 14 days after the modification request is made.¹⁰

Can land owner's consent for the original application be used for a modification?

No. If land owner's consent was required for the original application for consent for SSD or approval of SSI, fresh land owner's consent must be provided for a modification request, even if the land owner has not changed since the original application.

⁶ EP&A Regulation, clause 193(1)

⁷ EP&A Regulation, clause 193(4)

⁸ [EP&A Regulation, clause 193\(3\)](#)

⁹ EP&A Regulation, clause 115(2)

¹⁰ EP&A Regulation, clause 193 (4)(b)(ii).

Land owner's consent for applications on Crown land

With one exception stated below, the same requirements for land owner's consent apply in relation to SSD or SSI applications on "Crown land" (see definition below) as for other land.¹¹

The exception is that an SSD application can only be made by a lessee of Crown land with the written consent of the Crown, except if the applicant is a public authority or the development is public notification development.¹²

Who can provide land owner's consent for Crown Land?

Land owner's consent for Crown land can be obtained from the NSW Department of Primary Industries - Lands the reserve trust (which may be the local council) if one exists.

Further information about land owner's consent for development on Crown land can be found in the NSW Land and Property Management Authority's form '[Landowner's Consent: Landowner's consent application](#)'

Definitions

Critical State significant infrastructure is SSI that is declared to be critical SSI upon the Minister for Planning forming the view that it is essential for the State for economic, environmental or social reasons.¹³ SSI that has been declared critical includes certain Pacific Highway upgrade projects, rail infrastructure projects, and NorthConnex and WestConnex road projects.

Crown land is land vested in the Crown excluding land that:

- is dedicated for a public purpose; or
- has been sold or lawfully contracted to be sold and in respect of which the Crown has received the purchase price or other consideration.¹⁴

It is different from 'public land' which includes any land owned by or under the control of the local council (with certain exceptions including a public road and a regional park under the [National Parks and Wildlife Act 1974](#)).¹⁵

Public authority means:

- (a) a public or local authority constituted by or under an Act, or
- (b) a Public Service agency, or
- (c) a statutory body representing the Crown, or
- (d) a Public Service senior executive within the meaning of the [Government Sector Employment Act 2013](#), or
- (e) a statutory State owned corporation (and its subsidiaries) within the meaning of the [State Owned Corporations Act 1989](#), or
- (f) a chief executive officer of a corporation or subsidiary referred to in paragraph (e), or

¹¹ [EP&A Regulation, clauses 49 and 193](#)

¹² EP&A Regulation, clause 49(3) and (4)

¹³ [EP&A Act, section 115V](#)

¹⁴ [Crown Lands Act 1989, section 3](#)

¹⁵ [Local Government Act 1993](#), Dictionary

(g) a person prescribed by the regulations for the purposes of this definition,¹⁶

and in relation to an SSD application, includes an irrigation corporation within the meaning of the *Water Management Act 2000* that the Minister administering that Act has, by order in writing, declared to have the status of a public authority for the purposes of clause 49 of the EP&A Regulation in relation to development of a kind specified in the order.¹⁷

Public notification development means:

- SSD set out in clause 5 (Mining) or 6 (Petroleum (oil and gas)) of Schedule 1 to *State Environmental Planning Policy (State and Regional Development) 2011*, but does not include development to the extent that it is carried out on land that is a state conservation area reserved under the *National Parks and Wildlife Act 1974*, or
- SSD on land with multiple owners designated by the Secretary of the Department of Planning and Environment for the purpose of clause 49 of the EP&A Regulation, by notice in writing to the applicant for the SSD.

FAQ

At what stage in the assessment is land owner's consent required?

Where land owner's consent is required for an SSD application, the EP&A Regulation requires the application to contain evidence that the owner of the land on which the development is to be carried out has consented to the application.¹⁸

Land owner's consent that is required in respect of SSI need not be provided in the application for approval – it may be obtained at any time before the application is determined¹⁹.

What form must land owner's consent be in?

Land owner's consent for SSD must be in writing²⁰. There are no requirements for the form of land owner's consent for SSI. However, for the purpose of clarity and avoidance of doubt, it is recommended that land owner's consent for both SSD and SSI be provided in a signed statement that:

- refers to the details of the relevant application;
- specifies the title details of the land owned by the land owner and to which the application relates, or upon which the project is to be carried out; and
- states that the land owner consents to the making of the application.

What is the effect if land owner's consent is conditional or withdrawn?

If land owner's consent is given on a conditional basis, it may not be consent at all and the consent authority may not have jurisdiction to determine the application. Ultimately it depends on the particular facts in each case.

¹⁶ EP&A Act, section 4 and see EP&A Regulation, clause 277

¹⁷ EP&A Regulation, clause 49(5)

¹⁸ EP&A Regulation, [clause 50](#) and [Schedule 1, Part 1\(1\)\(i\)](#)

¹⁹ [EP&A Regulation, clause 193\(2\)](#)

²⁰ [EP&A Regulation, clause 49\(1\)\(b\)](#)

The withdrawal or revocation of land owner's consent after the application has been made does not prevent the consideration and determination of the application.

Does land owner's consent to a planning application enable entry to the land?

The scope of land owner's consent that is required for a planning application is consent to the application only. Unless otherwise stated, it does not give an applicant, proponent or any other person consent to enter the land and carry out the relevant development.