

Assessment of impacts under section 4.15 of the EP&A Act

Purpose

This practice note provides general guidance on the application of section 4.15 of the *Environmental Planning & Assessment Act 1979* (EP&A Act) and specific guidance on the significant likely impacts component of the provision.

Section 4.15 of the EP&A Act sets out the matters a consent authority must consider in determining a Development Application (DA), where relevant. Consent authorities are required to consider these matters in the context of the development as a whole, ensuring that decisions are balanced and consistent with the objects of the Act. This practice note provides practical guidance on applying these requirements when preparing, assessing and determining a DA.

Recent changes to the EP&A Act have clarified the scope of assessment under section 4.15. Consent authorities can now focus their consideration on significant likely impacts, reducing unnecessary consideration of minor or irrelevant matters. A summary of the key changes introduced through the reforms is provided in Appendix A.

The interpretation of section 4.15 is likely to evolve as it is tested and considered by the courts. Applicants, consent authorities and members of the community are encouraged to seek legal or planning advice to understand how caselaw may affect specific projects, noting that advice may vary on a case-by-case basis.

Proportionality in assessment

The EP&A Act includes an object to promote a proportionate and risk-based approach to environmental planning and assessment. This principle underpins the risk-based pathways established under the EP&A Act, including exempt and complying development, and the targeted assessment pathway. But it also guides consent authorities to assess the impacts of individual DAs in a proportionate manner.

Proportionality promotes efficient decision-making and directs resources to what truly matters.

It enables the planning system to deliver decisions that are balanced, efficient and transparent, whilst ensuring that the level of assessment is commensurate to the nature and risk of each proposal.

Proportionality as standard practice

Proportionality reflects the widely accepted approach to risk management, where the level of scrutiny aligns with the level of risk. The risk matrix below illustrates this principle by combining the potential impact of an activity with the likelihood of it occurring, showing where assessment effort should be concentrated.

In practice, lower-risk impacts are given less consideration and weight, while higher-risk impacts receive more detailed consideration and, where appropriate, conditions to manage risks.

		Impact				
		Very low	Low	Moderate	High	Very high
Likelihood	Very high	Moderate	High	High	Very high	Very high
	High	Low	Moderate	High	High	Very high
	Moderate	Low	Low	Moderate	High	High
	Low	Very low	Low	Low	Moderate	High
	Very low	Very low	Very low	Low	Low	Moderate

Figure 1: Risk matrix

Section 4.15: General requirements

Section 4.15 of the EP&A Act sets out the matters a consent authority must consider when determining a DA, where relevant. These include:

- **Planning instruments and agreements:** Environmental planning instruments, development control plans, planning agreements (including drafts), relevant regulations, and any proposed instruments notified to the consent authority (section 4.15(1)(a)(ii)),
- **Significant likely impacts of the development:** Environmental, social, and economic impacts in the locality (section 4.15(1)(b)),
- **Suitability of the site:** Whether the site can accommodate the development safely and appropriately (section 4.15(1)(c)),

- **Public submissions:** Issues raised by the community (section 4.15(1)(d)),
- **Public interest:** Broader considerations that affect the community and statutory objectives (section 4.15(1)(e)).

There is no hierarchy of considerations for the purposes of s 4.15 of the EP&A Act. The weight to be given to each matter is for the consent authority to determine, having regard to the circumstances of the case. In exercising its discretion, the consent authority must balance multiple, and sometimes competing, factors in reaching a reasoned and proportionate decision.

These considerations are also not an exhaustive list of what can be considered when assessing a DA. Other matters may be considered if they are relevant to the DA and help advance the objects of the EP&A Act.

‘Significant likely impacts’

Meaning of significant

Section 4.15(1)(b) requires consent authorities to consider significant likely impacts when assessing development applications.

The EP&A Act does not define the term “significant”, so its meaning has been shaped by court decisions in NSW planning law as well as the ordinary meaning of the word. The following principles provide a useful starting point for understanding whether there is a significant likely impact that must be assessed:

- to be significant an impact must be “important”, “notable”, “weighty” or “more than ordinary”.
- mitigation measures proposed as part of the development should be taken into account when considering whether a likely impact is significant.
- significance varies with the context or setting of the proposed development. Significance will usually depend on the effects on the site itself and on the broader geographical area in which it is located.
- The more remote an impact, the less significant it is likely to be.

In the absence of any legislative definition, the interpretation of “significant” may evolve over time as the courts consider its application. Applicants, consent authorities and community members are encouraged to seek legal advice to understand how emerging case law may influence the interpretation in the context of their proposal.

This practice note will be updated periodically to reflect judicial interpretation as it develops, ensuring that guidance remains current and aligned with evolving case law.

Meaning of likely

For an impact to be “likely” there must be a real chance or possibility of the impact occurring, but it does not have to be “more probable than not”.

The term is to be understood in its ordinary sense, informed by judicial consideration across a range of statutory contexts. It helps distinguish impacts that are genuinely possible from those that are remote or speculative.

Non-significant impacts

While section 4.15 requires consent authorities to consider significant likely impacts, it does not prevent them from considering impacts that are less than significant, where relevant. The discretion rests with the consent authority to determine whether such impacts warrant consideration in the context of the proposal.

In exercising this discretion, consent authorities should adopt the principle of proportionality, applying a risk-based approach to ensure that the level of assessment is commensurate with the consequence and likelihood of the impact.

Practical application

In applying section 4.15(1)(b), the following principles should guide the preparation, assessment, and determination of a DA:

- The scoping or pre-lodgement process should focus assessment on the issues that matter, supporting a proportionate and risk-based approach.
- Applicants should ensure DA documentation clearly identifies and addresses any significant likely impacts, including proposed mitigation measures.
- Public submissions should be considered with a focus on whether the issues raised relate to impacts that are both likely and significant.
- Requests for further information should target uncertainties about significant likely impacts, rather than seeking detail on minor or immaterial issues.
- Assessment reports should focus on significant likely impacts when considering s4.15(1)(b).
- Non-significant impacts should generally not form the basis for refusal of a DA.

- Conditions of consent may be imposed under section 4.17 to manage likely impacts, even if they are not significant (see next section).

Imposition of conditions

Section 4.17(1)(a1) of the EP&A Act allows a consent authority to impose conditions where they relate to a likely impact of the development. This ensures that likely impacts can be managed, even if they are not significant.

Importantly, it allows conditions to be imposed proactively to prevent manageable impacts from escalating – for example, setting noise limits so that a minor issue does not become significant.

Regulation-making power – relevant and irrelevant factors

Section 4.15 includes sub-sections (1A)-(1B), which enable the *Environmental Planning and Assessment Regulation 2021* (Regulations) to clarify how consent authorities should consider certain matters. These provisions apply to:

- Section 4.15(1)(b) - the significant likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- Section 4.15(1)(c) – the suitability of the site for the development and
- Section 4.15(1)(e) – the public interest.

This framework provides certainty by allowing regulations to specify which factors are relevant or not relevant to the assessment of a DA. It ensures consent authorities concentrate on the most important issues. It also supports a proportionate, risk-based approach by clarifying the limits of mandatory considerations under section 4.15.

Table 1: Sub-sections (1A)-(1B)

Provision	Explanation
Section 4.15(1A)	Establishes a regulation-making power to declare factors that are relevant and not relevant to the development being assessed, requiring consent authorities to focus on significant issues.

Provision	Explanation
Section 4.15(1B)	Precludes consent authorities from considering factors declared as not relevant under section 4.15(1A)(b) in their assessment of a DA, reducing unnecessary delays and disputes and providing certainty for applicants.

Section 65A of the *EP&A Regulation*: impacts of “other development”

Section 65A is a regulation made under section 4.15(1A)(b). It declares that the significant likely impacts of “other development” for which consent is not sought in the DA are not relevant matters for consideration, when assessing the significant likely impacts of a development under section 4.15(1)(b).

“Other development” is defined as development that is likely to be, or will be, required as a result of the development that is the subject of the DA, but is not included in the current DA.

In practice, this means consent authorities are precluded from assessing off-site or enabling works that are not part of the DA, as they can be assessed through another assessment pathway under the EP&A Act.

Examples of other development could include:

- A bridge required to access a proposed school, where the bridge is not included in the DA for the proposed school.
- A transmission line needed to power a mine or renewable energy project, where the transmission line is not included in the DA as it is to be assessed under Part 5 of the EP&A Act.
- A stormwater detention basin located on public land, required to service a residential subdivision but not included in the subdivision DA.
- A water pumping station or reservoir required to service a large residential estate, delivered by a water utility under a separate approval.
- Upgrades to a regional wastewater treatment plant required for an industrial precinct, but not included in the DA.
- A substation upgrade or high-voltage connection, needed for a manufacturing facility, but not included in the DA.

- New fibre optic cabling or a mobile tower installation, which is not part of the DA and subject to separate telecommunications approvals.

This provision does not prevent a consent authority from:

- Imposing a deferred commencement or other condition requiring approvals to be obtained or enabling works to be completed before the consent is operational or construction works commence. This may be appropriate if the works are essential to the orderly development of land, safety or other important considerations.
- Considering the impacts of other development if relevant under other heads of consideration in section 4.15, such as the provisions of an Environmental Planning Instrument. For example, the impact of scope 3 emissions from other development may still be relevant to consider as an aspect of the public interest or specifically required under *State Environmental Planning Policy (Resources and Energy) 2021* for certain development types.

State Significant Development

The current section 4.38 of the EP&A Act allows the Planning Secretary to determine what constitutes the “single proposed development” that is State Significant development. This provides flexibility to include or exclude certain infrastructure from the SSD application, recognising that such infrastructure may be subject to separate assessment processes.

The consent authority must not consider the significant likely impacts of “other development” the purposes of section 4.15(1)(b) of the EP&A Act.

Further information

If you have any questions or require further information about this practice note, please contact planningsystemreform@dphi.nsw.gov.au.

Appendix A: Reforms to Section 4.15 (2025)

The 2025 reforms to section 4.15 of the EP&A Act aim to clarify what must be considered in the development assessment process, streamline decision-making and embed a proportionate, risk-based approach to planning. Further detail about the reforms is available on the Department's website.

A summary of key provisions is provided below.

Provision	What it does	Why it matters
Section 4.15	Inserts “significant” before “likely” in section 4.15(1)(b), narrowing the scope of impacts to be considered	Focuses assessment on impacts that are both likely and significant
Section 4.15(1A)	Allows regulations to declare what factors are and are not relevant for the purposes of s 4.15(1)(b), (c) or (e)	Focuses assessment on meaningful issues
Section 4.15(1B)	Requires consent authorities to exclude consideration of factors declared “not relevant”	Reduces delays and disputes
Section 4.17(1)(a1)	Allows the consent authority to impose conditions that relate to a likely impact of the development	Makes sure that likely impacts can still be managed through conditions, even if they are not significant
Section 65A of the EP&A Regulation	Excludes impacts from “other development” not included in the DA for the purposes of s 4.15(1)(b)	Clarifies the scope of assessment
Section 4.38(4A)	Allows the Planning Secretary to determine what is included or excluded from the “single proposed development” for SSD	Provides certainty in relation to the relevant planning pathway for complex projects