

July 2023

Guide for Applicants Impact Assessed Development



Adelaide Desalination Plant

Impact Assessed Development Application

Introduction

This guide has been created to assist applicants with the lodgement of Impact Assessed Development applications and to understand the assessment process.

Under section 108 (1)(b) and (c) of the *Planning, Development and Infrastructure Act 2016* (PDI Act) a development proposal can be classified or declared as an Impact Assessed Development.

This is the most rigorous level of development assessment in South Australia and is reserved for projects which cannot be properly considered under alternative assessment pathways (such as an assessment under the Planning and Design Code) due to the nature, scale and extent of their potential impacts, where the effects of those impacts are unknown or more uncertain.

An application for Impact Assessed Development involves the preparation of an Environmental Impact Statement (EIS) that addresses the expected environmental, social and economic effects of the proposed development. Environmental Impact Assessment (EIA) has been a key planning assessment pathway under South Australia's planning system since the 1980s.



Impact Assessed Development Application

New Applications

There are two ways a development can be determined as Impact Assessed:

1. A Ministerial Declaration that a proposal is 'impact assessed'.
2. An activity or land use prescribed as 'impact assessed' under Regulation 27 (a1) the *Planning, Development, and Infrastructure (General) Regulations 2017*.

Declaration

An applicant can request that the Minister for Planning (the Minister) make a declaration under s.108(1)(c) of the PDI Act such that the Impact Assessed Development process applies to the assessment of the development.

The Minister has responsibility for determining if a declaration should or should not be made, to ensure the proper and orderly assessment of a development proposal. The Minister is required to consider the matters outlined in Regulation 27 (2) and (3) of the *Planning, Development, and Infrastructure (General) Regulations 2017*.

The declaration is published in the SA Government Gazette, which identifies the project scope (and elements captured by the process), and the land to which the declaration applies. Once made, a declaration can be varied to account for additional land, new or different elements, or changed processes.

Prescribed by Regulation

Two types of developments are currently prescribed by Regulation 27 (a1) of the *Planning, Development, and Infrastructure (General) Regulations 2017*:

- a. windfarm located in marine waters, and
- b. marina of 100 berths or more.

Assessment Process

Impact Assessed Development applications undergo an Environmental Impact Assessment (EIA) process, as defined by sections 111–117 of the PDI Act. This includes referral, public notification, and assessment steps.

In addition, the adequacy of documentation at the application, EIS and Response Document stages will be considered by Planning and Land Use Services, Department for Trade and Investment (PLUS-DTI) (along with the Commission and ultimately the Minister) before the next assessment stage can be undertaken.

The Commission is responsible for the assessment of impact assessed developments, with the support of PLUS staff, and is the author of the Assessment Report, which forms the principal recommendation to the Minister.

The steps in this process are detailed below. Please refer to **Figure 1** (on page 9) for a flowchart of the Impact Assessed Development process.

Pre-lodgement

Prior to formal lodgement of an application, applicants are offered a pre-lodgement service by Planning and Land Use Services in the Department for Trade and Investment (PLUS-DTI). This process facilitates preliminary consultation with state referral agencies to confirm information requirements, review the applicant's draft documentation and to identify issues that might need to be addressed before the application documentation is finalised.

Development Application

Following the declaration or classification of a proposal as an Impact Assessed Development, the applicant must lodge a formal Scoping Application with the Minister. The application should identify the key social, environmental and economic issues and impacts associated with the development, in accordance with Practice Direction 17.

Impact Assessed Development Application

Assessment Requirements

The Impact Assessed process – unlike the assessment of more typical proposals under the Planning and Design Code – requires the development of specific assessment requirements that consider a broad range of assessment issues and potential impacts that an Environmental Impact Statement (EIS) must address. The assessment requirements identify the environmental attributes relevant to the proposed development, and the associated environmental, economic and social impacts that must be addressed in the EIS.

The State Planning Commission (Commission) will determine the level of assessment required for each impact (standard or detailed), based on consideration of the following key factors:

- » scale of the impact
- » nature of the impact
- » sensitivity of the environment
- » ability to avoid, mitigate and/or offset the impact
- » technical assessment and investigations required to identify and assess mitigation measures

The Commission will also have regard to relevant legislation, policy and other guidance documents.

The Commission is responsible for the preparation of assessment criteria. Before formal consideration by the Commission, the draft assessment criteria will be circulated to relevant state and/or Commonwealth agencies for consideration and feedback. The proponent will then be given an opportunity to respond and, upon request, provide a formal deputation to the Commission. Other referral bodies are also prescribed by the Act and Regulations to assist the Commission in determining the level of detail required in the EIS.

Following the Commission's endorsement of the final assessment requirements, they will be released on the PlanSA portal.

Referrals

Under the impact assessed process, there are mandatory referrals to the following agencies and/or local authorities to provide expert advice in the preparation of the assessment criteria (as required by s.112 of the PDI Act):

- » Environment Protection Authority (EPA), if the EIS relates to a prescribed activity of environmental significance under the *Environment Protection Act 1993*.
- » The Minister who is responsible for the administration of the *Adelaide Dolphin Sanctuary Act 2005*, if the EIS relates to a proposed development that is to be undertaken within, or is likely to have a direct impact on, the Adelaide Dolphin Sanctuary.
- » The Minister who is responsible for the administration of the *River Murray Act 2003*, if the EIS relates to a proposed development that is to be undertaken within the Murray–Darling Basin.
- » The Minister who is responsible for the administration of the *Marine Parks Act 2007*, if the EIS relates to a proposed development that is to be undertaken within, or is likely to have a direct impact on, a marine park.
- » The local council, if the EIS relates to proposed development that is to be undertaken within the area of the council.

In addition to the above, a whole-of-government approach is adopted in the consideration of impact assessed projects. This starts with cross-agency briefings (via a nominated Departmental Impact Assessed Project Coordinator) through to liaison with subject matter experts within those agencies, including economic, social, community and emergency service bodies. Formal Technical Working Groups are established to carefully review documentation and provide feedback throughout the EIS process (refer s.113(5)(a)(iv) of the PDI Act).

Impact Assessed Development Application

Public Notification

The public exhibition of the EIS is an important step in the assessment process. The purpose of this process is to enable the public to express their views on the proposal. All comments received during this period are considered in the assessment process.

Prior to the commencement of the notification stage, the Minister must also have regard to the underlying principles of the Community Engagement Charter for public participation in planning processes (insofar as they may be appropriately adapted to an EIS process).

The Minister may also undertake, or require the applicant to undertake, any other consultation in relation to the EIS as the Minister sees fit, having regard to the principles applying under the Community Engagement Charter.

The PDI Act provides for a 30-business-day (6 week) consultation period. The start of the notification period coincides with the publication of public notices in local newspapers, and with documentation made available electronically on the PlanSA portal or as hard copies for viewing at the offices of PLUS and the local council(s) where the development is proposed.

Copies of all public submissions are provided to the applicant for their review and to inform their preparation of a formal Response Document.

Response Document

Following the referrals and the public notification period, the applicant is required to prepare a document that addresses the issues raised in submissions and outline any proposed changes to the development.

The Response Document may include:

- » Amendments to the EIS
- » Changes to the original proposal in response to issues that have been raised

The completed Response Document and associated public comments are made publicly available on the PlanSA portal.

Both the EIS and Response Document form the overall application.

Assessment Report

Following receipt of the Response Document, the Commission will consider a draft Assessment Report prepared by PLUS, which considers the whole proposal including the EIS, public submissions, and council and agency comments in its preparation and analysis. The Assessment Report is the culmination of the impact assessed process and will include draft recommendations to the Minister for Planning regarding the proposal. The Commission is the author of the Assessment Report and has complete discretion in its analysis, findings and recommendation.

Decision Process

The Minister is the decision maker for Impact Assessed Development applications.

In deciding whether the proposal will be approved (and if so, what reserve matters and/or conditions that apply) or refused, the Minister must have regard to the Assessment Report, EIS, Response Document as well as to the relevant provisions of the following:

- » State Planning Policies
- » Regional Plans
- » Planning and Design Code
- » Building Code of Australia
- » *Environment Protection Act 1999* (if the development involves a prescribed activity of environmental significance)
- » Any other special legislative schemes or other relevant government policy and/or legislation

If an approval is granted, the Minister will issue a Provisional Development Authorisation, from which reserved matters and/or conditions and building rules requirements as stipulated, will need to be satisfied before construction can commence.

If the proposed development is refused a notice advising of such is also prescribed.

In both circumstances – there is no appeal right against the decision of the Minister.

Impact Assessed Development Application

Post Approval Requirements

A Provisional Development Authorisation issued by the Minister may include matters requiring further assessment (i.e. reserved matters), or the submission of further details such as construction and/or operational plans (i.e. conditions).

Reserved matters and conditions can be progressively satisfied through the submission and consideration of final drawings, management plans and other documentation required by the Minister. Where post-approval requirements need further review and feedback from the local council or state agency, the Technical Working Group will be reconvened.

Developments may also be staged, including the satisfaction of reserved or condition matters.

Prior to issuing a final Development Authorisation, the Minister must have regard to the Building Rules. The Building Rules are set out by the National Construction Code, regulations under the PDI Act and Ministerial building standards to assess that building work is safe and compliant with relevant technical requirements.

A Certificate of Compliance is then issued by an accredited building professional, allowing the Minister to review, and consistent with the approved plans, issue a final Development Authorisation for each stage and/or element of the approved development.

Extension of time

The PDI Act allows for extensions to a previously granted Development Authorisation to allow additional time for the commencement of construction and/or completion of an approved Impact Assessed Development. The Minister for Planning (or lawful delegate) can consider such requests pursuant to Section 115(8) of the PDI Act.

Variation and/or Amendment Process

Section 115(8) of the PDI Act allows an applicant (who is the beneficiary) of a previously granted Impact Assessed Development Authorisation to seek a variation. This includes a minor change to approved documentation or to vary a condition of approval.

In cases where more substantive changes are proposed, this requires a formal amendment process, requiring the reconsideration of the existing assessment documentation along with referral and public notification steps.

Prior to the lodgement of any variation application, applicants are encouraged to consult PLUS on the required pathway, including any additional consultation, fees or processing requirements. In addition, if five years has passed since an EIS was completed and placed on public exhibition, the EIS cannot be used for assessment purposes, unless it has been formally reviewed to determine its continued suitability and adequacy.

Timelines

There are no legislated time-frames for the assessment and determination of applications for Impact Assessed Developments. Time-frames will be affected by the overall complexity and uniqueness of each project, and the need to ensure each statutory step is satisfactorily completed before the next step can commence. Time-frames are only mandated for the formal referral of a development application to state agencies and the local council (20 business days), and for the public notification period (30 business days).

Impact Assessed Development Application

Fees

The impact assessed process attracts a range of fees commensurate with the level and complexity of the assessment work undertaken. These being for lodgement, assessment (0.25% of the development cost up to \$500,000) and public notification, with associated extension of time and variation fees (up to \$25,000).

The assessment fee can be paid in three instalments, being at the completion and/or submission of the assessment criteria (40%), upon the submission of the draft EIS (30%) and at the submission of the Response Document (30%).

The applicant is also responsible for any publication fees to produce a physical copy of the EIS but can recover reasonable costs when offering copies for sale to the public.

Building certification fees are in addition to those required by the planning assessment and are determined by an accredited (building) professional.

Refer to the **Application Fees** page and **Ministerial Fee Notice** on the PlanSA portal.

Early No, Cancellations and Revocations

The Minister may resolve to issue an 'early no' to a proposal, at any stage in the assessment process where it is apparent that a refusal is warranted, or where an applicant has discontinued the assessment process.

Where a development has been approved but construction has not commenced within an agreed timeframe, an authorisation may be cancelled pursuant to s115(9) of the PDI Act. An initial declaration can also be revoked under s.108(6) of the PDI Act with a notice being published in the Government Gazette.

Planning and Design Code

Where an EIS document explicitly envisages a future change to the Planning and Design Code, essentially to provide a suitable updated zoning and code policy to complement the type of development and land use(s) approved under the impact assessed process, the Minister may amend a designated instrument in order to provide consistency with a development authorisation, on the basis the works have substantially commenced or been completed (refer s.76(2)(d) of the PDI Act). This removes the cost and time required of initiating a separate code amendment process as outlined in **Code Amendments | PlanSA**.

Impact Assessed Development Application

EPBC Act

The *Commonwealth's Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places, defined in the EPBC Act as matters of National Environmental Significance (MNES). Some SA based projects have the potential to effect MNES such that they would become a 'controlled action'.

The current bilateral agreement expired with the implementation of the PDI Act, and since August 2020, a State-Commonwealth administrative review was commenced to work on a new agreement. Whilst the terms of any future bilateral agreement are still to be drafted, PLUS is actively exploring with applicants and the Commonwealth individual project accreditation (based on agreed administrative arrangements between the SA and Commonwealth governments) for projects undertaken in the interim.

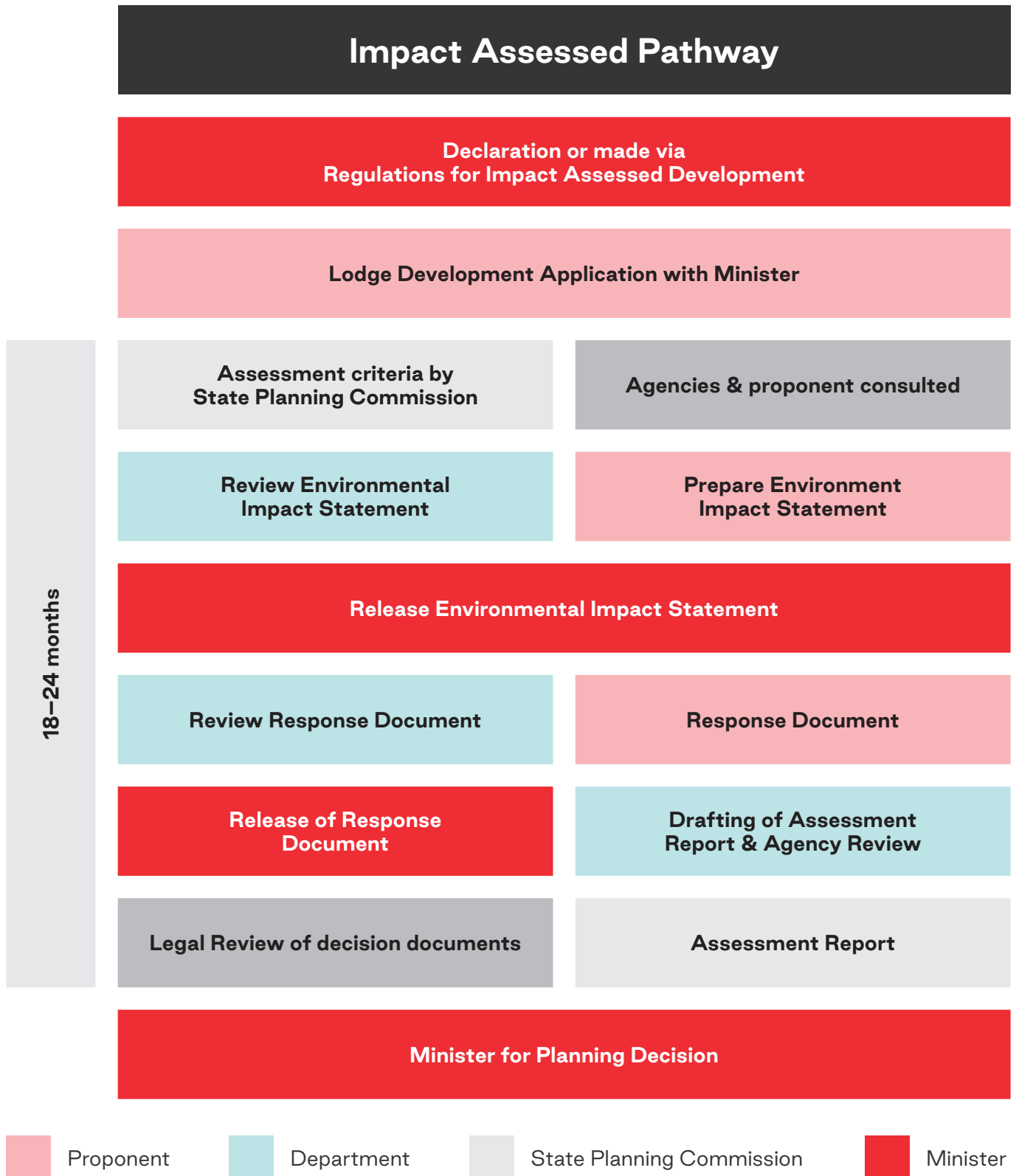
This will allow a single assessment approach and process to be undertaken, in consultation with the Commonwealth Department of Climate Change, Energy, the Environment and Water (DCCEEW) who would provide both input and feedback into the adequacy of the assessment documentation (from setting the preparation of the Assessment Report).

Transitional Arrangements

The PDI Act (and associated regulations) contain transitional provisions to ensure that declarations previously made, approved Development Report (DR) / Public Environment Report (PER) / Environment Impact Statement (EIS) documentation, Assessment Reports and Development Authorisations, continue to be recognised under the PDI Act as equivalent documents for the purposes of Impact Assessed Developments. Please refer to reg 11A of the *Planning, Development and Infrastructure (Transitional Provisions) Regulations 2017*.

Impact Assessed Development Application

Figure 1: Impact Assessed Development Process



For further information visit
plan.sa.gov.au



Government of South Australia
Department for Trade
and Investment