



Standard Conditions for State Significant Development

*Ports & Water Projects
August 2018*

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Defined Terms

Applicant	[Applicant name] or any other person carrying out any development to which this consent applies.
Conditions of this consent	The conditions contained in Schedule/s [xx] of this document.
Construction	The demolition and removal of buildings or works, the carrying out of works for the purpose of the development, including bulk earthworks, and erection of buildings and other infrastructure permitted by this consent.
Council	[insert relevant Council]
Decommissioning	The controlled process of safely retiring a facility from service, including decontamination, dismantling and disposal after the cessation of operations.
Demolition	The deconstruction and removal of buildings, sheds and other structures on the site.
Development	The development described in the EIS and Response to Submissions, including the works and activities comprising [insert the relevant phases for the development ie construction, etc], as modified by the conditions of this consent.
EIS	The Environmental Impact Statement titled [xxx], prepared by [xxx] dated [xxx], submitted with the application for consent for the development, including any additional information provided by the Applicant in support of the application.
Environment	Includes all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings.
Environmental Representative Protocol	The document of the same title published by the Department.
Incident	An occurrence or set of circumstances that causes, or threatens to cause, material harm and which may or may not be, or cause, a non-compliance. Note: “material harm” is defined in this consent.
Management and mitigation measures	The management and mitigation measures set out in Appendix [x].
Material harm	Is harm that:

- a) involves actual or potential harm to the health or safety of human beings or to the environment that is not trivial; or
- b) results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$10,000, (such loss includes the reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures to prevent, mitigate or make good harm to the environment).

Modification Assessments	The document assessing the environmental impact of a proposed modification of this consent and any other information submitted with the following modification applications made under the EP&A Act: [insert modification number and date]; [insert modification number and date]; etc.
Non-compliance	An occurrence, set of circumstances or development that is a breach of this consent.
Operation	The [carrying out/use] of [insert industry description – eg the waste facility] upon completion of construction.
PA	Means a planning agreement within the meaning of the term in section 7.4 of the EP&A Act.
Planning Secretary	Planning Secretary under the EP&A Act, or nominee.
Registered Aboriginal Parties	Means the Aboriginal persons identified in accordance with the document entitled “Aboriginal cultural heritage consultation requirements for proponents 2010” (DECCW).
Rehabilitation	The restoration of land disturbed by the development to a good condition, to ensure it is safe, stable and non-polluting.
Response to Submissions	The Applicant’s response to issues raised in submissions received in relation to the application for consent for the development under the EP&A Act.
Sensitive receivers	A location where people are likely to work, occupy or reside, including a dwelling, school, hospital, office or public recreational area.
Year	A period of 12 consecutive months.

Administrative Conditions

1. Obligation to Minimise Harm to the Environment

In addition to meeting the specific performance measures and criteria in this consent, all reasonable and feasible measures must be implemented to prevent and, if prevention is not reasonable and feasible, minimise any material harm to the environment that may result from the construction and operation of the development, and any rehabilitation required under this consent.

2. Terms of Consent

The development may only be carried out:

- a) in compliance with the conditions of this consent;
- b) in accordance with all written directions of the Planning Secretary;
- c) generally in accordance with the EIS and Response to Submissions;
- d) generally in accordance with Modification Assessments;
- e) in accordance with the Development Layout in Appendix x and/or the approved plans in the table below; and
[insert table of Architectural Drawings]
- f) in accordance with the management and mitigation measures.

Consistent with the requirements in this consent, the Planning Secretary may make written directions to the Applicant in relation to:

- a) the content of any strategy, study, system, plan, program, review, audit, notification, report or correspondence submitted under or otherwise made in relation to this consent, including those that are required to be, and have been, approved by the Planning Secretary; and
- b) the implementation of any actions or measures contained in any such document referred to in (a) above.

The conditions of this consent and directions of the Planning Secretary prevail to the extent of any inconsistency, ambiguity or conflict between them and a document listed in condition [x](c) or [x](d). In the event of an inconsistency, ambiguity or conflict between any of the documents listed in condition [x](c) and [x](d), the most recent document prevails to the extent of the inconsistency, ambiguity or conflict.

3. Notification of Commencement

The date of commencement of each of the following phases of the development must be notified to the Department in writing, at least one month before that date:

- a) construction;
- b) operation;
- c) cessation of operations; and
- d) decommissioning.

If the construction or operation or decommissioning of the development is to be staged, the Department must be notified in writing at least one month before the commencement of each stage, of the date of commencement and the development to be carried out in that stage.

4. Surrender of Existing Consents or Approvals

Within 12 months of the date of commencement of development to which this consent applies, or within another timeframe agreed by the Planning Secretary, the Applicant must surrender the existing [project approval/development consent dated [XXX] for the [XX Project] in accordance with the EP&A Regulation.

Upon the commencement of development to which this consent applies, and before the surrender of existing development consents or project approvals required under condition [x], the conditions of this consent prevail to the extent of any inconsistency with the conditions of those consents or approvals.

Note: This requirement does not extend to the surrender of construction and occupation certificates for existing and proposed building works under the former Part 4A of the EP&A Act or Part 6 of the EP&A Act as applies from 1 September 2018. The surrender should not be understood as implying that works legally constructed under a valid consent or approval can no longer be legally maintained or used.

5. Evidence of Consultation

Where conditions of this consent require consultation with an identified party, the Applicant must:

- a) consult with the relevant party prior to submitting the subject document to the Planning Secretary for approval; and
- b) provide details of the consultation undertaken including:
 - i. the outcome of that consultation, matters resolved and unresolved; and
 - ii. details of any disagreement remaining between the party consulted and the Applicant and how the Applicant has addressed the matters not resolved.

6. Staging, Combining and Updating Strategies, Plans or Programs

With the approval of the Planning Secretary, the Applicant may:

- a) prepare and submit any strategy, plan or program required by this consent on a staged basis (if a clear description is provided as to the specific stage and scope of the development to which the strategy, plan or program applies, the relationship of the stage to any future stages and the trigger for updating the strategy, plan or program);
- b) combine any strategy, plan or program required by this consent (if a clear relationship is demonstrated between the strategies, plans or programs that are proposed to be combined); and
- c) update any strategy, plan or program required by this consent (to ensure the strategies, plans and programs required under this consent are updated on a regular basis and incorporate additional measures or amendments to improve the environmental performance of the development).

If the Planning Secretary agrees, a strategy, plan or program may be staged or updated without consultation being undertaken with all parties required to be consulted in the relevant condition in this consent.

If approved by the Planning Secretary, updated strategies, plans or programs supersede the previous versions of them and must be implemented in accordance with the condition that requires the strategy, plan or program.

7. Protection of Public Infrastructure

Before the commencement of construction, the Applicant must:

- a) consult with the relevant owner and provider of services that are likely to be affected by the development to make suitable arrangements for access to, diversion, protection and support of the affected infrastructure;
- b) prepare a dilapidation report identifying the condition of all public infrastructure in the vicinity of the site (including roads, gutters and footpaths); and
- c) submit a copy of the dilapidation report to the Planning Secretary and Council.

Unless the Applicant and the applicable authority agree otherwise, the Applicant must:

- a) repair, or pay the full costs associated with repairing, any public infrastructure that is damaged by carrying out the development; and
- b) relocate, or pay the full costs associated with relocating any infrastructure that needs to be relocated as a result of the development.

8. Demolition

All demolition must be carried out in accordance with *Australian Standard AS 2601-2001 The demolition of structures* (Standards Australia, 2001).

9. Structural Adequacy

All new buildings and structures, and any alterations or additions to existing buildings and structures, that are part of the development, must be constructed in accordance with:

- a) the relevant requirements of the BCA; and
- b) any additional requirements of the SANSW where the building or structure is located on land within a declared Mine Subsidence District.

Note:

- Under Part 6 of the EP&A Act, the Applicant is required to obtain construction and occupation certificates for the proposed building works.
- Part 8 of the EP&A Regulation sets out the requirements for the certification of the development.
- Under section 21 of the Coal Mine Subsidence Compensation Act 2017, the Applicant is required to obtain the Chief Executive of Subsidence Advisory NSW's approval before carrying out certain development in a Mine Subsidence District.

10. Compliance

The Applicant must ensure that all of its employees, contractors (and their sub-contractors) are made aware of, and are instructed to comply with, the conditions of this consent relevant to activities they carry out in respect of the development.

11. Operation of Plant and Equipment

All plant and equipment used on site, or to monitor the performance of the development must be:

- a) maintained in a proper and efficient condition; and
- b) operated in a proper and efficient manner.

12. Community Communication Strategy

No later than one month before the commencement of construction, a Community Communication Strategy must be prepared and submitted to the Planning Secretary for approval. The Community

Communication Strategy is to provide mechanisms to facilitate communication between the Applicant, the Council and the community (including adjoining affected landowners and businesses, and others directly impacted by the development), during the design and construction of the development. The Community Communication Strategy must:

- a) assign a central contact person to keep the nearby sensitive receivers regularly informed throughout the development;
- b) detail the mechanisms for regularly consulting with the local community throughout the development, such as holding regular meetings to inform the community of the progress of the development and report on environmental monitoring results;
- c) detail a procedure for consulting with nearby sensitive receivers to schedule high noise generating works, vibration intensive activities or manage traffic disruptions;
- d) include contact details for key community groups, relevant regulatory authorities, Registered Aboriginal Parties and other interested stakeholders; and
- e) include a complaints procedure for recording, responding to and managing complaints, including:
 - i. email, toll-free telephone number and postal addresses for receiving complaints;
 - ii. advertising the contact details for complaints before and during operation, via the local newspaper and through on-site signage;
 - iii. a complaints register to record the date, time and nature of the complaint, details of the complainant and any actions taken to address the complaint; and
 - iv. procedures for the resolution of any disputes that may arise during the course of the development.

Construction must not commence until the Community Communication Strategy has been approved by the Planning Secretary.

The approved Community Communication Strategy must be implemented for the duration of the development and for 12 months following the completion of operation.

13. Easements

Within [x] months after the date of this consent, an easement under section 88A and/or restriction or public positive covenant under section 88E of the Conveyancing Act 1919 naming the Council/Planning Secretary as the prescribed authority, which can only be revoked, varied or modified with the consent of the Council/Planning Secretary, and which provides for [xxx] must be registered on title of [insert Lot and DP].

14. External Walls and Cladding

The external walls of all buildings including additions to existing buildings must comply with the relevant requirements of the BCA.

Before the issue of a Construction Certificate and an Occupation Certificate, the Applicant must provide the Certifying Authority with documented evidence that the products and systems proposed for use or used in the construction of external walls, including finishes and claddings such as synthetic or aluminium composite panels, comply with the requirements of the BCA.

The Applicant must provide a copy of the documentation given to the Certifying Authority to the Planning Secretary within seven days after the Certifying Authority accepts it.

15. Environmental Representative

Works must not commence until an ER has been approved by the Planning Secretary and engaged by the Applicant.

The Planning Secretary's approval of an ER must be sought no later than one month before the commencement of works, or within another timeframe agreed with the Planning Secretary.

The proposed ER must be a suitably qualified and experienced person who was not involved in the preparation of the EIS or Response to Submissions, and is independent from the design and construction personnel for the development.

The Applicant may engage more than one ER for the development, in which case the functions to be exercised by an ER under the terms of this approval may be carried out by any ER that is approved by the Planning Secretary for the purposes of the development.

For the duration of the works until the commencement of operation / [x] months/years after the commencement of operation, or as agreed with the Planning Secretary, the approved ER must:

- a) receive and respond to communication from the Planning Secretary in relation to the environmental performance of the development;
- b) consider and inform the Planning Secretary on matters specified in the terms of this consent;
- c) consider and recommend to the Applicant any improvements that may be made to work practices to avoid or minimise adverse impact to the environment and to the community;
- d) review documents identified in Table [xx] and any other documents that are identified by the Planning Secretary, to ensure they are consistent with requirements in or under this consent and if so:
 - i. make a written statement to this effect before submission of such documents to the Planning Secretary (if those documents are required to be approved by the Planning Secretary); or

- ii. make a written statement to this effect before the implementation of such documents (if those documents are required to be submitted to the Planning Secretary/Department for information or are not required to be submitted to the Planning Secretary/Department);
- e) regularly monitor the implementation of the documents listed in Table [xx] to ensure implementation is being carried out in accordance with the document and the terms of this consent;
- f) as may be requested by the Planning Secretary, help plan, attend or undertake audits of the development commissioned by the Department including scoping audits, programming audits, briefings, and site visits, but not Independent Audits required under condition [x] of this consent;
- g) as may be requested by the Planning Secretary, assist the Department in the resolution of community complaints;
- h) assess the impacts of minor ancillary facilities comprising lunch sheds, office sheds and portable toilet facilities as required by condition [x] of this consent; and
- i) prepare and submit to the Planning Secretary and other relevant regulatory agencies, for information, an Environmental Representative Monthly Report providing the information set out in the Environmental Representative Protocol under the heading "Environmental Representative Monthly Reports." The Environmental Representative Monthly Report must be submitted within seven calendar days following the end of each month for the duration of the ER's engagement for the development, or as otherwise agreed with the Planning Secretary.

The Applicant must provide the ER with all documentation requested by the ER in order for the ER to perform their functions specified in condition [x] (including preparation of the ER monthly report), as well as:

- a) the complaints register (to be provided on a daily basis); and
- b) a copy of any assessment carried out by the Applicant of whether proposed work is consistent with the consent (which must be provided to the ER before the commencement of the subject work).

The Planning Secretary may at any time commission an audit of an ER's exercise of its functions under condition [x]. The Applicant must:

- a) facilitate and assist the Planning Secretary in any such audit; and
- b) make it a term of their engagement of an ER that the ER facilitate and assist the Planning Secretary in any such audit.

16. Applicability of Guidelines

References in the conditions of this consent to any guideline, protocol, Australian Standard or policy are to such guidelines, protocols, Standards or policies in the form they are in as at the date of this consent.

However, consistent with the conditions of this consent and without altering any limits or criteria in this consent, the Planning Secretary may, when issuing directions under this consent in respect of ongoing monitoring and management obligations, require compliance with an updated or revised version of such a guideline, protocol, Standard or policy, or a replacement of them.

Indicative

Environmental Management

1. Management Plan Requirements

Management plans required under this consent must be prepared in accordance with relevant guidelines, and include:

- a) detailed baseline data;
- b) details of:
 - i. the relevant statutory requirements (including any relevant approval, licence or lease conditions);
 - ii. any relevant limits or performance measures and criteria; and
 - iii. the specific performance indicators that are proposed to be used to judge the performance of, or guide the implementation of, the development or any management measures;
- c) a description of the measures to be implemented to comply with the relevant statutory requirements, limits, or performance measures and criteria;
- d) a program to monitor and report on the:
 - i. impacts and environmental performance of the development; and
 - ii. effectiveness of the management measures set out pursuant to paragraph (c) above;
- e) a contingency plan to manage any unpredicted impacts and their consequences and to ensure that ongoing impacts reduce to levels below relevant impact assessment criteria as quickly as possible;
- f) a program to investigate and implement ways to improve the environmental performance of the development over time;
- g) a protocol for managing and reporting any:
 - i. incident and any non-compliance (specifically including any exceedance of the impact assessment criteria and performance criteria);
 - ii. complaint;
 - iii. failure to comply with statutory requirements; and
- h) a protocol for periodic review of the plan.

Note: The Planning Secretary may waive some of these requirements if they are unnecessary or unwarranted for particular management plans.

2. Revision of Strategies, Plans and Programs

Within three months of:

- a) the submission of a Compliance Report under condition [x];
- b) the submission of an incident report under condition [x];
- c) the submission of an Independent Audit under condition [x];
- d) the approval of any modification to the conditions of this consent; or
- e) the issue of a direction of the Planning Secretary under condition [x] which requires a review,

the strategies, plans and programs required under this consent must be reviewed, and the Department must be notified in writing that a review is being carried out.

If necessary to either improve the environmental performance of the development, cater for a modification or comply with a direction, the strategies, plans and programs required under this consent must be revised to the satisfaction of the Planning Secretary. Where revisions are required, the revised document must be submitted to the Planning Secretary for approval within six weeks of the review.

Note: This is to ensure strategies, plans and programs are updated on a regular basis and to incorporate any recommended measures to improve the environmental performance of the development.

Reporting and Auditing

1. Incident Notification, Reporting and Response

The Department must be notified in writing to compliance@planning.nsw.gov.au immediately after the Applicant becomes aware of an incident. The notification must identify the development (including the development application number and the name of the development if it has one), and set out the location and nature of the incident.

Subsequent notification must be given and reports submitted in accordance with the requirements set out in Appendix [x].

APPENDIX [X] - WRITTEN INCIDENT NOTIFICATION AND REPORTING REQUIREMENTS

A written incident notification addressing the requirements set out below must be emailed to the Department at the following address, compliance@planning.nsw.gov.au, within seven days after the Applicant becomes aware of an incident. Notification is required to be given under this condition even if the Applicant fails to give the notification required under condition [x] or, having given such notification, subsequently forms the view that an incident has not occurred.

WRITTEN INCIDENT NOTIFICATION REQUIREMENTS

Written notification of an incident must:

- a) identify the development and application number;
- b) provide details of the incident (date, time, location, a brief description of what occurred and why it is classified as an incident);
- c) identify how the incident was detected;
- d) identify when the Applicant became aware of the incident;
- e) identify any actual or potential non-compliance with conditions of consent;
- f) describe what immediate steps were taken in relation to the incident;
- g) identify further action that will be taken in relation to the incident; and
- h) identify a project contact for further communication regarding the incident.

INCIDENT REPORT REQUIREMENTS

Within 30 days of the date on which the incident occurred, or as otherwise agreed to by the Planning Secretary, the Applicant must provide the Planning Secretary and any relevant public authorities (as determined by the Planning Secretary) with a detailed report on the incident addressing all requirements below, and such further reports as may be requested.

The Incident Report must include:

- a) a summary of the incident;
- b) outcomes of an incident investigation, including identification of the cause of the incident;
- c) details of the corrective and preventative actions that have been, or will be, implemented to address the incident and prevent recurrence;
- d) details of any communication with other stakeholders regarding the incident.

2. Non-Compliance Notification

The Department must be notified in writing to compliance@planning.nsw.gov.au within seven days after the Applicant becomes aware of any non-compliance.

The notification must identify the development and the application number for it, set out the condition of consent that the development is non-compliant with, the way in which it does not comply and the reasons for the non-compliance (if known) and what actions have been, or will be, undertaken to address the non-compliance.

A non-compliance which has been notified as an incident does not need to also be notified as a non-compliance.

3. Compliance Reporting

No later than 6 weeks before the date notified for the commencement of [construction/operation], a Compliance Monitoring and Reporting Program prepared in accordance with the Compliance Reporting Post Approval Requirements (Department 2018) must be submitted to the Department.

Compliance Reports of the project must be carried out in accordance with the Compliance Reporting Post Approval Requirements (Department 2018).

The Applicant must make each Compliance Report publicly available no later than 60 days after submitting it to the Department and notify the Department in writing at least 7 days before this is done.

4. Independent Audit

No later than 4 weeks before the date notified for the commencement of [construction/operation], an Independent Audit Program prepared in accordance with the Independent Audit Post Approval Requirements (Department 2018) must be submitted to the Department.

Independent Audits of the development must be carried out in accordance with:

- a) the Independent Audit Program submitted to the Department under condition [x] of this consent; and

- b) the requirements for an Independent Audit Methodology and Independent Audit Report in the Independent Audit Post Approval Requirements (Department 2018).

In accordance with the specific requirements in the Independent Audit Post Approval Requirements (Department 2018), the Applicant must:

- a) review and respond to each Independent Audit Report prepared under condition [x] of this consent;
- b) submit the response to the Department; and
- c) make each Independent Audit Report and response to it publicly available no later than 60 days after submission to the Department and notify the Department in writing at least 7 days before this is done.

5. Monitoring and Environmental Audits

Any condition of this consent that requires the carrying out of monitoring or an environmental audit, whether directly or by way of a plan, strategy or program, is taken to be a condition requiring monitoring or an environmental audit under Division 9.4 of Part 9 of the EP&A Act. This includes conditions in respect of incident notification, reporting and response, non-compliance notification, compliance reporting and independent auditing.

Note: For the purposes of this condition, as set out in the EP&A Act, “monitoring” is monitoring of the development to provide data on compliance with the consent or on the environmental impact of the development, and an “environmental audit” is a periodic or particular documented evaluation of the development to provide information on compliance with the consent or the environmental management or impact of the development.

6. Access to Information

At least 48 hours before the commencement of construction until the completion of all works under this consent, including rehabilitation and remediation, the Applicant must:

- a) make the following information and documents (as they are obtained or approved) publicly available on its website:
 - i. the documents referred to in condition [x] of this consent;
 - ii. all current statutory approvals for the development;
 - iii. all approved strategies, plans and programs required under the conditions of this consent;
 - iv. the proposed staging plans for the development if the construction, operation or decommissioning of the development is to be staged;
 - v. minutes of CCC meetings;

- vi. regular reporting on the environmental performance of the development in accordance with the reporting requirements in any plans or programs approved under the conditions of this consent;
 - vii. a comprehensive summary of the monitoring results of the development, reported in accordance with the specifications in any conditions of this consent, or any approved plans and programs;
 - viii. a summary of the current stage and progress of the development;
 - ix. contact details to enquire about the development or to make a complaint;
 - x. a complaints register, updated monthly;
 - xi. the Compliance Reports of the development;
 - xii. audit reports prepared as part of any Independent Audit of the development and the Applicant's response to the recommendations in any audit report;
 - xiii. any other matter required by the Planning Secretary; and
- b) keep such information up to date, to the satisfaction of the Planning Secretary.