Approach to Setting Conditions

Draft Environmental Impact Assessment Guidance Series
June 2017
Disclaimer

While every reasonable effort has been made to ensure that this document is correct at the time of printing, the State of NSW, its agents and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance or upon the whole or any part of this document.

Copyright notice

In keeping with the NSW Government’s commitment to encourage the availability of information, you are welcome to reproduce the material that appears in the ‘Approach to Setting Conditions Guideline’ for personal, in-house or non-commercial use without formal permission or charge. All other rights are reserved. If you wish to reproduce, alter, store or transmit material appearing in the ‘Approach to Setting Conditioning Guideline’ for any other purpose, a request for formal permission should be directed to Planning Services, NSW Department of Planning and Environment, GPO Box 39 Sydney NSW 2001.
Contents

1. Introduction 1
2. The role of conditions in EIA 3
2.1 How is a determination made? 3
2.2 Why are conditions of consent imposed? 3
2.3 How are conditions of consent enforced? 4
3. Overarching approach to setting conditions 5
3.1 Key principles 5
3.2 Typical structure of a development consent 6
4. Types of conditions 8
4.1 Performance-based conditions 8
4.2 Prescriptive conditions 9
4.3 Management-based conditions 9
4.4 Summary of different condition types 10
5. How will environmental impacts be conditioned? 12
5.1 Conditions to mitigate adverse impacts 12
5.2 Conditions requiring environmental enhancements 13
5.3 Which mitigation measures will be conditioned? 13
5.4 The conditioning framework 13
5.5 The assessment and mitigation framework 16
5.6 Benefits of the new approach 17
6. Conclusion 19
7. Glossary 20
8. Appendices 23
   Appendix A – Example conditions 24
   Administrative conditions 24
   Performance-based conditions 24
   Prescriptive conditions 25
   Management-based conditions 26
   Environmental enhancement conditions 26
1. Introduction

Under the *Environmental Planning and Assessment Act 1979* (the Act), the Minister for Planning or delegate\(^1\) decides whether to approve or refuse a State significant project in NSW. If the Minister or delegate decides to grant consent\(^2\), the consent is subject to conditions the Minister or delegate chooses to impose\(^3\).

The purpose of the Approach to Setting Conditions Guideline is to describe the approach the Department of Planning and Environment (the Department) will adopt when drafting recommended conditions of consent for State significant projects or modifications to State significant projects. The primary audience of the guideline is the Department’s assessment officers who are responsible for drafting recommended conditions of consent. It is also relevant to decision-makers who determine State significant projects. It will be of use to proponents\(^4\) and their project teams, when developing performance criteria or mitigation measures for inclusion in environmental impact assessment (EIA) documentation\(^5\), which are taken into account by the Department when drafting recommended conditions. The guideline will also allow the community and other stakeholders to understand the role of conditions of consent in mitigating environmental impacts during construction and operation.

The Approach to Setting Conditions Guideline, along with the other EIA guidelines, has been developed to drive greater consistency in the form, content and quality of information provided by proponents throughout the EIA. This philosophy commences during scoping and continues through to the preparation of the Environmental Impact Statement (EIS) and Submissions Report\(^6\), with the resulting conditions of consent responding to the quality and detail of the information provided in all EIA documentation up to the point of determination.

Specifically, this guideline:

- sets out the statutory considerations associated with imposing conditions of consent
- outlines the principles that underpin an effective condition
- sets out a standard approach to developing recommended conditions of consent to mitigate adverse environmental impacts which is consistent and can be easily understood
- recognises that different condition types will be appropriate in different circumstances
- provides clear linkages between EIA documentation up to the point of determination, and the recommended conditions of consent by:
  - outlining how the ‘approved project’ will be defined

---

\(^1\) The Minister for Planning has delegated the power to determine certain SSD and SSI projects to the Department of Planning or the Planning Assessment Commission

\(^2\) For the purposes of this guideline, the term ‘consent’ includes the granting of consent for SSD projects, the approval of SSI projects and approvals of modifications to those consents and approvals

\(^3\) EP&A Act s. 89E and s. 115W

\(^4\) For the purposes of this guideline, the term ‘proponent’ includes applicants for SSD projects that are assessed under Part 4 of the Act and proponents for SSI projects that are assessed under Part 5.1 of the Act

\(^5\) For the purposes of this guideline, the term ‘EIA documentation’ includes the Scoping Report, EIS, Submissions Report and any other documentation provided by the proponent up to the point of determination

\(^6\) For the purposes of this guideline, reference to the ‘Submissions Report’ includes where applicable, the Preferred Infrastructure Report
o explaining how the quality of information and the level of assessment undertaken as part of the EIA will impact the type of conditions that will be imposed

o providing an assessment and mitigation framework which aligns with the conditioning framework to guide proponents in how to present performance criteria or mitigation measures.

This guideline should be read in conjunction with the other guidelines that provide detail around EIA, including:

- Overview of the EIA Improvement Project
- Community Guide to EIA
- Scoping an Environmental Impact Statement
- Preparing an Environmental Impact Statement
- Responding to Submissions
- Community and Stakeholder Engagement
- Modifying an Approved Project
- Peer Review.
2. The role of conditions in EIA

Recommended conditions of consent are developed during the assessment phase of EIA as shown in Figure 1.

Figure 1 – Developing recommended conditions of consent in the context of EIA

2.1 How is a determination made?

During the assessment phase of EIA, the Department reviews all of the EIA documentation submitted by the proponent and assesses the project against the requirements of the Act and other relevant Government policies and guidelines. The Department also considers how the proponent has addressed the issues raised in public and agency submissions. The Department documents its findings in an Assessment Report.

If the decision-maker is the Minister or a delegate within the Department, the Assessment Report includes recommended conditions of consent or reasons for recommending refusal. If the decision-maker is the Planning Assessment Commission (the Commission), the Department’s Assessment Report does not contain any recommendations so that the Commission can make an independent decision.

After reviewing the Assessment Report, the decision-maker decides whether to approve or refuse the project. The determination is published on the Department’s website along with the reasons for refusal if the project is not approved, or the conditions of consent if the project is approved.

2.2 Why are conditions of consent imposed?

The Minister or delegate imposes conditions of consent to set out the terms on which the project or modification may proceed. Typically, conditions of consent are imposed to:

- regulate the environmental impacts of the project
- require the carrying out of appropriate mitigation measures for such impacts
- place clear parameters around the approved project or modification
- identify any engagement requirements
- avoid, minimise or offset the adverse impacts of the project
- maximise the benefits of the project
- set out monitoring and reporting requirements
- set out the auditing requirements to monitor compliance.

2.3 How are conditions of consent enforced?

The Department regulates the carrying out of State significant projects to ensure compliance with the conditions of consent. However, it is ultimately the proponent’s responsibility to undertake monitoring and reporting to satisfy the Department that the conditions of consent are being complied with and to report incidents to the appropriate regulatory agency.

For State significant projects, conditions of consent may require intensive environmental monitoring together with independent audit and expert review of environmental performance.

The Department has published a compliance policy and associated guidelines for breach management, prosecutions and penalty notices to assist authorised officers in exercising their powers in a fair, consistent and equitable manner. These documents also help the community and other stakeholders understand how the Department goes about its work.

To make sure companies are adhering to the conditions placed on their projects, the compliance team:

- conducts spot checks and unannounced visits to projects, including surveillance
- conducts compliance audits
- meets with the community and industry
- investigates all complaints.

If a company is found to have breached its conditions, compliance officers take the necessary enforcement action such as:

- prosecution for the most serious offences
- issuing a fine
- imposing orders
- issuing warning letters
- working with industry, the community and other stakeholders to negotiate a good outcome.

The EIA Improvement Project is updating and developing new guidelines to support the Department’s compliance functions with the aim of presenting monitoring and reporting information in a way that allows compliance to be more effectively assessed.
3. Overarching approach to setting conditions

3.1 Key principles

The approach to setting conditions is underpinned by the following principles which require conditions of consent to be:

- **valid** - imposed for a planning purpose, fairly and reasonably relate to the development in question, and able to be reasonably imposed on the proponent
- **achievable** - able to be implemented and achieved
- **specific and understandable** - written in plain English, without ambiguity and able to be interpreted in their own right
- **enforceable** - set out clear outcomes that need to be achieved, or actions that need to be taken, by whom, and when
- **proportionate** - to the level of risk that the project or activity poses to public health and the environment
- **inclusive** - address all matters that are relevant to the determination
- **final** - exhaust all of the issues raised by the application and not defer consideration of any significant matter.

In drafting any recommended conditions of consent, the Department should also:

- apply the conditioning framework consistently
- avoid duplication
- tailor requirements to accommodate staged construction
- develop conditions in consultation with relevant agencies.

In essence, all conditions need to be fit for purpose.

**Note:**

- The conditions of consent apply to the land identified in the Development Application.
- The conditions of consent apply for the life of the project and cannot be amended unless a modification has been approved.
- Certain other approvals or licences that may be required to carry out the project must be substantially consistent with the conditions of consent, as set out in the Act\(^7\).

---

\(^7\) EP&A Act s. 89K and s. 115ZH
3.2 **Typical structure of a development consent**

Development consents\(^8\) set out the conditions of consent that apply to a project. For ease of understanding, these conditions are usually grouped into the following categories:

- administrative conditions
- community and other stakeholder engagement conditions
- environmental management conditions
- specific environmental conditions.

While all of these components are important elements of the development consent, the primary focus of this guideline is the approach to setting conditions for specific environmental matters.

### 3.2.1 Administrative conditions

All development consents include a range of administrative conditions that relate to the project as a whole. For example, administrative conditions are used to define the approved project and establish the requirements for monitoring and reporting on compliance.

**Defining the approved project**

The Minister or delegate will place clear boundaries around the approved project by requiring the project to be undertaken as described in the project description. Therefore, the project description must specify the land on which the development will be undertaken and describe all of the elements of the project for which consent is sought. This includes the physical location of the project and the activities that will be undertaken during construction and operation. The site boundary must be shown on a plan and submitted as a shape file.

Refer to the Preparing an Environmental Impact Statement Guideline for more information about the role and content of the project description.

**Note:** The project description is intended to be a dynamic chapter that is updated, as needed, throughout the EIA. If any changes to the design or amendments to the description of the project are proposed following EIS exhibition, the onus is on the proponent to ensure the project description is updated and submitted to the Department. If updates are made to the project description, the Minister or delegate will condition the most up-to-date version of the project description.

**Modifying the project through the conditions of consent**

If the Minister or delegate decides the project can only be approved subject to modifications, the Minister or delegate has the power to modify the project through the conditions of consent\(^9\).

**Monitoring and reporting compliance**

The conditions of consent set out the requirements for the monitoring and reporting program that must be prepared and implemented to demonstrate compliance with the conditions of consent. The purpose of this

---

\(^8\) For the purposes of this guideline, the term ‘development consent’ includes a development consent for a SSD project and the conditions of approval for an SSI project

\(^9\) EP&A Act s. 89E(1)(a) and s. 115ZB(3)
program is to identify how and when the proponent will monitor and report on the project’s compliance with the conditions of consent, and what actions will be undertaken in the event of a non-compliance or incident being identified.

This requirement to monitor and report on compliance is in addition to any specific monitoring and reporting requirements that may be required as part of an environmental condition (refer to Section 4).

3.2.2 Community and other stakeholder engagement

Effective and pro-active community and other stakeholder engagement is critical to EIA and the successful implementation of a project. If the Minister or delegate believes community and other stakeholder engagement must continue to be undertaken in the post-approval phase, the conditions of consent will set out the requirements, such as establishing a community consultative committee. Further guidance on community and stakeholder engagement is provided in the Community and Stakeholder Engagement Guideline.

3.2.3 Specific environmental matters

If the project has the potential to have an adverse impact on a particular environmental matter, such as biodiversity or water, the development consent will contain one or more conditions of consent that outline the performance criteria, prescriptive measures or management-based measures that must be implemented to avoid, mitigate or offset the impact. The development consent may also set requirements for environmental enhancements or beneficial impacts to particular environmental matters, such as the built environment. For more information about how the Department will develop recommended conditions of consent for environmental matters, refer to Section 5.

3.2.4 Environmental management

Most development consents will include a requirement to prepare and implement an Environmental Management Plan that sets out how the project will be managed to achieve the management objectives and implement the mitigation measures specified in the EIS and Submissions Report. The requirement to prepare and implement an Environmental Management Plan will be supported by requirements to prepare sub-plans, where necessary, to manage the adverse impacts on particular environmental matters.
4. Types of conditions

Conditions to mitigate adverse impacts on environmental matters fall into one, or a combination, of the following categories:

- performance-based conditions
- prescriptive conditions
- management-based conditions.

Each of these condition types is described in more detail below. In many cases, more than one type of condition will be required to effectively avoid, mitigate or offset the adverse impacts on a particular environmental matter.

Appendix 1 provides examples of the different condition types.

4.1 Performance-based conditions

Performance-based conditions identify performance criteria that must be complied with to achieve an appropriate environmental outcome but do not specify how the outcome is to be achieved. Performance-based conditions will typically be used when:

- there is a clear standard to be met, such as the noise levels derived through application of the draft Industrial Noise Guideline
- there is good quality baseline data available
- there is sufficient information available from the EIS and related documents to define appropriate performance criteria
- the performance criteria are measurable and able to be enforced
- the environmental risks are well understood and able to be managed
- achievement of the performance criteria is able to be independently verified.

A performance-based condition must:

- identify quantifiable and measurable performance criteria
- state when and where the condition applies
- set out the monitoring and reporting requirements
- require the preparation and implementation of a Monitoring and Response Plan which identifies:
  - the trigger levels that will be adopted to forewarn a potential non-compliance with the performance criteria
  - the response actions that will be undertaken if the trigger levels are reached
  - the contingency actions that will be undertaken if there is a non-compliance with the performance criteria
  - how the monitoring and reporting will be carried out.
A performance-based condition may also require:

- a baseline survey if additional information is required to supplement the baseline information provided in the EIS and Submissions Report about the physical, chemical or biological characteristics of the existing environment, such as longer-term baseline data or a seasonal survey
- supplementary documentation to address any residual uncertainty about a proponent’s ability to achieve the performance criteria. For example if the proposed technology is in its infancy or the proposed operational procedure has a high risk of failure and the consequential impacts of that failure would be significant.

**Note:** If supplementary documentation is required, it should be submitted prior to, or at the same time as the Monitoring and Response Plan.

### 4.2 Prescriptive conditions

Prescriptive conditions itemise actions that need to be taken or things that must not be done.

A prescriptive condition will typically be used when a specific and finite action is required. Prescriptive conditions often relate to the physical aspects of the project and are commonly imposed when there is a known best-practice technology, design or management approach to mitigate the impact, and there is a high reliance on that particular control measure to effectively mitigate the impact.

A prescriptive condition must:

- dictate an action
- state when and where the condition applies.

While a prescriptive condition will not require the development or implementation of a matter-specific monitoring and reporting program, compliance with the condition (i.e. the implementation of the prescriptive action) will need to be reported as part of the project’s overall compliance monitoring and reporting program (refer to Section 3.2.1 for more information).

### 4.3 Management-based conditions

Management-based conditions identify one or more management objectives that must be achieved through the implementation of a management plan.

Management-based conditions are typically imposed when regulatory agencies have reasonable confidence that the potential impacts can be satisfactorily avoided or mitigated by implementing known operational or technical approaches. The purpose of the management plan is to explain how the proponent will apply and optimise these approaches to achieve the management objectives and describe how the effectiveness of these approaches will be monitored.

A management-based condition must:

- identify one or more management objectives which outline the intent of the condition, such as minimising dust
- state when and where the condition applies
- set out the monitoring and reporting requirements
• require the development and implementation of an environmental management system or management plan which identifies:
  o the management actions that will be undertaken to achieve the management objective
  o how the effectiveness of the management actions will be monitored, evaluated and reported.

A management-based condition may also require:

• a baseline survey if additional information is required to supplement the baseline information provided in the EIS and Submissions Report about the physical, chemical or biological characteristics of the existing environment such as longer-term baseline data or a seasonal survey.

**Note:** A management-based condition cannot be used to defer consideration of a matter which must be assessed prior to determining the application.

### 4.4 Summary of different condition types

The components of each type of condition are presented in Table 1 below.

**Table 1 – Components of different condition types**

<table>
<thead>
<tr>
<th>Type of condition</th>
<th>Performance Criteria</th>
<th>Monitoring &amp; Response Plan</th>
<th>Prescriptive Action</th>
<th>Management Objective</th>
<th>Management Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Performance-based</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prescriptive</td>
<td></td>
<td></td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Management-based</td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

1 The Monitoring and Response Plan should identify:
- trigger levels that will be adopted to forewarn a potential non-compliance with the performance criteria
- response actions that will be undertaken if the trigger levels are reached
- contingency actions that will be undertaken if there is a non-compliance with the performance criteria
- how the monitoring and reporting will be carried out.

2 The Management Plan that is developed to support the achievement of a management objective should identify:
- management actions which will be undertaken to achieve the management objective
- how the effectiveness of the management actions will be monitored, evaluated and reported.

### 4.4.1 Optional components

Where there is significant uncertainty about a proponent’s ability to achieve the performance criteria, the condition will require the proponent to submit supplementary documentation to demonstrate how the performance criteria will be achieved. This may include providing further evidence about the proposed technology to demonstrate how it will be effective or detailing the measures that will be implemented to mitigate the impact.
If additional information is required to supplement the baseline information provided in the EIS and Submissions Report about the physical, chemical or biological characteristics of the existing environment, a performance-based or management-based condition may also require proponents to undertake a baseline survey.
5. How will environmental impacts be conditioned?

5.1 Conditions to mitigate adverse impacts

The Department has developed a conditioning framework to provide greater consistency in the way it develops recommended conditions of consent to mitigate adverse impacts on environmental matters.

The framework recognises that different approaches will be appropriate in different circumstances, however, there is a clear preference for performance-based conditions over prescriptive or management-based conditions.

Importantly, the framework sets an expectation for evidence-based decision-making by requiring EIA documentation to provide more information up-front. EIA documentation should demonstrate why the nominated performance criteria, prescriptive measures or management objectives are appropriate and explain how they will be achieved and maintained. It is the Department’s responsibility to assess the information provided by the proponent and recommend appropriate conditions of consent. If the Department does not believe the measures proposed by the proponent are appropriate, the Department may seek further information or it will develop recommended conditions of consent that require other measures to be implemented. Alternatively, the Department may recommend that the project be refused.

Proponents will be required to undertake appropriate monitoring and reporting to demonstrate that the performance criteria and management objectives specified in the conditions of consent are being achieved. The Department will monitor the project’s compliance and take any enforcement action necessary.

Due to the complexity of the impacts that result from State significant projects, more than one type of condition will often be required to give the Minister or delegate confidence that the residual impacts on a particular environmental matter will be acceptable. Alternatively, conditions may need to be supported by supplementary measures to give regulatory agencies and the community and other stakeholders greater certainty that the performance criteria will be achieved.

Example 1: A train station will be constructed in close proximity to a school. Construction needs to occur 24 hours a day to meet scheduling commitments.

Response: A performance-based condition would be imposed to set noise criteria at particular locations around the school. A prescriptive condition may be imposed to specify the physical parameters of a noise wall that must be constructed in front of the school to ensure noise impacts are reduced to an appropriate level.

Example 2: A waste management facility will be constructed in close proximity to residences. The proponent is proposing to use an emerging technology to manage odour impacts.

Response: A performance-based condition would be imposed to set odour criteria at the closest residences. The condition may also include a requirement to provide supplementary documentation which describes, in more detail, the technology that will be adopted and the measures that will be implemented to ensure its effectiveness.
Note: The conditioning framework will be used to avoid, minimise and offset adverse or potentially adverse impacts only. Refer to Section 5.4 for more information on the conditioning framework.

5.2 Conditions requiring environmental enhancements

Conditions that will result in beneficial environmental outcomes such as improvements to open space or enhancements to urban design will be drafted on a case-by-case basis. These types of conditions may require the preparation of a plan that demonstrates how and when the environmental objectives will be achieved.

Example 3: A major road project will require the partial acquisition of a local park. Small pockets of new green space will be provided in the vicinity of the road project to partially offset this loss.

Response: A condition may be imposed requiring the proponent to prepare an Urban Design and Landscape Plan to maximise opportunities for connectivity between the existing park and the new green spaces.

5.3 Which mitigation measures will be conditioned?

The Department will adopt a risk-based approach when developing recommended conditions of consent. This means that recommended conditions of consent will only be developed for the performance criteria or mitigation measures that are of material importance in avoiding, mitigating or offsetting impacts to ensure appropriate environmental outcomes can be achieved.

If a performance-based condition is issued, the condition will specify the performance criteria that must be achieved. If the Department is confident the performance criteria are achievable, the conditions will not specify the mitigation measures that must be implemented to achieve that criteria.

Refer to the Preparing an Environmental Impact Statement Guideline for more information on how mitigation measures should be presented in the EIS.

5.4 The conditioning framework

5.4.1 How to select appropriate types of conditions

If the Department recommends that the Minister or delegate approves a project, the Department will draft the recommended conditions of consent in accordance with the conditioning framework (refer to Figure 2). As discussed in Section 5.1, a combination of condition types will often be required to give the Department confidence that an impact can be effectively avoided, mitigated or offset.

The conditioning framework directs the Department to select a:

- performance-based condition if regulatory agencies believe performance criteria should be imposed
- prescriptive condition if there is a high reliance on a particular control measure to effectively avoid, mitigate or offset the impact
- management-based condition if regulatory agencies believe the impact can best be managed through known management approaches.

Additional requirements such as supplementary documentation or a baseline survey may be added to these conditions as needed.
5.4.2 Dealing with inadequate assessment

If the Department believes insufficient detail has been provided in the EIA documentation or if the Department does not agree that the proposed performance criteria, prescriptive measures or management-based measures will effectively avoid, mitigate or offset the impacts, the Department may choose to:

- seek further information
- draft recommended conditions of consent that:
  - specify performance criteria, prescriptive measures or management-based measures that are not proposed in EIA documentation and/or
  - modify aspects of the project
- recommend that the Minister or delegate refuses the project.
Figure 2 • Conditioning Framework

Does the EIA documentation* nominate performance criteria to manage the impact?  

YES → Does the EIA documentation demonstrate that the performance criteria are quantifiable, measurable and within appropriate limits?  

YES → Develop performance-based condition  

NO → Consider other options  

NO → Does the EIA documentation propose prescriptive measures to mitigate the impact?  

YES → Is there evidence in the EIA documentation to justify the proposed prescriptive measures?  

YES → Develop prescriptive condition  

NO → Consider other options  

NO → Does the EIA documentation propose management-based measures to mitigate the impact?  

YES → Does the EIA documentation demonstrate how the management objectives will be achieved?  

YES → Develop management-based condition  

NO → Consider refusal of the proposal  

NO → Consider other options  

---

* EIA documentation includes all documentation submitted by the proponent up to the point of determination, including but not limited to the EIS and Submissions Report.

Notes

1. If the supporting management-based measures (i.e. the trigger levels, response actions, contingency actions, and monitoring and reporting protocols) are detailed in the EIA documentation, the condition may require the implementation of those measures. If the measures are not included, the condition will require the development and implementation of a Monitoring and Response Plan.

2. If the management-based measures (i.e. the management objectives, management actions, and monitoring and reporting protocols) are detailed in the EIA documentation, the condition may require the implementation of those measures. If the measures are not included, the condition will require the development and implementation of a Management Plan.

3. Other options may include:
   - seeking further information
   - drafting recommended conditions of consent that:
     - specify performance criteria, prescriptive measures or management-based measures that are not proposed in the EIA documentation; and/or
     - modify aspects of the project
   - recommending that the Minister or delegate refuses the project.
5.5 The assessment and mitigation framework

5.5.1 Guidance for proponents

The conditioning framework is underpinned by a complementary assessment and mitigation framework which has been developed to guide proponents in their choice of mitigation measures. The assessment and mitigation framework follows the same hierarchy of approaches as the conditioning framework to encourage proponents to present information in a way that enables the conditions of consent to respond to the quality and detail of information provided in EIA documentation. Therefore, the onus is on proponents to undertake robust assessments and follow the assessment and mitigation framework if they are seeking greater certainty about the conditions of consent that are likely to be imposed.

While the assessment and mitigation framework applies to the adverse or potentially adverse impacts only, the Department also expects proponents to identify opportunities for environmental enhancements, such as improvements to open space, through the EIA.

**Note:** While the assessment and mitigation framework provides guidance to proponents in their choice of mitigation measures, it is ultimately the Department’s responsibility to assess the information provided by the proponent and recommend appropriate conditions of consent.

5.5.2 How to select appropriate performance criteria and mitigation measures

The assessment and mitigation framework should be used by proponents when developing performance criteria and mitigation measures for inclusion in EIA documentation (refer to Figure 3). It follows the same hierarchy as the conditioning framework and therefore, directs proponents to develop:

- **Performance-based measures** - if the proponent believes they can comply with performance criteria that are measurable and quantifiable, and sufficient supporting evidence can be provided in EIA documentation to demonstrate why the performance criteria are appropriate. This may include providing the results of a technical assessment that has been undertaken in accordance with an established methodology.

- **Prescriptive measures** - if there is a known best-practice technology, design or management approach\(^\text{10}\) to mitigate the impact or if the proponent wants to ‘lock in’ particular elements of the project, such as physical parameters or mitigation measures, to give greater certainty to stakeholders or regulatory agencies. The proponent must be able to justify why that approach is appropriate by providing scientific evidence, referencing relevant guidelines or citing case studies.

- **Management-based measures** - if the management objectives can best be achieved through known management approaches.

**Note:** Proponents are encouraged to provide the details of any management-based measures and monitoring and reporting protocols in EIA documentation to provide greater transparency and certainty to regulatory agencies, the community and other stakeholders.

\(^{10}\) When an impact cannot be avoided, minimised or mitigated to an **appropriate** level, the impact may need to be offset or compensated. Where an established offsetting methodology such as the NSW Biodiversity Offsets Policy for Major Projects exists, that methodology falls into the category of a ‘prescriptive measure’ for the purposes of the assessment and mitigation framework.
Figure 3 - Assessment and Mitigation Framework for Proponents

- Does the assessment indicate the impact can be reduced to an appropriate level?
  - NO
  - YES
    - Is the impact quantifiable, and measurable?
      - NO
      - YES
        - Identify appropriate performance criteria and justify why criteria are appropriate
        - Demonstrate how compliance with the performance criteria will be achieved and maintained
    - NO
      - Identify prescriptive measures
      - Justify why measures are appropriate
  - NO
    - Identify management objectives
    - Demonstrate how management objectives will be achieved and maintained
  - Consider amending the proposal

Notes
1. Provide the results of a technical assessment that has been undertaken in accordance with an established methodology.
2. Provide an outline of the Monitoring and Reporting Plan that will be implemented, including details of the trigger criteria, response actions, contingency actions, and monitoring and reporting protocols, where known.
3. Cite scientific evidence, relevant guidelines or case studies.
4. Provide details of the management actions, and the monitoring and reporting protocols that will be implemented, where known.

5.6 Benefits of the new approach

The intent of the complementary frameworks is to introduce a consistent approach to mitigating impacts throughout EIA. This approach enables the conditions of consent to respond to the quality and detail of the information provided in EIA documentation, including recommending more onerous requirements where the Department forms a view that the proposed measures may not be effective in mitigating impacts. This approach
is consistent with the new scoping methodology which results in the development of SEARs that respond to the information provided in the Scoping Report.

Proponents who adopt the principles and follow the methodologies provided in the EIA guidelines will have greater certainty on the type and content of consent requirements that the Minister or delegate will impose if the project is approved.

The requirement for evidence-based decision-making provides a clear incentive for proponents to present the findings of the EIA and the justification for particular design choices, performance criteria or mitigation measures in a transparent manner. This in turn will make the EIS and Submissions Report more robust and easier for regulatory agencies, the community and other stakeholders to understand.

The increased use of performance-based conditions, in accordance with the framework, will enable proponents to be innovative and change their choice of methodology or technology over the life of the project, and will make compliance with the conditions of consent easier to understand, monitor and enforce.
6. Conclusion

This guideline describes the circumstances in which different types of conditions will be used by the Department to avoid, mitigate or offset the adverse impacts of State significant projects if a project is recommended for approval. The guideline also guides proponents in their choice of performance criteria and mitigation measures, and sets out the Department’s expectations about the quality and type of information that should be provided in EIA documentation.

The Approach to Setting Conditions will result in EISs and Submissions Reports that are more robust and easier for decision-makers, regulatory agencies, the community and other stakeholders to understand, and conditions of consent that are consistent and enforceable.

Proponents seeking greater certainty in the approval process and a more streamlined post-approval process are strongly encouraged to:

- undertake robust assessments up-front in the EIS and Submissions Report
- follow the assessment and mitigation framework
- provide sufficient supporting information in EIA documentation.

Ultimately, it is the proponent’s responsibility to satisfy decision-makers, regulatory agencies, the community and other stakeholders that the impacts from the project will be appropriate and well managed.
7. Glossary

Assessment and mitigation framework  A tool for proponents which sets out the Department’s preferred hierarchy for mitigating and managing the impacts of State significant projects.

(The) Commission  The Planning Assessment Commission.

Community  A group of people living in a specific geographical area or with mutual interests that could be affected by a State significant project.

Community and other stakeholders  All those with a stake in a project including community members that may be impacted by, or interested in the project.

Community Consultative Committee  A technique for the proponent to meet the engagement outcomes and maintain regular two-way communication with stakeholders through the life of a project, including reporting on project progress and impacts and obtaining stakeholder perspectives on these impacts.

Conditioning framework  A tool for the Department which sets out the preferred hierarchy for developing recommended conditions of consent to mitigate the adverse impacts of State significant projects.

Conditions of consent  The conditions that the Department or decision-maker sets when a project is approved. The conditions control the way in which development is constructed or operates. The proponent must adhere to these conditions.

Consent  Includes the granting of consent for SSD projects, the approval of SSI projects and approvals of modifications to those consents and approvals.

Contingency actions  The actions that will be undertaken if there is a non-compliance with the performance criteria specified in the conditions of consent for an environmental matter.

Critical SSI  A State significant infrastructure project declared by the Minister to be essential for the State for economic, environmental or social reasons.

Department  NSW Department of Planning and Environment.

Engagement  The act of seeking the participation of the community and other stakeholders on behalf of the project proponent or regulatory agencies.

Environmental Impact Assessment (EIA)  Environmental impact assessment (EIA) is the process of identifying, predicting, evaluating and mitigating the environmental, social, economic and other relevant effects of development proposals. It includes scoping of the project, consultation with the community and other stakeholders, preparation and exhibition of the EIS, assessment and determination of the project.
EIA documentation

Includes the Scoping Report, EIS, Submissions Report and any other documentation provided by the proponent up to the point of determination.

Environmental Impact Statement (EIS)

The primary document prepared by the proponent which includes assessment of all relevant matters and impacts associated with a State significant project.

EP&A Act

*Environmental Planning and Assessment Act 1979*(NSW).

Key issue

A matter that requires detailed assessment, such as a technical study, to better understand the potential impacts that are likely to arise and identify project specific mitigation.

Management actions

The actions that will be undertaken to achieve the management objectives for an environmental matter.

Management objective

The management goal that proponents are seeking to achieve by implementing and optimising appropriate management approaches.

Management Plan

A plan which demonstrates how the management objectives for an environmental matter will be achieved.

Management-based measure

A known operational or technical approach that will be applied to avoid or mitigate an impact.

Matter

An element of the natural or human environments that may be affected by activities associated with State significant projects.

Minister

NSW Minister for Planning.

Mitigation

Action taken to reduce the impact that a project may have on a matter.

Modification

An approved change to a project that is implemented by modifying an existing development consent. An application must be made under the EP&A Act before the modification can be approved.

Monitoring and Response Plan

A plan which demonstrates how compliance with the performance criteria specified in the conditions of consent will be achieved.

Other issue

A matter whose impacts can usually be managed by well understood and routinely used mitigation measures. Usually, further information will be required, but often without the need for a technical study.

Participation

The activity whereby the community and other stakeholders have a say and potentially influence decisions that impact on their lives.

Performance criteria

The threshold criteria specified in the conditions of consent that must not be exceeded.

Performance-based measure

A commitment to achieve a certain level of performance to avoid or mitigate an impact.

Prescriptive measure

A known best-practice technology, design or management approach to avoid, mitigate or offset an impact.
Approach to Setting Conditions

Project

Includes applications for State significant development or State significant infrastructure under the EP&A Act.

Project approval

Includes:
• development consent for State significant development
• infrastructure approval for State significant infrastructure.

Proponent

The person or entity seeking approval for a State significant project, or acting on an approval for a State significant project, including any associated entities that have been engaged to assist with project delivery.

Public

The activities which are open to the entire public rather than targeted at particular stakeholders, for example, public exhibition of the EIS.

Response actions

The actions that will be undertaken if the trigger levels are reached.

Scoping

Scoping identifies the matters and impacts that are likely to be relevant and establishes terms of reference for the Environmental Impact Statement (EIS).

Scoping Meeting

A meeting held between the proponent and the Department to discuss the project concept and agree on the approach to engaging with the community and other stakeholders prior to finalising the Scoping Report, taking into account potential project impact and likely community and stakeholder interest.

Scoping Report

A publicly available document which provides preliminary information on a project and its potential impacts to support a request for Secretary’s Environmental Assessment Requirements (SEARs).

SEARs

The SEARs (Secretary’s Environmental Assessment Requirements) set out clear expectations on the level of assessment required for each relevant matter which must be addressed by the proponent in the EIS.

Secretary

The Secretary of the NSW Department of Planning and Environment.

Stakeholder

Any person or group with an interest in, or the potential to be affected by, a State significant project.

State significant development (SSD)

Development projects which have State significance due to their size, economic value or potential impacts assessed and approved under part 4.1 of the EP&A Act.

State significant infrastructure (SSI)

Infrastructure projects which have State significance due to their size, economic value or potential impacts assessed and approved under Part 5.1 of the EP&A Act.

State significant projects

A State significant development or State significant infrastructure project as defined under the EP&A Act.

Trigger levels

The levels that will be adopted to forewarn a potential non-compliance with the performance criteria.
8. Appendices
Appendix A – Example conditions

Administrative conditions

1. The proponent must carry out the development in accordance with the Project Description provided in the Submissions Report (xxx, June 2016).
2. All Monitoring and Response Plans must be prepared in accordance with the Department of Planning and Environment’s ‘Monitoring and Response Plan Guideline’.
3. All Management Plans must be prepared in accordance with the Department of Planning and Environment’s ‘Management Plan Guideline’.

Performance-based conditions

Water quality

4. Water discharged from sediment basins must meet the following criteria unless otherwise approved through an EPL:
   a. Turbidity of 50 NTU
   b. pH 6.5 – 8.5
   c. No visible soil and grease
5. Prior to commencing construction, the proponent must submit a Monitoring and Response Plan to the Secretary for approval, to demonstrate how performance against condition 4 will be monitored and reported, and the response actions and contingency actions that will be taken to ensure condition 4 is complied with.
6. The Monitoring and Response Plan must be implemented for the duration of construction.

Air Quality

7. The proponent must achieve the air quality criteria specified in Table 1 at the boundary of any privately owned land during construction of the project.

Table 1: Air Quality Criteria

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Averaging Period</th>
<th>Criterion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Particulate matter &lt; 10 µm (PM_{10})</td>
<td>Annual</td>
<td>a,d 30 µg/m³</td>
</tr>
<tr>
<td>Particulate matter &lt; 10 µm (PM_{10})</td>
<td>24 hour</td>
<td>b 50 µg/m³</td>
</tr>
<tr>
<td>Total suspended particulates (TSP)</td>
<td>Annual</td>
<td>a,d 90 µg/m³</td>
</tr>
<tr>
<td>c Deposited dust</td>
<td>Annual</td>
<td>b 2 g/m²/month</td>
</tr>
<tr>
<td></td>
<td></td>
<td>a,d 4 g/m²/month</td>
</tr>
</tbody>
</table>

Notes to Table 1:

a Cumulative impact (i.e. increase in concentrations due to the development plus background concentrations due to all other sources).
8. Prior to commencing construction, the proponent must submit a Monitoring and Response Plan to the Secretary for approval, to demonstrate how performance against condition 7 will be monitored and reported, and the response actions and contingency actions that will be taken to ensure condition 7 is complied with.

9. The Monitoring and Response Plan must be implemented for the duration of construction.

Biodiversity

10. No more than 0.2 ha of EEC River Flat Eucalypt Forest may be cleared.
11. No more than 1 ha of vegetation identified in the Tree Preservation Strategy as being of low significance may be cleared.
12. The proponent must report compliance with condition 10 and 11 in accordance with the Department of Planning and Environment’s ‘Compliance Monitoring and Reporting Guideline’.

Prescriptive conditions

Transport

13. The proponent must not:
   a. transport more than 150,000 tonnes of quarry products from the site during any calendar year
   b. receive or dispatch more than 45 laden trucks from the site on any calendar day.

Access

14. To ensure pedestrian safety is maintained, a pedestrian refuge island must be provided to facilitate crossing of Duke Street at Arncliff Road. The island must be designed in accordance with AS1742.10-2009.

Heritage

15. If any item or object of Aboriginal heritage significance is identified on site:
   a. all work in the immediate vicinity of the suspected Aboriginal item or object must cease immediately
   b. a 10 m buffer area around the suspected item or object must be cordoned off
   c. the OEH must be contacted immediately.
16. Work in the immediate vicinity of the Aboriginal item or object may only recommence in accordance with the provisions of Part 6 of the National Parks and Wildlife Act 1974.
Management-based conditions

Traffic Management Plan

17. The proponent must prepare a Traffic Management Plan for the development. This plan must:
   a. be prepared in consultation with the RMS and Council
   b. be submitted to the Secretary for approval
   c. describe the processes in place for the control of truck movements entering and exiting the site
   d. include a Drivers’ Code of Conduct that details the safe and quiet driving practices that must be used by drivers transporting products to and from the quarry
   e. describe the measures to be put in place to ensure compliance with the Drivers’ Code of Conduct
   f. describe measures to minimise the transmission of dust and tracking of material onto the surface of the public road from vehicles leaving the quarry.

18. The proponent must not commence quarrying operations until the Traffic Management Plan is approved by the Secretary.

19. The proponent must implement the most recent version of the Traffic Management Plan, as approved by the Secretary, for the duration of quarrying activities.

Environmental enhancement conditions

Landscape design

20. Prior to the commencement of above ground works, the proponent must present design modifications to the Design Integrity Panel that address the following:
   a. A revised landscape design that provides:
      i. seating for 50 people between the playing fields and the open space area
      ii. seating for 30 people on the southern side of the playing fields
      iii. dense planting along the Mowbray Lane boundary
      iv. a mix of planting around the open space area
      v. greater accessibility and permeability to promote the use of the open space outside of school operating hours
   b. Further details relating to the final materials and façade treatment of the buildings, particularly the southern facade of the multipurpose hall, to ensure it is sympathetic to the surrounding streetscape.

21. Evidence of the Design Integrity Panel’s endorsement of the design modifications required by condition 20 must be submitted to the Secretary prior to the commencement of above ground works.
For more information about the EIA Improvement Project visit planning.nsw.gov.au