



Environmental
Defenders Office

State Significant Development

What you need to know and
how to have your say



A world where nature thrives

We are an environmental law practice that protects the Australia Pacific region by delivering legal solutions for peoples, nature and our climate

We deliver innovative legal solutions for peoples and planet

We empower communities and fight for nature through law

We educate people about the law and their rights

We advocate for better laws that deliver transformative change

We litigate to uphold rights and enforce the law

www.edo.org.au



Legal Information

The content provided is legal information, not legal advice.

If you require legal advice on a specific issue raised in this workshop, you can call us on our free telephone advice line.

Go to our website for more details on how to access our advice line: www.edo.org.au

By law we can only assist one client on any issue –
We prefer to work with community groups



State Significant Development

What is it and what does it mean?

Assessment pathway

EIS

Submission writing

What next?

Legal Avenues



2. State Significant Development



What is it?

- Identified in SEPP (State and Regional Development) 2011
- EIS required
- Must be exhibited for 28 days
- Minister for Planning/Independent Planning Commission is consent authority
- Merits appeals for proponents and objectors (unless public hearing)



What does it mean?

- The assessment pathway for SSD is more streamlined than other developments
- Assessment criteria in s 4.15 still applies
- Minister can delegate decision-making to IPC
- Minister can also require IPC to hold a public hearing
- Some approvals are not required
- Other approvals must be consistent with SSD approval



Relevance of other legislation

Approvals not required:

- A permit to dredge, harm marine vegetation or block the passage of fish
- an Aboriginal heritage impact permit;
- a permit to clear native vegetation;
- a bush fire safety authority; or
- a water use approval.

Approvals that must be consistent with the SSD approval:

- Environment Protection Licence (EPA); or
- Consent under s 138 of the Roads Act
- A licence under the Pipelines Act



3. Assessment pathway



Process for assessing SSD



4. Environmental Impact Statement



Environmental Impact Statement

What is an EIS?

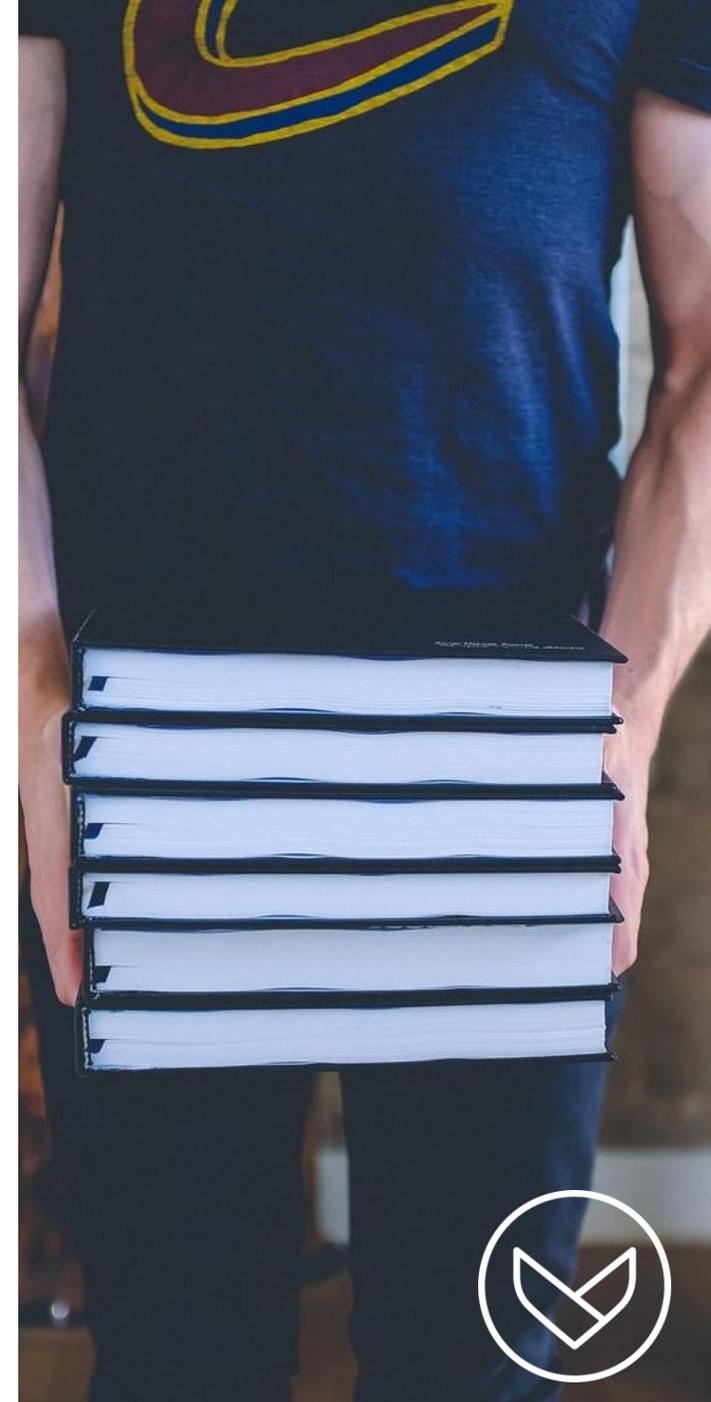
- An EIS is a comprehensive set of documents setting out all the relevant information on the project
- It must address all the key issues set out in the SEARs

What role does an EIS play in the decision-making process?

- The EIS is the main document the decision-maker will take into consideration when assessing the project

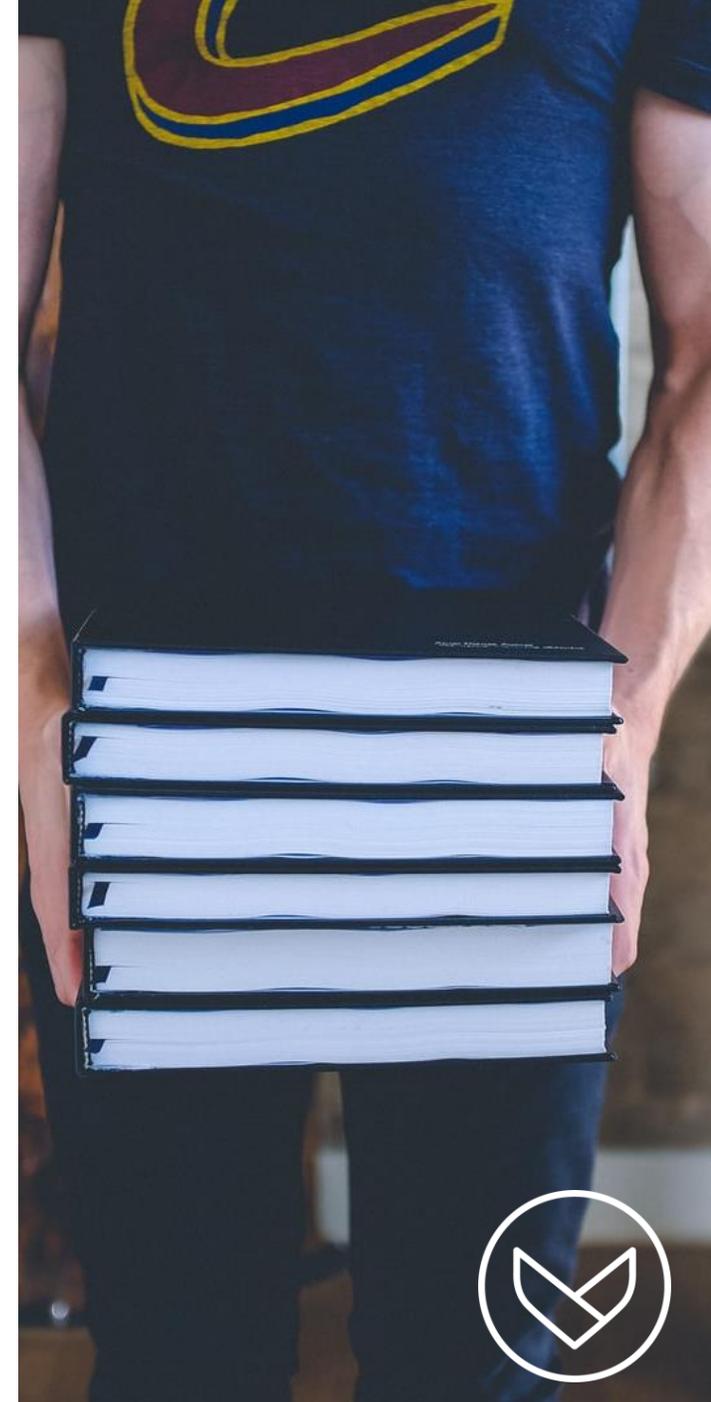
Have all the decisions already been made by the time the EIS is lodged?

- The decision/s around the type of project and the preferred route have been made by the time the EIS is lodged



What is required to be included?

- Must address the Secretary's Environmental Assessment Requirements (SEARs)
- In addition:
 - Executive Summary
 - Statement of Objectives
 - Any feasible alternatives
 - Analysis of the development
 - Justification for carrying out the development



5. Community Participation: Submission writing



Public exhibition period

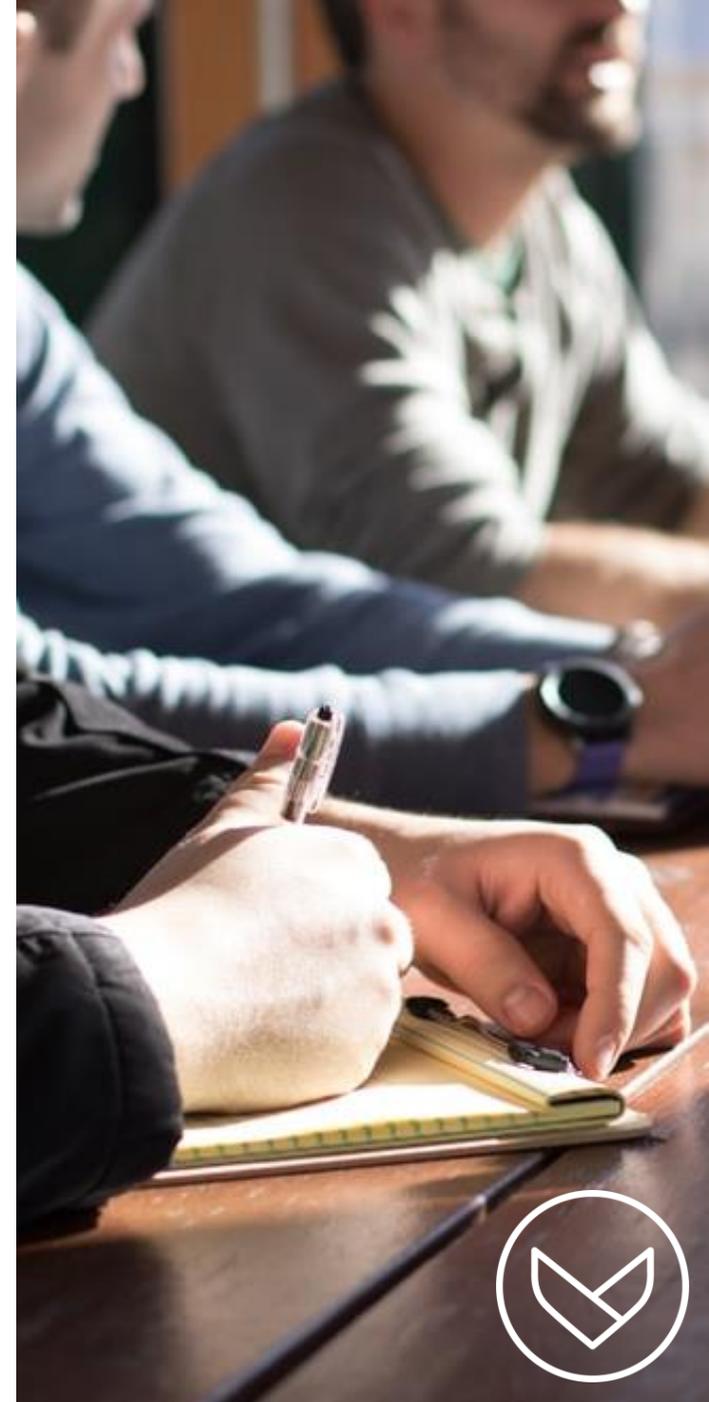
- The EIS will be placed on public exhibition for a minimum of 28 days (legislative requirement).
- During that time, any person can make a written submission on the project.
- The Planning Secretary must then provide copies of submissions received by the Planning Secretary or a report of the issues raised in those submissions to:
 - the proponent,
 - the EPA, and
 - any other public authority the Planning Secretary considers appropriate.



Submission writing

What documents can you comment on in your submission?

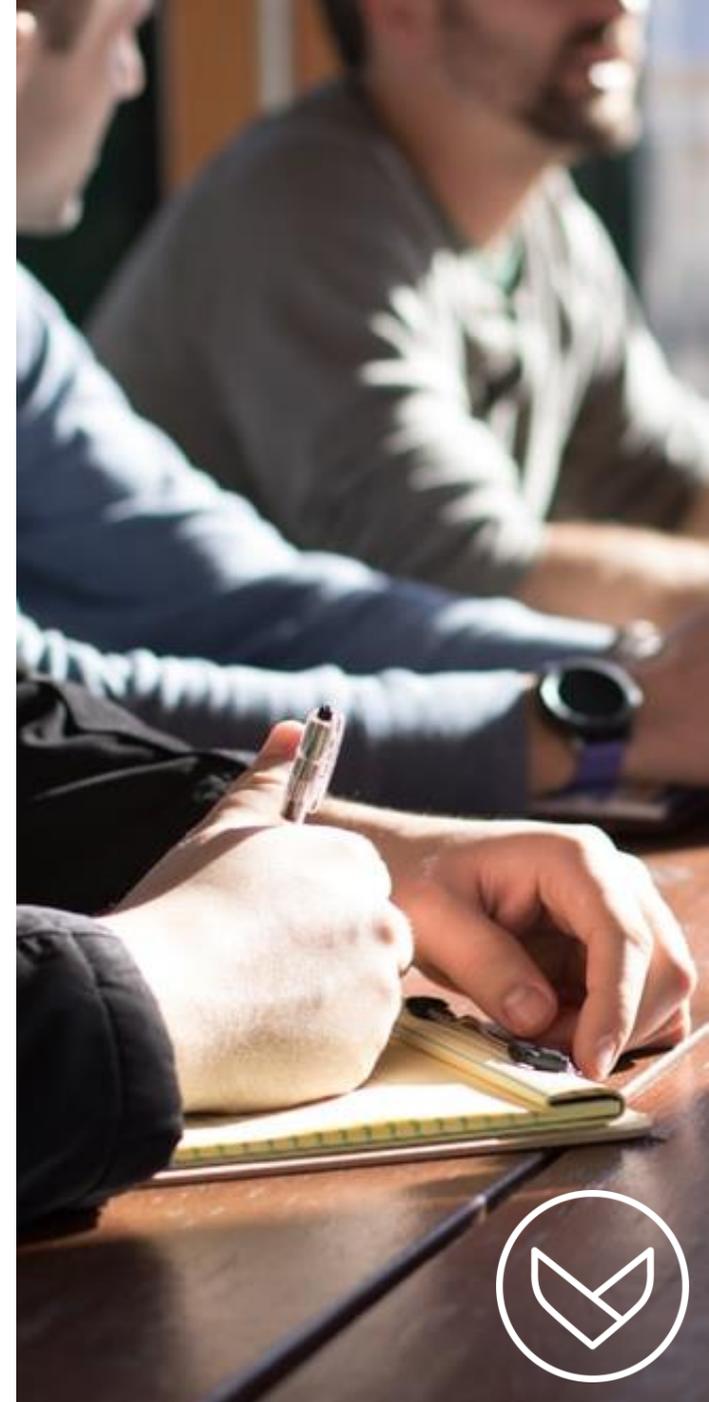
- Everything that makes up the DA, including the Environmental Impact Statement and all appendices
- All the relevant documents are available on the NSW Planning and Environment Major Projects website: <https://www.planningportal.nsw.gov.au/major-projects>



Submission writing

How do I set out my submission?

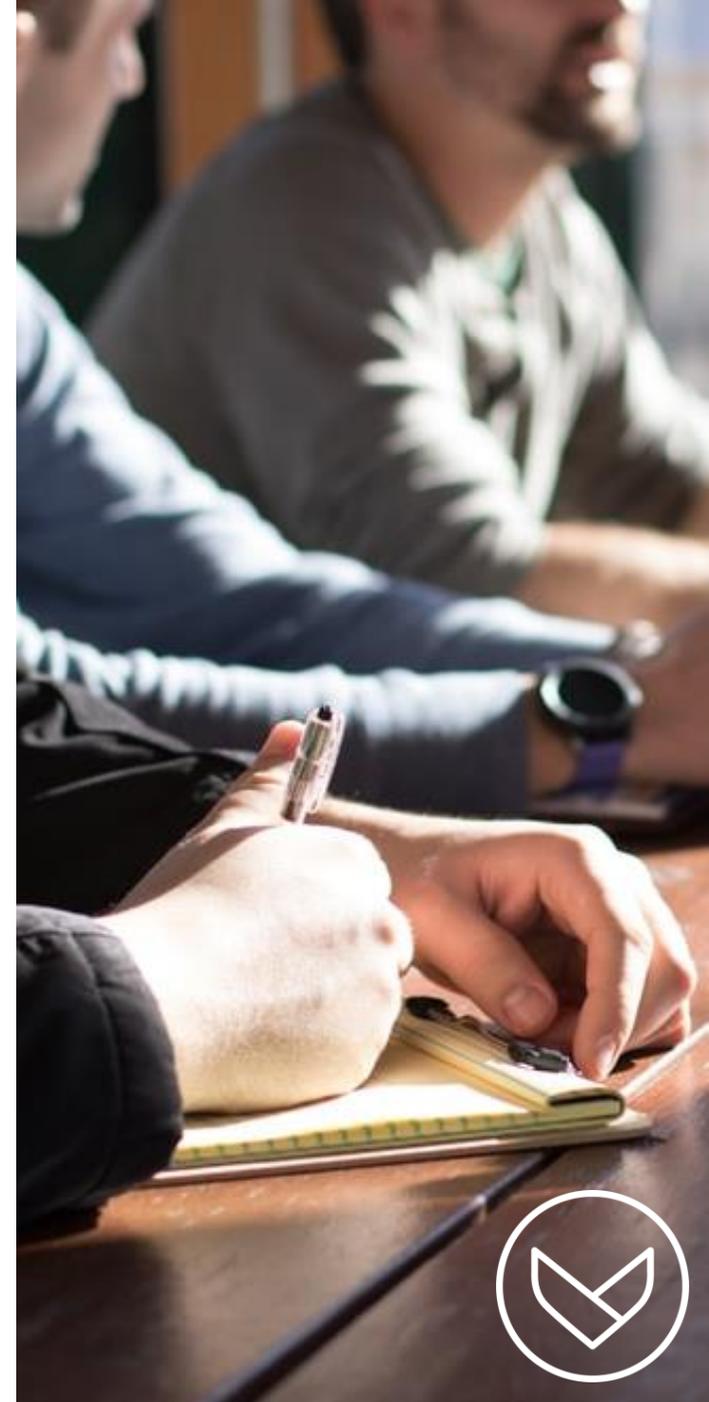
- Introduce yourself or your group. What is your background and experience?
- Explain why are you interested in, and how you will be affected by, the development
- Give recommendations – tell the decision-maker what you want them to do



Submission writing

How do I set out my submission?

- Personalise the submission – it's OK to sign a pro forma submission, but ensure you personalise it
- Talk about how the proposal will affect:
 - you
 - your family
 - the environment
 - the local economy
 - existing industry



Submission writing

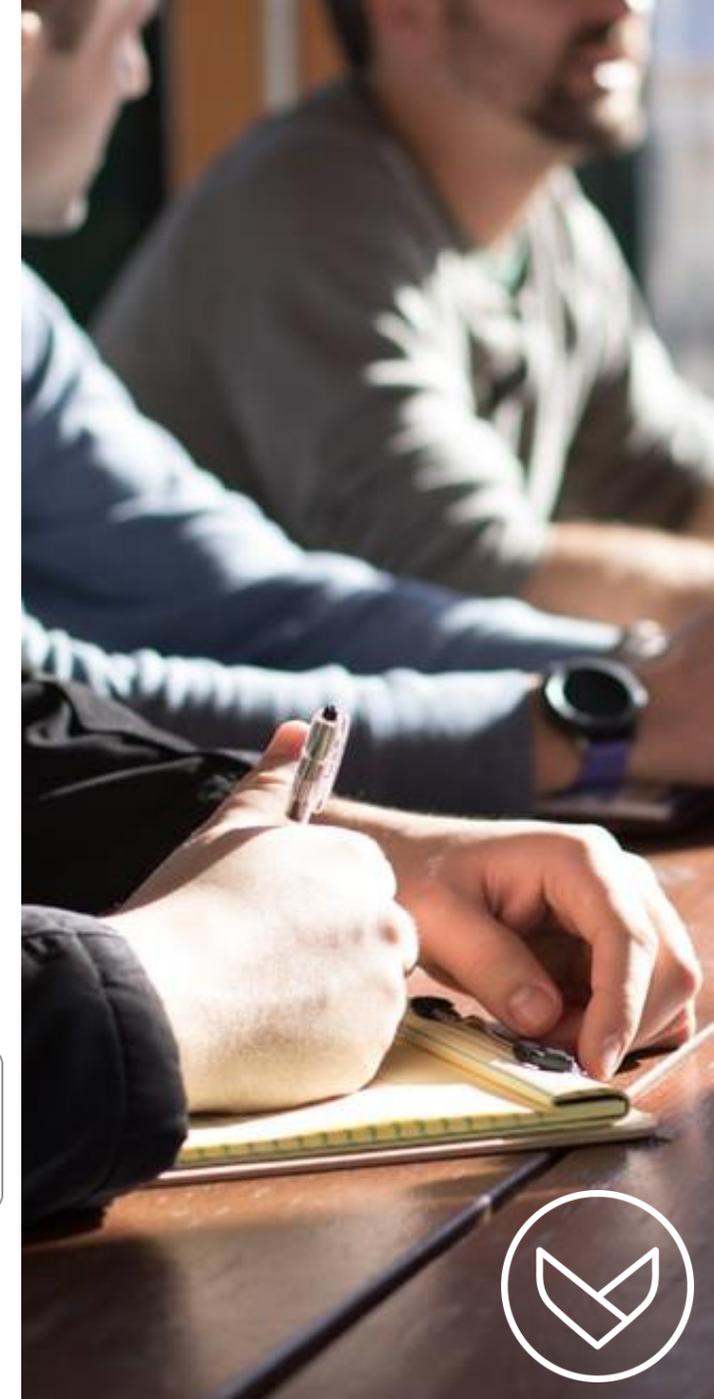
Read proposal and supporting documents

Identify key issues/concerns

Clearly set out your concerns and support with facts/evidence

Tell the decision maker what you want them to do

Submit before deadline

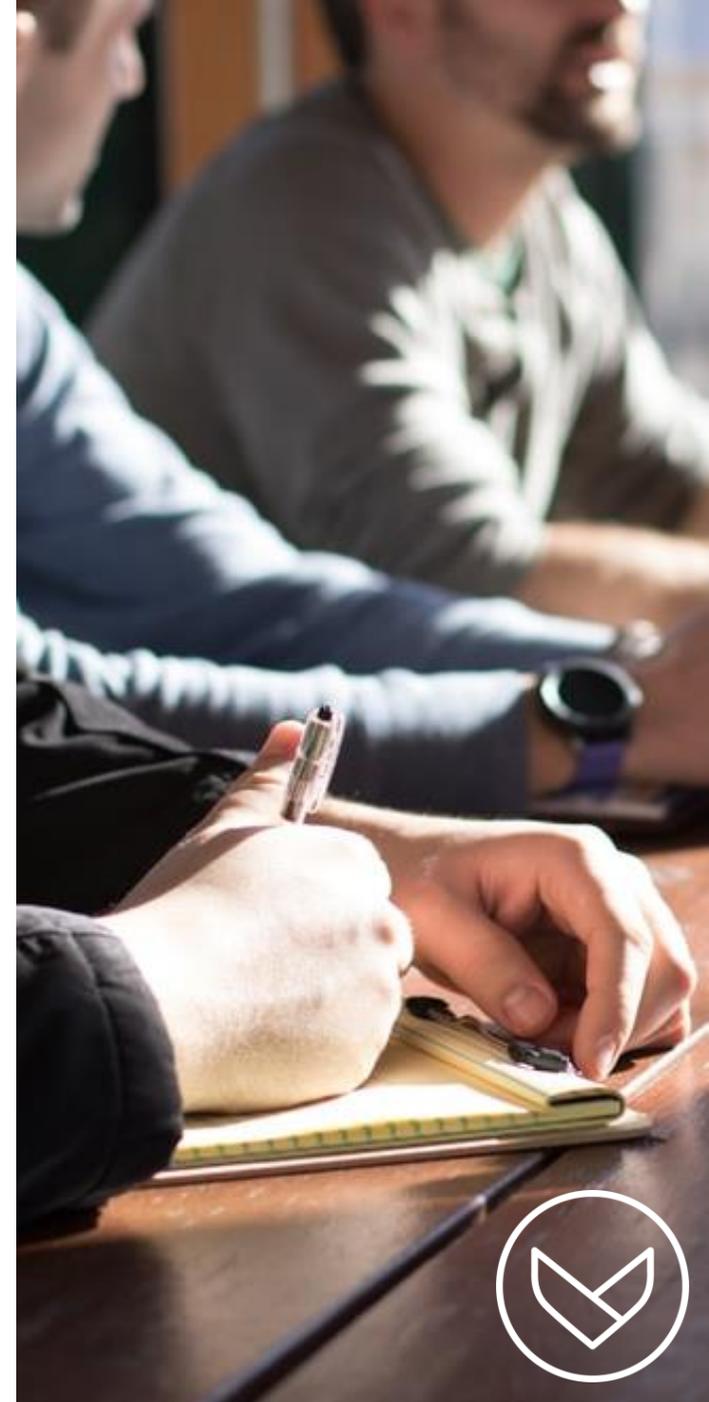


Submission writing

How to engage the reader:

- *Think about your strategy. What will motivate people?*
- *Keep submissions on-topic*
- *Give insights into analysis or experiences from elsewhere that make your case*
- *Point to innovative ideas*
- *Make your submission short and punchy*
- *Get the reader engaged early*
- *Be objective and outcome focussed*
- *Have a civilised and interesting conversation*

- Tom Grosskopf, Director Metropolitan Branch,
Regional Operations, Office of Environment and Heritage

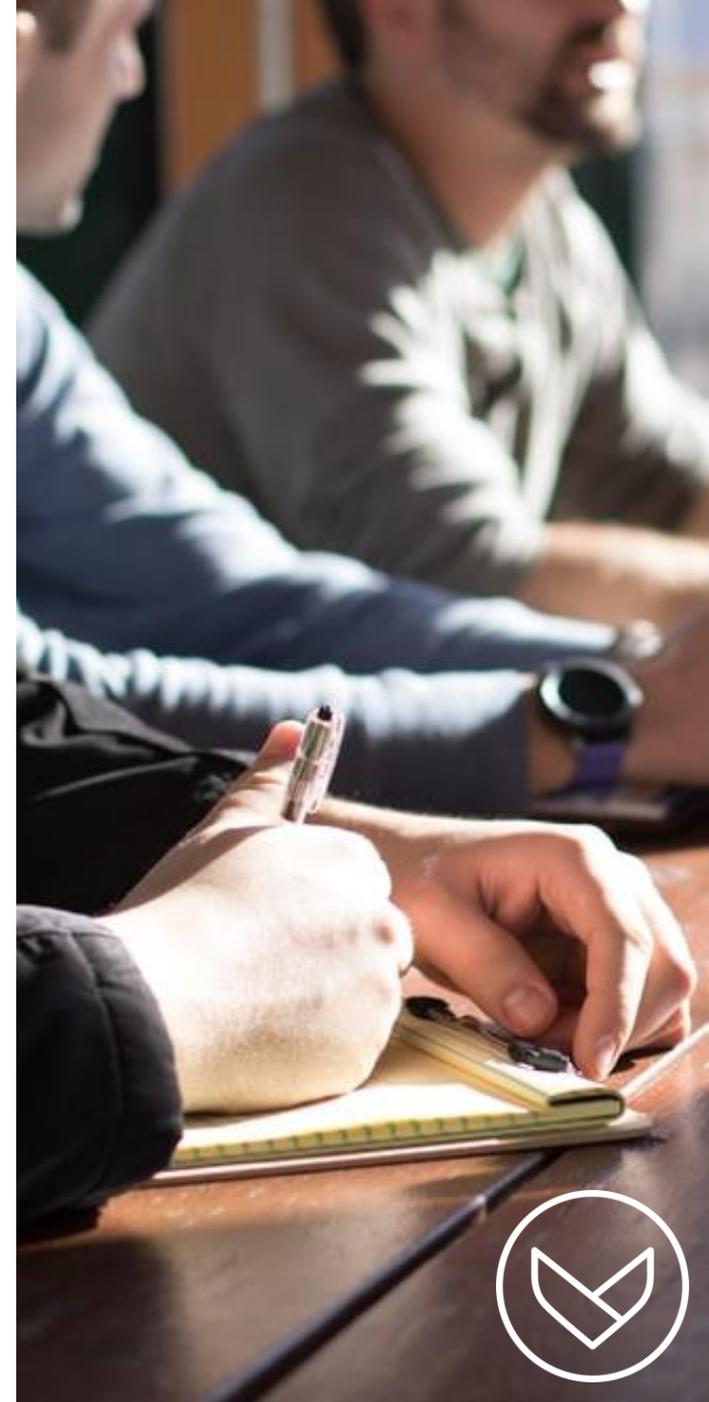


Submission writing

Practical tips:

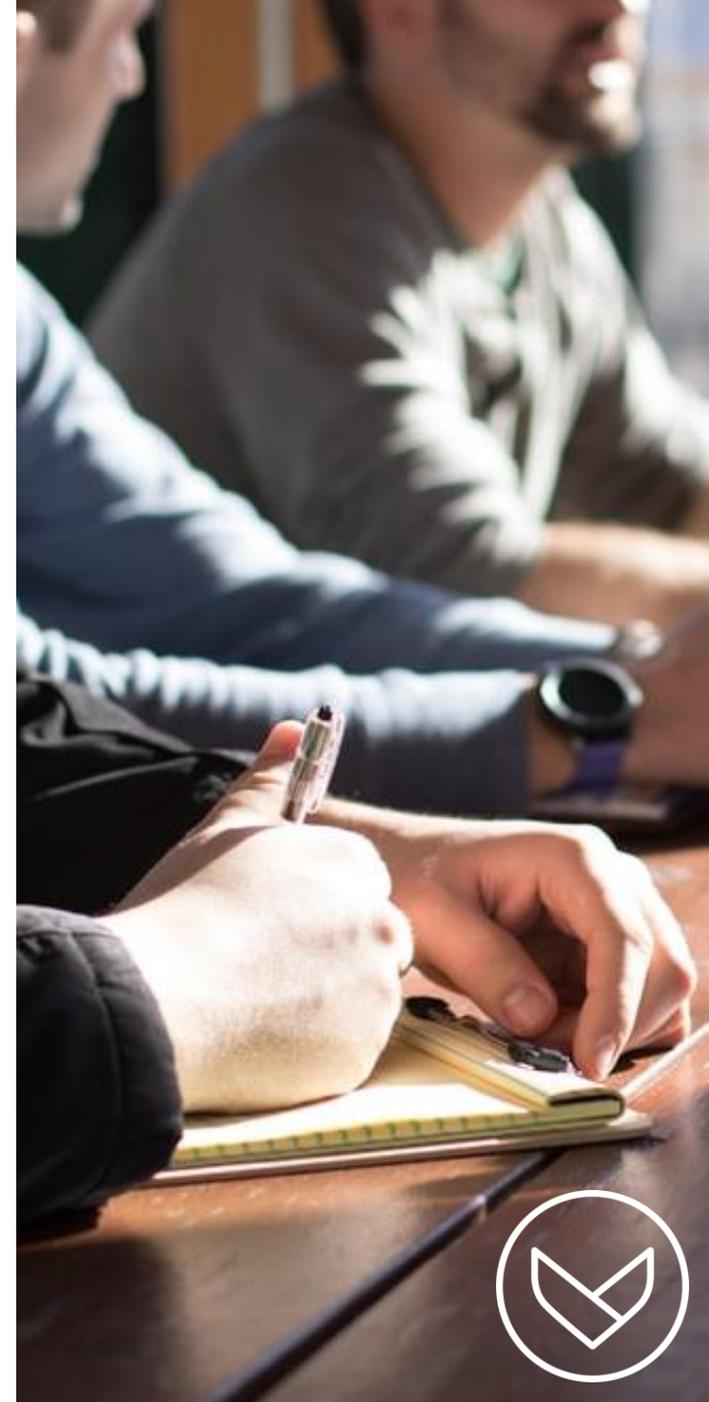
- *Include a summary at the top of your submission*
- *Use headings within your submission to structure your argument*
- *Use clear language*
- *One idea per paragraph*
- *Put your idea in the first sentence, then explain it in the rest of the paragraph*

- Tom Grosskopf, Director Metropolitan Branch,
Regional Operations, Office of Environment and Heritage



Alliances

- Who else shares your concerns?
- A broad church of objectors is better than a narrow subsection of the community – more difficult to dismiss
- Are there any Government agencies that would agree with your concerns?

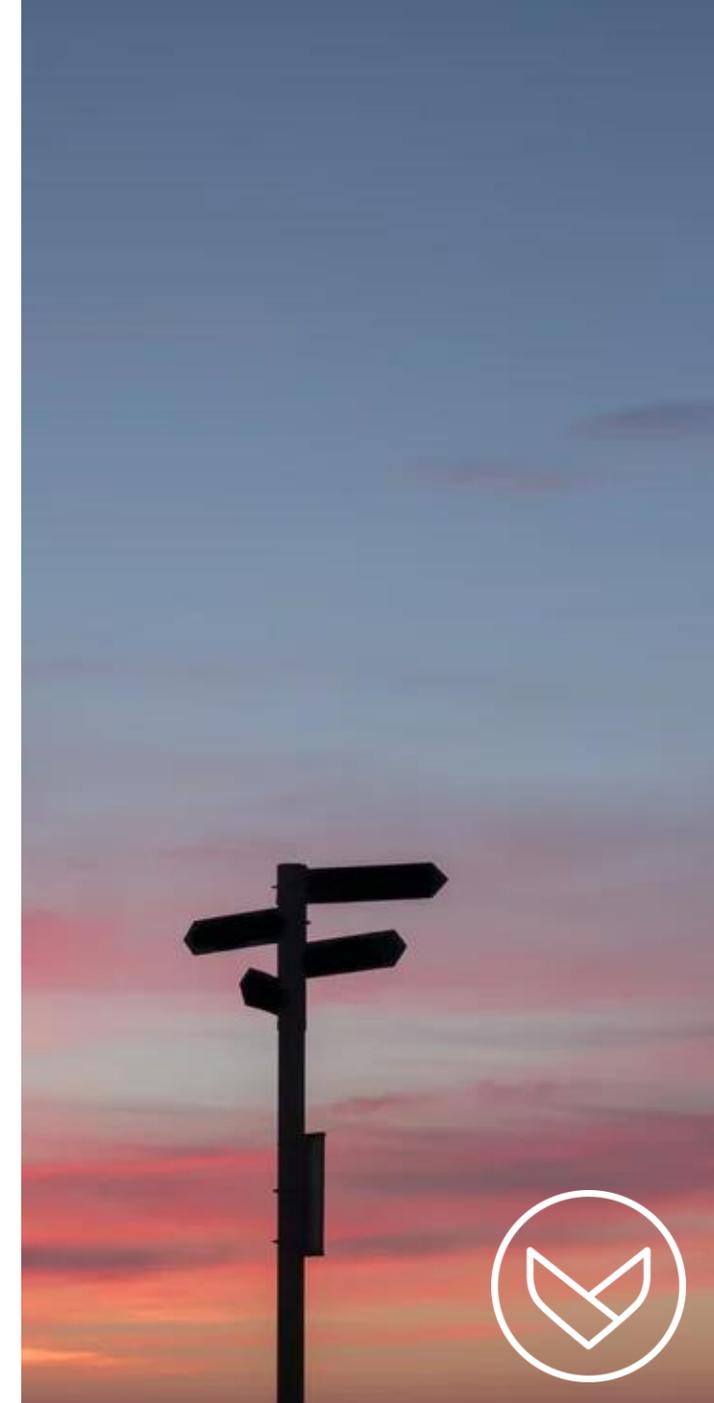


6. What to expect next?



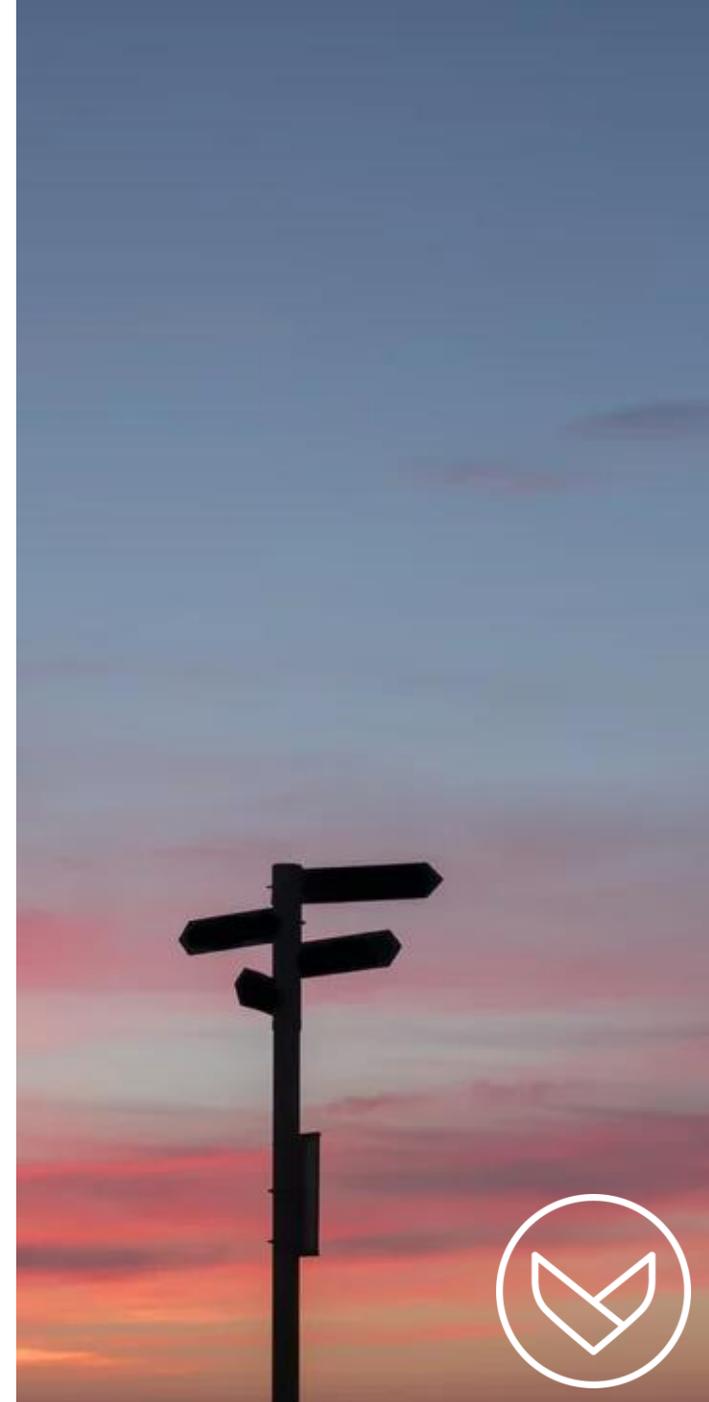
Response to submissions

- The Planning Secretary must provide the SSD proponent with the submissions, or a summary of the submissions, received during the submission period.
- The Planning Secretary may require the proponent to submit a response to the issues raised in the submissions
- The Planning Secretary must make particular documents available on the NSW planning portal



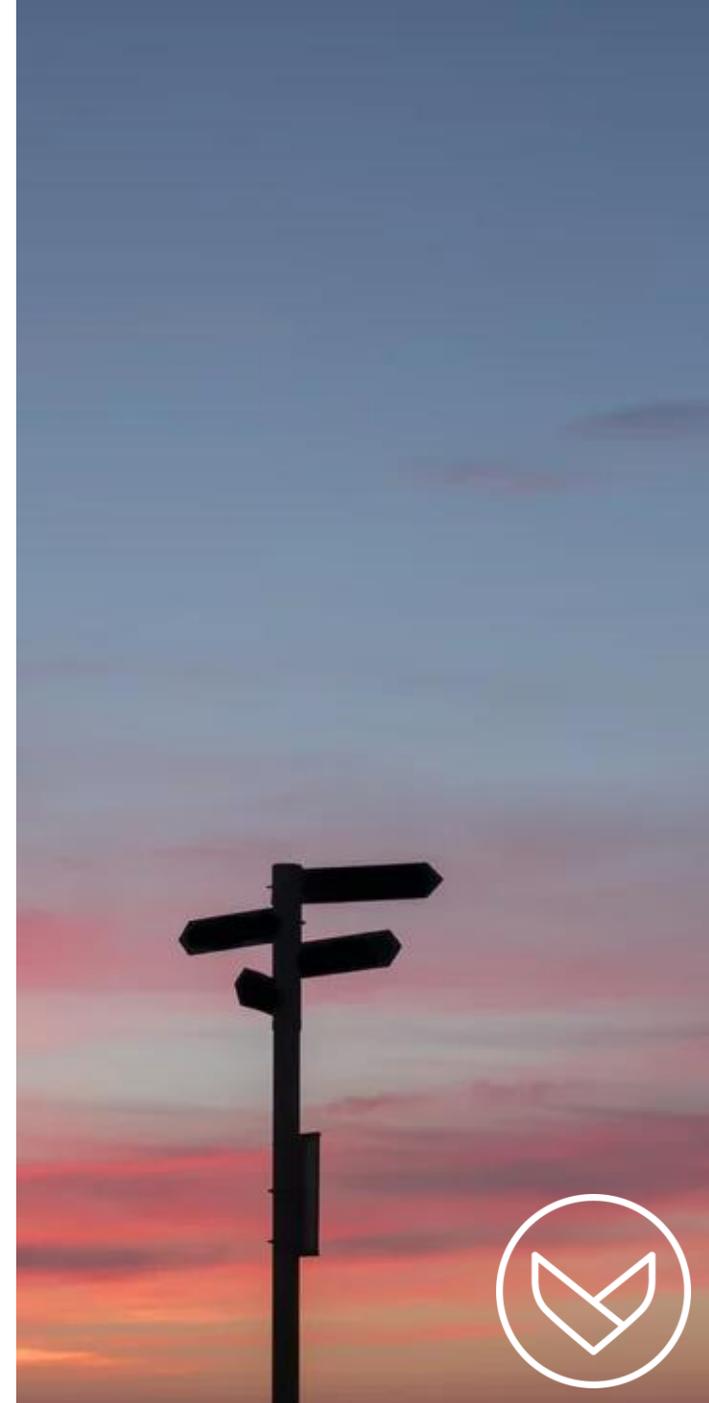
Evaluation

- EPA Act, s. 4.15
- The provisions of:
 - Any EPI – See [Mining SEPP](#)
 - Any proposed instrument that has been the subject of public consultation
 - Any DCP
 - Any planning agreement or draft planning agreement
 - The Regulations
 - Any Coastal Zone Management Plan



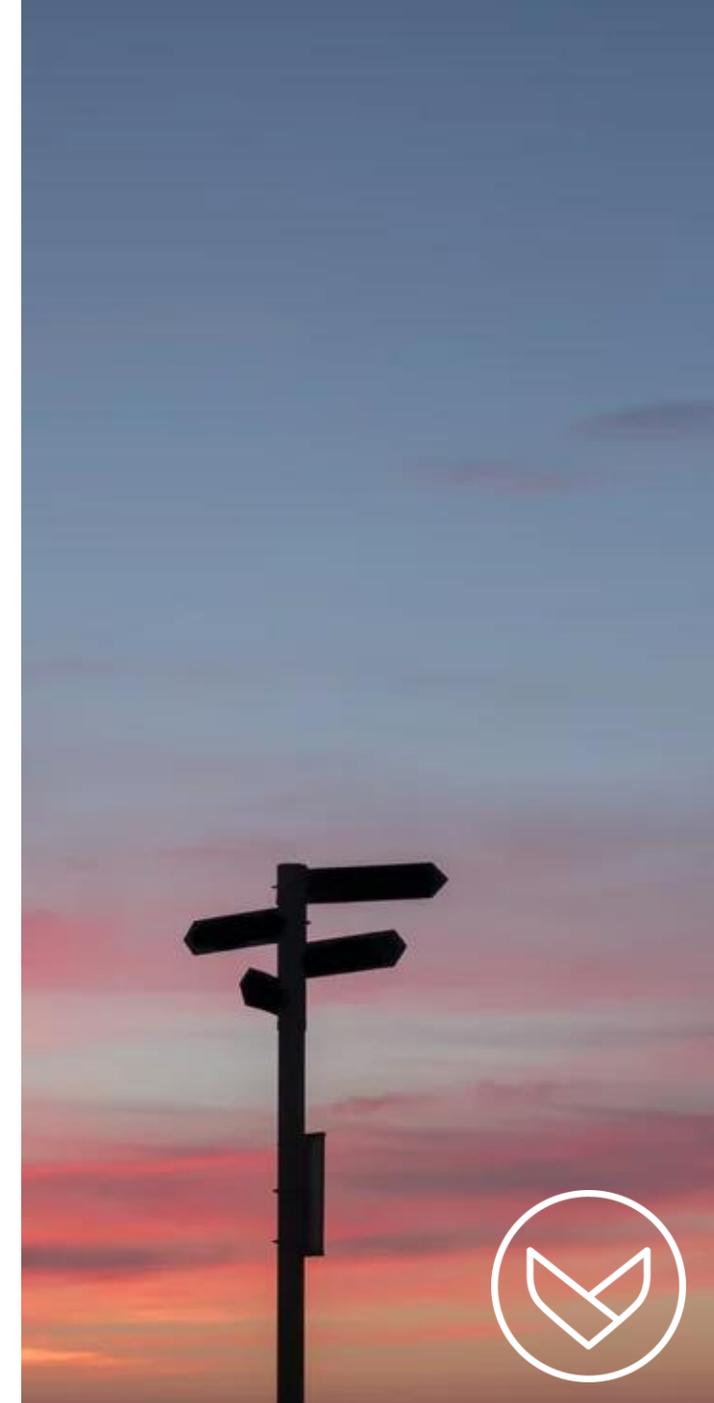
Evaluation

- the likely impacts of the development including environmental impacts on both the natural and built environments, and social and economic impacts in the locality
- the suitability of the site for the development
- any submissions
- the public interest (includes ESD principles)



Determination

- When deciding whether to approve the SSD application, the Minister must consider
 - All relevant considerations contained within section 4.15
- The Minister can approve or refuse the application
- The Minister can approve the application subject to such modifications or conditions as the Minister determines



7. Legal Avenues



If approved, can the decision be
challenged in Court?

Types of appeals

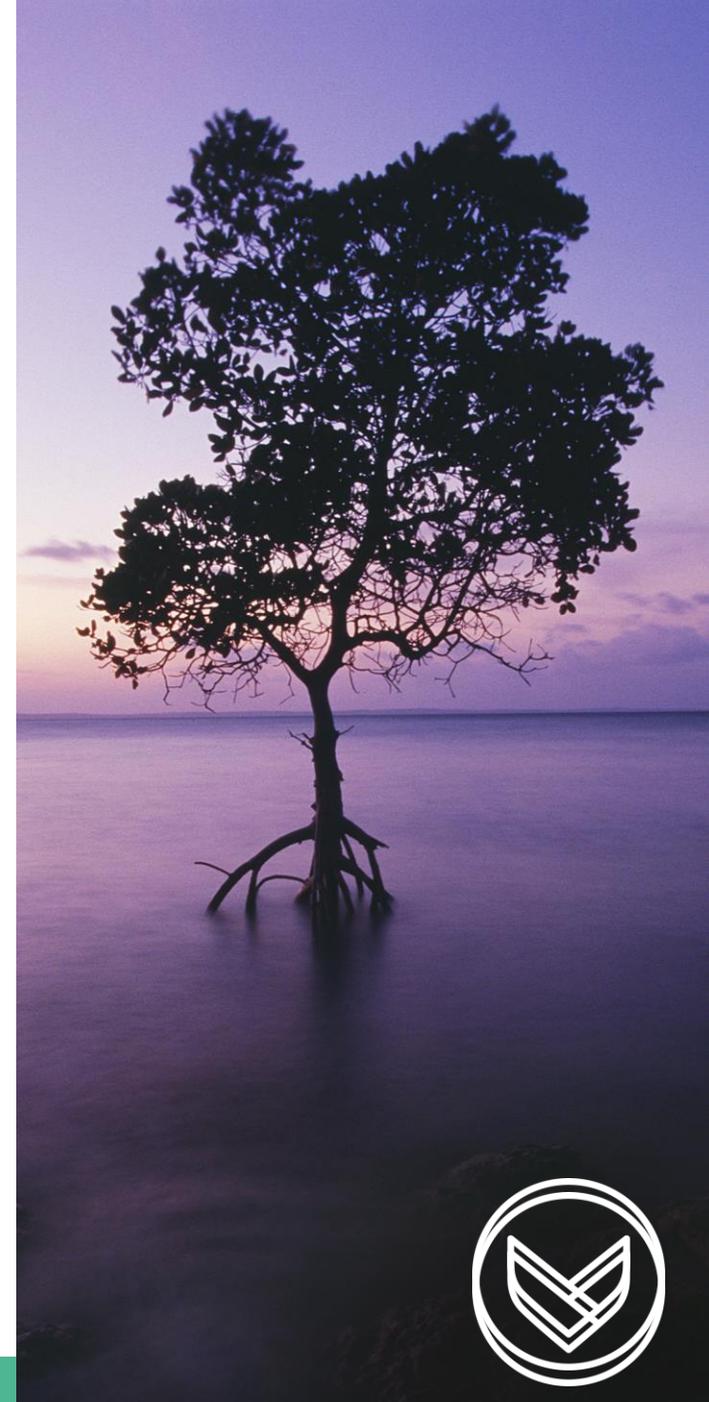
Merits appeal

- The court stands in the shoes of the original decision maker (Minister) and remakes the decision from scratch
- The merits of the project are re-assessed – that is, costs and benefits
- Court can approve or refuse the development – or attach new conditions

Judicial review

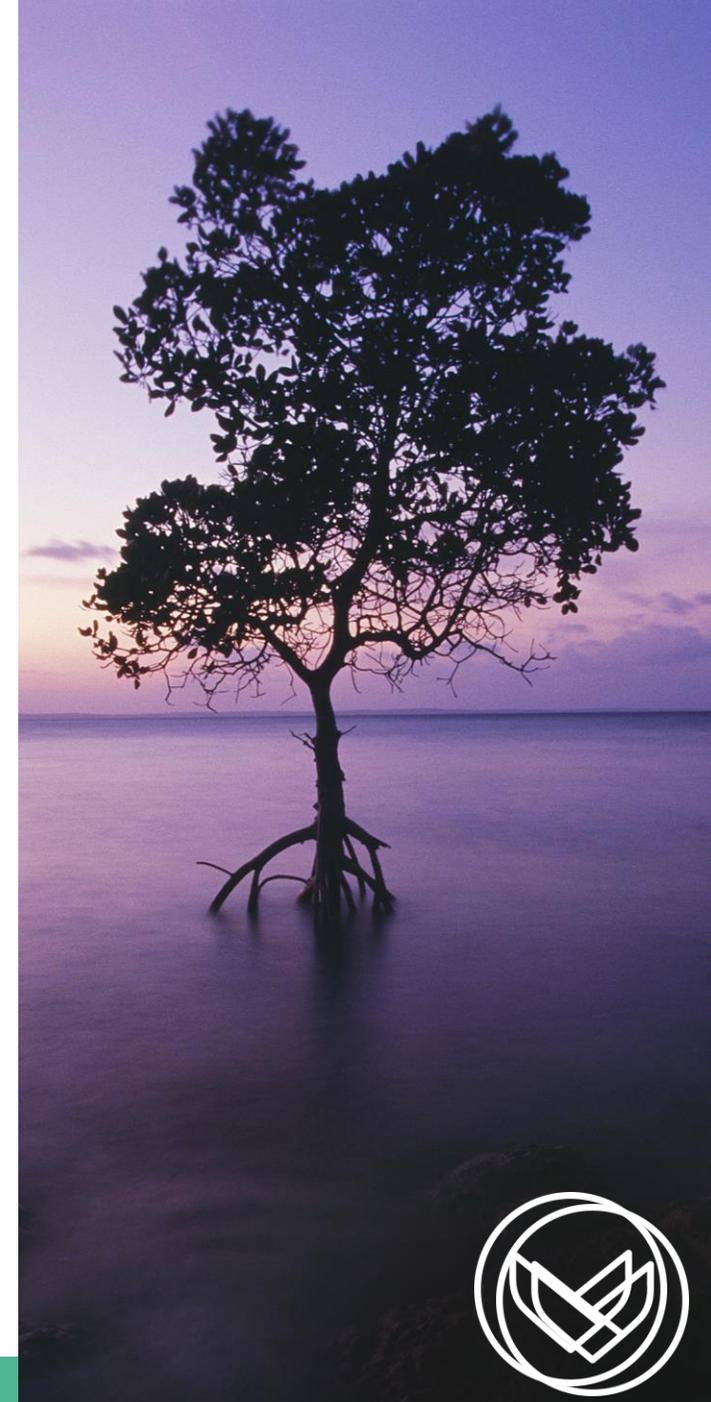
- The legality of the decision is under challenge, as opposed to the merits of the decision
- Must be based on a legal error in the decision-making process
- Court can void the decision but the same decision can be re-made (this time correctly)

Legal action should be viewed as a last resort



Availability of appeals

State Significant Development			
	Appeal Type	Availability	Time Limit
Proponent Appeals	Merits appeal	Yes*	6 months
	Judicial Review	Yes	3 months
Third Party Appeals	Merits appeal	Yes**	28 days
	Judicial Review	Yes	3 months



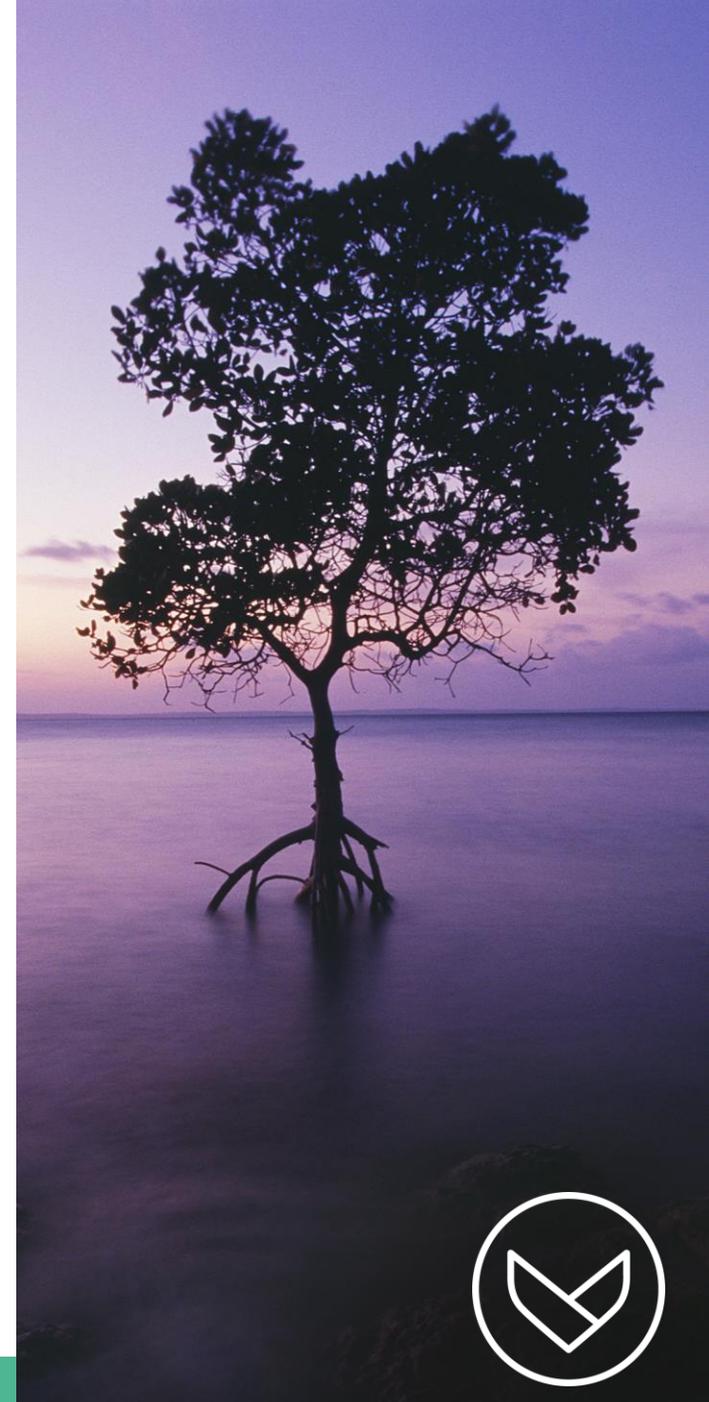
If the project goes ahead

Civil enforcement may be an option

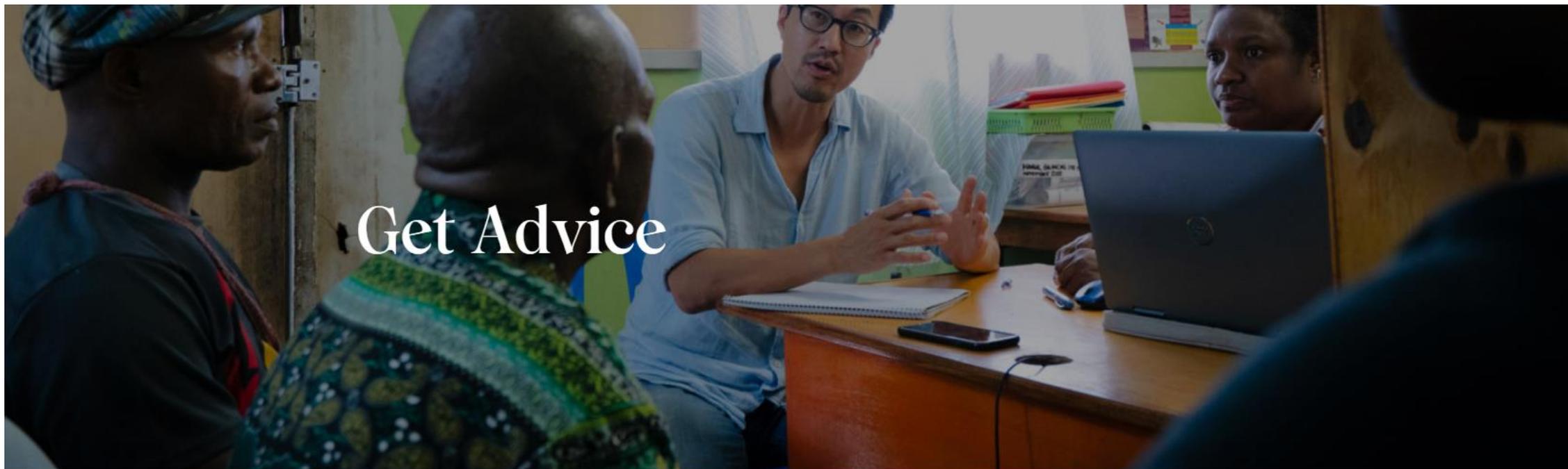
- Court proceedings where a person alleges that there has been a breach of an environmental law, and asks the Court to make orders to remedy or restrain that breach
- Any person can bring civil enforcement proceedings – useful where the regulator will not take appropriate enforcement action
- No time limits
- Requires evidence which can be difficult to get

Examples

- Failure to comply with SSD approval conditions or any other licence requirements (e.g. pollution licence)



Call us for free initial legal advice: 1800 626 239



Get Advice

EDO provides free initial legal advice on planning and environmental law matters.

If you need advice, please contact your nearest office. Your request will be allocated to one of our solicitors, who will call you back.

EDO deals with a high volume of requests for advice, so it is important that you get in touch early to ensure your matter can be dealt with in time. We cannot advise more than one client on the same issue, so if you are part of a community group, you will need to elect a representative to seek and receive advice on behalf of the group.

Advice can generally only be provided to the person it relates to. If you are seeking advice on behalf of someone else, we will need their written permission before providing it.

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SUBMIT

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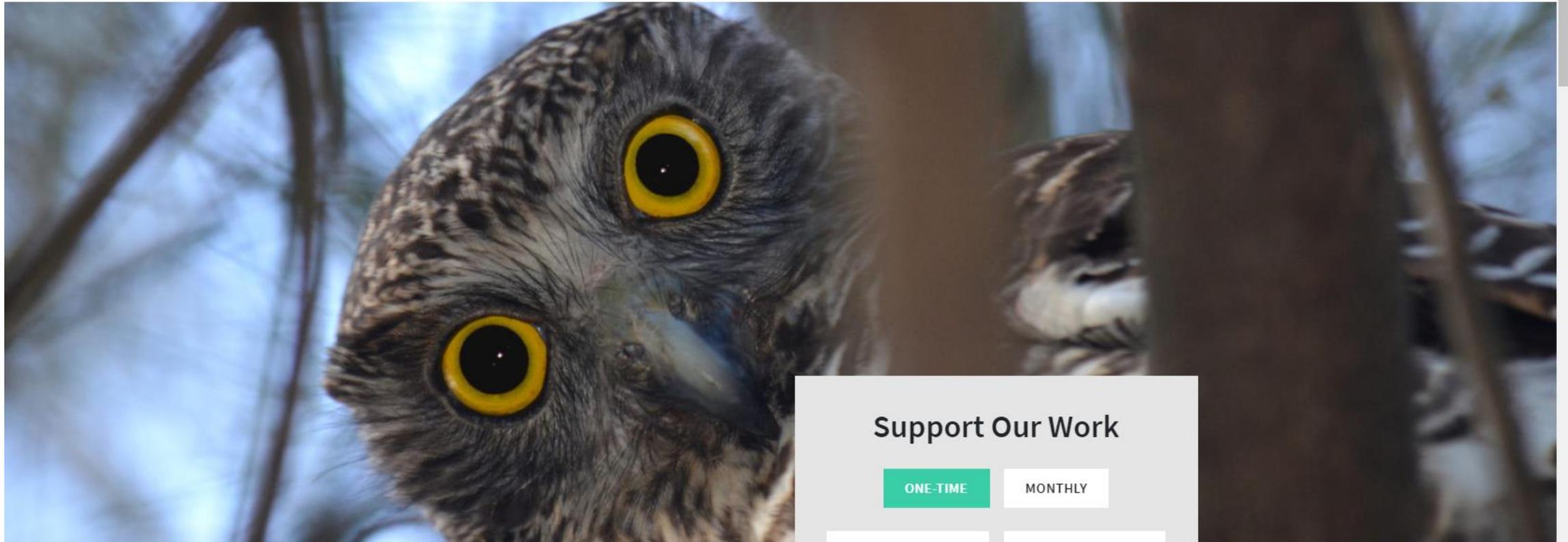
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MONTHLY

\$40

\$70

Questions?



Thank you.

