

Review of Decision for SSD and SSD Modifications

Introduction

Under the *Environmental Planning and Assessment Act 1979*¹ (the Act), an applicant of a State significant development (SSD) project may request a review of decision or determination (called a 'review of decision' in this Fact Sheet). The review can be either an internal review by the Department of Planning, Industry and Environment (the Department), or the Department can refer the review to the Independent Planning Commission (IPC).

Reviews can also be requested by applicants in relation to the determination decisions for a modification to an SSD development consent in certain circumstances.

Requests for a review of decision may be undertaken if an application was refused or if the applicant is dissatisfied with a condition of consent². Reviews are an important part of the planning system as they provide a quick, low cost alternative to court proceedings associated with merit appeals and judicial reviews.

During the internal review process, the respective development consent remains operative³. Following the internal review, the Department can decide to change or uphold its original decision or condition of consent. After a review by the IPC, the Department will change or uphold its original decision or condition of consent depending on the IPC review outcome.

This Fact Sheet provides guidance to applicants in relation to a review of decision of SSD and SSD modification applications, including:

- which decisions are subject to review
- how an applicant can request a review of decision
- whether the SSD application or SSD modification application can be amended as part of the review
- timeframes for a review
- who can undertake a review and when a review will be referred to the IPC
- how the Department completes a review of decision
- associated fees
- how an applicant will be notified of the review outcome.

Which decisions are subject to review?

A review of decision is specific to development applications under Part 4 of the Act. This Fact Sheet applies to SSD applications and SSD modification applications.

While applicants can request a review of decision for SSD and SSD modifications, reviews are restricted to decisions made by the Department (as a delegate of the Minister), not the IPC or the Planning Secretary (as delegates), or the IPC as consent authority.

Crown development (referred to in Division 4.6 of the Act) is not subject to a review of decision.

¹ Division 8.2 *Environmental Planning and Assessment Act 1979*

² The review can include a condition or conditions of consent.

³ Under s.4.20 of the *Environmental Planning and Assessment Act 1979*

A determination or decision reviewed under Division 8.2 of the Act is not subject to further review under the same Division.

How an applicant can request a review of decision?

Only the applicant can request a review of decision. Third party objectors (e.g. the community and/or other stakeholders) who lodged submissions during the EIS exhibition cannot request a review, but may have other appeal rights⁴.

The applicant must lodge a request for a review of decision in writing to the Department. The request must identify what aspect is to be reviewed (i.e. a refused application or condition of consent) and must be made to the assessment team responsible for the Assessment Report.

Once the request has been received by the Department, a fee for the review will be calculated and the applicant will receive an invoice within 14 days.

Can the SSD application or SSD modification application be amended as part of the review?

In requesting a review, the applicant may amend the proposed development the subject of the original application for consent or modification. The reviewer (Department or IPC) may then review the matter, having regard to the amended development. The reviewer must be satisfied that the amended development is substantially the same as the development for which consent was originally sought by the application the subject of the review.

Timeframes for a review

Timeframes for a review of decision for an applicant and the Department are shown in Table 1.

Table 1. Timeframes for the Department's review of decision

Development decision	Applicant lodgment of review request (after the date of the written notice of the decision or determination)	Department internal review timeframe
Refused SSD application	Six months total for applicant lodgment and Department review ⁵ .	Six months total for applicant lodgment and Department review ⁶ . The Department recommends applicants lodge their requests for a review within three months, to allow sufficient time for the Department to under the review within the six month legislative timeframe period.

⁴ For more information see [Factsheet FS02 Appeal Rights](#)

⁵ Legislative requirement

⁶ Legislative requirement

Development decision	Applicant lodgment of review request (after the date of the written notice of the decision or determination)	Department internal review timeframe
Dissatisfaction with an approval condition associated with SSD or SSD modification application	Six months total for applicant lodgment and Department review ⁷ .	Six months total for applicant lodgment and Department review ⁸ . The Department recommends applicants lodge their requests for a review within three months to allow sufficient time for the Department to under the review within the six month legislative timeframe period.
Refused SSD modification application	28 days ⁹	Depends on whether re-exhibition for 14 days is required ¹⁰ .

A determination or decision cannot be reviewed after the period within which any appeal may be made to the Court has expired if no appeal was made, or after the Court has dealt with an appeal against the determination or decision. This is six months for merit appeals and three months for judicial reviews (for more information see Factsheet FS02 [Appeal Rights](#)).

Who can undertake a review and when will a review be referred to the IPC?

Once a review of decision is requested, the Department will determine if the review will be conducted internally or referred to the IPC. Referrals to the IPC will be for refused SSD applications and SSD modification applications which are particularly sensitive or contentious with a high level of public interest.

Department reviews will be conducted by a senior officer who was not involved in the original decision, and who is not subordinate to the delegated officer who determined the application.

How the Department completes a review of decision

Review of decision - refused SSD applications and SSD modification applications

If a request for a review of a refused application is made, the Department will review and assess the application (including the EIS) against the mandatory legislative framework in the Act¹¹. The Department will determine if the review application requires re-exhibition. Submissions concerning the application for review can be made within the 14 day exhibition period and all submissions

⁷ Legislative requirement

⁸ Legislative requirement

⁹ Legislative requirement

¹⁰ Re-exhibition will be dependent on the original modification application type ([s.4.55](#) of the Act)

¹¹ [Section 4.15](#) of the Act

must be considered. The Department will inform the applicant of the outcome in writing and publish the outcome on the Department's website.

If a determination is changed on review, the new determination replaces the earlier one on the date the new decision is registered on the Department's website.

Review of decision - dissatisfaction with a condition of consent

Where an applicant requests a review of decision associated with a condition of consent, the Department will:

- consult with other relevant agencies
- assess the appropriateness of the condition
- confirm if the condition remains the same or if any changes are required
- inform the applicant of the outcome in writing and publish the outcome on the Department's website.

Associated fees

When the Department receives a request for a review, a fee for the review will be calculated and an invoice will be forwarded to the applicant within 14 days.

The maximum fees for a review of decision for a refused application and a condition of consent are¹²:

- a) 50% of the original development application fee for a development application that does not involve the erection of a building, the carrying out of a work or the demolition of a work or building
- b) \$190 for a development application that involves the erection of a dwelling-house with an estimated cost of construction of \$100,000 or less
- c) Table 2 for any other development applications.

An additional amount of not more than \$620 if notice of the application is required to be given under sections 8.2-8.5 of the Act.

Table 2. Maximum fees for a review of decision for other development applications (i.e. excluding categories detailed in (a) and (b))

Estimated cost ¹³	Maximum fees
Up to \$5,000	\$55
\$5,001-\$250,000	\$85, plus an additional \$1.50 for each \$1,000 (or part of \$1,000) of the estimated cost
\$250,001-\$500,000	\$500, plus an additional \$0.85 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$250,000
\$500,001-\$1,000,000	\$712, plus an additional \$0.50 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$500,000

¹² The maximum fee payable applies to SSD and council reviews.

¹³ Estimated cost of the development.

Estimated cost ¹³	Maximum fees
\$1,000,001-\$10,000,000	\$987, plus an additional \$0.40 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$1,000,000
More than \$10,000,000	\$4,737, plus an additional \$0.27 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$10,000,000

Fee for a review of decision (modification)

The maximum fee for a review of a SSD modification application is 50% of the original modification application fee.

How an applicant will be notified of the review outcome

The applicant will be informed of the outcome of the review of decision in writing and the outcome will be published on the Department's website. The applicant cannot request a further review of the same decision under Division 8.2 of the Act.

For more information

- Call Service NSW on 1300 305 695.
- Email to information@planning.nsw.gov.au.
- If English is not your first language, please call 131 450. Ask for an interpreter in your language and then request to be connected to on 1300 305 695.

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