



*Post-approval requirements for
State significant developments*

October 2015

Independent Audit Guideline



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1 Introduction

State significant developments may be required to undertake periodic independent audits. These audits are in addition to those audits which may be undertaken by regulators or the operator.

An independent audit may be required as a condition of a regulatory approval, or may be required by regulators as part of compliance and enforcement operations. An independent audit provides a detailed assessment of an operation's performance in relation to key compliance issues.

The findings of these audits are made publicly available.

1.1 Purpose and scope

The primary purpose of this document is to ensure that independent audits of State significant developments in NSW are undertaken in a consistent manner and meet minimum standards expected by the Government.

This guideline provides guidance for commissioning and completing independent audits for State significant developments, in a manner consistent with Government expectations, in order to:

- achieve a consistent approach to, and quality of, audits such that compliance can be adequately assessed and performance robustly evaluated;
- improve transparency and ease of assessment of audit findings for agencies; and
- improve transparency for the community.

Where there is any inconsistency between this guideline and the conditions placed on an operation's approval, the conditions will prevail.

1.2 Reporting framework for mining developments

The Integrated Mining Policy includes three post approval guidelines that relate to a mine operator's reporting requirements. These are the:

- Annual Review Guideline;
- Independent Audit Guideline; and
- Web based Reporting Guideline.

These guidelines are important elements of the Government's compliance and enforcement framework – they provide for regular, transparent reporting of an operation's consistency with its approval conditions. The Annual Review and web-based reporting are 'self-reporting' mechanisms that are reviewed by the regulator. Independent Audits occur on a periodic basis as determined by the approval conditions or in response to a specific incident or trigger. Regulators conduct ongoing compliance and enforcement activity across the industry, which leverages these reporting mechanisms to oversight the compliance status of a mining operation.

1.3 Definitions

For the purposes of this Guideline:

<i>Approval</i>	means a relevant regulatory approval instrument, for example: a Development Consent (DC), Environment Protection Licence (EPL), Mining Lease (ML), or Water Access Licence (WAL).
<i>Development</i>	means a development which is the subject of a consent or approval under the <i>Environmental Planning and Assessment Act 1979</i> .
<i>DPE</i>	means the Department of Planning and Environment.
<i>DRE</i>	means the Division of Resources & Energy within the Department of Industry.
<i>EPA</i>	means the Environment Protection Authority.
<i>Lead regulator</i>	means the regulator that is responsible for the regulatory requirement that triggers the audit. For example, if an audit is triggered by a development consent condition, DPE would be the lead regulator.
<i>DPI Water</i>	means the Division of Water within the Department of Primary Industries.
<i>Operator</i>	means the entity that holds the relevant approvals for a given development. Where the operator does not operate the development, it is expected that the operator will consult closely with the entity operating the development in carrying out the audit requirements in this document.
<i>Regulatory agency</i>	means a government agency with responsibility for regulating the development.

2 Audit Objectives, Scope and Criteria

All elements of any independent audit conducted in NSW should follow the auditing standard AS/NZS ISO 19011:2014 *Guidelines for auditing management systems* and this guideline.

2.1 Audit objectives

The main objective of an independent audit is to assess the operator's compliance with the requirements of regulatory approvals, including (as applicable):

- the Development Consent;
- the Environment Protection Licence;
- the Mining Lease; and
- water licences and approvals.

An individual audit may also have specific objectives relating to its trigger, for example an audit undertaken in response to a pollution incident may aim to ensure protections are in place (or are put in place) to prevent the incident re-occurring.

2.2 Audit scope

The audit scope is determined by the lead regulator. The lead regulator may apply a strict compliance or risk based approach to determining the audit scope.

In deciding on the scope of the audit, the lead regulator will give consideration to the following:

- the conditions of all relevant approvals;
- management plan requirements;
- the requirements of relevant regulatory agencies;
- the status of the operation;
- the key regulatory risks, including past or future risks;
- the predictions of environmental impact assessments;
- the performance of the operation;
- results from previous audits;
- any incidents or community complaints;
- feedback received from other regulatory agencies on the performance of the operation;
- feedback received from the community / community consultative committee on the performance of the operation; and
- agency policy or other focus areas.

The scope of the audit should detail:

- the physical boundaries of the audit – it should cover the area specified by the relevant regulatory approvals;
- the time period covered by the audit – the audit should address the period since the previous independent audit or where there has been no previous independent audit, the period since the date of the approval (i.e. the period governed by the regulatory approval); and
- the organisational units, activities and processes that will be covered.

Generally, independent audits should cover all organisational units, activities and processes relating to the development that are referred to in the relevant regulatory approval(s).

2.3 Audit criteria

Audit criteria should be developed by the lead auditor as the reference against which compliance is determined. All applicable approvals and management plans relevant to a development may be within the scope of the audit.

Compliance with relevant conditions of each approval instrument is likely to be routinely assessed in an audit. Criteria relating to management plans may be included on a case-by-case basis.

The audit criteria should be developed to achieve the specific aims of the audit, in addition to the broader audit objectives outlined above (Section 2.1). For example, if an audit is to be conducted in response to previously poor management of air pollution, the criteria may focus on air pollution approval conditions and management plans.

All relevant regulators should be consulted by the auditor to ensure their requirements are met.

The following approvals and other approval documents may be considered by the audit:

- conditions of Development Consent – all conditions of the consent may be considered for audit including the Statement of Commitments, where applicable;
- conditions of Environment Protection Licence (EPL) – all conditions of the EPL may be audited;
- conditions of other relevant approvals, as agreed with the lead regulator; and
- environmental assessment documentation (any document referenced in the consent e.g. Environmental Impact Statement (EIS), Environmental Assessment (EA), Statement of Environmental Effect, Response to Submissions)¹ commitments – this will include key features of the development, for example location and sequencing of activities, production rates, landforms etc., plus environmental management commitments; and
- management plan obligations – the adequacy of management plans in meeting relevant approval requirements (even if the management plan has previously been approved), in addition to the effectiveness of plan implementation.

Other issues may also be considered by the audit, for example:

- requirements of other relevant environmental legislation may be considered (e.g. are all required environmental approvals in place considering the requirements of acts such as the *Environmental Planning and Assessment Act 1979*, *Protection of the Environment Operations Act 1997*, *Mining Act 1992*, *Petroleum (Onshore) Act 1991*, *National Parks and Wildlife Act 1974*, *Threatened Species Conservation Act 1995*, *Heritage Act 1977* and *Water Management Act 2000*); and
- any other specific matters raised by relevant agencies or the lead regulator during audit scoping or through agency consultation (refer to **Section 4.2**).

Audit criteria that are developed from conditions of an approval or terms of a management plan should be clearly stated in the audit report and should be framed so that the auditor can quantify whether or not the operation complies with regulatory requirements.

¹ Only the final, current or consent version of these documents should be relevant to the audit.

3 Selection and Approval of Audit Team

Once the scope of the audit has been determined through the processes outlined in **Section 2**, the proposed audit team should be selected. The details of the proposed audit team, including curricula vitae, should be provided to the lead regulator for approval. In selecting the audit team and approving the audit team, consideration should be given to the audit team's competence and independence.

3.1 Audit team competence

The proposed audit team should be selected with consideration to the following:

- the overall competence of the audit team required to achieve the audit objectives, taking into consideration the audit scope and criteria;
- the lead auditor should demonstrate suitable audit experience to the satisfaction of the lead regulator. The lead auditor should hold accreditation with a relevant industry body (i.e. an organisation accredited by JAS-ANZ) and be certified as a lead environmental auditor or principal environmental auditor;
- auditors in the audit team should demonstrate suitable audit experience to the satisfaction of the lead regulator. Accreditation with a relevant industry body (i.e. an organisation accredited by JAS-ANZ) may be utilised to assist in demonstrating suitable auditing experience to the lead regulator, however, certification is not mandatory; and
- the lead auditor should have experience in environmental impact assessment and operational environmental management in a relevant industry, in addition to experience in environmental auditing.

3.2 Selection of technical specialists

Although not always required, a technical specialist may be included in the audit team if there is a need for a specific skill that is beyond the expertise of the auditors.

The lead regulator should identify or confirm the technical specialist areas that are involved in the audit and agree on the level of involvement with the lead regulator.

Technical experts should be able to demonstrate their competence based on formal qualifications and reasonable experience in their area of expertise and in a relevant industry, and previous demonstrated quality work. Technical specialists with some audit experience are preferable.

3.3 Independence of the audit team

It is essential to demonstrate the independence, impartiality and objectivity of the audit process. Auditors must be independent of the development being audited and be free from bias and conflict of interest. The audit findings must be based on verifiable audit evidence.

In order to ensure independence and to avoid conflicts of interest, an independent auditor should not:

- be related to any owner or operator of the development. Such a relationship includes: employer, business partner, employee, sharing a common employer, having a contractual arrangement outside the audit, spouse, partner, sibling, parent, and child;
- have any pecuniary interest in the development (or parent company). Such an interest includes the situation where there is a reasonable likelihood or expectation of financial gain or loss to the auditor, or to a person to whom the auditor is closely related (i.e. immediate family);
- have provided services (not including independent reviews / auditing) to the development to the extent that they would be auditing work done by themselves or their company; or
- accept any inducement, commission, gift or any other benefit from auditee organisations, their employees or any interested party or knowingly allow colleagues to do so.

Any work done by the proposed audit team, or other members of the companies that they are employed by, for the development or its parent company need to be declared to the lead regulator to inform their decision-making regarding auditor independence.

Once the lead regulator is satisfied with the competence and independence of the audit team and has issued written approval, the audit can be commissioned and commenced.

4 Audit Methodology

The audit evidence should be collected using the following methods:

- review of relevant documentation and reports;
- interview of relevant site personnel; and
- a site inspection of relevant activities/processes.

Other audit evidence collection methods may also be appropriate depending on the objective and scope of the audit, or other certain circumstances (for example, verification sampling). The audit methodology should be agreed with the lead regulator prior to commencement. Other agencies may need to be consulted on the audit methodology on relevant technical elements.

4.1 Compliance assessment criteria

The compliance status for each requirement or commitment should be assessed in accordance with the criteria in Table 1.

Table 1 - Compliance assessment criteria

Assessment	Criteria
Compliant	Where the auditor has collected sufficient verifiable evidence to demonstrate that the intent and all elements of the requirement of the regulatory approval have been complied with within the scope of the audit.
Not verified	Where the auditor has not been able to collect sufficient verifiable evidence to demonstrate that the intent and all elements of the requirement of the regulatory approval have been complied with within the scope of the audit. In the absence of sufficient verification the auditor may in some instances be able to verify by other means (visual inspection, personal communication, etc.) that a requirement has been met. In such a situation, the requirement should still be assessed as not verified. However, the auditor could note in the report that they have no reasons to believe that the operation is non-compliant with that requirement.
Non-compliant	Where the auditor has collected sufficient verifiable evidence to demonstrate that the intent of one or more specific elements of the regulatory approval have not been complied with within the scope of the audit.
Administrative non-compliance	A technical non-compliance with a regulatory approval that would not impact on performance and that is considered minor in nature (e.g. report submitted but not on the due date, failed monitor or late monitoring session). This would not apply to performance-related aspects (e.g. exceedance of a noise limit) or where a requirement had not been met at all (e.g. noise management plan not prepared and submitted for approval).
Not triggered	A regulatory approval requirement has an activation or timing trigger that had not been met at the time of the audit inspection, therefore a determination of compliance could not be made.
Observation	Observations are recorded where the audit identified issues of concern which do not strictly relate to the scope of the audit or assessment of compliance. Further observations are considered to be indicators of potential non-compliances or areas where performance may be improved.
Note	A statement or fact, where no assessment of compliance is required.

The terms “partial compliance” or “partial non-compliance” or similar should not to be used.

Risk levels for any non-compliances should be identified consistent with Table 2:

Table 2 - Risk levels for non-compliances

Risk level	Colour code	Description
High		Non-compliance with potential for significant environmental consequences, regardless of the likelihood of occurrence
Medium		Non-compliance with: <ul style="list-style-type: none"> • potential for serious environmental consequences, but is unlikely to occur; or • potential for moderate environmental consequences, but is likely to occur
Low		Non-compliance with: <ul style="list-style-type: none"> • potential for moderate environmental consequences, but is unlikely to occur; or • potential for low environmental consequences, but is likely to occur
Administrative non-compliance		Only to be applied where the non-compliance does not result in any risk of environmental harm (e.g. submitting a report to government later than required under approval conditions)

4.2 Agency and community consultation

Prior to the commencement of the site inspection (refer to **Section 4.3**), the auditor should contact each of the key agencies with a role in regulating the development to obtain their feedback and draw the auditor’s attention to any key issues, within the agreed scope of the audit. This would include as a minimum (unless otherwise agreed with the lead regulator):

- DPE;
- EPA;
- DRE (if relevant);
- DPI Water;
- Office of Environment and Heritage; and
- relevant local council(s).

Any comments should be recorded and reported in the audit report and any specific issues investigated as part of the audit.

In addition to consultation with the key agencies, unless otherwise agreed with the lead regulator, the auditor should contact the Chair of the development’s Community Consultative Committee (if applicable) to obtain feedback and draw the auditor’s attention to any key issues, within the agreed scope of the audit. This should also be documented in the audit report and any key issues should be investigated as part of the audit.

The auditor may consider additional consultation with other stakeholders, for example, relevant statutory authorities or community groups. The auditor may elect to consider the comments of these stakeholders in a similar fashion to the Chair of the Community Consultative Committee.

4.3 Site interviews and inspections

The audit should include a program of interviews with key site personnel with responsibility for operational and environmental management and where possible, a selection of operational personnel to assist with determining compliance status.

The site inspection should cover each of the key aspects of the development and should assist the auditor to verify statements made by site personnel regarding the controls implemented for environmental management purposes, the status of the operation and the operation's overall environmental performance. The site inspection should also assist the auditor to identify any opportunities for improved environmental performance.

The auditor should be provided reasonable access to all requested areas for inspection, understanding that the inspections will be accompanied by the designated site person, and that some areas may not be able to be physically accessed for safety or operational reasons. If the auditor feels that site access has constrained the quality of the audit process, this should be noted in the report.

The areas inspected, the personnel interviewed and the outcomes of both the interviews and site inspection should be documented in the audit report.

5 Audit Reporting

5.1 Content of audit reports

The outcomes of the audit should be documented in a thorough, easy to read, and accurate audit report. The report must be written in a neutral tone that reflects the facts gathered by the audit team. Any opinions or conclusions of the audit team that are recorded in the report should be identified as such, along with supporting evidence.

The report should include the following:

- **Introduction** – providing a brief overview of the development, the audit objectives, scope and criteria, and other relevant introductory information.
- **Methodology** – a discussion of the methodology used for the audit including the audit team (with details of qualifications and experience), the approvals and documents audited, other key documents reviewed, any agency, site personnel or other persons interviewed, the coverage of the site inspection, the assessment criteria used and the method of reporting.
- **Audit findings** – including:
 - *documentation of the agency and community consultation undertaken and the outcomes of this consultation;*
 - *a brief discussion of the actions arising from the previous audit and progress made on addressing these actions;*
 - *checklists for the relevant approval conditions appended to the report identifying each condition, assessing compliance status, documenting verified evidence and providing recommendations for any non-compliance;*
 - *a summary of the compliance assessment against the relevant approvals in the main audit report followed by specific discussion of any non-compliances, in the order of the condition number;*
 - *a discussion of compliance with any management plan requirements, including a summary of overall compliance and specific discussion of any non-compliances and improvement opportunities;*
 - *a discussion of compliance with commitments and key project features from the environmental assessment documentation referred to in the consent (e.g. EIS, EA, Response to Submissions etc.);*
 - *a discussion of any incidents (including any penalty infringement notices) and complaints and the performance of the development in relation to response and management of these;*
 - *a discussion of environmental performance² – a thorough review and assessment of the development's environmental performance addressing each of the key environmental aspects relevant to the development. This performance review should consider the effectiveness of the development's environmental management system, relevant operational systems (e.g. maintenance of environmental controls), management commitment, risk assessment and management, and training. The performance review should identify any potential future non-compliance issues from a review of environmental monitoring data (i.e. if the development is trending towards non-compliance); and*
 - *identification of any continual improvement opportunities identified as part of the audit – continual improvement opportunities are to be recommended by the auditor based on the auditor's experience and in consultation with relevant regulatory representatives and the operator.*

² For sites that are ISO4001 complaint, the auditor may refer to the results of a recent ISO4001 audit, if the auditor deems it appropriately meets the objectives of the audit.

The auditor may provide the draft audit report to the operator for review and provide the operator an opportunity to provide any additional information. The auditors' draft report should only be revised where additional information or evidence is provided that results in a change to compliance status or corrects errors in fact or misunderstanding. All substantive changes should be summarised in a separate attachment to the final audit report.

Audit reports should be finalised by the auditor before submission to the lead regulator. The lead regulator may approve the final report, subject to the approval conditions of the operation.

5.2 Certification of the audit report

Independent audits submitted to the lead regulator must be certified by the lead auditor on an "Independent Audit Submission Form", which is to be attached to each audit report. A copy of the form is provided in **Appendix A**.

5.3 Audit report distribution

Copies of the final audit report should be distributed to relevant agencies and the relevant local council within two weeks of the audit being finalised.

A copy of the independent audit should be placed on the development's website.

6 Action Plan

The operator should respond to the lead regulator within four weeks of receiving the final report, with an action plan responding to the audit findings and any recommendations. In the event that an audit report requires the development of a particularly complex or technical action plan, the operator may contact the lead regulator and request a longer timeframe for completion.

The action plan should include:

- an appropriately detailed response to the recommendations and any actions proposed to be taken;
- a timeline for implementation where actions are proposed;
- reasons for any circumstance where the operator proposes to not implement a recommendation; and
- discussion of continual improvement initiatives to be implemented by the operator. These initiatives may be proposed as an outcome of the audit findings, in response to past non-compliances or complaints, or to meet the development's continual improvement targets.

The lead regulator will consider the action plan, and may approve it if required by the operation's approval conditions. A copy of the final action plan should be placed on the development's website.

Appendix A Independent Audit Certification Form

Independent Audit Certification Form	
Development Name	
Development Consent No.	
Description of Development	
Development Address	
Operator	
Operator Address	
Independent Audit	
Title of Audit	
<p><i>I certify that I have undertaken the independent audit and prepared the contents of the attached independent audit report and to the best of my knowledge:</i></p> <ul style="list-style-type: none"> <i>The audit has been undertaken in accordance with relevant approval condition(s) and in accordance with the auditing standard AS/NZS ISO 19011:2014 and Post Approval Guidelines – Independent Audits</i> <i>The findings of the audit are reported truthfully, accurately and completely;</i> <i>I have exercised due diligence and professional judgement in conducting the audit;</i> <i>I have acted professionally, in an unbiased manner and did not allow undue influence to limit or over-ride objectivity in conducting the audit;</i> <i>I am not related to any owner or operator of the development as an employer, business partner, employee, sharing a common employer, having a contractual arrangement outside the audit, spouse, partner, sibling, parent, or child;</i> <i>I do not have any pecuniary interest in the audited development, including where there is a reasonable likelihood or expectation of financial gain or loss to me or to a person to whom I am closely related (i.e. immediate family);</i> <i>Neither I nor my employer have provided consultancy services for the audited development that were subject to this audit except as otherwise declared to the lead regulator prior to the audit; and</i> <i>I have not accepted, nor intend to accept any inducement, commission, gift or any other benefit (apart from fair payment) from any owner or operator of the development, their employees or any interested party. I have not knowingly allowed, nor intend to allow my colleagues to do so.</i> <p><i>Note.</i></p> <p>a) <i>The Independent Audit is an ‘environmental audit’ for the purposes of section 122B(2) of the Environmental Planning and Assessment Act 1979. Section 122E provides that a person must not include false or misleading information (or provide information for inclusion in) an audit report produced to the Minister in connection with an environmental audit if the person knows that the information is false or misleading in a material respect. The maximum penalty is, in the case of a corporation, \$1 million and for an individual, \$250,000.</i></p> <p>b) <i>The Crimes Act 1900 contains other offences relating to false and misleading information: section 192G (Intention to defraud by false or misleading statement—maximum penalty 5 years imprisonment); sections 307A, 307B and 307C (False or misleading applications/information/documents—maximum penalty 2 years imprisonment or \$22,000, or both).</i></p>	
Signature	
Name of Lead / Principal Auditor	
Address	
Email Address	
Auditor Certification (if relevant)	
Date:	