



Planning &
Environment

Secretary's Assessment Requirements

*For integrated
development*

February 2019

January 2019
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SECRETARY'S ASSESSMENT REQUIREMENTS

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Introduction

Purpose of this document

Local councils assess and determine most local development proposals in NSW under the *Environmental Planning & Assessment Act 1979* (EP&A Act). Local development includes new dwellings, commercial, retail and industrial developments.

Some local development applications require approval from another NSW government agency before a determination can be made by a local council **and are facilitated through a statutory process known as integrated development. NSW government agencies participating in this process are called approval bodies.**

Integrated Development is development that, in order for it to be carried out, requires development consent and one or more approvals from an approval. This framework links development consents granted under the EP&A Act with any associated approval, licence, consent, permission or permit required under other legislation.

This document is the assessment requirements prescribed by the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) as the State Assessment Requirements (SARs) for the purposes of section 4.47(4A)(b) of the EP&A Act. It sets out the matters the Secretary of the Department should consider when acting on behalf of an approval body under section 4.47(4A) of the EP&A Act to:

- advise the council of whether it would grant the approval sought and the general terms of its approval; or
- resolve inconsistencies that have been identified by a council in the general terms of approval.

At this stage, the SARs only apply to local development for which a council is the consent authority. They do not apply to local development for which the Minister for Planning is the consent authority.

Structure

Part 1	Part 1 explains the Secretary's step-in powers generally. It includes information about the legislative framework and sets out the circumstances in which the Secretary can step in for integrated development.
Part 2	Part 2 is the technical and assessment requirements for each approval that triggers the integrated development framework.
Part 3	Part 3 are the Guidance Principles that serve as heads of consideration for the Secretary if she exercises the power to resolve an inconsistency between two or more approval body who intend to issue conflicting GTAs (i.e. advice that cannot be implemented together as they are contradictory).
Part 4	Part 4 is a glossary that contains technical and other terms used in this document.

Part 1 – Secretary’s step-in powers for integrated development

Integrated development

Integrated development is development that requires development consent and one or more approvals of the following approvals in order to be carried out (see Table 1 below). Complying development and State significant development are excluded from the integrated development pathway (see section 4.46 of the EP&A Act).

Table 1

Act	Provision	Approval
<i>Coal Mine Subsidence Compensation Act 2017</i>	s 22	approval to alter or erect improvements, or to subdivide land, within a mine subsidence district
<i>Fisheries Management Act 1994</i>	s 144	aquaculture permit
	s 201	permit to carry out dredging or reclamation work
	s 205	permit to cut, remove, damage or destroy marine vegetation on public water land or an aquaculture lease, or on the foreshore of any such land or lease
	s 219	permit to set a net, netting or other material, or construct or alter a dam, floodgate, causeway or weir, or otherwise create an obstruction, across or within a bay, inlet, river or creek, or across or around a flat.
<i>Heritage Act 1977</i>	s 58	approval in respect of the doing or carrying out of an act, matter or thing referred to in s 57 (1)
<i>Mining Act 1992</i>	ss 63, 64	grant of mining lease
<i>National Parks and Wildlife Act 1974</i>	s 90	grant of Aboriginal heritage impact permit
<i>Petroleum (Onshore) Act 1991</i>	s 16	grant of production lease Note: The grant of a production lease is State Significant Development under the State Environmental Planning Policy (State and Regional Development) 2011. As a result, it is not integrated development and the need for the Secretary to step in does not arise.
<i>Protection of the Environment Operations Act 1997</i>	ss 43 (a), 47 and 55	Environment protection licence to authorise carrying out of scheduled development work at any premises.
	ss 43 (b), 48 and 55	Environment protection licence to authorise carrying out of scheduled activities at any premises (excluding any activity described as a “waste activity” but including any activity described as a “waste facility”).
	ss 43 (d), 55 and 122	Environment protection licences to control carrying out of non-scheduled activities for the purposes of regulating water pollution resulting from the activity.

Act	Provision	Approval
<i>Roads Act 1993</i>	s 138	consent to: erect a structure or carry out a work in, on or over a public road, dig up or disturb the surface of a public road, remove or interfere with a structure, work or tree on a public road, pump water into a public road from any land adjoining the road, or connect a road (whether public or private) to a classified road.
<i>Rural Fires Act 1997</i>	s 100B	authorisation under section 100B in respect of bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes
<i>Water Management Act 2000</i>	ss 89, 90, 91	water use approval, water management work approval or activity approval under Part 3 of Chapter 3

Process

When a council receives a development application for integrated development, the council must refer the application and any associated fee to the approval body and seek their general terms of approval (**GTA**).

GTAs are an in-principle approval from the approval body under a specific piece of legislation and the terms and conditions upon which that approval would be granted. They must be incorporated into any consent that is granted under the EP&A Act.

If an approval body recommends refusal by not giving GTAs, the council must refuse a development application (**DA**). However, if advice is not received within 40 days of the application being forwarded to the approval body or, if advertised, 21 days from when the public submissions are forwarded to the approval body (or another timeframe if additional information has been requested) the council may determine the development application without the advice from the relevant approval body.

Who is an approval body?

An approval body is the NSW government agency authorised to grant the approval under one of the other Acts listed in section 4.46 of the EP&A Act (see Table 1 above).

Secretary's role in these applications

The Secretary now has power under the EP&A Act to act in place of an approval body to prevent delays in the assessment of a DA where:

- an approval body has failed to inform the council whether or not it would grant the approval and the terms on which it would grant its approval, in the timeframes specified in the EP&A Act on the EP&A Regulation; or
- there is an inconsistency that has been identified by the council in the GTAs of 2 or more approval bodies, which would mean that the GTAs of an approval body could not be met without breaching the GTAs of another approval body.

Why is this necessary?

Delays can sometimes occur in the integrated development framework. To prevent this, the Secretary can now step in to act in place of an approval body to:

- advise the council of whether it would grant the approval sought and the general terms of its approval; and
- resolve inconsistencies that have been identified by a council in the GTAs.

Are there constraints on when the Secretary can step in?

Yes, the Secretary can only step in when there has been non-compliance with the statutory timeframes or there is an inconsistency that has been identified by the consent authority in the GTAs of 2 or more approval bodies.

An integrated DA is taken to be refused if the consent authority has not determined the application within 60 days. The general principles for stepping in include:

- Approval bodies should retain primary responsibility for issuing GTAs.
- The Secretary should only step after the parties have made a genuine attempt to resolve the issues.
- Where possible, the Secretary should possible rely on the advice of approval bodies to inform the decision-making.

Considerations

Determining whether to grant an approval and the terms on which it should be granted

Where the Secretary exercises the power under section 4.47(4A) of the EP&A Act to act on behalf of an approval body for the purposes of informing a council of whether or not it would grant the approval sought, and the terms upon which that approval should be granted, the Secretary must take into consideration the assessment requirements specified for each approval in Part 2 of this document. This sets out the steps that the Secretary must follow when acting in place of an approval body. A summary of these requirements is set out in Table 2 below.

Table 2

Stage 1 - Identifying the approval

The Secretary should consider the basis upon which an approval is required. As part of this, the Secretary should go through the following steps:

- *Step 1 - review the consent authority's letter and any material that was provided to the approval body and identify the approval that is sought;*
- *Step 2 – identify who the approval body is and consider their role under the relevant legislation.*

Stage 2 - Obtaining the information needed for the assessment

The Secretary should determine what information is required to make the decision. As part of this, the Secretary should go through the following steps:

- *Step 3 - look at the relevant legislation and identify the general legislative requirements;*
- *Step 4 - determine what information is required, including key policies, publications and guidelines;*
- *Step 5 - compare the information that has been provided against the information generally required and then determine whether it is possible to make the decision in the circumstances. If not, the Secretary should consider whether additional information should be obtained from the applicant.*

Stage 3 - Making the decision

The Secretary must follow the process that the approval body generally follows when making the decision. As part of this the Secretary should go through the following step:

- *Step 6 - consider the information available together with any relevant policies and guidelines and determine whether to grant an approval.*

Stage 4 - Giving general terms of approval

The following steps apply:

- *Step 7 - once the Secretary has considered all of the information provided and any relevant policies and guidelines under Step 6, the Secretary must decide whether to grant the approval sought, or whether it should be refused.*
- *Step 8 – where the Secretary determines to grant the approval, the Secretary must consider whether to grant it unconditionally or subject to conditions. If a conditional approval is to be granted, what should those conditions be.*

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Part 2 – Technical assessment requirements

Coal Mine Subsidence Compensation Act 2017

Step	Requirement	Explanation	Considerations	Additional information
Stage 1 - Identifying the approval				
1.	What approval is required?	<p>General Terms of Approval in accordance with s.4.47 of the EP&A Act in respect to alter or erect improvements, or to subdivide land, within a mine subsidence district.</p> <p>An approval is required under section 22 of the <i>Coal Mine Subsidence Compensation Act 2017</i> (Subsidence Act) from the Chief Executive of Subsidence Advisory NSW (SA NSW) to build (alter or erect improvement) or to subdivide land in a mine subsidence district.</p> <p>Mine subsidence is the movement of the ground following the extraction of coal. After coal is extracted beneath the surface, the land above can sink. Subsidence can cause damage to buildings and other structures.</p>	Not applicable.	Mine subsidence districts are proclaimed in areas where there are potential subsidence risks from underground coal mining that has occurred or may take place in the future. Mine subsidence districts are viewable on the NSW Planning Portal.
2.	Who is the approval body and what is their role?	SA NSW is responsible for regulating surface development (building and subdivision works) within mine subsidence districts to ensure new homes and structures are built to an appropriate standard that reduces the risk of damage should subsidence occur.	Not applicable.	Not applicable.

Stage 2 - Obtaining the information needed for the assessment

Coal Mine Subsidence Compensation Act 2017

Step	Requirement	Explanation	Considerations	Additional information
3.	What are the general legislative requirements?	<p>The relevant legislative requirements can be found in sections 21, 22, 24 and 25 of the Subsidence Act.</p> <p>Section 21 of the Subsidence Act prohibits a person from carrying out work or subdividing land in a mine subsidence district without a relevant approval from the Chief Executive.</p> <p>While an approval is required to alter or erect an improvement, or subdivide land, within a mine subsidence district, certain works commonly referred to as “deemed approval” can be undertaken under section 24 without the need for an approval.</p> <p>The regulations can also exempt works from the need for an approval (section 25).</p>	<p><u>Question 1</u> Is the proposed development one that needs approval from SA NSW? I.e. alteration, erection, improvement, subdivision? Prospective outcome depending upon answer If answer is:</p> <ul style="list-style-type: none"> • yes, go to question 2; or • no, nothing further is required under section 22. The Secretary is not required to make any decision. <p><u>Question 2</u> Is the proposal work to be undertaken in a mine subsidence district? See additional information section in Step 1 for more information on these districts. Prospective outcome depending upon answer If answer is:</p> <ul style="list-style-type: none"> • yes, go to question 3; or • no, nothing further is required under section 22. The Secretary is not required to make any decision. <p><u>Question 3</u> Is the proposed development on the deemed approval list? See additional information section in this step. Prospective outcome depending upon answer If answer is:</p>	<p><u>Deemed approvals</u> SA NSW has made the following exemption order under section 24 and prepared a deemed approvals list which sets out the types of development that do not require an SA NSW approval under section 22.</p> <p><u>Exemption under the Regulation</u> No development is currently exempt from the requirement to hold an approval under the regulation. Approval is required.</p>

Coal Mine Subsidence Compensation Act 2017

Step	Requirement	Explanation	Considerations	Additional information
			<ul style="list-style-type: none"> • yes, nothing further is required under section 22. The Secretary is not required to make any decision. • no, go to question 4. <p><u>Question 4</u> Does an exemption apply. See additional information section for more information. Prospective outcome depending upon answer No works are exempt under the Regulation. Go to Step 4.</p>	
4.	What information does the approval body usually require, including key policies, publications and guidelines?	<p>If an approval is required from SA NSW, there are two types of approval pathways are available:</p> <ol style="list-style-type: none"> 1. fast track assessment; and 2. merit assessment. <p>The relevant pathway for a project is determined by the guideline that applies to the development proposal. SA NSW has prepared surface development guidelines which specify what is permitted, in which areas and who can assess those proposals.</p> <p>The relevant assessment pathway that applies for:</p> <ol style="list-style-type: none"> 1. Surface Development Guidelines 2, 3, 5, 6 or 8 is the 5-day fast-track assessment. If a proposal meets the requirements specified in these guidelines, the proposal does not need to be referred to SA NSW and can be approved by either the local council or a private certifier. 2. Where a development falls under guidelines 1, 4 or 7, involves subdivision, or 	<p><u>Question 1</u> Is this an application that was subject to a notice issued by the Chief Executive of SA NSW in accordance with section 22(2) of the Subsidence Act? Prospective outcome depending upon answer If the answer is:</p> <ol style="list-style-type: none"> 1. yes, consider the notice sent by SA NSW and determine whether the applicant has provided the necessary information. 2. no, go to question 2. <p><u>Question 2</u> Has the applicant provided all the information that is generally required for the specific application? See additional information section for more information. Prospective outcome depending upon answer: If answer is:</p> <ul style="list-style-type: none"> • yes, go to question 3; or 	<p><u>Applications – all development not including subdivision</u> Sufficient information is required to enable the decision maker to assess the proposal and minimise risk in the event of mine subsidence.</p> <p>For merit assessment applications not including subdivision, see clause 3.1 of the <u>SA NSW Development Application - Merit Assessment Policy</u> for the information that should be provided in support of an application. Generally, the following information is required:</p> <ul style="list-style-type: none"> • relevant property details, including the lot or portion, deposited plan, section number (if applicable), house number, street, suburb or town; • location plans that clearly identifies the building site in relation to mining; • preliminary design drawings that show the extent of work; and

Coal Mine Subsidence Compensation Act 2017

Step	Requirement	Explanation	Considerations	Additional information
		<p>does not meet the requirements specified in guidelines for 2, 3, 5, 6 or 8 then a full merit assessment is required information about the cost of the proposed changes.</p> <p><u>Chief Executive has the power to request specific information</u> Under section 22(2), the Chief Executive has to power to require certain information in a notice sent to the applicant.</p> <p><u>Advertised applications</u> Certain applications must be advertised by the Heritage Council in a State-wide daily newspaper if it believes that allowing the proposed activity would materially affect the significance of an item or place (section 61).</p>	<ul style="list-style-type: none"> no, go to Step 5 to seek additional information from an applicant. <p><u>Question 3</u> Is that information sufficient enough to enable the Secretary to clearly undertake the impacts of the proposal on fish populations, aquatic habitats, aquatic threatened species, commercial and recreational fishing and aquaculture industries (both directly and indirectly)?</p> <p>Prospective outcome depending upon answer</p> <p>If answer is:</p> <ol style="list-style-type: none"> yes, go to Step 6; or no, go to Step 5 and seek additional information from an applicant. 	<ul style="list-style-type: none"> general description of the extent of the work. <p>The following additional information must be provided if a full merit assessment is required:</p> <ul style="list-style-type: none"> geotechnical desktop study (assessing the risk of mine subsidence & recommended design parameters), geotechnical site investigation (including boreholes - depending on the outcome of the desktop study), and building Impact Statement. <p><u>Subdivision Application</u> In addition to the above requirements, subdivision applications should include details plans of the proposed subdivision layout including the proposed dimensions and layout and area extent of each lot. The proposed street names and details of whether the proposal is part of a larger staged subdivision are also relevant.</p> <p><u>Guidelines</u></p> <ol style="list-style-type: none"> The type of guideline that is applied depends on subsidence hazards at the property. Each guideline includes restrictions on building footprints, height, foundation type, superstructure material and occupation density. SA NSW surface development guidelines are available on the planning portal.

Coal Mine Subsidence Compensation Act 2017

Step	Requirement	Explanation	Considerations	Additional information
5.	Is further information required?	The Secretary has the power under the EP&A Regulation to request additional information.	<p>Question Do you have all the information required to make the decision?</p> <p>Prospective outcome depending upon answer: If answer is:</p> <ul style="list-style-type: none"> • yes, go to Step 6; or • no, seek additional information from an applicant following the process specified 70AB of the EP&A Regulation. 	The Secretary must consider the information available before and determine whether there is sufficient information available to make the decision. Refer to step 4 for more information regarding what may be required.

Stage 3 - Making the decision

6.	What should the decision maker consider including any relevant policies or guidelines that should be followed.	<p>The power under section 22 is a discretionary power, which means that the decision-maker can exercise it if, it is suitable in the given situation having regard to any specified statutory requirements, and also taking into account the objects of the Subsidence Act, and its overall framework.</p> <p>While there are no specific statutory requirements in the Subsidence Act, SA NSW has developed the following policies:</p> <ol style="list-style-type: none"> 1. SA NSW Development Application – Merit Assessment Policy 2. SA NSW Subdivision Assessment Policy <p>Both policies provide a framework for the assessment and determination of applications within mine subsidence districts that require merit assessment, i.e. they do not comply with the relevant SA NSW development guideline assigned to the property.</p>	<p>Question 1 What are the objects of the Subsidence Act?</p> <p>Prospective outcome depending upon answer The following objects should be considered when assessing any application:</p> <p><i>The object of the Subsidence Act is to provide for a fair, efficient and sustainable compensation framework for dealing with the impacts of coal mine subsidence, and in particular to provide the assessment and management of risks associated with subsidence resulting from coal mine operations.</i></p> <p>Question 2 Is the proposed development proposed in an area with a current mining title? See additional information section for more</p>	<p>Area proposed The guideline assigned to a property includes information about whether the property is located above existing mine workings and/or within a current mining title. Applicants can find the SA NSW guideline assigned to a property through the NSW Planning Portal. Full copies of SA NSW's eight development guidelines are available at www.subsidenceadvisory.nsw.gov.au/development-guidelines</p> <p>Mining title areas <u>Development applications not including subdivision</u> Where an application is proposed in an area with a current mining title, the decision maker must assess the application following the process set out in clause 4.2 of the SA NSW Development</p>
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Coal Mine Subsidence Compensation Act 2017

Step	Requirement	Explanation	Considerations	Additional information
		<p><u>Considerations</u> <i>Development other than subdivision</i> For development applications that require a merit assessment, the considerations for the assessment process vary depending on whether it is in an area affected by operational, historical or future mining (i.e. whether the property is in an operational (active) or non-active mining area), and the type, size, potential repair cost of the proposed development. The decision maker should consider:</p> <ul style="list-style-type: none"> • the likelihood that mine subsidence events will occur • consequence of mine subsidence events on surface infrastructure and public safety • reliability of information used to determine the above, including mine plans, assumed pillar and extraction dimensions, and assumptions regarding geotechnical modelling • risks arising from the proposed engineering controls. <p><u>Subdivision</u> The assessment process and required supporting documents will vary depending on things like the size and nature of the proposed subdivision and associated surface development, whether it is in an area of non-active, active or future underground mining, the depth of the mine workings beneath the site, the nature of the mine workings including condition, extraction height and percentage of extraction, any history of subsidence at the site and the geotechnical characteristics of the site. The decision maker should also consider the following:</p> <ul style="list-style-type: none"> • Subsidence risk sources (hazards) and potential events • Likelihood of mine subsidence • Consequences of mine subsidence 	<p>information re considerations and assessment for development not including subdivision and also for subdivision applications.</p> <p><u>Question 2</u> What is the likelihood of a subsidence event occurring? Prospective outcome depending upon answer Section 22(7) of the Subsidence Act gives SA NSW the power to refuse to grant an approval if the decision maker believes the land may subside if the coal in the land were extracted via underground methods.</p> <p><u>Question 3</u> What are the risks arising from any proposed controls?</p> <p><u>Question 4</u> What do the relevant guidelines and policies say about this type of proposal?</p>	<p><u>Application – Merit Assessment Policy.</u> This includes consultation with the relevant mine operator or the Division of Resources and Geoscience.</p> <p><u>Subdivision</u> Where an application is proposed in an area with a current mining title, the decision maker must assess the application following the process set out in clause 4.2 of the SA NSW Subdivision application assessment policy. This includes consultation with the relevant mine operator or the Division of Resources and Geoscience.</p> <p><u>Mine workings outside a current title area Development applications not including subdivision</u> Where an application is proposed in a district which covers mine workings outside a current mining title, the decision maker must assess the application following the process set out in clause 4.3 of the SA NSW Development Application – Merit Assessment Policy. This includes guidance on assessing subsidence risk and the types of engineering controls that may be applied based on geotechnical uncertainty (see Attachment B in the Policy).</p> <p><u>Subdivision</u> Where an application is proposed in an area with a current mining title, the decision maker must assess the application following the process set out in</p>

Coal Mine Subsidence Compensation Act 2017

Step	Requirement	Explanation	Considerations	Additional information
		<ul style="list-style-type: none"> The certainty with which hazards, likelihood and consequences are known Ways to communicate and control the risk and associated costs. <p>Other relevant policies and/or guidelines http://www.subsidenceadvisory.nsw.gov.au/development-guidelines</p>		<p>clause 4.3 of the SA NSW Subdivision application assessment policy.</p> <p>Procedure to be followed when assessing the likelihood of an event occurring and the risks arising from controls</p> <p>See attachment C of both the SA NSW Development Application – Merit Assessment Policy and the SA NSW Subdivision application assessment policy for the procedure used by SA NSW Risk Engineers to assess surface development on merit or for the purposes of subdivision.</p>
Stage 4 - Giving general terms of approval				
7	What are relevant statutory considerations?	<p>The relevant statutory considerations can be found in sections 22(1), (3), (7) & (9).</p> <p>An approval can be granted under section 22, unconditionally or subject to conditions. It may also be refused.</p> <p>The power to refuse to grant an approval can only be exercised if the decision maker believes the proposal will occur on land that may subside if the coal in the land were extracted by underground methods. It can also be refused if it would not get approval under the EP&A Act (section 22(9)).</p>	<p>Following Steps 3 – 6, the Secretary must decide whether to grant or refuse the approval after reviewing and assessing the available information, and after taking into account the objects of the Subsidence Act and the overall framework. See additional information for situations in which an application should be refused.</p> <p>Prospective outcome depending upon answer</p> <p>If the Secretary decides to:</p> <ol style="list-style-type: none"> grant the approval, go to Step 8. refuse the approval, the Secretary must notify the consent authority and follow the process set out the EP&A Regulation. 	<p>The following are examples of where the decision maker may refuse:</p> <ul style="list-style-type: none"> Development applications that SA NSW has determined present an unacceptable financial or safety risk and the potential subsidence impact cannot be effectively mitigated through engineering design; and Areas where the subsidence hazard has been assessed by SA NSW to present a credible and unacceptable public safety risk and an effective mitigation strategy is not feasible. <p>It is unlikely that integrated development applications of this nature would need to</p>

Coal Mine Subsidence Compensation Act 2017

Step	Requirement	Explanation	Considerations	Additional information
				be deferred or only partial approval granted.
8.	What conditions should be imposed?	<p>If an approval is granted, consideration must then be given to the terms upon which that approval should be granted.</p> <p>Under section 22(3), SA NSW can grant an approval either subject to conditions or unconditionally.</p> <p>If the Secretary decides to impose conditions, any resulting condition must be for a proclaimed purpose, there must be a nexus between what is proposed and the condition that is proposed and it must be reasonable.</p> <p>The following note appears under section 22(3) which may provide guidance on the conditions that should be imposed:</p> <p><i>Conditions may include requirements related to the nature of improvements, the height, weight, type of material, number of storeys and methods of construction and any improvements within the district. Such conditions may vary according to the location, class or nature of the improvements.</i></p>	<p><u>Matters the Secretary should consider when making a decision about the terms upon which an approval should be granted</u></p> <ol style="list-style-type: none"> 1. If you would grant the approval, should it be conditional or unconditional? 2. If conditions should be imposed to help reduce potential impact, what should these conditions be? 3. Should other special conditions be imposed? If yes, what is the basis and what should those conditions be? 	<p>SA NSW generally places conditions on proposed development within a district to reduce the risk of potential mine subsidence damage. Conditions may include requirements related to the nature and class of any development, the size, height and location of new structures, and the use of certain building materials and construction methods. In most cases, SA NSW's requirements for standard residential development are consistent with the Australian Building Code and do not result in increased construction costs. More information on conditions that should be imposed on approvals where certain subsidence risks have been identified can be found in:</p> <ol style="list-style-type: none"> 1. The SA NSW Development Application – Merit Assessment Policy. Pages 33 – 35 set out a range of conditions that should be imposed on an approval where there is a Trough Subsidence Risk or an estimated sinkhole risk. 2. The SA NSW Subdivision application assessment policy. Pages 32 – 35 set out assessment requirements and conditions that should be imposed for sinkhole prone areas and a trough subsidence hazard.

Coal Mine Subsidence Compensation Act 2017

Step	Requirement	Explanation	Considerations	Additional information
				<p>For Subdivision approvals, conditions may be imposed on proposed works to:</p> <ol style="list-style-type: none"> 1. ensure all subdivision infrastructure is constructed in a way that helps prevent subsidence damage; and 2. eliminate or minimise as far as is practicable the cost and type of engineering mitigation measures relating to mine subsidence hazards for future purchasers of subdivided land.

Fisheries Management Act 1994 – aquaculture permit under section 144

Step	Requirement	Explanation	Considerations	Additional information
Stage 1 - Identifying the approval				
1.	What approval is required?	<p>General Terms of Approval in accordance with s.4.47 of the EP&A Act in respect to an aquaculture permit.</p> <p>Aquaculture as defined by the <i>Fisheries Management Act 1994 (FM Act)</i> requires a permit. A permit under section 144 of the FM Act will permit its holder to undertake a relevant class of aquaculture in a leased area or any other area, i.e. to take fish of the species authorised out of the water.</p> <p>An aquaculture permit will be required regardless of whether the proposed development will occur within or affect a key fish habitat, the test which applies for other permits.</p>	Not applicable.	<p>Aquaculture is defined as cultivating fish or marine vegetation for the purposes of harvesting the fish or marine vegetation or their progeny with a view to sale or keeping fish or marine vegetation in a confined area for a commercial purpose, but does not include keeping anything in a pet shop for sale or in an aquarium for exhibition, anything done for the purposes of maintaining a collection of fish or marine vegetation otherwise than for a commercial purpose, or any other thing prescribed by the regulations.</p> <p>A leased area is an area that is the subject of an aquaculture lease.</p>
2.	Who is the approval body and what is their role?	The Minister for Primary Industries is responsible for issuing (or refusing to issue) aquaculture permits. However, this function has been delegated to the Secretary, Department of Industry (DPI Fisheries), see page 3551 of NSW Government Gazette No 59.	Not applicable.	DPI Fisheries is responsible for conserving the State's fishery resources, protecting and conserving fish habitats and threatened aquatic species in NSW waters, managing Marine Parks and Aquatic Reserves and managing and overseeing the implementation of the marine Estate Management Strategy.
Stage 2 - Obtaining the information needed for the assessment				
3.	What are the general legislative requirements?	<p>There are different types of permit required depending on the type of activity that a person is doing. The permits cover everything from hatchery, fish outs to land and lease-based culture.</p> <p>Any person (including a corporation) can apply for a permit in accordance with the any relevant class of permit (section 145(1), (3)). However, they will first</p>	<p><u>Question 1</u> Has the application been made by the owner of the item or land the subject of the application or if not, is the person the lawful occupier or do they consent in writing from the owner? Prospective outcome depending upon answer</p>	<p><u>Landowner's consent</u> In NSW, the bed and banks of major waterways (rivers, estuaries, bays, harbours and lakes) is generally Crown Land. The Department of Industry - Lands (DoI Lands) has ownership, control and management of Crown land. Most proposals in waterways (e.g. below</p>

Fisheries Management Act 1994 – aquaculture permit under section 144

Step	Requirement	Explanation	Considerations	Additional information
		<p>need to obtain landowner's consent, if landowner's consent is required. See additional information section.</p> <p>There are 8 classes of aquaculture permits that can be issued (Class A-H – see <i>clause 4(1) of the Fisheries Management (Aquaculture) Regulation 2017 (Aquaculture Regulation)</i>) and additional information section. Each has different requirements that must be satisfied, see Step 4 for more information.</p> <p>There are a number of exemptions from the requirement to hold a permit. For example, a permit is not required for aquaculture undertaken by:</p> <ul style="list-style-type: none"> • the Minister under a development plan, or • under Part 8 of the FM Act, or • otherwise for the purposes of the administration of the FM Act (see section 144(4)(a) of the FM Act). <p>An aquaculture permit is not required for persons carrying out an exempt activity in respect of that exempt activity. These are prescribed as exemptions under the Aquaculture Regulation. Similarly, you do not need a permit if you only wish to produce fish in farm dams for your own consumption.</p>	<p>If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to question 2; or 2. no, seek additional information from the applicant under Step 5. See additional information section. <p><u>Question 2</u> Does an exemption apply? Prospective outcome depending upon answer</p> <p>If answer is:</p> <ol style="list-style-type: none"> 1. yes, nothing further is required under section 144 of the FM Act. The Secretary is not required to make any decision. 2. no, go to Step 4. 	<p>the Mean High-Water Mark of tidal waterways) will require prior “landowner’s consent” from DoI Lands (or Roads and Maritime Services in some cases), to submit a Development Application to Council. This includes most domestic waterfront facilities such as jetties, boatsheds, berthing areas, boat ramps, slipways, pontoons and seawalls.</p> <p>If an area has been deemed to be Priority Oyster Lease Area then in accordance with SEPP62 development consent and therefore land owners consent is not required.</p> <p><u>Permits</u> Class A is required to carry out extensive aquaculture on public water or land subject to an aquaculture lease.</p> <p><u>Exempt activities</u> Exempt activities include the cultivation of ornamental fish by a person in a pond, tank or other structure, if the total capacity of all structures in which the person cultivates ornamental fish is less than 10,000 litres and the keeping of fish by a person in a confined area, for the purposes of selling fish alive, if the person does not cultivate the fish concerned (see section 144(4)(b) of the FM Act and clause 5 of the Aquaculture Regulation).</p>
4.	What information does the approval body usually require, including	Sufficient relevant information needs to be provided with the application to enable DPI Fisheries to clearly understand what is proposed and how it may affect fish populations, aquatic habitats, aquatic threatened	<u>Question 1</u> Does the application contain the required information? See explanation and additional information sections.	The following information is required at a minimum to assess the proposal impact:

Fisheries Management Act 1994 – aquaculture permit under section 144

Step	Requirement	Explanation	Considerations	Additional information
	key policies, publications and guidelines?	<p>species, commercial and recreational fishing and aquaculture industries (both directly and indirectly).</p> <p>See the additional information section for a detailed outline of the information required for a Standard Submission.</p> <p>In addition to these requirements, aquaculture permit applications should contain:</p> <ul style="list-style-type: none"> • a completed Commercial Farm Development, this plan must include a biosecurity plan and also describe the way the applicant proposes to undertake the aquaculture. • maps which show: <ul style="list-style-type: none"> ○ the location of the farm in relation to the adjoining waterways ○ land ownership categories ○ structures which may affect public land ○ existing vegetation type and cover, including wetlands ○ flood contours • a sketch/diagram showing all structures, buildings, ponds, raceways, tanks, etc, dimensions, areas to be excavated, water supplies, reticulation design for the farm, effluent release points. • Cross section views of ponds showing dike dimensions, pond bottom slopes, water entry and exit points. • Information to show that the applicants are not disqualified from holding a permit • A project profile analysis which sets out the risk level of the proposal. • A farm development plan. 	<p>Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to question 2; or 2. no, go to Step 5 and seek additional information from an applicant. <p><u>Question 2</u> Is that information sufficient enough to enable the Secretary to clearly understand the potential impacts of the proposal?</p> <p>Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 3. yes, go to Step 6; or 4. no, go to Step 5 and seek additional information from an applicant. 	<ul style="list-style-type: none"> • Clearly meets the information requirements in the relevant aquaculture permit application - https://www.dpi.nsw.gov.au/fishing/aquaculture/forms • Conforms with the relevant Aquaculture Industry Development Plan. https://www.dpi.nsw.gov.au/fishing/aquaculture/publications/general/nsw-lbsas; https://www.dpi.nsw.gov.au/fishing/aquaculture/publications/oysters/industry-strategy; https://www.dpi.nsw.gov.au/fishing/aquaculture/marine-waters-strategy • Complies with the provisions of SEPP62; • any other matters relevant to the particular case.

Fisheries Management Act 1994 – aquaculture permit under section 144

Step	Requirement	Explanation	Considerations	Additional information
5.	Is further information required?	The Secretary has the power under the EP&A Regulation to request additional information.	<p><u>Question</u> Do you have all the information required to make the decision?</p> <p>Prospective outcome depending upon answer: If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to Step 6; or 2. no, seek additional information from an applicant following the process specified 70AB of the EP&A Regulation. 	The Secretary must consider the information available before her to determine whether it is sufficient to make the decision. Refer to step 4 for more information regarding what may be required.

Stage 3 - Making the decision

6.	What should the decision maker consider including any relevant policies or guidelines that should be followed.	<p>When assessing development applications, DPI Fisheries makes a decision on a case by case basis as whether the proposal should be permitted to proceed, having regard to any specified statutory requirements, and also taking into account the objects of the FM Act, and its overall framework. The decision is typically based on the predicted impacts and whether the proposal adequately meets the legislative requirements of the FM Act and any relevant policies and guidelines.</p> <p><u>Relevant policies and guidelines</u> The following policies and guidelines are relevant:</p> <ul style="list-style-type: none"> • https://www.dpi.nsw.gov.au/_data/assets/pdf_file/0005/634694/Policy-and-guidelines-for-fish-habitat.pdf • The DPI Fisheries Priority Action Statement and Recovery Plans developed for threatened species listed under the FM Act. • Land Based Sustainable Aquaculture Strategy • NSW Oyster Industry Sustainable Aquaculture Strategy Third Edition 2016 	<p><u>Question 1</u> What are the objects of the Act and how does the proposal fit with these objects?</p> <p><u>Question 2</u> What are the potential impacts of the proposal?</p> <p><u>Question 3</u> Is the proposal designed in a way that addresses threats and risks, i.e. does it seek to avoid or mitigate potential impacts?</p> <p><u>Question 4</u> Is the proposal consistent with relevant policies and guidelines?</p>	<p>The following policies and guidelines provide relevant additional information:</p> <ul style="list-style-type: none"> • Land Based Sustainable Aquaculture Strategy • NSW Oyster Industry Sustainable Aquaculture Strategy Third Edition 2016 • NSW Marine Waters Sustainable Aquaculture Strategy
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Fisheries Management Act 1994 – aquaculture permit under section 144

Step	Requirement	Explanation	Considerations	Additional information
		<ul style="list-style-type: none"> NSW Marine Waters Sustainable Aquaculture Strategy https://www.dpi.nsw.gov.au/fishing/aquaculture/marine-waters-strategy 		
Stage 4 - Giving general terms of approval				
7	What are relevant statutory considerations?	<p>The relevant statutory considerations are specified in sections 144, 145, 146 of the FM Act and clause 8 of the Aquaculture Regulation.</p> <p>A permit can be granted under section 144, unconditionally or subject to conditions. It can also be refused.</p>	<p>Having regard to the matters and information provided in Steps 3 - 6, taking into account the grounds upon which a permit can be refused, the Secretary must determine whether to grant or refuse the permit sought. As part of this the Secretary should consider any objects of the FM Act and the overall framework.</p> <p>Prospective outcome depending upon answer</p> <p>If the Secretary decides to:</p> <ol style="list-style-type: none"> grant the permit, go to Step 8. refuse the permit, the Secretary must notify the consent authority and follow the process set out the EP&A Regulation. 	<p>Section 146(2) of the FM Act specifies the grounds upon which the Minister may refuse to issue a permit, this includes if:</p> <ol style="list-style-type: none"> the application was not duly made, in the case of an individual—the applicant is disqualified under section 161 from holding an aquaculture permit, in the case of a corporation—the applicant or any of the directors or other persons concerned in the management of the corporation is disqualified under section 161 from holding an aquaculture permit, the Minister is not satisfied that the applicant has prepared an appropriate commercial farm development plan, or the Minister is not satisfied that the applicant has the expertise necessary to undertake the aquaculture successfully, the area where the applicant proposes to undertake aquaculture is not available or suitable for that purpose,

Fisheries Management Act 1994 – aquaculture permit under section 144

Step	Requirement	Explanation	Considerations	Additional information
				<p>(g) the application is inconsistent with any relevant aquaculture industry development plan,</p> <p>(h) the Minister is otherwise authorised or required by the regulations, or by this or any other Act, to refuse to issue the permit.</p> <p>The following additional grounds are specified in clause 8 of the Aquaculture Regulation:</p> <p>(a) the applicant has been convicted or found guilty of an offence under the Act or regulations made under the Act, or</p> <p>(b) the Minister believes on reasonable grounds that there is a risk that if the activity to which the permit relates were authorised:</p> <p>(i) fish (whether cultivated or naturally occurring) could become infected with a particular disease, or</p> <p>(ii) the environment of the area where it is proposed to carry on the activity would be damaged.</p>

Fisheries Management Act 1994 – aquaculture permit under section 144

Step	Requirement	Explanation	Considerations	Additional information
8.	What conditions should be imposed?	<p>If a permit is granted under section 144, consideration must then be given to the terms upon which that permit should be granted.</p> <p>Section 152 provides that an aquaculture permit is subject to such conditions as are prescribed by the Regulations and such others as are determined by the Minister and specified in the permit. Such may include conditions which:</p> <ol style="list-style-type: none"> 1. regulate the type of aquaculture that may be undertaken 2. relate to the erection of structures 3. deal with the escape of fish or effluent 4. require a permit holder to enter into a bond, guarantee or other financial arrangement in respect of the performance of certain obligations 5. specify the need for public liability insurance 6. relate to the review of the commercial farm development plan of the permit holder 7. require the destruction or control of pests <p>If the Secretary decides to impose conditions, any resulting condition must be for a proclaimed purpose, there must be a nexus between what is proposed and the condition that is proposed and it must be reasonable.</p>	<p><u>Matters the Secretary should consider when making a decision about the terms upon which an approval should be granted</u></p> <ol style="list-style-type: none"> 1. If you would grant the approval, should it be conditional or unconditional? 2. If conditions should be imposed to help reduce potential impact, what should these conditions be? 3. Should other special conditions be imposed? If yes, what is the basis and what should those conditions be? 	<p><u>Conditions prescribed in the Aquaculture Regulation</u></p> <p>There are a range of statutory conditions in the Aquaculture Regulation that also apply to aquaculture permits, though they may not need to be specifically referenced in the permit.</p>

Fisheries Management Act 1994 - permit under section 201 to carry out dredging or reclamation work

Step	Requirement	Explanation	Considerations	Additional information
Stage 1 - Identifying the approval				
1.	What approval is required?	<p>General Terms of Approval in accordance with s.4.47 of the EP&A Act in respect to a permit to carry out dredging or reclamation work.</p> <p>A permit is required under section 201 of the FM Act to carry out dredging or reclamation work, but only if the proposed site is within a waterway that fits the definition of key fish habitat and is mapped as key fish habitat.</p> <p>Dredging work means:</p> <ul style="list-style-type: none"> (a) any work that involves excavating water land (as defined in section 198A of the FM Act), or (b) any work that involves moving material on water land or removing material from water land that is prescribed by the regulations as being dredging work to which Division 3 of Part 7 (the Division relevant to this type of approval) applies. <p>Reclamation work means any work that involves:</p> <ul style="list-style-type: none"> (a) using any material (such as sand, soil, silt, gravel, concrete, oyster shells, tyres, timber or rocks) to fill in or reclaim water land, or (b) depositing any such material on water land for the purpose of constructing anything over water land (such as a bridge), or (c) draining water from water land for the purpose of its reclamation. 	<p><u>Question 1</u> Is it a water to which the FM Act applies? See additional information regarding this.</p> <p>Prospective outcome depending upon answer: If answer is:</p> <ul style="list-style-type: none"> 1. yes, go to step 3; or 2. no, nothing further is required. The Secretary is not required to make any decision, no permit is required. 	<p>One of the objectives of the FM Act is to 'conserve key fish habitats'. However, the term 'key fish habitat' is not defined. See 'Key Fish Habitat maps' for more information on working out what would be a key fish habitat.</p> <p>For the purposes of definition of dredging, clause 263 of the <i>Fisheries Management (General) Regulation 2010 (FM General Regulation)</i> prescribes the following as dredging work:</p> <ul style="list-style-type: none"> (a) work that involves the removal of woody debris, snags, gravel beds, cobbles, rocks, boulders, rock bars or aquatic vegetation from water land, (b) work that involves the removal of any other material from water land that disturbs, moves or harms woody debris, snags, gravel beds, cobbles, rocks, boulders, rock bars or aquatic vegetation, (c) work that involves moving woody debris, snags, gravel beds, cobbles, rocks, boulders, rock bars or aquatic vegetation on water land.

Fisheries Management Act 1994 - permit under section 201 to carry out dredging or reclamation work

Step	Requirement	Explanation	Considerations	Additional information
2.	Who is the approval body and what is their role?	The Minister for Primary Industries (Minister) is responsible for issuing (or refusing to issue) a permit of this nature. However, this function has been delegated to the Secretary, Department of Industry, see NSW Government Gazette No 59, or delegated senior staff within DPI Fisheries.	Not applicable.	DPI Fisheries is responsible for conserving the State's fishery resources, protecting and conserving fish habitats and threatened aquatic species in NSW waters, managing Marine Parks and Aquatic Reserves and managing and overseeing the implementation of the Marine Estate Management Strategy.
Stage 2 - Obtaining the information needed for the assessment				
3.	What are the general legislative requirements?	<p>A person (other than a public authority) may carry out dredging work or reclamation work if permitted to do so by the Minister (sections 200 and 201 of the FM Act). However, if they are not the landowner, they will first need to obtain landowner's consent, if landowner's consent is required. See additional information section.</p> <p>A permit will not be required in the following situations:</p> <p>(a) any dredging work or reclamation work carried out in respect of an artificial body of water, unless the body of water is permanently or intermittently connected to a natural body of water or unless the regulations otherwise provide,</p> <p>(b) any dredging work or reclamation work carried out in respect of a farm dam, unless the regulations otherwise provide,</p> <p>(c) anything permitted by or under the FM Act (such as digging for bait),</p> <p>(d) anything exempted from Division 3 of Part 7 of the FM Act by the regulations.</p> <p>Works can also be excluded from the operation of this section by the FM General Regulation. See the additional information section.</p>	<p><u>Question 1</u> Is what is proposed going to take place in water to which the FM Act applies? See additional information regarding this. The FM Act only applies if the water is a key fish habitat.</p> <p>Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to question 2; or 2. no, nothing further is required. The Secretary is not required to make any decision, no permit is required. <p><u>Question 2</u> Who is applying for the permit?</p> <p>Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. a person, business, company or local government authority, go to question 3; or 2. a public authority, nothing further is required. The Secretary is not required to make any decision, no permit is required. <p><u>Question 3</u></p>	<p><u>Waters to which the FM Act apply</u> One of the objectives of the FM Act is to 'conserve key fish habitats'. However, the term 'key fish habitat' is not defined. See 'Key Fish Habitat maps' for more information on working out what would be a key fish habitat.</p> <p><u>Landowner's consent</u> In NSW, the bed and banks of major waterways (rivers, estuaries, bays, harbours and lakes) is generally Crown Land. DoI Lands has ownership, control and management of Crown land. Most proposals in waterways (e.g. below the Mean High-Water Mark of tidal waterways) will require prior "landowner's consent" from DoI Lands (or Roads and Maritime Services in some cases), to submit a Development Application to Council. This includes most domestic waterfront facilities such as jetties, boatsheds, berthing areas, boat ramps, slipways, pontoons and seawalls.</p> <p><u>Exclusions</u></p>

Fisheries Management Act 1994 - permit under section 201 to carry out dredging or reclamation work

Step	Requirement	Explanation	Considerations	Additional information
			<p>Has the application been made by the owner of the item or land the subject of the application or if not, is the person the lawful occupier or do they consent in writing from the owner?</p> <p>Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to question 4; or 2. no, seek additional information from the applicant under Step 5. See additional information section. <p><u>Question 4</u> Is what is proposed to be carried out in artificial water body or a farm dam that is unconnected to a natural body of water?</p> <p>Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, nothing further is required. The Secretary is not required to make any decision, no permit is required; or 2. no, go to Question 5. <p><u>Question 5</u> Is the work excluded under the FM General Regulation? See additional information for more information.</p> <p>Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, nothing further is required. The Secretary is not required to make any decision. 2. no, go to Step 4. 	<p>Dredging work or reclamation work carried out by public authority is exempt from the need for a permit if it is carried out in accordance with the Code of Practice for Minor Works in NSW Waterways published on the Department's website.</p>
4.	What information does the approval body usually require, including	Sufficient relevant information needs to be provided with the application to enable DPI Fisheries to clearly understand what is proposed and how it may affect fish populations, aquatic habitats, aquatic threatened	<p><u>Question 1</u> Does the application contain the required information? See explanation and additional information sections.</p>	The following information is required at a minimum to assess the proposal impact:

Fisheries Management Act 1994 - permit under section 201 to carry out dredging or reclamation work

Step	Requirement	Explanation	Considerations	Additional information
	<p>key policies, publications and guidelines?</p>	<p>species, commercial and recreational fishing and aquaculture industries (both directly and indirectly). See the additional information section for a detailed outline of the information required for a Standard Submission.</p> <p>In addition to the standard submission requirements specified in the additional information sections, the following information should also be provided:</p> <ul style="list-style-type: none"> • How long will the dredging or reclamation works/activities occur (indicate if ongoing)? • What period of the year will the dredging or reclamation works/activities occur? • What are the dimensions of the area(s) to be dredged/reclaimed? • What is the total volume of material to be dredged or deposited? • Where and how will the dredged material be disposed of? • To what depth below the existing bed will material be removed (give range if variable)? • What is the nature of the material to be dredged or included in reclamation? • Is the material to be dredged or used in reclamation likely to be contaminated by heavy metals or chemicals (give details)? • Does the material to be dredged or used in reclamation have acid forming characteristics (give details)? • How is the area of works/activities to be marked or delineated? • What environmental safeguards will be used during and after dredging or reclamation? <p><u>Relevant guidelines</u></p> <ul style="list-style-type: none"> • NSW DPI Policies and guidelines for fish habitat conservation and management 	<p>Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to question 2; or 2. no, go to Step 5 and seek additional information from an applicant. <p><u>Question 2</u> Has the applicant considered and applied the relevant policies and guidelines? Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to question 3; or 2. no, go to Step 5 and seek additional information from an applicant to ensure compliance with those guidelines. <p><u>Question 3</u> Is that information sufficient enough to enable the Secretary to clearly undertake the impacts of the proposal on fish populations, aquatic habitats, aquatic threatened species, commercial and recreational fishing and aquaculture industries (both directly and indirectly)? Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to Step 6; or 2. no, go to Step 5 and seek additional information from an applicant. 	<ul style="list-style-type: none"> • clear description of the proposal including details of construction methods and materials. • Site address, property description, map(s) and photographs of the area affected and adjacent areas including the extent of tidal inundation if relevant. • a clear description of the physical and hydrological features of the impacted area (which may extend upstream and downstream of the development site in the case of flowing rivers or tidal waterways). • a clear description (and maps if appropriate) of aquatic environments, fish and marine vegetation that occur in the area with particular emphasis on those likely to be affected. • details of the nature, timing, magnitude and duration of any disturbance to aquatic environments. • assessments of predicted impacts upon any threatened species, populations, ecological communities (fish and marine vegetation) or critical habitat listed under the FM Act (e.g. Test of Significance and/or Species Impact Statements). • details of proposals for ameliorating any

Fisheries Management Act 1994 - permit under section 201 to carry out dredging or reclamation work

Step	Requirement	Explanation	Considerations	Additional information
		<p>(Updated 2013) - this should be considered by an applicant before a development application is lodged. This outlines the general position of NSW DPI on many types of development and activities.</p> <ul style="list-style-type: none"> • DPI's Integrated Development Assessment Process document provides information on DPI's requirements for various approvals/permits • Why do fish need to cross the road? Fish passage requirements for waterway crossings: Includes more detailed guidance on waterway crossings. • Aquatic Ecology in Environmental Impact Assessment: To be referred to where aquatic reserves or marine parks are likely to be affected. 		<p>environmental effects, including habitat compensation or rehabilitation.</p> <ul style="list-style-type: none"> • details of the general regional context, any protected areas, other developments in the area, and/or cumulative impacts. • notification of any other matters relevant to the particular case and NSW DPI. <p>For more information see Part 3.3 of the Policies and guidelines for fish habitat conservation and management (Updated 2013).</p>
5.	Is further information required?	The Secretary has the power under the EP&A Regulation to request additional information.	<p><u>Question</u> Do you have all the information required to make the decision?</p> <p>Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to Step 6; or 2. no, seek additional information from an applicant following the process specified 70AB of the EP&A Regulation. 	The Secretary must consider the information available before her to determine whether it is sufficient to make the decision. Refer to step 4 for more information regarding what may be required.
Stage 3 - Making the decision				
6.	What should the decision maker consider including any relevant policies or guidelines that should be followed.	When assessing development applications, NSW DPI makes a decision on a case by case basis as whether the proposal should be permitted to proceed, having regard to any specified statutory requirements, and also taking into account the objects of the FM Act, and its overall framework.	<p><u>Question 1</u> What are the relevant objects of the FM Act in these circumstances and how does the proposal fit with these objects?</p> <p><u>Question 2</u></p>	<p><u>Threatened species</u> Threatened species, populations and ecological communities of fish, aquatic invertebrates and marine vegetation are listed under the provisions of Part 7A of the FM Act (Schedules 4, 4A and 5). Current listings are available at:</p>

Fisheries Management Act 1994 - permit under section 201 to carry out dredging or reclamation work

Step	Requirement	Explanation	Considerations	Additional information
		<p>The decision is typically based on the predicted impacts upon fish populations (including listed threatened species, populations and ecological communities), aquatic habitats, and the commercial and recreational fishing and aquaculture industries, and whether the proposal adequately meets the legislative requirements of the FM Act and any relevant policies and guidelines.</p> <p>There are additional objects in the dredging and reclamation division of the FM Act, which are also relevant. These require DPI Fisheries to conserve the biodiversity of fish and aquatic vegetation and to protect fish habitat by providing for the management of dredging and reclamation work, consistent with the objectives of ecologically sustainable development.</p> <p><u>Impacts on threatened species</u> If a proposal is within the range of a threatened species, population or ecological community (including within a critical habitat) listed under the FM Act and there is a possibility of an adverse effect upon one or more of those threatened species, populations or ecological communities, then a Test of Significance (7 Part Tests) for each potentially affected species, population or ecological community must be provided in accordance with Part 7A Division 12 of the FM Act. The purpose of the Test of Significance is to determine whether your development is likely to cause a significant effect on threatened species.</p> <p><u>Relevant guidelines</u></p> <ul style="list-style-type: none"> • NSW DPI Policies and guidelines for fish habitat conservation and management (Updated 2013) - this should be considered by an applicant before a development application is lodged. This outlines the 	<p>What are the impacts of the proposal upon fish populations (including listed threatened species, populations and ecological communities), aquatic habitats, and the commercial and recreational fishing and aquaculture industries?</p> <p><u>Question 3</u> Is the proposal designed in a way that addresses threats and risks, i.e. does it seek to avoid or mitigate potential impacts?</p> <p><u>Question 4</u> Is the proposal consistent with relevant policies and guidelines?</p>	<p>https://www.dpi.nsw.gov.au/fishing/species-protection/conservation/what-current</p> <p><u>Guidelines for test of significance</u> DPI Fisheries Guidelines for Tests of Significance can be found at: https://www.dpi.nsw.gov.au/data/assets/pdf_file/0006/634947/Threatened-Species-Guidelines.pdf</p> <p>There are instances where NSW DPI will approve dredging and reclamation, such as for essential public navigation and environmental rehabilitation purposes. However, it's unlikely the activity would be allowed if it would:</p> <ul style="list-style-type: none"> • reduce water quality • damage or destroy marine vegetation, including mangroves, seagrasses, and wetlands • damage or destroy riparian vegetation, gravel beds, reefs, or snags, or interfere with commercial and recreational fishing or aquaculture activities.

Fisheries Management Act 1994 - permit under section 201 to carry out dredging or reclamation work

Step	Requirement	Explanation	Considerations	Additional information
		<p>general position of NSW DPI on many types of development and activities.</p> <ul style="list-style-type: none"> • DPI's Integrated Development Assessment Process document provides information on DPI's requirements for various approvals/permits • Why do fish need to cross the road? Fish passage requirements for waterway crossings: Includes more detailed guidance on waterway crossings. • Aquatic Ecology in Environmental Impact Assessment. To be referred to where aquatic reserves or marine parks are likely to be affected. 		

Stage 4 - Giving general terms of approval

7	What are relevant statutory considerations?	<p>Under the FM Act, the decision-maker can grant a permit unconditionally or subject to conditions. The decision-maker can also refuse to grant a permit.</p> <p>Generally, NSW DPI will make a decision as to whether the proposal should be permitted to proceed based on compatibility with the adopted Policies and guidelines for fish habitat conservation and management (Updated 2013).</p> <p>Any decision should be based on the predicted impacts upon fish populations, aquatic habitats, commercial and recreational fishing and aquaculture industries. Proposals which are likely to have a significant adverse impact are not likely to be approved in the absence of reasonable compensatory measures.</p>	<p>Having regard to the matters and information provided in Steps 3 - 6, taking into account the information outlined in the additional information section including the relevant policies and guidelines, the Secretary must determine whether to grant or refuse the permit sought. As part of this the Secretary should consider any objects of the FM Act and the overall framework.</p> <p>Prospective outcome depending upon answer</p> <p>If the Secretary decides to:</p> <ol style="list-style-type: none"> 1. grant the permit, go to Step 8. 2. refuse the permit, the Secretary must notify the consent authority and follow the process set out the EP&A Regulation. 	<p>The Guidelines provides that proponents should, as a priority, aim to avoid impacts upon key fish habitats. Where avoidance is impossible or impractical, proponents should then aim to minimise impacts. Any remaining impacts should then be offset with compensatory works. To achieve this, NSW DPI applies the following general principles to activities that may affect key fish habitats within NSW: Equity, the precautionary principle, conservation of biodiversity and fish populations, protected and threatened species, protected areas and critical habitats, a comprehensive environmental assessment, no net loss of key fish habitat, adaptive management.</p> <p>The decision-maker should read and apply the relevant tests in Section 3 of</p>
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Fisheries Management Act 1994 - permit under section 201 to carry out dredging or reclamation work

Step	Requirement	Explanation	Considerations	Additional information
				<p>the Policies and guidelines for fish habitat conservation and management (Updated 2013).</p>
8.	<p>What conditions should be imposed?</p>	<p>If it is determined to grant a dredging and reclamation permit to the proposed DA, the GTAs issued will need to include the following condition as dredging and reclamation permits are only issued by the Secretary Department of Industry (or delegate of) once Development Consent has been granted: 'The proponent must apply for and obtain a Part 7 permit for dredging and reclamation under the FM Act from DPI Fisheries prior to any works on site. Permit application forms are available from the DPI Fisheries website at: http://www.dpi.nsw.gov.au/fisheries/habitat/heap/permit'</p> <p>If a permit is granted under section 201, consideration must then be given to the terms upon which that permit should be granted. Conditions under Part 7 are subject to such conditions as are prescribed in the Regulations or specified in the permit. These conditions can be applied at the permit stage rather than the Development Application Stage.</p> <p>Should the Secretary should consider it appropriate to include additional conditions at the General Terms of Approval stage she should consider the information provided by the applicant and assess whether it is necessary to impose conditions to ensure minimal harm to the environment due to the proposed activity.</p> <p>If the Secretary decides to impose conditions, any resulting condition must be for a proclaimed purpose, there must be a nexus between what is proposed and the condition that is proposed and it must be</p>	<p><u>Matters the Secretary should consider when making a decision about the terms upon which an approval should be granted</u></p> <ol style="list-style-type: none"> 1. If you would grant the permit, should it be conditional or unconditional? 2. If conditions should be imposed to help reduce potential impact, what form should these conditions take? 3. Should other special conditions be imposed? If yes, what is the basis and what form should they take? 	<p>Conditions should ensure that works cause minimal harm to the aquatic environment.</p> <p>Conditions can be tailored to the specific activity of works undertaken. Generally NSW DPI requires precautions to be taken before, during and after completion of works to mitigate environmental impacts. See part 3.3.2 – 3.3.5 of the and guidelines for fish habitat conservation and management (Updated 2013).</p> <p>A permit may include conditions requiring the permit holder to enter into a bond or guarantee or other financial arrangement for the due performance of their obligations under the FM Act (see section 220(1) and (1B)).</p>

Fisheries Management Act 1994 - permit under section 201 to carry out dredging or reclamation work

Step	Requirement	Explanation	Considerations	Additional information
		reasonable.		

Fisheries Management Act 1994 - permit under section 205 to harm marine vegetation in a protected area

Step	Requirement	Explanation	Considerations	Additional information
Stage 1 - Identifying the approval				
1.	What approval is required?	<p>General Terms of Approval in accordance with s.4.47 of the EP&A Act in respect to a permit to cut, remove, damage or destroy marine vegetation on public water land or an aquaculture lease, or on the foreshore of any such land or lease.</p> <p>A permit is required under section 205 of the FM Act to harm marine vegetation in a protected area, but only if the proposed site is within a waterway that fits the definition of key fish habitat and is mapped as key fish habitat.</p> <p>The following definitions in section 204 are relevant:</p> <ol style="list-style-type: none"> 1. harm, in relation to marine vegetation, means gather, cut, pull up, destroy, poison, dig up, remove, injure, prevent light from reaching or otherwise harm the marine vegetation, or any part of it; 2. marine vegetation means marine vegetation, whether living or dead. Section 205 applies to mangroves, seagrasses and other marine vegetation declared by the regulation to be marine vegetation to which section 205 applies; and 3. protected area means any public water land, or any area that is the subject of an aquaculture lease and includes the foreshore. 4. foreshore means any land adjacent to public water land, or adjacent to an area that is the subject of an aquaculture lease, that is below the highest astronomical tide level of the 	Not applicable	<p>The following are declared by clause 260 of the FM General Regulation to be marine vegetation to which section 205 applies:</p> <ol style="list-style-type: none"> (a) attached marine and estuarine macroalgae, (b) saltmarsh in a protected area. <p>For the purposes of the FM General Regulation, the following definitions apply:</p> <ol style="list-style-type: none"> 1. marine and estuarine macroalgae means those species of non-microscopic plants commonly known as seaweeds that belong to the plant classification divisions of <i>Rhodophyta</i>, <i>Phaeophyta</i> and <i>Chlorophyta</i>, that are endemic to New South Wales marine and estuarine waters; and 2. saltmarsh means an ecological community within the meaning of Part 7A of the FM Act known as saltmarsh in which one or more of the following species of plants are found: <ol style="list-style-type: none"> (a) <i>Baumea juncea</i>, (b) <i>Isolepsis nodosa</i>, (c) <i>Juncus kraussii</i>,

Fisheries Management Act 1994 - permit under section 205 to harm marine vegetation in a protected area

Step	Requirement	Explanation	Considerations	Additional information
		waters by which the land or area is submerged;		(d) <i>Samolus repens</i> , (e) <i>Sarcocornia quinqueflora</i> , (f) <i>Selliera radicans</i> , (g) <i>Sporobolus virginicus</i> , (h) <i>Suaeda australis</i> , (i) <i>Triglochin striata</i> , (j) <i>Zoysia macrantha</i> .
2.	Who is the approval body and what is their role?	The Minister for Primary Industries (Minister) is responsible for issuing (or refusing to issue) a permit of this nature. However, this function has been delegated to the Secretary, Department of Industry, see NSW Government Gazette No 59, or delegated senior staff within DPI Fisheries.	Not applicable.	DPI Fisheries is responsible for conserving the State's fishery resources, protecting and conserving fish habitats and threatened aquatic species in NSW waters, managing Marine Parks and Aquatic Reserves and managing and overseeing the implementation of the Marine Estate Management Strategy.

Stage 2 - Obtaining the information needed for the assessment

3.	What are the general legislative requirements?	<p>Sections 204 and 205 of the FM Act and the associated FM General Regulation set out provisions to protect marine vegetation (such as saltmarshes, mangroves, seagrass and seaweeds whether alive or dead) from 'harm' on public water land below the astronomical high tide mark or the foreshore of such land.</p> <p>There are a number of exemptions to this requirement (see section 205A of the FM Act), for example, the Division does not apply to any marine vegetation that is being cultivated (defined as including propagate, hatch, breed, rear or farm) or kept in accordance with an aquaculture permit.</p> <p>In addition, the FM General Regulation can:</p> <ul style="list-style-type: none"> exempt any activity, class of activities or area from the operation of this Division of specified provisions of the Division; and 	<p>Question 1 Is what is proposed going to take place in water to which the FM Act applies? See additional information regarding this. The FM Act only applies if the water is a key fish habitat.</p> <p>Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> yes, go to question 2; or no, nothing further is required. The Secretary is not required to make any decision, no permit is required. <p>Question 2 Is what will be impacted marine vegetation as it is defined in section 205(1) (i.e. mangroves, seagrasses or microalgae growing on public water land or the foreshore of public water</p>	<p>Waters to which the FM Act apply One of the objectives of the FM Act is to 'conserve key fish habitats'. However, the term 'key fish habitat' is not defined. See 'Key Fish Habitat maps' for more information on working out what would be a key fish habitat.</p> <p>Exemptions in the FM General Regulation</p> <ol style="list-style-type: none"> The taking of sea lettuce (<i>Ulva</i> spp.) and blackfish weed (<i>Enteromorpha</i> spp.) for use as bait is exempt from the operation of section 205 (2) of the Act. Any activity that harms saltmarsh is exempt from the
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Fisheries Management Act 1994 - permit under section 205 to harm marine vegetation in a protected area

Step	Requirement	Explanation	Considerations	Additional information
		<ul style="list-style-type: none"> • prescribe activities that are considered to be harmful to marine vegetation (section 205B of the FM Act and clause 261 of the FM General Regulation). <p>See additional information section for more information on the FM General Regulation provisions.</p> <p>A person can apply for a permit to harm marine vegetation in a protected area. In some circumstances, they will first need to obtain landowner's consent, if landowner's consent is required. See additional information section.</p>	<p>land) (note it does not matter whether dead or alive) and other marine vegetation declared by the Regulations to be marine vegetation to which s205 applies?</p> <p>Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to question 4. 2. no, nothing further is required. The Secretary is not required to make any decision, no permit is required; or <p><u>Question 3</u> Is it a proposal that would cause harm as defined (i.e. cutting, poisoning, removing, trimming, pulling up, gathering or shading) or is it an activity that is prescribed as being harmful under the FM General Regulation? Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, to either or both questions, go to question 4; or 2. no, nothing further is required. The Secretary is not required to make any decision, no permit is required. <p><u>Question 4</u> Is the proposal in a protected area? Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to question 5; or 2. no, nothing further is required. The Secretary is not required to make any decision, no permit is required. <p><u>Question 5</u></p>	<p>operation of section 205 (2) of the Act if:</p> <ol style="list-style-type: none"> (a) the activity is authorised under the <i>Biodiversity Conservation Act 2016</i>, or (b) the saltmarsh is on land reserved under Part 4 of the <i>National Parks and Wildlife Act 1974</i>. <p><u>Activities that are prescribed as being harmful to marine vegetation</u></p> <p>The following are prescribed activities:</p> <ol style="list-style-type: none"> (a) the use of any fishing method in waters that are over a bed of seagrass in a protected area, being a fishing method that is prohibited by or under the FM Act (excluding Division 4 of Part 7 of the FM Act), (b) any activity that obstructs or alters tidal flows to marine vegetation in a protected area, (c) the driving or operation of a vehicle (including a hovercraft) over marine vegetation in a protected area, (d) the grazing or movement of stock (horse, cattle, asses, pigs, sheep, goat etc.) on marine vegetation in a protected area. <p><u>Landowner's consent</u> In NSW, the bed and banks of major waterways (rivers, estuaries, bays, harbours and lakes) is generally Crown Land. DoI Lands has ownership, control</p>

Fisheries Management Act 1994 - permit under section 205 to harm marine vegetation in a protected area

Step	Requirement	Explanation	Considerations	Additional information
			<p>Is what is proposed excluded under the Regulations? See additional information for more information.</p> <p>Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, nothing further is required. The Secretary is not required to make any decision. 2. no, go to Question 5. <p><u>Question 5</u> Has the application been made by the owner of the item or land the subject of the application or if not, is the person the lawful occupier or do they consent in writing from the owner?</p> <p>Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to Step 4; or 2. no, seek additional information from the applicant under Step 5. See additional information section. 	<p>and management of Crown land. Most proposals in waterways (e.g. below the Mean High-Water Mark of tidal waterways) will require prior "landowner's consent" from DoI Lands (or Roads and Maritime Services in some cases), to submit a DA to council. This includes most domestic waterfront facilities such as jetties, boatsheds, berthing areas, boat ramps, slipways, pontoons and seawalls.</p>
4.	<p>What information does the approval body usually require, including key policies, publications and guidelines?</p>	<p>Sufficient relevant information needs to be provided with the application to enable DPI Fisheries to clearly understand what is proposed and how it may affect fish populations, aquatic habitats, aquatic threatened species, commercial and recreational fishing and aquaculture industries (both directly and indirectly). See the additional information section for a detailed outline of the information required for a Standard Submission.</p> <p>In addition to the standard submission requirements specified in the additional information sections, the following information should also be provided:</p> <ul style="list-style-type: none"> • Specify the type of marine vegetation (saltmarsh, mangroves, seagrasses, marine 	<p><u>Question 1</u> Does the application contain the required information? See explanation and additional information sections.</p> <p>Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to question 2; or 2. no, go to Step 5 and seek additional information from an applicant. <p><u>Question 2</u> Has the applicant considered and applied the relevant policies and guidelines?</p> <p>Prospective outcome depending upon answer If answer is:</p>	<p>Minimum requirements for information to be provided:</p> <ul style="list-style-type: none"> • clear description of the proposal including details of construction methods and materials. • Site address, property description, map(s) and photographs of the area affected and adjacent areas including the extent of tidal inundation if relevant. • a clear description of the physical and hydrological features of the impacted area (which may extend upstream

Fisheries Management Act 1994 - permit under section 205 to harm marine vegetation in a protected area

Step	Requirement	Explanation	Considerations	Additional information
		<p>macroalgae) to be harmed. Include species names.</p> <ul style="list-style-type: none"> • Specify the area or number of each type of marine vegetation to be harmed. • Specify how marine vegetation will be directly and/or indirectly harmed. <p>The following guidelines should also be considered and applied:</p> <ul style="list-style-type: none"> • NSW DPI Policies and guidelines for fish habitat conservation and management (Updated 2013) - this should be considered by an applicant before a development application is lodged. This outlines the general position of NSW DPI on many types of development and activities. • DPI's Integrated Development Assessment Process document provides information on DPI's requirements for various approvals/permits • Why do fish need to cross the road? Fish passage requirements for waterway crossings: Includes more detailed guidance on waterway crossings. • Aquatic Ecology in Environmental Impact Assessment: To be referred to where aquatic reserves or marine parks are likely to be affected. 	<ol style="list-style-type: none"> 1. yes, go to question 3; or 2. no, go to Step 5 and seek additional information from an applicant to ensure compliance with those guidelines. <p><u>Question 3</u> Is that information sufficient enough to enable the Secretary to clearly undertake the impacts of the proposal on fish populations, aquatic habitats, aquatic threatened species, commercial and recreational fishing and aquaculture industries (both directly and indirectly)?</p> <p>Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to Step 6; or 2. no, go to Step 5 and seek additional information from an applicant. 	<p>and downstream of the development site in the case of flowing rivers or tidal waterways).</p> <ul style="list-style-type: none"> • a clear description (and maps if appropriate) of aquatic environments, fish and marine vegetation that occur in the area with particular emphasis on those likely to be affected. • details of the nature, timing, magnitude and duration of any disturbance to aquatic environments. • assessments of predicted impacts upon any threatened species, populations, ecological communities (fish and marine vegetation) or critical habitat listed under the FM Act (e.g. Test of Significance and/or Species Impact Statements). • details of proposals for ameliorating any environmental effects, including habitat compensation or rehabilitation. • details of the general regional context, any protected areas, other developments in the area, and/or cumulative impacts. • notification of any other matters relevant to the particular case and NSW DPI. <p>For more information see Part 3.3 of the Policies and guidelines for fish</p>

Fisheries Management Act 1994 - permit under section 205 to harm marine vegetation in a protected area

Step	Requirement	Explanation	Considerations	Additional information
				habitat conservation and management (Updated 2013).
5.	Is further information required?	The Secretary has the power under the EP&A Regulation to request additional information.	<p><u>Question</u> Do you have all the information required to make the decision?</p> <p>Prospective outcome depending upon answer</p> <p>If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to Step 6; or 2. no, seek additional information from an applicant following the process specified 70AB of the EP&A Regulation. 	The Secretary must consider the information available before her to determine whether it is sufficient to make the decision. Refer to Step 4 for more information regarding what may be required.

Stage 3 - Making the decision

6.	What should the decision maker consider including any relevant policies or guidelines that should be followed.	<p>Marine vegetation, such as saltmarsh, mangroves, seagrasses, and macroalgae (seaweeds), provides shelter and nursery areas for aquatic animals and a hiding place from predators, and is an essential component of the food chain in estuarine and coastal environments. It also stabilises sediments and shorelines and protects water quality in estuaries for recreational users.</p> <p>The relevant matters for consideration can be found in the Policy and Guidelines for Fish Habitat Conservation and Management (2013 Update), particularly Chapter 3 and section 3.2. Adequate compensation and mitigation measures are required for any approved harm of marine vegetation.</p> <p>There are also more specific considerations depending upon the waterbody, vegetation that are proposed to be removed and type of activity (e.g, Chapter 5 refers to foreshore works and waterfront development).</p>		<p>NSW DPI applies the following policy in relation to harm to marine vegetation:</p> <ul style="list-style-type: none"> • Strapweed (<i>Posidonia australis</i>) seagrass must not be directly or indirectly impacted by any activity or development.
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Fisheries Management Act 1994 - permit under section 205 to harm marine vegetation in a protected area

Step	Requirement	Explanation	Considerations	Additional information
Stage 4 - Giving general terms of approval				
7	What are relevant statutory considerations?	<p>Under the FM Act, the decision-maker can grant a permit subject to conditions. The decision-maker can also refuse to grant an approval.</p> <p>Generally, NSW DPI will make a decision as to whether the proposal should be permitted to proceed on the basis of compatibility with the adopted Policies and guidelines for fish habitat conservation and management (Updated 2013).</p> <p>Any decision should be based on the predicted impacts upon fish populations, aquatic habitats, commercial and recreational fishing and aquaculture industries. Proposals which are likely to have a significant adverse impact are not likely to be approved in the absence of reasonable compensatory measures.</p>	<p>Having regard to the matters and information provided in Steps 3 - 6, taking into account the information outlined in the additional information section including the relevant policies and guidelines, the Secretary must determine whether to grant or refuse the permit sought. As part of this the Secretary should take into account any objects of the FM Act and the overall framework.</p> <p>Prospective outcome depending upon answer</p> <p>If the Secretary decides to:</p> <ol style="list-style-type: none"> 1. grant the permit, go to Step 8. 2. refuse the permit, the Secretary must notify the consent authority and follow the process set out the EP&A Regulation. 	<p>The Guidelines provides that proponents should, as a first priority, aim to avoid impacts upon key fish habitats. Where avoidance is impossible or impractical, proponents should then aim to minimise impacts. Any remaining impacts should then be offset with compensatory works. In order to achieve this, NSW DPI applies the following general principles to activities that may affect key fish habitats within NSW: Equity, the precautionary principle, conservation of biodiversity and fish populations, protected and threatened species, protected areas and critical habitats, a comprehensive environmental assessment, no net loss of key fish habitat, adaptive management.</p> <p>The decision-maker should read and apply the relevant tests in Section 3 of the Policies and guidelines for fish habitat conservation and management (Updated 2013).</p>

Fisheries Management Act 1994 - permit under section 205 to harm marine vegetation in a protected area

Step	Requirement	Explanation	Considerations	Additional information
8.	What conditions should be imposed?	<p>If it is determined to grant a harm marine vegetation permit to the proposed DA, the GTAs issued will need to include the following condition as harm marine vegetation permits are only issued by the Secretary Department of Industry (or delegate of) once Development Consent has been granted: 'The proponent must apply for and obtain a Part 7 permit for harm of marine vegetaion under the FM Act from DPI Fisheries prior to any works on site. Permit application forms are available from the DPI Fisheries website at: http://www.dpi.nsw.gov.au/fisheries/habitat/help/permit'</p> <p>For permits granted under section 205, consideration must then be given to the terms upon which that permit should be granted. Conditions under Part 7 are subject to such conditions as are prescribed in the Regulations or specified in the permit. These conditions can be applied at the permit stage rather than the Development Application Stage.</p> <p>Should the Secretary should consider it appropriate to include additional conditions at the General Terms of Approval stage she should consider the information provided by the applicant and assess whether it is necessary to impose conditions to ensure minimal harm to the environment due to the proposed activity.</p> <p>If the Secretary decides to impose conditions, any resulting condition must be for a proclaimed purpose, there must be a nexus between what is proposed and the condition that is proposed and it must be reasonable.</p>	<p>Matters the Secretary should consider when <u>making a decision about the terms upon which an approval should be granted</u></p> <ol style="list-style-type: none"> 1. If you would grant the permit, should it be conditional or unconditional? 2. If conditions should be imposed to help reduce potential impact, what form should these conditions take? 3. Should other special conditions be imposed? If yes, what is the basis and what form should they take? 	<p>Conditions should ensure that works cause minimal harm to the aquatic environment. Conditions can be tailored to the specific activity of works undertaken.</p> <p>Generally NSW DPI requires precautions be taken before, during and after completion of works to mitigate the environmental impacts.. See Part 3.3.2 – 3.3.5 of the Policies and guidelines for fish habitat conservation and management (Updated 2013) for conditions that may be relevant.</p> <p>A permit may include conditions requiring the permit holder to enter into a bond or guarantee or other financial arrangement for the due performance of the holder's obligations under the FM Act (see section 220(1) and (1B)).</p>

Fisheries Management Act 1994 - permit under section 219

Step	Requirement	Explanation	Considerations	Additional information
Stage 1 - Identifying the approval				
1.	What approval is required?	<p>General Terms of Approval in accordance with s.4.47 of the EP&A Act in respect to a permit under section 219 of the FM Act to:</p> <p>(a) set a net, netting or other material, or</p> <p>(b) construct or alter a dam, floodgate, causeway or weir, or</p> <p>(c) otherwise create an obstruction,</p> <p>across or within a bay, inlet, river or creek, or across or around a flat, but only if the proposed site is within a waterway that fits the definition of key fish habitat and is mapped as key fish habitat.</p>	Not applicable.	A blockage may include the construction of physical barriers (e.g. dams, weirs, regulators, road crossings, floodgates, coffer dams, silt curtains or nets), the presence of hydrological barriers (e.g. alteration of the gradient of the stream bed or increases in water velocities), or the creation of behavioural barriers (e.g. where water quality or temperature is altered deterring fish passage for some or all native fish species).
2.	Who is the approval body and what is their role?	The Minister for Primary Industries (Minister) is responsible for issuing (or refusing to issue) a permit of this nature. However, this function has been delegated to the Secretary, Department of Industry, see NSW Government Gazette No 59, or delegated senior staff within DPI Fisheries.	Not applicable.	DPI Fisheries is responsible for conserving the State's fishery resources, protecting and conserving fish habitats and threatened aquatic species in NSW waters, managing Marine Parks and Aquatic Reserves and managing and overseeing the implementation of the Marine Estate Management Strategy.
Stage 2 - Obtaining the information needed for the assessment				

Fisheries Management Act 1994 - permit under section 219

Step	Requirement	Explanation	Considerations	Additional information
3.	What are the general legislative requirements?	A permit is required to undertake an activity that would block fish passage, but only if it is in waters to which the FM Act applies. Further, a permit is not required if the activity is otherwise permitted by the FM Act or an activity or waters is exempted from the operation of this section by the regulations.	<p><u>Question 1</u> Is it a water to which the FM Act applies? See additional information regarding this. Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to question 2; or 2. no, nothing further is required. The Secretary is not required to make any decision, no permit is required. <p><u>Question 2</u> Would what has been proposed in the application block the passage of fish? i.e is it the construction of a dam, weir, floodgate, netting or other material or another activity which creates an obstruction? Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to question 3; or 2. no, nothing further is required. The Secretary is not required to make any decision, no permit is required. <p><u>Question 3</u> Is the work excluded under the FM General Regulations? See additional information for more information. Prospective outcome depending upon answer Go to Step 4, no activities or waters are currently exempt. Permit is required.</p>	<p>Is it water to which the FM Act applies? One of the objectives of the FM Act is to 'conserve key fish habitats'. However, the term 'key fish habitat' is not defined. See 'Key Fish Habitat maps' for more information on working out what would be a key fish habitat.</p> <p><u>Exclusions prescribed in the Regulation</u> No activities or waters are currently exempt from the operation of the section.</p>
4.	What information does the approval body usually require, including key policies, publications and guidelines?	Sufficient relevant information needs to be provided with the application to enable DPI Fisheries to clearly understand what is proposed and how it may affect fish populations, aquatic habitats, aquatic threatened species, commercial and recreational fishing and	<p><u>Question 1</u> Does the application contain the required information? See explanation and additional information sections.</p>	<p><u>Minimum requirements for information to be provided as outlined in section 3.3 of the Policies and guidelines for fish habitat conservation and management (Updated 2013):</u></p>

Fisheries Management Act 1994 - permit under section 219

Step	Requirement	Explanation	Considerations	Additional information
		<p>aquaculture industries (both directly and indirectly). See the additional information section for a detailed outline of the information required for a Standard Submission.</p> <p>In addition to the standard submission requirements specified in the additional information sections, the following information should also be provided:</p> <ul style="list-style-type: none"> • How often does the waterbody contain water? (If intermittent, estimate average annual frequency) • Are there permanent waterholes upstream or downstream? Give details. • Are there any natural or man-made obstructions to fish passage nearby (give details)? If so, how often are these obstructions 'drowned out'? • Are fish migrations known to occur in the area? Give details of fish species and the time(s) of migrations: • Why is it necessary to obstruct or block fish passage? • For how long do you propose to obstruct or block fish passage? • By how much will the proposed obstruction or blockage to fish passage reduce the cross-sectional area of the water course • If the proposed obstruction or blockage to fish passage contains openable 'gates' or other structures (e.g. a regulator), how often and when will it be open and enable fish passage? Give details: • What 'head loss' or 'afflux' is expected across the obstruction or blockage to fish passage under a range of flow conditions? • Describe measures proposed for maintaining fish passage during the proposed works/activities (e.g. fishways, bypass channels, trapping and manual relocation): 	<p>Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to question 2; or 2. no, go to Step 5 and seek additional information from an applicant. <p><u>Question 2</u> Has the applicant considered and applied the relevant policies and guidelines? Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to question 3; or 2. no, go to Step 5 and seek additional information from an applicant to ensure compliance with those guidelines. <p><u>Question 3</u> Is that information sufficient enough to enable the Secretary to clearly undertake the impacts of the proposal on fish populations, aquatic habitats, aquatic threatened species, commercial and recreational fishing and aquaculture industries (both directly and indirectly)? Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to Step 6; or 2. no, go to Step 5 and seek additional information from an applicant. 	<ul style="list-style-type: none"> • clear description of the proposal including details of construction methods and materials. • site address, property description, map(s) and photographs of the area affected and adjacent areas including the extent of tidal inundation if relevant. • a clear description of the physical and hydrological features of the impacted area (which may extend upstream and downstream of the development site in the case of flowing rivers or tidal waterways). • a clear description (and maps if appropriate) of aquatic environments, fish and marine vegetation that occur in the area with particular emphasis on those likely to be affected. • details of the nature, timing, magnitude and duration of any disturbance to aquatic environments. • assessments of predicted impacts upon any threatened species, populations, ecological communities (fish and marine vegetation) or critical habitat listed under the FM Act (e.g. Test of

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Step	Requirement	Explanation	Considerations	Additional information
		<ul style="list-style-type: none"> • If works will be removed after a time, how will fish passage be restored? • Will restoration of fish passage restore similar conditions to the waterbody as existed before the blocking of fish passage? • Describe environmental compensation measures for unavoidable and permanent blockage of fish passage (e.g. other improvement projects for the aquatic environment) <p>The following guidelines should also be considered and applied:</p> <ul style="list-style-type: none"> • NSW DPI Policies and guidelines for fish habitat conservation and management (Updated 2013) - this should be considered by an applicant before a development application is lodged. This outlines the general position of NSW DPI on many types of development and activities. • DPI's Integrated Development Assessment Process document provides information on DPI's requirements for various approvals/permits • Why do fish need to cross the road? Fish passage requirements for waterway crossings: Includes more detailed guidance on waterway crossings. • Aquatic Ecology in Environmental Impact Assessment. To be referred to where aquatic reserves or marine parks are likely to be affected. 		<p>Significance and/or Species Impact Statements).</p> <ul style="list-style-type: none"> • details of proposals for ameliorating any environmental effects, including habitat compensation or rehabilitation. • details of the general regional context, any protected areas, other developments in the area, and/or cumulative impacts. • notification of any other matters relevant to the particular case and NSW DPI.
5.	Is further information required?	The Secretary has the power under the EP&A Regulation to request additional information.	<p><u>Question</u> Do you have all the information required to make the decision? Prospective outcome depending upon answer If answer is:</p> <p><input type="radio"/> yes, go to Step 6; or</p>	The Secretary must consider the information available before her to determine whether it is sufficient to make the decision. Refer to step 4 for more information regarding what may be required.

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Step	Requirement	Explanation	Considerations	Additional information
			2. no, seek additional information from an applicant following the process specified 70AB of the EP&A Regulation.	

Stage 3 - Making the decision

6.	What should the decision maker consider including any relevant policies or guidelines that should be followed.	<p>The free passage of fish within rivers and streams and between estuarine and freshwater environments is a critical aspect of aquatic ecology.</p> <p>The maintenance of connectivity between upstream and downstream habitats (longitudinal connectivity) and adjacent riparian and floodplain habitats (lateral connectivity) is an essential part of fish habitat management.</p> <p>The FM Act includes provisions to ensure the maintenance and restoration of fish passage as part of the construction of new, or the modification of existing, in stream structures.</p> <p>Works that may result in the temporary or permanent blockage of fish passage require a permit.</p> <p>Part 4.1.2 of Part 4 of the Policies and guidelines for fish habitat conservation and management (Updated 2013) sets out NSW DPI's general policy and guidelines for mitigating the impacts of obstructing fish passage, there are specific guidelines and policies for different types of blockages.</p>	<p>The Secretary should consider the information provided by the application under Step 4 against the policies and guidelines for fish passage outlined in section 4.1.2 of the Policies and guidelines for fish habitat conservation and management (Updated 2013) and determine whether a permit should be granted. In addition, other requirements will apply depending on the blockage type:</p> <ol style="list-style-type: none"> 1. section 4.2 applies to waterway crossings; 2. section 4.3 applies to dams, weirs and regulators; 3. section 4.4 applies to floodgates; 4. section 4.5 applies to temporary in-stream structures; and 5. section 4.6 applies to instream rehabilitation works; and 6. section 4.7 applies to instream structural removal 	<p>The following will be relevant:</p> <ol style="list-style-type: none"> 1 The timing of any works. They should be planned so as not to interfere with the possible migration of fish within the waterway. Temporary blockages should not be placed within a waterway during the months of September to March, which are the key months when most of native fish are moving to spawn or recruit within NSW waters. They should also coincide with low flow periods within the respective catchment. 2. In-stream works (e.g. pads, coffer dams, sediment controls) should be designed and staged to avoid blocking the entire waterway. If the entire waterway is to be blocked, measures need to be implemented to maintain historic base flow conditions within the waterway (e.g. diversion channel) for the duration of the proposed works.
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Stage 4 - Giving general terms of approval

Fisheries Management Act 1994 - permit under section 219

Step	Requirement	Explanation	Considerations	Additional information
7	What are relevant statutory considerations?	<p>Under the FM Act, the Minister can grant a permit unconditionally or subject to conditions. The Minister can also refuse to grant a permit.</p> <p>Generally, NSW DPI will make a decision as to whether the proposal should be permitted to proceed on the basis of compatibility of the proposal with the adopted Policies and guidelines for fish habitat conservation and management (Updated 2013). Chapter 4 contains specific policy and guidelines relating to fish passage.</p> <p>Any decision should be based on the predicted impacts upon fish populations, aquatic habitats, commercial and recreational fishing and aquaculture industries. Proposals which are likely to have a significant adverse impact are not likely to be approved in the absence of reasonable compensatory measures.</p>	<p>Having regard to the matters and information provided in Steps 3 - 6, taking into account the information outlined in the additional information section including the relevant policies and guidelines, the Secretary must determine whether to grant or refuse the permit sought. As part of this the Secretary should consider any objects of the FM Act and the overall framework.</p> <p>Prospective outcome depending upon answer</p> <p>If the Secretary decides to:</p> <ol style="list-style-type: none"> 1. grant the permit, go to Step 8. 2. refuse the permit, the Secretary must notify the consent authority and follow the process set out the EP&A Regulation. 	<p>Any decision should be based on the predicted impacts upon fish populations, aquatic habitats, commercial and recreational fishing and aquaculture industries. Proposals which are likely to have a significant adverse impact are not likely to be approved in the absence of reasonable compensatory measures.</p> <p>The Guidelines provides that proponents should, as a priority, aim to avoid impacts upon key fish habitats. Where avoidance is impossible or impractical, proponents should then aim to minimise impacts. Any remaining impacts should then be offset with compensatory works. To achieve this, NSW DPI applies the following general principles to activities that may affect key fish habitats within NSW: Equity, the precautionary principle, conservation of biodiversity and fish populations, protected and threatened species, protected areas and critical habitats, a comprehensive environmental assessment, no net loss of key fish habitat, adaptive management.</p>

Fisheries Management Act 1994 - permit under section 219

Step	Requirement	Explanation	Considerations	Additional information
8.	What conditions should be imposed?	<p>If it is determined to grant a permit to block fish passage to the proposed DA, the GTAs issued will need to include the following condition as permits to block fish passage are only issued by the Secretary Department of Industry (or delegate of) once Development Consent has been granted: 'The proponent must apply for and obtain a Part 7 permit to block fish passage under the FM Act from DPI Fisheries prior to any works on site. Permit application forms are available from the DPI Fisheries website at: http://www.dpi.nsw.gov.au/fisheries/habitat/help/permit'</p> <p>For permits granted under section 220, consideration must then be given to the terms upon which that permit should be granted. Conditions under Part 7 are subject to such conditions as are prescribed in the Regulations or specified in the permit. These conditions can be applied at the permit stage rather than the Development Application Stage.</p> <p>Should the Secretary should consider it appropriate to include additional conditions at the General Terms of Approval stage she should consider the information provided by the applicant and assess whether it is necessary to impose conditions to ensure minimal harm to the environment due to the proposed activity.</p> <p>If the Secretary decides to impose conditions, any resulting condition must be for a proclaimed purpose, there must be a nexus between what is proposed and the condition that is proposed and it must be reasonable.</p>	<p><u>Matters the Secretary should consider when making a decision about the terms upon which an approval should be granted</u></p> <ol style="list-style-type: none"> 1. If conditions should be imposed to help reduce potential impact, what form should these conditions take? 2. Should other special conditions be imposed? If yes, what is the basis and what form should they take? 	<p>Conditions should ensure that works cause minimal harm to the aquatic environment.</p> <p>Conditions can be tailored to the specific activity of works undertaken.</p> <p>Generally NSW DPI requires precautions be taken before, during and after completion of works to mitigate the environmental impacts.. See Part 3.3.2 – 3.3.5 of the Policies and guidelines for fish habitat conservation and management (Updated 2013) for conditions that may be relevant.</p> <p>A permit may include conditions requiring the permit holder to enter into a bond or guarantee or other financial arrangement for the due performance of the holder's obligations under the FM Act (see section 220(1) and (1B)).</p>

Heritage Act 1977

Step	Requirement	Explanation	Considerations	Additional information
Stage 1 - Identifying the approval				
1.	What approval is required?	<p>General Terms of Approval in accordance with s.4.47 of the EP&A Act in respect of the doing or carrying out of an act, matter or thing referred to in s 57 (1) of the Heritage Act 1977 (section 58, <i>Heritage Act 1977 (Heritage Act)</i>).</p> <p>Section 57 states that where an interim heritage order (interim order) or listing on the State Heritage Register (State Register) applies to a place, building, work, relic moveable object, precinct or land, approval from the Heritage Council or relevant council must be granted before certain activities or work can occur.</p>	Not applicable.	Not applicable.
2.	Who is the approval body and what is their role?	The Heritage Council is an independent statutory body that works to ensure the protection, preservation and promotion of heritage in NSW. It plays a key role in reviewing relevant application to ensure that any proposed changes or additions to new buildings or sites do not detract from the heritage significance of the place.	Not applicable.	Although a local council can also be an approval body under the Heritage Act, section 4.46(4) EP&A Act provides that development cannot be integrated development in respect of an approval under section 57 of the Heritage Act if the approval that is required is the approval of the council. This will occur where the local council has been given delegated authority from the Heritage Council of NSW.
Stage 2 - Obtaining the information needed for the assessment				
3.	What are the general legislative requirements?	The relevant legislative requirements can be found in sections 57 – 60 of the Heritage Act.	<p><u>Question 1</u> Is the proposed development one that needs approval under section 60 of the</p>	<p><u>Interim Heritage Orders</u> These orders are made by the Minister on the recommendation of the Heritage Council, or by local councils under delegation. An Interim</p>

Heritage Act 1977

Step	Requirement	Explanation	Considerations	Additional information
		<p>Where a place or item is subject to an interim order or listed on the State Register, an approval is required under the Heritage Act if a person proposes to demolish, damage, move, excavate, alter or carry out development (sections 57 and 58).</p> <p>An application for approval may be made by the owner of the item or land subject of the application or any person with the consent in writing of that owner or for Crown Land the lawful occupier. There are several exemptions from this requirement, for example section 57 does not apply to anything that is exempted by a heritage agreement (section 57(1B)). In addition, the Minister can, by order published in the gazette, exempt certain activities from the requirement to obtain the Heritage Council's approval.</p>	<p>Heritage Act? i.e. is it an activity to which section 57 applies?</p> <p>Prospective outcome depending upon answer If answer is:</p> <ul style="list-style-type: none"> • yes, go to question 2; or • no, nothing further is required under section 60 of the Heritage Act 1977. The Secretary is not required to make any decision. <p><u>Question 2</u> Has the application been made by the owner of the item or land? If the applicant is not the owner has owner's consent been obtained?</p> <p>Prospective outcome depending upon answer If answer is:</p> <ul style="list-style-type: none"> • yes, go to question 3; or • no, obtain owner's consent <p><u>Question 3</u> Is the land listed on the State Heritage Register or subject to an Interim Heritage Order?</p> <p>Prospective outcome depending upon answer If answer is:</p> <ul style="list-style-type: none"> • yes, go to question 4; or • no, nothing further is required under section 60 of the Heritage Act. The Secretary is not required to make any decision. <p><u>Question 4</u> Does a standard or site specific exemption apply? Did the applicant lodge</p>	<p>Heritage Order provides a "breathing space" of no more than 12 months during which a full heritage assessment is completed. Places that currently subject to an interim heritage order include:</p> <p><u>State Heritage Register</u> This register is a list of places and objects of particular importance to the people of NSW and can be found here (https://www.environment.nsw.gov.au/heritageapp/heritagesearch.aspx)</p> <p><u>Exemptions</u> Where an exemption exists, the applicant must notify the consent authority of the exemption when the development application is lodged by lodging an exemption notification form. Some sites have sites specific exemptions identified in the State Heritage Register itself. Standard Exemptions may be found at https://www.environment.nsw.gov.au/resources/heritagebranch/heritage/StandardExemptions.pdf. In addition, a search should be undertaken of the Government Gazette.</p> <p><u>Who may make the application?</u> . Anyone may lodge an application. However, the consent of the owners is always required. If owner's consent has not been obtained, the application should be refused.</p>

Heritage Act 1977

Step	Requirement	Explanation	Considerations	Additional information
			<p>an exemption notification form? Is there an agreement that applies?</p> <p>Prospective outcome depending upon answer</p> <p>If answer is:</p> <ul style="list-style-type: none"> • yes, to any or all these questions, nothing further is required under section 60 of the Heritage Act. The Secretary is not required to make any decision; or • no, go to Step 4. 	
4.	<p>What information does the approval body usually require to assess an application and make a determination</p>	<p><u>Making an application</u></p> <p>The level of information required will vary with each application and depends on:</p> <p>(a) why the item is of heritage significance;</p> <p>(b) the complexity of the heritage item;</p> <p>(c) the type and extent of work proposed; and</p> <p>(d) the impact of the work on that significance.</p> <p>However, at general level, a section 60 application must clearly show:</p> <ul style="list-style-type: none"> • what an applicant proposes to demolish, remove, destroy or excavate, what will remain and not change, and/or what is proposed to be constructed, created, planted or altered; and • the relation of the proposal to the site boundaries and existing site features. <p>In addition, an applicant must provide:</p> <ul style="list-style-type: none"> • electronic copies of all drawings that describe the proposal; • photographs • a statement of heritage impact; • a conservation management plan but only if the proposal would have a major impact; 	<p><u>Question 1</u></p> <p>Does the application include sufficient information to enable an assessment of whether the impact of the development is appropriate for the heritage item or place?</p> <p>Prospective outcome depending upon answer</p> <p>If answer is:</p> <ul style="list-style-type: none"> • yes, go to question 2; or • no, go to Step 5 and seek additional information from an applicant. <p><u>Question 2</u></p> <p>Was this matter publicly advertised?</p> <p>Prospective outcome depending upon answer</p> <p>If advertised, the Secretary may need to see further information from Council on the representations made during the public exhibition period. These representations will also be a matter for consideration in Step 6.</p>	<p>The section 60 form approved by the Minister contains a checklist that may assist the Secretary with determining the adequacy of information provided by the Applicant for integrated developments:</p> <p>https://www.environment.nsw.gov.au/resource/s/heritagebranch/heritage/section60checklist.pdf</p> <p><u>Statement of heritage impact</u></p> <p>An integrated development application referred to the Heritage Council of NSW for GTA's or GTR's must be accompanied by a statement of heritage impact.</p> <p>A statement of heritage impact must address:</p> <ul style="list-style-type: none"> • why the item is of heritage significance; • what impact the proposed works will have on that significance; • what measures are proposed to mitigate negative impacts; and • why other solutions are not viable.

Heritage Act 1977

Step	Requirement	Explanation	Considerations	Additional information
		<ul style="list-style-type: none"> an archaeological assessment/research design, if it's an archaeological proposal and excavation is proposed; photographs; ad information about the cost of the proposed changes. 		<p>The following is the relevant guideline: https://www.environment.nsw.gov.au/resources/heritagebranch/heritage/hmstatementsofhi.pdf</p>
5.	Is further information required?	The Secretary has the power under the EP&A Regulation to request additional information.	<p><u>Question</u> Do you have all the information required to make the decision?</p> <p>Prospective outcome depending upon answer If answer is:</p> <ul style="list-style-type: none"> yes, go to Step 6; or no, seek additional information from an applicant following the process specified 70AB of the EP&A Regulation. 	The Secretary must consider the information available before her to determine whether it is sufficient to make the decision. Refer to Step 4 for more information regarding what may be required.

Stage 3 - Making the decision

6.	What should the decision maker consider including any relevant policies or guidelines that should be followed.	<p><u>Considerations</u> In reaching a decision on an application, the Heritage Council of NSW has considerable scope in deciding what matters to consider and can take into account any such matters that are relevant. In addition, it must take into consideration:</p> <ul style="list-style-type: none"> the extent to which that application, if approved, would affect the significance of any item as an item of the environmental heritage; public submissions made under section 61; relevant matters relating to conservation of the item; and 	<p>The following are relevant considerations in making a decision under the Heritage Act:</p> <ol style="list-style-type: none"> What is the significance of the heritage item or place? What is the impact of the proposed development on the heritage item or place? Is what is proposed likely to have an impact on the heritage significance of the item or place? If so, to what extent? Can impacts be avoided or mitigated? 	Public submissions must be considered including those identifying economic issued and community sentiment
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Heritage Act 1977

Step	Requirement	Explanation	Considerations	Additional information
		<ul style="list-style-type: none"> • any applicable conservation management plan (within the meaning of section 38A) endorsed by the Heritage Council. <p>There is one limitation on the Heritage Council's broad discretion, in that it must refuse an application that would involve the demolition of the whole of buildings or works that are subject to an interim order or listed on the State Register, except where they are dangerous or are to be relocated (see section 62(2) and (3)).</p> <p><u>Relevant policies and guidelines</u> There are a range of guidelines which may aid in making a decision. They are available at:</p> <ul style="list-style-type: none"> • https://www.environment.nsw.gov.au/heritage/publications/index.htm#infill • https://www.environment.nsw.gov.au/heritage/publications/index.htm#impact • https://www.environment.nsw.gov.au/resources/heritagebranch/heritage/heritagecouncil/hcapprovals.pdf 	<p>5. Is there is anything else in guidelines which could assist the Secretary in making the decision.</p>	
Stage 4 - Giving General Terms of Approval (GTA's) and General Terms of Refusal (GTR's)				
7	What are relevant statutory considerations?	Under the Heritage Act 1977, the decision-maker can grant an approval unconditionally or subject to conditions. The decision-maker can also refuse to an application. See additional information for situations in which an application should be refused. In addition, an approval can be granted partial or it can be deferred until the applicant meets a certain condition. See sections 63, 63A and 63B.	Having regard to the matters and information set out in Steps 3 - 6, including the relevant policies and guidelines, and taking into account the information outlined in the additional information section, the Secretary must determine whether to issue General Terms of Approval or General Terms of Refusal under the EPA Act 1979. The Secretary should consider any objects of	Section 63 of the Heritage Act provides that the approval body shall refuse the approval where the application for the approval is made: <ul style="list-style-type: none"> (a) to demolish the whole of a building or work, or (b) which would, if approved, necessitate the demolition of the whole of a building or work.

Heritage Act 1977

Step	Requirement	Explanation	Considerations	Additional information
			<p>the Heritage Act 1977 and the planning system.</p> <p>Prospective outcome depending upon answer If the Secretary decides to:</p> <ol style="list-style-type: none"> 1. issue GTA's, go to Step 8. 2. Issue GTR's , the Secretary must notify the consent authority and follow the process set out the EP&A Regulation. 	<p>In such circumstances the Secretary must issue General Terms of Refusal. However, this does not apply if:</p> <ol style="list-style-type: none"> (a) the approval body / Secretary forms the opinion that the building or work constitutes a danger to users or occupiers of that building or work, the public or a section of the public; (b) it is a condition of the approval that the building or work be relocated on other land (c) the building or work is situated in a place or precinct that is of State Heritage significance but is not itself an item of significance and the approval body does not think the demolition will have a materially detrimental affect on the heritage of that place or precinct.
8.	<p>What GTA's should be provided to the local council?</p>	<p>Conditions can be attached to any approval granted under section 63 of the Heritage Act 1977. For this reason, the Secretary should consider the proposal and its impacts and determine whether GTA's should be issued..</p> <p>Where the Secretary determine to issue GTA's , consideration should be given to the terms upon which it should be granted. The GTA's should be for a proclaimed purpose, there must be a nexus between what is proposed and the GTA's.The GTA's must be reasonable.</p>	<p><u>Matters the Secretary should consider when making a decisio whether to issue GTA's or GTR's</u></p> <ol style="list-style-type: none"> 1. If GTA's are issued , should it be conditional or unconditional? 2. If conditions should be imposed to help reduce potential impact, what form should these conditions take? 3. Should other special conditions be imposed? If yes, what is the basis and what form should they take? 	<p>Conditions could be imposed:</p> <ul style="list-style-type: none"> • that require the applicant give security in such form and such amount as is determined by the approval body having regard to the nature and extent of the work referred to in the approval to ensure the satisfactory completion of that work (section 63(4)(a)), or • where the approval is for the demolition, in whole or in part, of a building or work, measures are to be taken in the interests of public safety and convenience with respect to the demolition (section 63(4)(b)).

Heritage Act 1977

Step	Requirement	Explanation	Considerations	Additional information
				Approval may be also granted subject to a condition that it not operate until the applicant satisfies the approval body at to any matters specified in the deferred commencement condition (section 63A).

Mining Act 1992

Step	Requirement	Explanation	Considerations	Additional information
Stage 1 - Identifying the approval				
1.	What approval is required?	<p>General Terms of Approval in accordance with s.4.47 of the EP&A Act in respect to granting of a mining lease.</p> <p>An authorisation (in the form of a Mining Lease) is required if a person proposes to extract material from land the purpose of recovering a mineral.</p> <p>A Mining Lease is not required to prospect only.</p> <p>The following definitions are relevant:</p> <ul style="list-style-type: none"> • Authorisation means an authority, which includes a mining lease granted under Part 5 of the <i>Mining Act 1992 (Mining Act)</i>. • Mine means (when used as a verb) to extract material from land for the purpose of recovering minerals from the material so extracted or to rehabilitate land (other than a derelict mine site) from which material has been extracted, but does not include any activity declared not to be mining by a regulation under section 11A or by an order made under such a regulation; • Prospect means to carry out works on, or to remove samples from, land for the purpose of testing the mineral bearing qualities of the land but does not include any activity declared not to be prospecting by a regulation under section 11A or by a declaration made under such a regulation. 	Not applicable.	<p>It is an offence under the Mining Act to prospect for or mine any mineral except in accordance with an authorisation that is in force in respect of that mineral and the land where the prospecting or mining is carried on (section 5 of the Mining Act).</p> <p>A Mining Lease gives the holder the exclusive right to mine for minerals over a specific area of land. It can also authorise its holder to under an ancillary mining activity or activities.</p> <p>An ancillary mining activity is defined as an activity prescribed by the regulations to be an ancillary mining activity for the purpose of the term's definition. Clause 7 of the Mining Regulation sets out the activities which are prescribed for that purpose.</p> <p>Development consents for mining projects are granted by both the Minister for Planning and Environment and councils, depending upon the scale and nature of the project. The Minister for Planning is the consent authority for State Significant Development as specified in <i>State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)</i>, including mining that</p> <ol style="list-style-type: none"> a) is coal or mineral sands mining; b) is in an environmentally sensitive area of State Significance; or

Mining Act 1992

Step	Requirement	Explanation	Considerations	Additional information
		<ul style="list-style-type: none"> Mineral means any substance prescribed in Schedule 1 of the <i>Mining Regulation 2016 (Mining Regulation)</i> as a mineral and includes coal and oil shale, but does not include extractive materials meaning sand (but not mineral sands), soil, gravel, rock or similar substances. <p>An authorisation can be obtained two ways:</p> <ol style="list-style-type: none"> By grant of a mining lease under section 63 of the Mining Act; or By grant of a mining lease through a tender process in accordance with section 64 of the Mining Act. 		<p>c) has a capital investment value of more than \$30 million.</p> <p>The advice in this section is only relevant to applications for, and modifications to, local development.</p>
2.	Who is the approval body and what is their role?	The decision-maker for the purposes of determining an application for a mining lease is the Minister for Resources (Minister).	Not applicable.	

Stage 2 - Obtaining the information needed for the assessment

3.	What are the general legislative requirements?	<p><u>Requirements for applications for a mining lease</u> Division 1 of Part 5 sets out the requirements for a mining lease application.</p> <p>Any person can apply for a mining lease. However, this limited in the following manner:</p> <ol style="list-style-type: none"> for allocated minerals in mineral allocation areas, the application must be made by the holder of an exploration licence, assessment lease or mining lease over that land and in respect of that mineral, or with the consent of the Minister; for applications that relate to land in a controlled release area, it must be made by 	<p><u>Question 1</u> Is the proposed application one that needs approval under section 63 or 64 of the Mining Act?</p> <p>Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> yes, go to question 2; or no, nothing further is required. The Secretary is not required to make any decision. <p><u>Question 2</u> Is the proposed application for allocated minerals in a mineral allocation area or does it relate to a controlled release area?</p>	<p><u>Prescribed distances</u> Prescribed distances are set out in section 62(2) of the Mining Act.</p> <p><u>Exemptions</u> There is currently no prescribed list of exemptions however an exemption could be allowed where the extraction of the mineral is not the primary purpose for the development activity, or it is extracted as an ancillary activity to another approved activity. Certain land can also be exempt by an order in writing served on the applicant or tenderer.</p>
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Mining Act 1992

Step	Requirement	Explanation	Considerations	Additional information
		<p>the holder of an exploration licence, assessment lease or mining lease over that land and in respect of that mineral,</p> <p>Division 2 of Part 5 then prescribes further restrictions to the grant of mining leases. This includes situations where the land that is the subject of an exploration licence or assessment lease, land that is already the subject of an application, and land on which or within a prescribed distance, a dwelling, garden or significant improvement is situated.</p> <p>For land:</p> <ol style="list-style-type: none"> 1. subject to exploration licences, the decision-maker must engage with the holders of those exploration licences about the proposed mining lease. Any objections are to be taken into consideration when the Minister determines that application. 2. on which a dwelling, garden or significant improvement is situated, consent must be provided from the landowner. <p>The Minister may, in limited circumstances, declare that an activity is not mining and is exempt from obtaining a mining lease (section 11A Mining Act).</p> <p><u>Tenders</u> The tender process only applies to allocated minerals in land within a mineral allocation area and to controlled release minerals within a controlled release area (section 52 of the Mining Act).</p> <p><u>Exclusions of land from application or tender</u></p>	<p>Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, is the application made by a person who holds an exploration licence, assessment lease or mining lease over that land and in respect of that mineral? If yes, go to question 3. If no, the Secretary is only able to grant the approval through the tender process. 2. No, go to question 3. <p><u>Question 3</u> Does an exemption apply? Prospective outcome depending upon answer Although there are currently no prescribed exemptions in the regulation, it may still be exempt in certain circumstances, for example, certain land may be exempt from an application or tender by a declaration under section 11A. The Secretary will need to consider whether this has occurred.</p>	

Mining Act 1992

Step	Requirement	Explanation	Considerations	Additional information
		Under section 55 of the Mining Act, the decision-maker can by order direct that certain land to which an application or tender relates be excluded from the application or tender.		
4.	What information does the approval body usually require, including key policies, publications and guidelines?	<p><u>Applications for mining leases</u> Section 51(4) and (5) of the Mining Act set out the information that is must be provided as part of an application for a mining lease, including that it must specify the mineral or minerals, or the ancillary mining activity or activities. It must also be accompanied by the following information:</p> <ul style="list-style-type: none"> (a) a description, prepared in the approved manner, of the proposed mining area, and (b) an assessment of the mineral bearing capacity of land in that area and of the extent of any mineral deposits in that land, and (c) particulars of the financial resources and technical advice available to all applicant, and (d) if the application is for a mining (mineral owner) lease, evidence that the minerals to which the application relates are owned by the applicant, and (e) the environmental performance record of the applicant, and (f) be accompanied by a proposed work program, and (g) any other information that is prescribed by the regulations. 	<p><u>Question 1</u> Does the application include sufficient information to enable an assessment of the proposal? I.e. has the information outlined in the explanation and additional information sections been provided. Prospective outcome depending upon answer If answer is:</p> <ul style="list-style-type: none"> 1. yes, go to question 2; or 2. no, go to Step 5 and seek additional information from an applicant. <p><u>Question 2</u> For a tender, has the information sought in the invitation to tender been provided? Prospective outcome depending upon answer If answer is:</p> <ul style="list-style-type: none"> 1. yes, go to question 3; or 2. no, go to Step 5 and seek additional information from an applicant. 3. If tender is not relevant to the application, go to Question 3. <p><u>Question 3</u> For either an application or tender, is the information sufficient for the Secretary to make a decision? Prospective outcome depending upon answer If answer is:</p> <ul style="list-style-type: none"> 1. yes, go to question 4; or 	<p><u>Matters prescribed by the Mining Regulation</u> The following information is prescribed by clause 25 of the Mining Regulation in respect of applications for a mining lease:</p> <ul style="list-style-type: none"> a) the environmental performance record of the applicant; b) in the case of a mining (mineral owner) lease <ul style="list-style-type: none"> i) the privately-owned mineral or minerals in relation to which the lease is sought, and (ii) evidence of the applicant's ownership of any such mineral. <p>Other matters that are relevant:</p> <ul style="list-style-type: none"> 1. details of any exploration licence held by the applicants, 2. the period for which the lease is sought, 3. a description of the existing environment, the proposed impacts and constraints, 4. proof of extinguishment of native title, 5. information about any Aboriginal Land claims in the area and

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Step	Requirement	Explanation	Considerations	Additional information
		<p>The land must have also have been properly surveyed (section 66 of the Mining Act).</p> <p><u>Relevant policies and guidelines</u> The following government policies should be considered when addressing rehabilitation issues:</p> <ul style="list-style-type: none"> • Mine Rehabilitation (Leading Practice Sustainable Development Program for the Mining Industry, 2006) • Mine Closure and Completion (Leading Practice Sustainable Development Program for the Mining Industry, 2006) • Strategic Framework for Mine Closure (ANZMEC-MCA, 2000) 	<p>2. no, go to Step 5 and seek additional information from an applicant.</p> <p><u>Question 4</u> Has the applicant considered and or applied the relevant policies in making their application? Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to Step 6; or 2. no, go to Step 5 and seek additional information from an applicant. 	<p>whether they affect the area sought,</p> <ol style="list-style-type: none"> 6. post mining land use options, outcomes and proposed rehabilitation of the land, 7. rehabilitation objectives and completion criteria, 8. rehabilitation methodology, 9. conceptual final landform design, 10. monitoring and research that will be implemented, triggers for intervention and adaptive management to address adverse results, as well as research programs for the ongoing improvement of the area. 11. Post closure maintenance, how will the area be actively managed once the mine is closed, 12. Barriers or limitations to effective rehabilitation. 13. Revegetation options including how to return soils to an appropriate condition for the intended land use.
5.	Is further information required?	The Secretary has the power under the EP&A Regulation to request additional information.	<p><u>Question</u> Do you have all the information required to make the decision to determine the proposal and grant the approval or the general terms of the approval? Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to Step 6; or 2. no, seek additional information from an applicant following the process specified 70AB of the EP&A Regulation. 	The Secretary must consider the information available before her to determine whether it is sufficient to make the decision. Refer to step 4 for more information regarding what may be required.

Stage 3 - Making the decision

Mining Act 1992

Step	Requirement	Explanation	Considerations	Additional information
6.	What should the decision maker consider including any relevant policies or guidelines that should be followed.	<p>A mining lease can be granted:</p> <ol style="list-style-type: none"> 1. over any land of any title or tenure 2. in respect of any minerals regardless of whether publicly or privately owned, but if privately owned only to the owner of those minerals 3. over the surface of the land, the surface and subsoil below, or down to a specified depth below the surface. <p>Part 2 of Schedule 1B of the Mining Act contains provisions about the grant or refusal of an application for a minor lease. It also applies to tenders for a mining lease. It sets out the matters that must be taken into account in considering and includes things like the need to protect and conserve the environment and land over the authorisation is sought. To be granted a mining lease, applicants must demonstrate that:</p> <ul style="list-style-type: none"> • there is an economically mineable mineral deposit within the area of the proposed lease, and • they have the financial and technical resources to carry out mining in a responsible manner. <p><u>Mining lease for an ancillary mining activity or activities only</u> In deciding whether to grant or refuse an application of this nature, the decision-maker must have regard to guidelines issued (and made publicly available) by the Secretary for the purposes of this subsection.</p> <p><u>Relevant policies and guidelines</u> There are a range of guidelines which may aid in making a decision. They are available at:</p>	The Secretary should consider the matters specified in the Mining Act, Part 2 of Schedule 1B and any relevant policies and guidelines when making a decision about the application for a mining lease	Any mining lease granted should specify: <ol style="list-style-type: none"> 1. the description of the land over which it is granted; 2. the list of the mineral or minerals or the ancillary mining activity or activities in respect of which it is granted; and 3. the conditions to which it is subject, see step 8.

Mining Act 1992

Step	Requirement	Explanation	Considerations	Additional information
		<p>a) Guide to the AHIP Process https://www.environment.nsw.gov.au/resources/cultureheritage/110397guideahipprocess.pdf</p> <p>b) Operational Policy: Protecting Aboriginal cultural heritage (internal Government document)</p>		
Stage 4 - Giving general terms of approval				
7	What are relevant statutory considerations?	<p>It is the role of the decision-maker to critically evaluate the information that has been provided by a proponent and form a view about whether to grant the approval that is sought. This requires a comprehensive merit-based assessment process that considers a broad range of environmental issues including water, aquifers, alternative uses of the land and whether the proposed development is in the best interests of the State. The ecological sustainability of the development, including inter-generational equity and environmental, social and economic factors are also to be considered.</p> <p>After considering an application for a Mining lease, the decision-maker can grant a Mining lease over all of part of land sought or may refuse the application.</p> <p>For mining leases involving ancillary mining activities or activities only, the decision-maker cannot grant a mining lease, unless satisfied that the ancillary mining or activities is or are to be carried out in the immediate vicinity of and are directly related to facilitate the mining lease or mineral claim.</p> <p>Should a Mining Lease be granted for ancillary mining activities or activities only on land that the titleholder doesn't own, the titleholder must have a compensation or access agreement over such land, before any activities under the</p>	<p>Having regard to the matters and information set out in Steps 3 - 6, including the relevant policies and guidelines, and taking into account the information outlined in the additional information section, the Secretary must determine whether to grant or refuse the approval sought or to issue the general terms of approval. As part of this the Secretary should consider any objects of the Mining Act and the overall framework.</p> <p>Prospective outcome depending upon answer: If answer is:</p> <ol style="list-style-type: none"> 1. grant an approval, go to step 8; 2. refuse the approval, notify the relevant local council and the applicant following the process set out in the EP&A Regulation. 	<p>The following are grounds for which the decision-maker can refuse an application:</p> <ol style="list-style-type: none"> (a) the relevant decision-maker considers that the applicant (or if the application relates to a transfer, the transferee) has an unsatisfactory compliance history, (b) the relevant decision-maker considers that the applicant (or if the application relates to a transfer, the transferee) does not meet the applicable minimum standards with respect to work programs and the technical and financial capability to carry out the proposed work program, (c) the applicant has not paid any fee payable in connection with the application, (d) the applicant has failed to lodge any information required to accompany the application within 10 business days after the application is lodged (other than a written consent referred to in section 13 (5) (e1)),

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Step	Requirement	Explanation	Considerations	Additional information
		associated ML can commence (see Section 265 of the Mining Act).		<p>(e) the applicant has failed to lodge a written consent with the application (as referred to in section 13 (5) (e1)),</p> <p>(f) in the case of an application relating to a mineral claim or opal prospecting licence—that the applicant has failed to pay any levy required under section 292SA in relation to the claim or licence.</p> <p>These matters do not limit the grounds for refusal.</p>
8.	What conditions should be imposed?	<p>If a mining lease is granted under either section 63 or 64, consideration must then be given to the terms upon which the mining lease should be granted.</p> <p>Part 3 of Schedule 1B of the Mining Act sets out the conditions to which an authorisation could be subject to. See additional information section.</p> <p>If the Secretary decides to impose conditions, any resulting condition must be for a proclaimed purpose, there must be a nexus between what is proposed and the condition that is proposed and it must be reasonable.</p>	<p><u>Matters the Secretary should consider when making a decision about the terms upon which an approval should be granted</u></p> <ol style="list-style-type: none"> 1. If you would grant the approval, should it be conditional or unconditional? 2. If conditions should be imposed to help reduce potential impact, what form should these conditions take? 3. Should other special conditions be imposed? If yes, what is the basis and what form should they take? 	<p><u>Conditions under Part 3 of Schedule 1B</u></p> <ol style="list-style-type: none"> (a) any condition imposed by the relevant decision-maker under this Schedule (including any variation of such a condition), and (b) any condition imposed by or under section 246P or 261B, and (c) in the case of a mining lease—the conditions referred to in clauses 7A and 7B, and (d) in the case of a mineral claim—the conditions referred to in clause 8, and (e) in the case of an opal prospecting licence—the conditions referred to in clause 9, and (f) any condition prescribed by the regulations. <p>Such conditions could relate to:</p> <ol style="list-style-type: none"> (a) the development and conduct of mining operations, (b) environmental management, protection and rehabilitation, including requiring the holder of the authorisation to:

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Step	Requirement	Explanation	Considerations	Additional information
				<ul style="list-style-type: none"> a. carry out activities or not to carry out activities in order to protect, prevent, control or mitigate harm to the environment, and b. rehabilitate land or water that is or may be affected by activities under the authorisation, (c) compliance with codes of practice or sets of standards published by any person or body, (d) ensuring the safety of the public in relation to prospecting and mining operations, (e) the administration of authorisations, (f) community relations, (g) requiring the holder to provide the Minister with reports detailing any non-compliance with the conditions of the authorisation, or any requirements of this Act or the regulations relating to activities under the authorisation, and any action taken, or to be taken, to prevent any recurrence, or to mitigate the effects of that non-compliance. <p>The Secretary should consider the Department of Resources and Geoscience current policies and guidelines – including any published General Terms of Approval.</p>

National Parks and Wildlife Act 1974

Step	Requirement	Explanation	Considerations	Additional information
Stage 1 - Identifying the approval				
1.	What approval is required?	<p>General Terms of Approval in accordance with s.4.47 of the EP&A Act in respect to granting of an Aboriginal heritage impact permit.</p> <p>An Aboriginal heritage impact permit (AHIP) under section 90 of the <i>National Parks and Wildlife Act 1974 (NPW Act)</i>. The AHIP is issued under section 90 of the NPW Act to manage harm or potential harm to Aboriginal objects or declared Aboriginal places. It gives permission to a person to harm these objects or places in certain circumstances.</p> <p>Harm is defined to include (in summary) any act or omission that destroys, defaces, damages an Aboriginal object or place, or moves an Aboriginal object from the land on which it had been situated (see section 5(1) for the full formal definition).</p>	Not applicable.	<p>Section 4.46(2) of the EP&A Act provides that development that requires an AHIP is not integrated development unless:</p> <ol style="list-style-type: none"> 1. an Aboriginal object is known, immediately before the development application is made, to exist on the land to which the development application applies; or 2. the land to which the development application applies is an Aboriginal place within the meaning of the NPW Act immediately before the development application is made. <p>An Aboriginal place can be declared if the Minister for the Environment forms the opinion that the place is or was of special significance with respect to Aboriginal culture (section 84). Aboriginal objects are defined to be “any deposit, object or material evidence (not being handicraft made for sale) relating to the Aboriginal habitation of the area that comprises NSW being habitation before or concurrence with (or both) the occupation of that area by persons of</p>

National Parks and Wildlife Act 1974

Step	Requirement	Explanation	Considerations	Additional information
				non-Aboriginal extraction and includes Aboriginal remains (section 5(1)).
2.	Who is the approval body and what is their role?	The Office of Environment and Heritage (OEH) administers the NPW Act which protects some aspects of Aboriginal cultural heritage in New South Wales. OEH is the decision-maker who decides whether to grant an AHIP application and the terms upon which it will be granted, or whether to refuse it.	Not applicable.	

Stage 2 - Obtaining the information needed for the assessment

3.	What are the general legislative requirements?	<p>The relevant legislative requirements can be found in Part 6 Division 2 of the NPW Act and clauses 80C and 80D of the <i>National Parks and Wildlife Regulation 2009 (NPW Regulation)</i>.</p> <p>An AHIP is required if proposed development will directly or indirectly harm an Aboriginal object or a declared Aboriginal place.</p> <p>It is a defence to a prosecution for harming Aboriginal objects or places under section 87 of the NPW Act provided that:</p>	<p><u>Question 1</u> Is the proposed development one that needs approval under section 90 of the NPW Act (i.e. will the proposed development harm an Aboriginal object or a declared Aboriginal place)?</p> <p>Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to question 2; or 2. no, nothing further is required under section 90 of the NPW Act. The Secretary is not required to make any decision. 	Not applicable.
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National Parks and Wildlife Act 1974

Step	Requirement	Explanation	Considerations	Additional information
		<ol style="list-style-type: none"> 1. the harm is authorised by the AHIP; and 2. the conditions of the AHIP were not contravened. <p>There are exemptions from the requirement to hold an AHIP for certain activities. For example, it will not be an offence if the work was required for any emergency fire-fighting act or bush fire reduction work (section 87A(b) of the NPW Act). In addition, a person may not need an approval if they have complied with one of the Codes specified in clause 80A of the NPW Regulation or what is proposed is a low impact activity as set out in clause 80B of the NPW Regulation.</p>	<p><u>Question 2</u> Does an exemption apply (i.e. does what is proposed fall into one of the circumstances set out in section 87A, or clauses 80A and 80B of the NPW Regulation)?</p> <p>Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, nothing further is required under section 90 of the NPW Act. The Secretary is not required to make any decision; or 2. no, go to Step 4. 	
4.	<p>What information does the approval body usually require, including key policies, publications and guidelines?</p> <p>Part 6 Division 2 of the NPW Act and clauses 80C and 80D of the NPW Regulation</p>	<p>Any person can apply for an AHIP. To do so they need to complete the approved form and supply the information required in the NPW Regulation or as indicated on the form or material accompanying the form (section 90A NPW Act). This requires a person to:</p> <ol style="list-style-type: none"> 1. prepare an Aboriginal cultural heritage assessment report that meets the requirements set out in clause 80D of the NPW Regulation. How to meet those requirements is set out in "Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW"; and 2. complete the Aboriginal community consultation process required under clause 80C of the NPW Regulation. See the "Aboriginal cultural heritage consultation requirements for proponents 2010" (https://www.environment.nsw.gov.au/re 	<p><u>Question 1</u> Does the application include sufficient information to enable the decision-maker to consider the section 90K factors outlined in Step 6?</p> <p><u>Question 2</u> Has the applicant considered and or applied the relevant policies?</p> <p><u>Question 3</u> Does the provided Aboriginal cultural heritage assessment report meet the requirements of clause 80D of the NPW Regulation? To determine this review the relevant requirements of the <i>Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW</i>.</p> <p>Prospective outcome depending upon answer If answer is to Questions 1,2 and 3 is:</p> <ol style="list-style-type: none"> 1. yes, go to Step 6; or 2. no, go to Step 5 and seek additional information from an applicant. 	<p>It is the role of the decision-maker to critically evaluate the information that has been provided by a proponent and form a view about the appropriateness and correctness of it. To meet the requirements of clause 80D of the NPW Regulation the applicant must provide the following information:</p> <ol style="list-style-type: none"> 1. a description of the Aboriginal objects and declared Aboriginal places located within the area of the proposed activity; 2. a description of the cultural heritage values, including the significance of the Aboriginal objects and declared Aboriginal places, that exist across the whole area that will be affected by the proposed activity and the significance of these values for the Aboriginal

National Parks and Wildlife Act 1974

Step	Requirement	Explanation	Considerations	Additional information
		<p style="text-align: center;">sources/cultureheritage/commconsultation/09781ACHconsultreq.pdf).</p> <p>For decisions relating to applications, the information sought from applicants should provide all the information needed to consider the section 90K factors outlined in Step 6. See additional information section regarding the information that is required.</p> <p>The following other policies are available on OEH's website which outlines the process and requirements for applying for an AHIP should be considered by an applicant:</p> <ul style="list-style-type: none"> • Applying for an Aboriginal Heritage Impact Permit: Guide for applicants (May 2011) https://www.environment.nsw.gov.au/resources/cultureheritage/20110280AHIPguideforapplicants.pdf • Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (September 2010) https://www.environment.nsw.gov.au/resources/cultureheritage/ddcop/10798ddcop.pdf • Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales (September 2010) https://www.environment.nsw.gov.au/resources/cultureheritage/10783FinalArchCOP.pdf • Guide to Aboriginal Heritage Impact Permit Processes and Decision Making Version 2 (August 2011) https://www.environment.nsw.gov.au/resources/cultureheritage/110397guideahipprocess.pdf 		<p>people who have a cultural association with the land;</p> <ol style="list-style-type: none"> 3. how the requirements for consultation with Aboriginal people have been met as specified in clause 80C of the NPW Regulation; 4. the views of those Aboriginal people regarding the likely impact of the proposed activity on their cultural heritage (if any submissions have been received as a part of the consultation requirements, the report must include a copy of each submission and your response; 5. actual or likely harm posed to the Aboriginal objects or declared Aboriginal places from the proposed activity, with reference to the cultural heritage values identified; 6. any practical measures that may be taken to protect and conserve those Aboriginal objects or declared Aboriginal places; and 7. any practical measures that may be taken to avoid or mitigate any actual or likely harm, alternatives to harm or, if this is not possible, to manage (minimise) harm.

National Parks and Wildlife Act 1974

Step	Requirement	Explanation	Considerations	Additional information
5.	Is further information required?	The Secretary has the power under the EP&A Regulation to request additional information.	Seek additional information from an applicant following the process specified 70AB of the EP&A Regulation.	The Secretary must consider the information available before her to determine whether it is sufficient to make the decision. Refer to step 4 for more information regarding what may be required.
Stage 3 - Making the decision				
6.	What should the decision maker consider including any relevant policies or guidelines that should be followed.	<p>Considerations Section 90K of the NPW Act sets out the following factors that must be considered as part of the determinative process for AHIP:</p> <ul style="list-style-type: none"> a) the objects of the NPW Act, b) actual or likely harm to the Aboriginal objects or Aboriginal place that are the subject of the permit, c) practical measures that may be taken to protect and conserve the Aboriginal objects or Aboriginal place that are the subject of the permit, d) practical measures that may be taken to avoid or mitigate any actual or likely harm to the Aboriginal objects or Aboriginal place that are the subject of the permit, e) the significance of the Aboriginal objects or Aboriginal place that are the subject of the permit, f) the results of any consultation by the applicant with Aboriginal people regarding the Aboriginal objects or Aboriginal place that are the subject of the permit (including any submissions made by Aboriginal people as part of a 	<p>The following are relevant considerations in making a decision under the NPW Act:</p> <ol style="list-style-type: none"> 1. What is the impact of the proposed development on the Aboriginal object or a declared Aboriginal place? 2. How do these fit with the objects of the NPW Act? 3. Does the proposal include practical measures to: <ul style="list-style-type: none"> (a) protect and conserve the Aboriginal place or object; or (b) avoid and mitigate any actual harm? 4. What is the significance of the place or object? 5. What is the outcome of the consultations with the Aboriginal people about the proposal? Are they in favour? Do they oppose? If so, why? 6. Are there any social or economic consequences that arise because of the making of decision in favour or against the proposal? 7. Is there is anything else in the guidelines which could assist the Secretary in making the decision. 	<p>The AHIP process aims to:</p> <ol style="list-style-type: none"> 1. explore suitable mechanisms for protecting Aboriginal objects and Aboriginal places; and 2. identify management options for Aboriginal cultural heritage in consultation with the Aboriginal community.

National Parks and Wildlife Act 1974

Step	Requirement	Explanation	Considerations	Additional information
		<p>consultation required by the regulations),</p> <p>g) whether any such consultation substantially complied with any requirements for consultation set out in the regulations,</p> <p>h) the social and economic consequences of making the decision,</p> <p>i) in connection with a permit application:</p> <ul style="list-style-type: none"> (i) any documents accompanying the application, and (ii) any public submission that has been made under the EP&A Act in connection with the activity to which the permit application relates and that has been received by the Chief Executive of OEH, and <p>j) any other matter prescribed by the regulations.</p> <p>This is an exhaustive list and no other matters can be considered (section 90K(2)).</p> <p><u>Relevant policies and guidelines</u></p> <p>There are a range of guidelines which may aid in making a decision. They are available at:</p> <ul style="list-style-type: none"> • Guide to Aboriginal Heritage Impact Permit Processes and Decision Making Version 2 (August 2011) https://www.environment.nsw.gov.au/resources/cultureheritage/110397guideahipprocess.pdf • <u>Operational Policy: Protecting Aboriginal cultural heritage</u> https://www.environment.nsw.gov.au/re 		

National Parks and Wildlife Act 1974

Step	Requirement	Explanation	Considerations	Additional information
		sources/cultureheritage/110396oppolac h.pdf)		
Stage 4 - Giving general terms of approval				
7	What are relevant statutory considerations?	<p>Under the NPW Act, the decision-maker can grant an AHIP subject to conditions (section 90(2)). The decision-maker can also refuse to grant the AHIP.</p> <p>The grounds for the refusal of an AHIP should always be determined on a case-by-case basis and will depend on the outcome of the decision-making process. See additional information section for examples of situations where an AHIP should be refused.</p>	<p>Having regard to the matters and information set out in Steps 3 - 6, including the relevant policies and guidelines, and taking into account the information outlined in the additional information section, the Secretary must determine whether to issue the general terms of approval. As part of this the Secretary should consider any objects of the NPW Act and the overall framework.</p> <p>Prospective outcome depending upon answer: If answer is:</p> <ol style="list-style-type: none"> 1. grant the AHIP, go to step 8; 2. refuse the AHIP, notify the relevant local council and the applicant following the process set out in the EP&A Regulation. 	<p>Examples of where an AHIP should be refused include:</p> <ol style="list-style-type: none"> 1. a proposal would desecrate an Aboriginal object or declared place, 2. there are serious heritage conservation or protection issues, that is, where there is potential for unacceptable harm. See the following policy for more information on this issue <u><i>Operational Policy: Protecting Aboriginal cultural heritage</i></u>. However, examples of this include: <ul style="list-style-type: none"> • where the project design is unsympathetic to the Aboriginal cultural heritage values of Aboriginal objects or places and will extensively harm them • where harm from an AHIP could be avoided by adopting other reasonable and practical measures

National Parks and Wildlife Act 1974

Step	Requirement	Explanation	Considerations	Additional information
				<ul style="list-style-type: none"> • where the loss of an Aboriginal object would irreversibly diminish the ability of Aboriginal communities to exercise cultural practices within a region or have an irreversible impact on cultural identity • where an identified Aboriginal object is – known to be of national, state or regional significance • of a type that is rare or cannot be readily accessed in the wider region • of a type known to be poorly conserved in the reserve system • where proposed works associated with an AHIP are inconsistent with the reasons for declaring an Aboriginal place.
8.	What conditions should be imposed?	<p>Conditions can be attached to an AHIP granted under section 90. For this reason, the Secretary should consider the proposal and its impacts and determine whether conditions should be imposed.</p> <p>Where the Secretary determine to grant an in-principle approval, consideration should be given to the terms upon which it should be granted. Any resulting condition must be for a proclaimed purpose, there must be a nexus</p>	<p>Matters the Secretary should consider when making a decision about the General Terms of Approval.</p> <p>What conditions should be imposed to help reduce potential impact, what form should these conditions take?</p> <p>Should other special conditions be imposed? If yes, what is the basis and what form should they take?</p>	<p>AHIPs may comprise the following types of conditions according to their use:</p> <ol style="list-style-type: none"> 1. mandatory; 2. standard; 3. operational; and 4. site-specific. <p>Site-specific conditions will be drafted on a case by case basis to cover</p>

National Parks and Wildlife Act 1974

Step	Requirement	Explanation	Considerations	Additional information
		between what is proposed and the condition that is proposed and it must be reasonable.		<p>unique circumstances that are relevant to an AHIP.</p> <p>See also the policy above “<i>Guide to Aboriginal Heritage Impact Permit processes and decision-making.</i>”</p>

Protection of the Environment Operations Act 1997

Step	Requirement	Explanation	Considerations	Additional information
Stage 1 - Identifying the approval				
1.	What approval is required?	<p>General Terms of Approval in accordance with s.4.47 of the EP&A Act in respect to an environment protection licence.</p> <p>An environmental protection licence under the <i>Protection of the Environment Operations Act 1997 (POEO Act)</i> by anyone who is:</p> <ul style="list-style-type: none"> • intending to carry out scheduled development work at any premises • carrying out scheduled activities at any premises (excluding any activity described as a 'waste activity' but including any activity described as a 'waste facility') • carrying out non-scheduled activities for the purposes of regulating water pollution resulting from the activity. <p>An environment protection licence regulates development to prevent or minimise emissions of pollutants from specific activities, to protect the environment and human health including emissions to air, land and water and noise and vibration impacts.</p> <p>Note that the issuing of GTAs is not an approval for the licensed activity and applicant still needs to apply to the EPA for an environment protection licence.</p>	Not applicable.	<p>Development is integrated development in respect of a licence that may be granted under the POEO Act to control the carrying out of non-scheduled activities for the purpose of regulating water pollution only if:</p> <ol style="list-style-type: none"> 1. the development application stipulates that an application for such a licence has been or will be made in respect of the development, or 2. the Environment Protection Authority notifies the consent authority in writing before the development application is granted or refused that an application for such a licence has been or may be made in respect of the development (section 4.46 EP&A Act).

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Step	Requirement	Explanation	Considerations	Additional information
2.	Who is the approval body and what is their role?	The NSW Environment Protection Authority (EPA) is the appropriate regulatory authority for activities at premises that require an environment protection licence (section 6, POEO Act). The EPL authorises the scheduled activity and if the activity is premises based, it defines the premises. The owner of the premises needs to give consent for the EPL application.	Not applicable.	The Protection of the Environment Operations (General) Regulation 2009 (General Regulation) at Chapter 7, Part 1 declares other appropriate regulatory authorities in certain circumstances. The EPA is the only appropriate regulatory authority relevant to licencing under Part 3 of the POEO Act.

Stage 2 - Obtaining the information needed for the assessment

3.	What are the general legislative requirements?	<p>The relevant legislative requirements can be found in sections 43, 47, 48, 55, 59 and 122 of the POEO Act.</p> <p><u>Section 43 – types of licences</u> An environment protection licence (EPL) may be issued under section 43 of the POEO Act to:</p> <ol style="list-style-type: none"> 1. authorise the carrying out of scheduled development work at any premises, as required under section 47; 2. authorise the carrying out of scheduled activities at any premises, as required under section 48; 3. control the carrying out of non-scheduled activities for the purpose of regulating water pollution resulting from any such activity, as referred to in section 122. <p><u>Scheduled development work</u> Scheduled development work is defined in section 47 as work at any premises at which scheduled activities are not carried on that is designed to enable scheduled activities to be carried on at the premises. It also includes</p>	<p><u>Question 1</u> Is the proposal a scheduled development work or a scheduled activity that meets the relevant threshold and criteria in Schedule 1 of the POEO Act? Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to question 2; or 2. no, nothing further is required. The Secretary is not required to make any decision. <p><u>Question 2</u> Is the application made by or with the consent in writing of the occupier of the premises?</p> <ol style="list-style-type: none"> 1. yes, go to Step 4; or 2. no, the Secretary may need to seek further information under Step 5. Under section 59 of the POEO Act, an application may only be made by the occupier or with the written consent of the occupier. 	<p><u>Scheduled development work</u> The following is specified in the clause 46 of the General Regulation as scheduled development work for the purposes of the POEO Act: <i>Work at any premises at which scheduled activities of a class listed in Schedule 1 to the Act are carried on that is designed to enable scheduled activities of a different class listed in that Schedule not authorised by a licence to be carried on at the premises.</i></p> <p>No works are currently specified as not being scheduled development by the regulation.</p> <p><u>Scheduled activities</u> See <u>Schedule 1 of the POEO Act</u> for the full list of scheduled activities to which section 48 applies. Special provisions apply for composting (clause 12). It provides that a composting activity is only declared to</p>
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Step	Requirement	Explanation	Considerations	Additional information
		<p>anything specified by the regulations as scheduled development work for the purposes of the POEO Act but does not include anything that is specified by the regulations as not being scheduled development work.</p> <p><u>Scheduled activities</u> Section 48 of the POEO Act applies to scheduled activities where Schedule 1 indicates that a licence is required for premises at which the activity is carried out on.</p> <p><u>Restrictions on making applications</u> Section 59 of the POEO Act provides that an application for a licence that relates to premises may be made only by or with the consent in writing of the occupier of the premises.</p>		<p>be a scheduled activity where it takes place inside the regulated area or takes place outside the regulated area but receives organics from inside the regulated area. The term regulated area is defined in clause 50 of Division 2 of Schedule 1.</p> <p>Most activities in Schedule 1 of the POEO Act specify a threshold above which a licence is needed. For example, if you carry out an activity of live-stock intensive activities—cattle, sheep or horse accommodation and can accommodate 1,500 cattle at any one time at the premises, you will need to hold a licence for the activity as the threshold is an accommodation capacity of ‘more than 1000 head of cattle’.</p> <p>There are also some exclusion from licensing. For example, there is an ‘exemption’ for cattle, sheep or horse accommodation facilities that can accommodate more than 1,000 cattle, 4,000 sheep or 400 horses if the facilities are ‘for drought or similar emergency relief’. Thresholds and exclusions are included in the definition of each scheduled activity listed in Schedule 1 of the POEO Act.</p> <p><u>Non-scheduled activities</u> The POEO Act does not require a licence to be issued for a non-scheduled activity, rather section 122 is a defence in proceedings against a person for an offence if the person</p>

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Step	Requirement	Explanation	Considerations	Additional information
				can establish that the carrying out of the non-scheduled activities was regulated by an EPL held by the person.
4.	What information does the approval body usually require, including key policies, publications and guidelines?	<p><u>Information requirements:</u> Appendix 1 of the EPA's Guide to Licensing sets out the material that must be provided in support of an application for an EPL. Generally, where applicable the following is required:</p> <ul style="list-style-type: none"> • Environmental Impact Statement or statement of environmental effects • A copy of the development application • A detailed description of: <ul style="list-style-type: none"> ○ the current and/or proposed activity (including commencement and completion dates of all stages of development work) ○ the production process (if any), including the types of materials used (that is, all solid, liquid and gas inputs), any reuse of recycled materials, and the nature of the finished product and all intermediates. Include a flow diagram of the process, showing all emission and/or discharge points for pollutants, raw material stockpiles and raw material input points; add a 	<p><u>Question 1</u> Does the application include sufficient information to enable an assessment of the proposal? i.e. has the relevant information outlined in the explanation and additional information columns provided. Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to question 2; or 2. no, go to Step 5 and seek additional information from an applicant. <p><u>Question 2</u> Is the information sufficient for the Secretary to make a decision? Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to question 3; or 2. no, go to Step 5 and seek additional information from an applicant. <p><u>Question 3</u> Is it clear from the information provided that the applicant considered and or applied the relevant policies? Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to Step 6; or 2. no, go to Step 5 and seek additional information from an applicant. 	<p>Air Impacts Emissions should not cause adverse impact upon human health and amenity. The proposed development should not result in offensive odour.</p> <p>The application should include a detailed Air Quality Impact Assessment (AQIA) for construction and operation of the development in accordance with the approved methods for the modelling and assessment of air pollutants in NSW.</p> <p>The AQIA should include:</p> <ul style="list-style-type: none"> • Demonstrated ability of the development to comply with the relevant regulatory framework, specifically the POEO Act and the POEO (Clean Air) Regulation (2010); and • A cumulative local and regional air quality impact assessment, including odour. <p>Noise Impacts The approval application should demonstrate the applicant can manage the impact of noise and</p>

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Step	Requirement	Explanation	Considerations	Additional information
		<p> <ul style="list-style-type: none"> ○ piping and instrument diagram where appropriate. ○ the finished product (if any) (tonnes/year), and capacity (tonnes/year) ○ all pollutants (air, water, noise) and waste products that will be generated, discharged and/or emitted ○ the proposed treatment, mitigation, and/or disposal methods for pollutants, including any discharges after treatment and/or mitigation and disposal ○ all pollution control equipment ○ the expected environmental goals or outcomes to be achieved in conducting the activity; ○ any site contamination; ○ the locality and site plan <p>See Appendix 1 of the EPA's Guide to Licensing for the additional information requirements that apply, including:</p> <ol style="list-style-type: none"> 1. where an activity will discharge pollutants to air, water, or land; 2. for activities with a proximity to dwellings and roads 3. for activities that relate to the generation, treatment, processing, reprocessing, storage and/or disposal of waste. <p><u>Policies and guidelines:</u></p> <p>Air</p> </p>		<p>vibration to protect the amenity and wellbeing of the community. Potential impacts should be minimised through the implementation of all feasible and reasonable mitigation measures.</p> <p>A noise and vibration impact assessment for both construction and operational phases should be undertaken as part of the application in accordance with relevant guidelines. EPA Noise Practice Notes are also applicable.</p> <p>The applicant may be required to assess blast overpressure and vibration impacts in accordance with ANZEC, 1990 <i>Technical Basis for Guidelines to minimise Annoyance Due to Blasting Overpressure and Vibration</i></p> <p>Water All practical measures that could be taken to prevent, control, abate or mitigate water pollution and protect human health and the environment from harm are considered and implemented where appropriate.</p> <p><u>Assessment Criteria</u> Applicants must demonstrate that all practical options to avoid discharge have been investigated and implemented and measures have been taken to reduce the level of contaminants in the discharge so that any impact is reduced where a</p>

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Step	Requirement	Explanation	Considerations	Additional information
		<ul style="list-style-type: none"> • Approved Methods for the Modelling and Assessment of Air Pollutants in NSW (EPA, 2016) https://www.epa.nsw.gov.au/your-environment/air/industrial-emissions/modelling-assessing-air-emissions • Approved Methods for the Sampling and Analysis of Air Pollutants in NSW (DECC 2006) https://www.epa.nsw.gov.au/your-environment/air/industrial-emissions/sampling-analysing-air-emissions • Technical Framework – Assessment and Management of Odour from Stationary Sources in NSW (DEC, 2006) https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/air/20060440framework.pdf • Generic Guidance and Optimum Model Settings for the CALPUFF Modelling System for Inclusion into the 'Approved Methods for the Modelling and Assessments of Air Pollutants in NSW, Australia (OEH, 2011) https://www.epa.nsw.gov.au/~media/EPACorporate%20Site/resources/air/CALPUFFModelGuidance.ashx • Ground-level ozone impact assessment framework (EPA, 2015) https://www.epa.nsw.gov.au/~media/EPACorporate%20Site/resources/air/150305-ozone-impact-assessment-summary.ashx <p>Noise</p>		<p>discharge is necessary. Applicants must:</p> <ol style="list-style-type: none"> 1. identify and estimate the quality and quantity of all pollutants that may be introduced into the water cycle by source and discharge point and describe the nature and degree of impact that any discharge(s) will have on the receiving environment, including consideration of all pollutants that pose a risk of non-trivial harm to human health and the environment (this should also include intercepted saline groundwater or acidic runoff generated by acid sulphate soil where appropriate); 2. demonstrate assessment against the ambient NSW Water Quality Objectives http://www.environment.nsw.gov.au/ieo/ and environmental values for the receiving waters relevant to the infrastructure activity, including the indicators and associated trigger values or criteria for the identified environmental values (this information should be sourced from the ANZECC (2000) criteria; 3. assess the significance of any identified impacts including consideration of the relevant

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Step	Requirement	Explanation	Considerations	Additional information
		<ul style="list-style-type: none"> • Noise Policy for Industry https://www.epa.nsw.gov.au/your-environment/noise/industrial-noise/noise-policy-for-industry-(2017) • Interim Construction Noise Guideline http://www.epa.nsw.gov.au/noise/constructnoise.htm • ANZECC Guideline for Blasting http://www.epa.nsw.gov.au/noise/blasting.htm • Assessing Vibration: A Technical Guide http://www.epa.nsw.gov.au/noise/vibrationguide.htm • Rail Noise Infrastructure Noise Guidelines (EPA, 2013) http://www.epa.nsw.gov.au/noise/railnoise.htm • Road Noise Policy and Application Notes http://www.epa.nsw.gov.au/noise/traffic.htm <p>Water</p> <ul style="list-style-type: none"> • Approved Methods for the Sampling and Analysis of Water Pollutants in NSW (DECC 2008). • <i>Australian and New Zealand Guidelines for Fresh and Marine Water Quality</i> (Australian and New Zealand Governments and Australian State and territory governments, http://www.waterquality.gov.au/anz-guidelines). • NSW Water Quality and River Flow Objectives a http://www.environment.nsw.gov.au/ieo/ • Using the ANZECC Guidelines and Water Quality Objectives in NSW (DEC 2006) 		<p>environmental values and ambient water quality outcomes. Assessment of discharges to surface waters should be guided by the ANZECC (2000); guidelines using local Water Quality Objectives.</p> <p>4. Demonstrate how construction and operation of the activity will:</p> <ol style="list-style-type: none"> a. protect the NSW Water Quality Objectives for receiving waters where they are currently being achieved; b. contribute towards achievement of the NSW Water Quality Objectives over time where they are not currently being achieved; and c. identify any proposed monitoring of water quality. <p>Waste EPA's Waste strategy in force under the Waste Avoidance and Resource Recovery Act 2001 could be a relevant consideration.</p> <p>The applicant will need to consider different assessment requirements based on the type of facility (i.e. landfills, alternative waste treatment</p>

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Step	Requirement	Explanation	Considerations	Additional information
		<p>https://www.environment.nsw.gov.au/research-and-publications/publications-search/using-the-anzecc-guidelines-and-water-quality-objectives-in-nsw</p> <ul style="list-style-type: none"> • Managing Urban Stormwater: Soils and Construction Volume 1 (Landcom 2004) and Volume 2 (A. Installation of Services; B Waste Landfills; C. Unsealed Roads; D. Main Roads; E. Mines and Quarries) (DEC, 2008) • Environmental Guidelines for Use of Effluent by Irrigation https://www.environment.nsw.gov.au/water/effluent.htm • Storing and Handling Liquids: Environmental Protection (EPA, 2007) https://www.epa.nsw.gov.au/licensing-and-regulation/licensing/environment-protection-licences/compliance-audit-program/chemical-storage-handling-and-spill-management/storing-and-handling-liquids-trainers-manual <p>Waste</p> <ul style="list-style-type: none"> • Waste guidelines and resources can be found at https://www.epa.nsw.gov.au/your-environment/recycling-and-reuse/warr-strategy and https://www.epa.nsw.gov.au/your-environment/waste/waste-overview/waste-regulations • EPA's Waste Classification Guidelines (DECC, 2009) https://www.epa.nsw.gov.au/your-environment/waste/classifying-waste • Environmental Guidelines: Solid Waste Landfills (EPA, Second edition 2016) 		<p>plants, liquid waste treatment plants, waste recovery facilities, building demolition waste processing yards, scrap metal yards, waste processing, waste fuel production, energy recovery facilities and in the context of Resource Recovery Orders and Exemptions).</p> <p>The waste transported, generated, or received as part of carrying out the activity should be minimised and managed in a way that protects all environmental values.</p> <p>Any human health or environmental impacts, risks and mitigation measures will need to be set out in accordance with relevant guidelines.</p> <p>Potential impacts related to the following environmental issues (that is Air issues (air quality, odour and dust emissions), noise and vibration, water pollution and waste management and generation) may need to be assessed, quantified and reported on where they are relevant to the proposal being assessed.</p> <p>Additional requirements for proposals thermally treating waste or recovering energy from waste.</p> <p>Refer to NSW Energy from Waste Policy requirements, and Resource Recovery framework.</p>

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Step	Requirement	Explanation	Considerations	Additional information
		<ul style="list-style-type: none"> • Environmental Guidelines: Use and Disposal of Biosolids Products (EPA, 1997) https://www.epa.nsw.gov.au/your-environment/recycling-and-reuse/resource-recovery-framework/current-orders-and-exemption/resource-recovery-biosolids • Environmental Guidelines: Composting and Related Organics Processing Facilities (EPA< 2004) https://www.epa.nsw.gov.au/your-environment/waste/waste-facilities/organics-processing-facilities • NSW Energy from Waste Policy Statement (EPA, 2015) https://www.epa.nsw.gov.au/publications/waste/140056-energy-from-waste • Standards for Managing Construction Waste in NSW https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/wasteregulation/18p1270-standards-for-managing-construction-waste-in-nsw.pdf <p>Scheduled Remediation</p> <ul style="list-style-type: none"> • Remedial Action Plan (RAP) in accordance with the contaminated land planning guidelines (as defined in Schedule 6 EP&A Act), and the guidelines (if any) in force under the <i>Contaminated Land Management Act 1997</i>. 		
5.	Is further information required?	The Secretary has the power under the <i>Environmental Planning and Assessment Regulation 2000 (EP&A Regulation)</i> to request additional information.	<p><u>Question</u> Do you have all the information required to make the decision? Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to Step 6; or 	The Secretary must consider the information available before her to determine whether it is sufficient to make the decision. Refer to step 4 for more information regarding what may be required.

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Step	Requirement	Explanation	Considerations	Additional information
			2. no, seek additional information from an applicant following the process specified in clause 54(2) – (6) of the EP&A Regulation	

Stage 3 - Making the decision

6.	What should the decision maker consider including any relevant policies or guidelines that should be followed.	<p><u>Considerations</u> In exercising its functions under the Act, the appropriate regulatory authority is required to consider the following considerations set out in section 45 of the POEO Act:</p> <ol style="list-style-type: none"> 1. any protection of the environment policies; 2. the objectives of the EPA as referred to in section 6 of <i>the Protection of the Environment Administration Act 1991</i>; 3. the pollution caused or likely to be caused by the carrying out of the activity or work concerned and the likely impact of that pollution on the environment; 4. the practical measures that could be taken: <ol style="list-style-type: none"> a. to prevent, control, abate or mitigate that pollution, and b. to protect the environment from harm as a result of that pollution, 5. any relevant green offset scheme, green offset works or tradeable emission scheme or other scheme involving economic measures, as referred to in Part 9.3; 6. in relation to an activity or work that causes, is likely to cause or has caused water pollution: 	The Secretary should consider the information provided against the matters specified in section 45 of the POEO Act, and any relevant policies and guidelines when making a decision about the referral for GTAs and whether the EPA is likely to issue an approval.	<p>An environment protection licence must be held by a fit and proper person (in accordance with section 83, of POEO Act). Note that is may not be a relevant consideration at the time of assessing whether to issue GTAs.</p> <p>For scheduled development work, an Erosion and Sedimentation Control Plan (ESCP) or Construction Environmental Management Plan (CEMP) must be provided to the EPA with the Licence application.</p>
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Step	Requirement	Explanation	Considerations	Additional information
		<ul style="list-style-type: none"> <li style="margin-left: 40px;">a. the environmental values of water affected by the activity or work, and <li style="margin-left: 40px;">b. the practical measures that could be taken to restore or maintain those environmental values, 7. in connection with a licence application relating to the control of the carrying out of non-scheduled activities for the purpose of regulating water pollution— whether the applicant is the appropriate person to hold the licence having regard to the role of the applicant in connection with the carrying out of those activities; 8. in connection with a licence application— any documents accompanying the application; 9. in connection with a licence application— any relevant environmental impact statement, or other statement of environmental effects, prepared or obtained by the applicant under the <i>Environmental Planning and Assessment Act 1979</i>; 10. in connection with a licence application— any relevant species impact statement prepared or obtained by the applicant under the <i>Threatened Species Conservation Act 1995</i> or Part 7A of the <i>Fisheries Management Act 1994</i>; 11. in connection with a licence application, any waste strategy in force under the <i>Waste Avoidance and Resource Recovery Act 2001</i>; 12. in connection with a licence application: <ul style="list-style-type: none"> a. any public submission in relation to the licence application received by the appropriate 		

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Step	Requirement	Explanation	Considerations	Additional information
		<p>regulatory authority under this Act, and</p> <p>b. any public submission that has been made under the <i>Environmental Planning and Assessment Act 1979</i>, in connection with the activity to which the licence application relates, and that has been received by the appropriate regulatory authority; and</p> <p>The appropriate regulatory authority should also consider:</p> <ol style="list-style-type: none"> 1. the objectives in s.3 of the POEO Act and the overall framework; 2. any EIS, Statement of Environmental Effects, Waste Strategy or technical reports provided by the applicant; and 3. any submissions from the public received by council during community consultation. <p><u>Relevant policies and guidelines</u> Refer to the relevant guidelines and policies outlined above in Step 4.</p>		

Stage 4 - Giving general terms of approval

7	What are relevant statutory considerations?	It is the role of the decision-maker to critically evaluate the information that has been provided by a proponent and form a view about whether the approval required, in relation to the development, should be granted. This requires a comprehensive merit-based assessment that considers protection, restoration and enhancement of the quality of the environment in the State, the ecological sustainability of the	Having regard to the matters and information set out in Steps 3 - 6, including the relevant policies and guidelines, and taking into account the information outlined in the additional information section, the Secretary must determine whether the approval required, in relation to the development, should be granted. Prospective outcome depending upon answer: If answer is:	
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Step	Requirement	Explanation	Considerations	Additional information
		<p>development, including inter-generational equity and environmental, social and economic factors are also to be considered, and reduction of risks to human health and prevention of the degradation of the environment.</p> <p>After considering an EPL application, the EPA may grant the EPL either unconditionally or subject to conditions. It can also refuse to grant the approval.,</p>	<ol style="list-style-type: none"> 1. an EPL is proposed to be granted that is consistent with the GTAs, go to step 8; 2. an EPL could not be approved, notify the relevant local council. 	
8.	What conditions should be imposed?	<p>If an EPL is proposed to be granted, consideration must be given to the terms upon which the EPL should be granted.</p> <p>The EPA's general terms of approval generally provide for the following types of licence conditions:</p> <ul style="list-style-type: none"> • Administrative conditions - authorising specific scheduled activities and / or scheduled development works to be carried out; up to a specified capacity (scale); • Limit conditions - specifying environmental performance requirements for each non-trivial environmental impact that has been identified (e.g. concentration and load limits for discharge of water pollutants); • Operating conditions – standard mandatory conditions; • Monitoring and recording conditions, including complaints handling; • Reporting conditions, including notification of environmental harm; and • General conditions. 	<p><u>Matters the Secretary should consider when making a decision about the terms upon which an approval should be granted</u></p> <ol style="list-style-type: none"> 1. If you would grant the EPL, should it be conditional or unconditional? 2. Whether discharges of pollutants are to be permitted 3. Whether any limits on pollutants should be imposed; 4. What monitoring of pollutants and or ambient environmental attributes should be required; 5. Other conditions as outlined in Part 3.5 POEO as appropriate. 	<p>Part 3.5, sections 65 to 76 of the POEO Act contain a non-exhaustive list of examples of conditions that can be attached to a licence. These conditions relate to:</p> <ol style="list-style-type: none"> 1. Monitoring; 2. Supply of information; 3. Certification; 4. Mandatory environmental audits 5. Pollution studies and reduction programs; 6. Financial assurances; 7. Remediation work; 8. Insurance cover; 9. Delayed commencement conditions; 10. Positive covenants; 11. Waste; and 12. Post-closure requirements. <p>However, a condition cannot be attached to a licence if compliance with the condition would result in a breach of a requirement made by or under the POEO Act. This is a matter to consider if issuing GTAs to ensure the EPA can issue an environment</p>

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Step	Requirement	Explanation	Considerations	Additional information
		Each of these groupings are described in more detail below.		protection licence that is not inconsistent with the consent.
		<p><u>Condition requiring a remedial action</u> A Remedial Action Plan (RAP) must be provided to the EPA 30 days prior to the commencement of any remedial works. The RAP must:</p> <ul style="list-style-type: none"> i. be prepared in accordance with the contaminated land planning guidelines (as defined in Sch 6 EP&A Act), and as approved or made by the EPA under Section 105 of the Contaminated Land Management Act 1997, ii. establish the environmental safeguards required to complete the remediation in an environmentally acceptable manner. <p>The licence may include limits, monitoring and reporting for air quality, surface water discharges from the site, groundwater, noise and vibration in relation to remedial works outside of the remediation area.</p>	<p>Where non-scheduled remediation is required during scheduled development works, the licence may address the remedial works defined by a RAP.</p> <p>The consent authority must be satisfied that remediation works have been successfully completed and that the land is suitable for the intended use (Site Audit Statement may be required by condition of Consent).</p> <p>The RAP must deal with impacts from remedial works including to establish the environmental safeguards required to complete the remediation in an environmentally acceptable manner (Guidelines for Consultants Reporting on Contaminated Sites, OEH 2011).</p>	<p>The Secretary may consider imposing a condition as follows:</p> <ol style="list-style-type: none"> 1. the consent authority is to be satisfied that remediation works have been successfully completed and that the land is suitable for the intended use (Site Audit Statement may be required by condition of Consent); and 2. a Remedial Action Plan must be provided to the EPA 30 days prior to the commencement of any remedial works.
		<p><u>Administrative Conditions (A)</u> The licence shall authorise the following <scheduled activity(ies)>. At <the premises></p>	The GTAs identifies the specific scheduled activities and any scheduled development works that need to be authorised on the licence. The latter generally includes site preparation works and the construction phase of a development.	The Secretary should ensure that GTAs set out what scheduled activities are authorised and at which premises.
		<p><u>Mandatory Conditions –</u></p> <p>Limit conditions (L) Except as expressly provided by the environment protection licence, the licensee must comply with the section 120 of the POEO Act.</p>	The mandatory conditions set out in the explanation section should be included on all EPLs.	The Secretary should impose all of the mandatory conditions specified in any GTAs issued.

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Step	Requirement	Explanation	Considerations	Additional information
		<p>The licensee must not cause, permit or allow any waste generated outside the premises to be received at the premises for storage, treatment, processing, reprocessing or disposal (where a licence is required) or any waste generated at the premises to be disposed of at the premises, except as expressly permitted by the licence. No condition in the licence identifies a potentially offensive odour for the purposes of section 129 of the POEO Act.</p> <p>Operating Conditions (O) Licensed activities must be carried out in a competent manner. This includes:</p> <ul style="list-style-type: none"> a) the processing, handling, movement and storage of materials and substances used to carry out the activity; and b) the treatment, storage, processing, reprocessing, transport and disposal of waste generated by the activity. <p>All plant and equipment installed at the premises or used in connection with the licensed activity:</p> <ul style="list-style-type: none"> a) must be maintained in a proper and efficient condition; and b) must be operated in a proper and efficient manner. <p>Monitoring and recording conditions – complaints handling (M) Pollution complaints relating to the premises must be recorded in detail and kept for four years, in a legible format and presented to an EPA authorised officer on request.</p> <p>The licensee must maintain and publicise a telephone number for the purpose of making pollution complaints.</p>		

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Step	Requirement	Explanation	Considerations	Additional information
		<p>Reporting conditions (R) An annual return must be completed and supplied to the EPA as specified in the environment protection licence.</p> <p>Notifications of environmental harm must be reported to the environment line and in accordance with Part 5.7 of the POEO Act.</p> <p>The licensee must provide written details of the notification to the EPA within 7 days of the date on which the incident occurred.</p> <p>An Authorised Officer may request a written report regarding suspicion of environmental harm as specified in the licence.</p> <p>General conditions (G) A copy of the licence must be kept on the premises and be made available to:</p> <ol style="list-style-type: none"> 1. employees and contractors working at the premises, and 2. an authorised officer of the EPA who asks to see it. <p>The licensee must maintain telephone contact details with the EPA; for key personnel to respond to incidents and for other purposes specified in the licence.</p>		
		<p><u>Conditions relating to specific activities</u></p> <p>Limit and monitoring (P, L, M) The environment protection licence may specify the location of discharge and/or monitoring points. Such points may be required to be identified with appropriate signage.</p>	<p>Conditions related to specific activities are included on an EPL as needed to regulate the potential impacts of those activities. Not all of these conditions will be applicable to a development.</p> <p>When issuing GTAs, the EPA generally includes specific monitoring or discharge points, pollutant concentrations limits and specific monitoring</p>	<p>All relevant environment impacts are able to be regulated; monitored and have environmental performance requirements (e.g. limits) placed on them (where relevant). The Secretary should consider each case and determine what specific activities</p>

Protection of the Environment Operations Act 1997

Step	Requirement	Explanation	Considerations	Additional information
		<p>For each point the licence may specify:</p> <ul style="list-style-type: none"> • Pollutant load monitoring and limits; • Pollutant concentration monitoring and limits; • Volume and mass monitoring and limits; • Noise monitoring and limits; • Blasting overpressure and vibration monitoring and limits; <p>The Licence may also specify:</p> <ul style="list-style-type: none"> • Hours of Operation; • Waste that may be received at the premises; • Blasting times and frequencies; • Offensive Blast Fume • Effluent application areas, monitoring and limits; • Additional reporting requirements that apply to specified points in the licence <p>Dust (O) Activities occurring in or on the premises must be carried out in a manner that will minimise the generation, or emission from the premises, of wind-blown or traffic generated dust.</p> <p>Waste Water Utilisation Areas (P, O) Waste water must only be applied to the following areas: <describe areas or refer to map reference(s)>.</p> <p>Spray from waste water application must not drift beyond the boundary of the waste water utilisation area to which it is applied. Waste water utilisation areas must effectively utilise the waste water applied to those areas. This includes the use for pasture or crop production, as well as ensuring the soil is able to</p>	<p>requirements, where possible. The Secretary may wish to identify specific pollutants identified in discharge characterisations and limits that maintain or improve the environmental qualities of the receiving environments.</p>	<p>conditions are needed. The GTAs should ensure that:</p> <ul style="list-style-type: none"> • Activities are managed to minimise dust generation. • Waste water application areas are managed to minimise long term and off-site impacts. • A pollution incident is managed to minimise impacts. • Necessary processes are operated to minimise risk of pollution. • Waste is managed in accordance with best practice or relevant guidelines • Monitoring records are kept and made available. • Sampling and testing methods meet acceptable standards. • There is an ability to detect if the environment is being impacted. • Meteorological data relevant to pollutant monitoring or environmental impacts is collected.

Protection of the Environment Operations Act 1997

Step	Requirement	Explanation	Considerations	Additional information
		<p>absorb the nutrients, salts, hydraulic load and organic materials in the solids or liquids. Monitoring of land and receiving waters to determine the impact of waste water application may be required by the EPA.</p> <p>Emergency Response (O, R) In the event of an event that harms or is likely to harm the environment, the licensee must use all practicable measures to minimise the impact of the event on the environment and public health. These measures are to be implemented as soon as practical after the licensee or one of the licensee's employees or agents becomes aware of the event. The licence may also require specific notification procedures relating to incidents at the premises.</p> <p>Processes and Management (O) The licence may specify processes that must be operated and/or management requirements that must be followed in relevant circumstances.</p> <p>Waste Management (O) The licence may specify waste management requirements for waste generated on the premises. This may include requirements to classify and record details of volumes of waste generated and where waste is disposed of.</p> <p>Monitoring Conditions (M) Monitoring records must be retained as specified in the licence. Sampling methods, frequencies and testing methods must comply with relevant guidelines or alternatives approved by the EPA as stated in the licence.</p> <p>The licence may specify monitoring of:</p>		

Protection of the Environment Operations Act 1997

Step	Requirement	Explanation	Considerations	Additional information
		<ul style="list-style-type: none"> • background or potentially impacted environments, or • meteorological parameters. <p>Reporting Conditions (R) The licence may specify that an annual report is provided to the EPA or that a report required by another authority is provided to the EPA as well.</p> <p>Financial Assurance</p> <p>The licence may require a financial assurance to be provided to the EPA for the cost of carrying out works or programs (such as remediation work or pollution reduction programs) required by the licence, where the financial assurance is justified having regard to:</p> <ul style="list-style-type: none"> • the degree of environmental harm associated with the activities under the licence, or • the remediation work that may be required because of the activities under the licence, or • the environmental record of the licence holder (or former/proposed holder), or • the adequacy of any financial assurance already provided (or required to be provided) by the same person to a public authority for carrying out the same (or substantially the same) works or programs. <p>If a financial assurance is required, the licence may also require that an independent assessment of the cost of the relevant work or program is provided to the EPA. This will assist the EPA to determine the amount of financial assurance required.</p>		

Protection of the Environment Operations Act 1997

Step	Requirement	Explanation	Considerations	Additional information

Roads Act 1993

Step	Requirement	Explanation	Considerations	Additional information
Stage 1 - Identifying the approval				
1.	What approval is required?	General Terms of Approval in accordance with s.4.47 of the EP&A Act in respect to works and structures undertaken on public roads or a classified road may require an approval from an appropriate roads authority under section 138 of the <i>Roads Act 1993</i> (Roads Act).	Not applicable.	A public road is defined in the Roads Act as any road that is opened or dedicated as a public road, whether under this or any other Act or law, and any road that is declared to be a public road for the purposes of the Act. A classified road includes main roads, highways, freeways, a toll way, etc, see the definition in the Roads Act.
2.	Who is the approval body and what is their role?	Section 7 of the Roads Act sets out who is the appropriate roads authority in certain circumstances. It provides that the Roads and Maritime Service (RMS) is the roads authority for all freeways. While the council of a local government area will be the roads authority for all public roads within their area (other than a freeway or crown road). Where a local council is both the consent authority and the approval body, the development is not integrated development (section 4.46(3), EP&A Act).	Not applicable.	RMS implements initiatives to improve the road network and to regulate users of roads. It regulates activities on public roads by requiring applicants to obtain its consent before carrying out works on classified roads which are managed and financed by RMS.

Stage 2 - Obtaining the information needed for the assessment

Roads Act 1993

Step	Requirement	Explanation	Considerations	Additional information
3.	What are the general legislative requirements?	<p>Consent is required in the form of an approval if a person wants to:</p> <ol style="list-style-type: none"> 1. erect a structure or carry out a work in, on or over a public road, or 2. dig up or disturb the surface of a public road, or 3. remove or interfere with a structure, work or tree on a public road, or 4. pump water into a public road from any land adjoining the road, or 5. connect a road (whether public or private) to a classified road. <p>Any person can apply for consent.</p>	<p><u>Question 1</u> Is the proposed development one that needs approval under section 138 of the Roads Act i.e. does it involve one of the matters outlined in the explanation section? Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to question 2; or 2. no, nothing further is required under section 138 of the Roads Act. No approval is required. The Secretary is not required to make any decision. <p><u>Question 2</u> Will the proposal connect to or in any other way interfere with a freeway, controlled access road, secondary road, tourist road, toll way, transit way, State work or Crown road? If so, your application requires approval from Roads and Maritime Prospective outcome depending upon answer If the answer is:</p> <ol style="list-style-type: none"> 1. yes, the relevant approval body is RMS, go to Step 4. 2. no, consider whether the approval body is a local council who is also the consent authority, if yes, nothing further is required from the Secretary, the matter is not integrated development. If no, go to Step 4. 	Not applicable.
4.	What information does the approval body usually require, including key policies, publications and guidelines?	<p>While there is no formal application form, the usual information to be submitted with an application for a Roads Act approval is:</p> <ol style="list-style-type: none"> 1. design report; 2. design drawings to RMS standards; 3. geotechnical report and pavement design; 4. design of traffic control signals; 5. traffic modelling; and 	<p><u>Question 1</u> Does the application include sufficient information to enable an assessment of the proposal? Prospective outcome depending upon answer The Secretary should consider the information that has been submitted as part of the application and determine whether sufficient information has been provided to make a decision. If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to Step 6; or 	RMS will usually require a traffic study or statement to consider the proposal's traffic and transport impacts

Roads Act 1993

Step	Requirement	Explanation	Considerations	Additional information
		<p>6. swept path plans demonstrating vehicles entering and exiting the site in a forward direction.</p> <p><u>Policies and guidelines</u> Further information is available here:</p> <ul style="list-style-type: none"> Roads and Maritime Services (RMS) Land Use Development Processes (November 2011) http://www.rms.nsw.gov.au/documents/projects/factsheet-development-process.pdf Schedule of Classified Roads and Unclassified Regional Roads http://www.rms.nsw.gov.au/business-industry/partners-suppliers/lgr/documents/classified-roads-schedule.pdf RMS Design Reference Documents http://www.rms.nsw.gov.au/business-industry/partners-suppliers/design-documents/index.html 	<p>2. no, go to Step 5 and seek additional information from an applicant.</p>	
5.	Is further information required?	The Secretary has the power under the EP&A Regulation to request additional information where she acts on behalf of a relevant approval body.	<p><u>Question</u> Do you have all the information required to make the decision?</p> <p>Prospective outcome depending upon answer The Secretary should consider the information that has been submitted as part of the application and determine whether sufficient information has been provided to make a decision. If answer is:</p> <ol style="list-style-type: none"> yes, go to Step 6; or no, seek additional information from an applicant following the process specified 70AB of the EP&A Regulation. 	The Secretary must consider the information available before her to determine whether it is sufficient to make the decision. Refer to Step 4 for more information regarding what may be required.

Stage 3 - Making the decision

Roads Act 1993

Step	Requirement	Explanation	Considerations	Additional information
6.	What should the decision maker consider including any relevant policies or guidelines that should be followed.	<p>RMS adopts a risk based approach to development, with the level of technical documentation required dependent on the nature and impact of the development. As part of this, RMS should consider the following aspects of the proposed development:</p> <ul style="list-style-type: none"> • concept layout. • the nature and size of the proposal Its nature and size. • potential impacts on the road, transport, pedestrian and cyclist networks. • the road network efficiency, sustainable transport • road safety impacts. • what solutions are in place to reduce the impacts • practical solutions for reducing any impacts • works must meet durability standards and aim to minimise impacts to road users and the community during construction. <p>Section 139F states that guidelines relating to street vending jointly issued by RMS and the Office of Local Government, are a mandatory consideration for these types of development.</p>	<p><u>General considerations</u></p> <ol style="list-style-type: none"> 1. What is the impact of the proposed development on the road and road network. 2. What does the traffic management plan say about the proposal? 3. Do the proposed mitigation measures and other solutions reduce potential impacts 	The RMS' aim is to ensure that road safety, efficiency, reliability and accessibility of the State road network are maintained.
Stage 4 - Giving general terms of approval				
7	What are relevant statutory considerations?	<p>Under the Roads Act, an approval body can determine an application for approval in the following manner:</p> <ul style="list-style-type: none"> • it may be granted generally, or for a particular situation; and 	Having regard to the matters and information set out in Steps 3 - 6, including the relevant policies and guidelines, and taking into account the information outlined in the additional information section, the Secretary must determine whether to grant or refuse the approval sought. As part of this	Not applicable.

Roads Act 1993

Step	Requirement	Explanation	Considerations	Additional information
		<ul style="list-style-type: none"> • it may relate to a specific structure or work; • it can also be granted with such conditions. 	<p>the Secretary should consider any objects of the Roads Act and the overall framework.</p> <p>Prospective outcome depending upon answer</p> <p>If the Secretary:</p> <ol style="list-style-type: none"> 1. grants an approval, go to step 8; 2. refuses the approval, notify the relevant local council and the applicant following the process set out in the EP&A Regulation. 	
8.	What conditions should be imposed?	<p>The Roads Act specifies a range of conditions that may be imposed on a Roads Act approval, including:</p> <ol style="list-style-type: none"> 1. Section 139(2) which permits the approval body to impose a condition requiring the construction of a utility service to be in such position as is indicated in a plan of subdivision; 2. Section 139A, which provides that an approval in relation to the erection of a structure may be granted subject to a condition that permits the use of the structure for the purpose of selling any article or service and requiring the payment in the nature of rent. <p>However, these provisions do not restrict the decision maker from imposing other conditions, provided there is a nexus between the condition and what is proposed under the project and the condition can be said to be reasonable.</p>	<p><u>Matters the Secretary should consider when making a decision about the terms upon which an approval should be granted</u></p> <ol style="list-style-type: none"> 1. If you would grant the approval, should it be conditional or unconditional? 2. If conditions should be imposed to help reduce potential impact, what form should these conditions take? 3. Should other special conditions be imposed? If yes, what is the basis and what form should they take? 	<p>The decision maker should consider any additional or relevant issues raised in the information provided by the applicant and consider whether conditions relevant to the circumstances should be imposed. For example, the GTAs might specify the need for further environmental assessments of the proposal or the need for a traffic management plan. The conditions could also set out how a proponent should record and resolve complaints it receives during the project, require that the proponent have a certain level of insurance or provide security.</p> <p>The Secretary should consider what controls are necessary to ensure that road safety, efficiency, reliability and accessibility of the State road network are maintained.</p>

Rural Fires Act 1997

Step	Requirement	Explanation	Considerations	Additional information
Stage 1 - Identifying the approval				
1.	What approval is required?	General Terms of Approval in accordance with s.4.47 of the EP&A Act in respect to an authorisation under Section 100B the <i>Rural Fires Act 1997 (Rural Fires Act)</i> . Authorisation is required in respect of bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes.	Not applicable.	Special fire protection purposes are defined in section 100B(6) as places like schools, child care centres, hospitals, hotels, seniors housing, etc. See also clause 46 of the <i>Rural Fires Regulation 2013 (Rural Fires Regulation)</i> for additional places which fall within that definition.
2.	Who is the approval body and what is their role?	The Commissioner of RFS NSW will consider the application for a bush fire safety authority under section 100B.	Not applicable.	Not applicable.
Stage 2 - Obtaining the information needed for the assessment				
3.	What are the general legislative requirements?	Section 100B of the Rural Fires Act states the Commissioner of the NSW Rural Fire Service (NSW RFS) may issue a bush fire safety authority for: <ol style="list-style-type: none"> 1. a subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes; or 2. development of bush fire prone land for a special fire protection purpose. 	<p><u>Question 1</u> Is the land bush fire prone land? Prospective outcome depending upon answer: If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to question 2; or 2. no, nothing further is required under section 100B of the Rural Fires Act. The Secretary is not required to make any decision. <p><u>Question 2</u> Is the proposed development one that needs approval under section 100B of the Rural Fires Act? I.e. does the proposal seek to subdivide</p>	<p>Bush fire prone land for the purposes of the Rural Fires Act is given the same meaning as it has in the EP&A Act.</p> <p>In the EP&A Act it is land that has been identified by a local council as land which can support a bush fire or is subject to bush fire attack. Bush fire prone land maps are prepared by local council and certified by the Commissioner of the NSW RFS. To find out if land is bush fire prone or not you can use the RSF online tool. The information should also be noted on</p>

Rural Fires Act 1997

Step	Requirement	Explanation	Considerations	Additional information
		<p>Such an authority is required before developing bush fire prone land for one of the above stated purposes.</p> <p>A bush fire safety authority authorises development to the extent that it complies with standards regarding setbacks, provision of water supply and other matters considered by the Commissioner to be necessary to protect persons, property or the environment from danger that may arise from a bush fire (section 100B(2)).</p> <p>Certain development is excluded from section 100B of the bush fire safety authorities:</p> <ol style="list-style-type: none"> 1. carrying out internal alterations to any building; and 2. development excluded by the regulations. <p>A list of excluded development is at clause 45 of the Rural Fires Regulation.</p>	<p>bush fire prone land for residential or rural residential purposes, or for a special fire protection purposes (see definition in Step 1)</p> <p>Prospective outcome depending upon answer: If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to question 3; or 2. no, nothing further is required under section 100B of the Rural Fires Act. The Secretary is not required to make any decision. <p><u>Question 2</u> Does an exemption apply (i.e. does the applicant only propose to carry out internal alterations or is it excluded in the Rural Fires Regulation, see the list at clause 45)?</p> <p>Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, nothing further is required under section 100B of the Rural Fires Act. The Secretary is not required to make any decision; or 2. no, go to Step 4. 	<p>section 149 certificate for the property.</p>
4.	<p>What information does the approval body usually require, including key policies, publications and guidelines?</p>	<p>An applicant must submit an application in accordance with the requirements listed at clause 44 of the Regulations, including:</p> <ol style="list-style-type: none"> 1. a description (including the address) of the property on which the development the subject of the application is proposed to be carried out; 2. a classification of the vegetation on and surrounding the property (out to a distance of 140 metres from the boundaries of the property) in accordance with the system for classification of vegetation contained in 	<p><u>Question 1</u> Does the application contain the required information? See explanation and additional information sections.</p> <p>Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to question 2; or 2. no, go to Step 5 and seek additional information from an applicant. <p><u>Question 2</u> Has the applicant considered and applied the relevant policies and guidelines?</p> <p>Prospective outcome depending upon answer If answer is:</p>	<p>Prescribed information is:</p> <ol style="list-style-type: none"> 1. a plan of subdivision that shows: <ol style="list-style-type: none"> a) the bush fire attack levels that will apply to the property on completion of any clearing of vegetation proposed to be carried out as part of any subdivision work (within the meaning of the EP&A Act), and b) proposed setbacks of any buildings that are, or may in future, be erected on the

Rural Fires Act 1997

Step	Requirement	Explanation	Considerations	Additional information
		<p>Planning for Bush Fire Protection guideline;</p> <ol style="list-style-type: none"> 3. an assessment of the slope of the land on and surrounding the property (out to a distance of 100 metres from the boundaries of the property); 4. identification of any significant environmental features on the property; 5. the details of any threatened species, population or ecological community identified under the <i>Threatened Species Conservation Act 1995</i> that is known to the applicant to exist on the property; 6. the details and location of any Aboriginal object (within the meaning of the NPW Act) or Aboriginal place (within the meaning of that Act) that is known to the applicant to be situated on the property; 7. a bush fire assessment for the proposed development (including the methodology used in the assessment) that addresses the following matters: <ol style="list-style-type: none"> a) the extent to which the development is to provide for setbacks, including asset protection zones; b) the siting and adequacy of water supplies for fire fighting; c) the capacity of public roads in the vicinity to handle increased volumes of traffic in the event of a bush fire emergency; d) whether or not public roads in the vicinity that link with the fire trail network have two-way access; e) the adequacy of arrangements for access to and egress from 	<ol style="list-style-type: none"> 1. yes, go to question 3; or 2. no, go to Step 5 and seek additional information from an applicant to ensure compliance with those guidelines. <p><u>Question 3</u> Is that information sufficient enough to enable the Secretary to assess the application?</p> <p>Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to Step 6; or 2. no, go to Step 5 and seek additional information from an applicant. 	<ol style="list-style-type: none"> 2. any further information concerning the proposed development that the Commissioner may require. <p>property, including asset protection zones, and</p>

Rural Fires Act 1997

Step	Requirement	Explanation	Considerations	Additional information
		<p>the development site for the purposes of an emergency response;</p> <ul style="list-style-type: none"> f) the adequacy of bush fire maintenance plans and fire emergency procedures for the development site; g) the construction standards to be used for building elements in the development; h) the adequacy of sprinkler systems and other fire protection measures to be incorporated into the development; and <p>8. an assessment of the extent to which the proposed development conforms with or deviates from the standards, specific objectives and performance criteria set out in Chapter 4 (Performance Based Controls) of Planning for Bush Fire Protection guideline.</p> <p>An application must also be accompanied by the prescribed information if:</p> <ul style="list-style-type: none"> 1. the proposed development is subdivision for the purposes of dwelling houses, dual occupancies or secondary dwellings on property that is in an urban release area; and 2. the application specifies that the applicant wishes the Commissioner, when determining the application, to consider whether it would be appropriate for the future erection of the dwelling houses, dual occupancies or 		

Rural Fires Act 1997

Step	Requirement	Explanation	Considerations	Additional information
		<p>secondary dwellings concerned to be excluded from the application of section 4.14 of the EP&A Act.</p> <p><u>Relevant guidelines:</u> The Secretary will be required to consider the Planning for Bushfire Protection 2006 guideline.</p>		
5.	Is further information required?	The Secretary has the power under the EP&A Regulation to request additional information.	<p>Question Do you have all the information required to make the decision?</p> <p>Prospective outcome depending upon answer If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to Step 6; or 2. no, seek additional information from an applicant following the process specified 70AB of the EP&A Regulation. 	The Secretary must consider the information available before her to determine whether it is sufficient to make the decision. Refer to Step 4 for more information regarding what may be required.
Stage 3 - Making the decision				
6.	What should the decision maker consider including any relevant policies or guidelines that should be followed.	<p><u>Considerations</u> The Commissioner will consider the information included in the application, which is required under clause 44 of the Rural Fires Regulation, and determine whether the proposal satisfies the board aim and objectives of the Planning for Bushfire Protection 2006 (PBP) the specific objectives for the development type and the performance criteria for the various proposed bush fire protection measures (BPMs).</p> <p>For residential/rural-residential subdivision and special fire protection purposes, proposal must also comply with the specific objectives set out in sections 4.1 and 4.2 respectively, and the BPMs in sections 4.1 and 4.2 respectively.</p>	<p>The PBP introduces a performance-based approach and identifies objectives and detailed performance criteria to satisfy desired outcomes.</p> <p>An applicant must have assessed whether their proposal conforms or deviates from the standards, specific objectives and performance criteria set out in Chapter 4.</p> <p>Where an applicant proposes not to follow an acceptable solution for a particular protection measure, detailed evidence must be submitted that demonstrates compliance with the criteria.</p>	

Rural Fires Act 1997

Step	Requirement	Explanation	Considerations	Additional information
		<p>For infill development, proposal must comply with the specific objectives and performance criteria in section 4.3.</p> <p>Other matters for consideration are:</p> <ol style="list-style-type: none"> 1. the objects of the Rural Fires Act (section 3); and 2. whether the development complies with the matters outlined in Planning for Bush Fire Protection guideline. <p><u>Relevant policies and guidelines</u> The development must also meet the requirements of <i>Australian Standard: 3959 Construction of buildings in bushfire-prone areas 1999</i>.</p> <p><u>Other relevant guidance materials:</u></p> <ul style="list-style-type: none"> • <i>Building Best Practice Guide</i> (http://www.rfs.nsw.gov.au/_data/assets/pdf_file/0018/4365/Building-Best-Practice-Guide.pdf) • <i>Council Checklist for Section 100B Development Applications</i> (http://www.rfs.nsw.gov.au/_data/assets/pdf_file/0003/4377/Council-Checklist-for-Section-100B-Development-Applications.pdf) • <i>Guide for Councils to Bushfire Prone Land Mapping</i> (http://www.rfs.nsw.gov.au/_data/assets/pdf_file/0011/4412/Guideline-for-Councils-to-Bushfire-Prone-Area-Land-Mapping.pdf) 		

Stage 4 - Giving general terms of approval

Rural Fires Act 1997

Step	Requirement	Explanation	Considerations	Additional information
7	What are relevant statutory considerations?	<p>An approval body may determine an application for approval by granting approval to that application either unconditionally, subject to conditions or by refusing approval.</p> <p>The PBP places an emphasis on the need to protect persons, property or the environment from the danger that may raise from a bush fire.</p> <p>In order to adequately protect persons and property, the RFS may deem it necessary to refuse an application for approval or apply conditions to any approval granted.</p>	<p>Having regard to the matters and information set out in Steps 3 - 6, including the relevant policies and guidelines, and taking into account the information outlined in the additional information section, the Secretary must determine whether to grant or refuse the approval sought. As part of this the Secretary should consider any objects of the Rural Fires Act and the overall framework.</p> <p>Prospective outcome depending upon answer If the Secretary:</p> <ol style="list-style-type: none"> 1. grants an approval, go to step 8; 2. refuses the approval, notify the relevant local council and the applicant following the process set out in the EP&A Regulation. 	Not applicable.
8.	What conditions should be imposed?	<p>Conditions can be attached to an approval granted under the Rural Fires Act. For this reason, the Secretary should consider the proposal and its impacts and determine whether conditions should be imposed.</p> <p>Any resulting condition must be for a proclaimed purpose, there must be a nexus between what is proposed and the condition that is proposed and it must be reasonable.</p>	<p><u>Matters the Secretary should consider when making a decision about the terms upon which an approval should be granted</u></p> <ol style="list-style-type: none"> 1. If you would grant the approval, should it be conditional or unconditional? 2. If conditions should be imposed to help reduce potential impact, what form should these conditions take? 3. Should other special conditions be imposed? If yes, what is the basis and what form should they take? 	<p>The following is a fact sheet on the types of conditions which may be required in a bush fire safety authority: https://www.rfs.nsw.gov.au/_data/assets/pdf_file/0018/4617/Fast-Fact-1-12-Application-of-Section-100B.pdf \</p>

Water Management Act 2000 - Water use approval under section 89

Step	Requirement	Explanation	Considerations	Additional information
Stage 1 - Identifying the approval				
1.	What approval is required?	<p>General Terms of Approval in accordance with s.4.47 of the EP&A Act in respect to water use approval.</p> <p>An approval to use water for a particular purpose at a particular location under s89(1) of the <i>Water Management Act 2000 (WM Act)</i>.</p>	Not applicable.	A water use approval authorises its holder to use water for a particular purpose, such as irrigation, at a particular location.
2.	Who is the approval body and what is their role?	<p>WaterNSW is responsible for protecting and managing access to surface and groundwater, and ensuring it is shared between the environment, towns and cities, and farmers and industry as well as for Aboriginal cultural activities.</p> <p>NRAR has been established under the <i>Natural Resources Access Regulator Act 2017</i> to be an independent, transparent and effective water regulator with total responsibility for the compliance and enforcement of water laws in NSW.</p> <p>NRAR is responsible for the administration (including assessment and determination) of water use approvals required by or for:</p> <ul style="list-style-type: none"> • Government agencies, including other NSW government agencies, local councils and the Commonwealth • State owned corporations • Water utilities, water supply authorities and licensed network operators under the Water Industry Competition Act 2006 • Major developments (state significant developments and state significant infrastructure) • Mining • Irrigation corporations • Schools and hospitals • Aboriginal communities and businesses 	Not applicable.	Water is a limited resource and must be managed sustainably for immediate and long-term needs.

Water Management Act 2000 - Water use approval under section 89

Step	Requirement	Explanation	Considerations	Additional information
		<p>WaterNSW is a State-Owned Corporation established under the <i>Water NSW Act 2014</i> and operates the state's rivers and water supply systems in accordance with the rules set out by regulators. WaterNSW is responsible for the administration of water use approvals required by:</p> <ul style="list-style-type: none"> • Rural landholders • Rural industries • Developments which are not state significant development or state significant infrastructure 		

Stage 2 - Obtaining the information needed for the assessment

3.	<p>What are the general legislative requirements?</p>	<p>A water use approval is required to use water on land for all purposes except when exercising basic landholder rights, or if the use is exempt from this requirement under the <i>Water Management (General) Regulation 2018 (WM Regulation)</i>.</p> <p>Clause 35(a) of the Regulation provides that a person is exempt from the requirement for a water use approval for the use of water for a purpose which a development consent is in force, other than the use of water for power generation by a major utility.</p> <p>Accordingly, for an application for integrated development, if development consent is granted then a water use approval is not required unless it relates to the use of water for power generation by a major utility</p>	<p><u>Question 1</u> Is the proposed water use for power generation by a major utility? Prospective outcome depending upon answer: If answer is:</p> <p>3. yes, go to question 2 no, nothing further is required under section 89 of the WM Act. The Secretary is not required to make any decision <u>Question 2</u> What is the relevant water management plan for the water source? Are there any restrictions in it to the grant of an approval? Prospective outcome depending upon answer: If answer is:</p> <ol style="list-style-type: none"> 1. yes, the Secretary may not be able to grant the approval; or 2. no, go to Step 4. 	<p><u>Regulation exemption</u></p> <p><u>Click here</u> for more information on exempt works under the Regulation. <u>Embargoes and water restrictions</u> Embargoes and water restrictions under the WM Act may impact on proposed development. An embargo is a partial or complete prohibition of access, extraction or use of water from a defined water management area (i.e. a catchment, aquifer or water source). Temporary water restrictions may also be in operation and these may prohibit access to water or limit water trading.</p> <p>Embargoes are made by the Governor by proclamation and published in the gazette. To find out if an embargo or restriction is in place you will either need to search the gazette for the relevant water source or contact WaterNSW.</p>
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Water Management Act 2000 - Water use approval under section 89

Step	Requirement	Explanation	Considerations	Additional information
		<p>Subject to an embargo or other restriction, any person can apply for an approval. A water management plan for the water source may also prohibit or restrict applications for certain approvals in certain circumstances.</p>		<p><u>Water management plans</u></p> <p>Under the WM ACT, all water that flows into an identified water source is allocated to consumptive and non-consumptive uses through water sharing plans.</p> <p>A water sharing plan must deal with certain matters, including the establishment of environmental water rules for the area or water source, the identification of requirements for water to satisfy basic landholder rights and extraction under water access licences, the establishment of water access licence dealing rules, and the establishment of a bulk access regime for the extraction of water under water access licences.</p> <p>The application should specify which water source it is. Water sharing plans for each water source can be found in the Regulation section of the NSW legislation website. Please check the relevant water sharing plan to ensure the correct water source and water management zone are identified.</p>

Water Management Act 2000 - Water use approval under section 89

Step	Requirement	Explanation	Considerations	Additional information
4.	What information does the approval body usually require, including key policies, publications and guidelines?	<p>The WM Act provides that a water use approval should not be granted unless there are adequate arrangements in place to ensure no more than minimal harm is done to any water source (including an aquifer), or its dependent ecosystems, because of the water use being carried out. To assist the decision-maker work out the impact of a proposed development on a water source and its dependent ecosystems, generally the following information is required:</p> <ul style="list-style-type: none"> • Relevant property details, including the lot or portion, deposited plan, section number (if applicable), house number, street, suburb or town. Location plans must clearly identify (using GPS co-ordinates where possible) the site of the water use in relation to the water source or dependent ecosystems. The coordinate projection must be clearly identified (such as GDA 94 for longitude and latitude of MGA 94) and include zone, easting/northing. • Plans or diagrams showing: <ul style="list-style-type: none"> ○ the width of any setbacks from water source – river, stream, lake, wetland or estuary; ○ indicative footprint (dimensions and size) of the proposed work - if dam or diversion structure include the height of embankments or walls; ○ distances of setbacks from water source and areas of water front land including width of riparian corridors; • flow characteristics or flow regime of the water source or floodplain. 	<p>Question 1 Does the application include the required information? If so, is there enough in that material for the decision-maker to assess whether there are adequate arrangements in place to ensure no more than minimal harm is done to the water source?</p> <p>Prospective outcome depending upon answer: If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to Step 6; or 2. no, go to Step 5 and seek additional information from an applicant. 	<p>All applicants must also provide a detailed Statement of Environmental Effects to demonstrate (where relevant) how their proposal will minimise or mitigate impacts (including cumulative impacts) on the following matters:</p> <ul style="list-style-type: none"> • water sources, floodplains and dependent ecosystems (including groundwater dependent ecosystems and wetlands, swamps, bogs, depressions and perennial streams) which should be protected and restored where possible, • habitats, animals and plants that benefit from water, • water quality including sediment and dissolved oxygen, its beneficial use classification and impacts, • groundwater pollution, disposal and contamination, including short and long-term protection measures, • acidity, waterlogging, or salinity (including dryland salinity where relevant), • cumulative impacts associated with other approvals, and impacts on existing water users, • geographical and other features of indigenous, major cultural, heritage or spiritual significance (natural or built), • soil erosion and compaction (impact of final land form on groundwater regime),

Water Management Act 2000 - Water use approval under section 89

Step	Requirement	Explanation	Considerations	Additional information
				<ul style="list-style-type: none"> • vegetation clearing (include dimensions of area and details of native species to be cleared). • contamination of soils, sediment control, contamination of water and other relevant sites, • geomorphic instability and impacts on other users.
5.	Is further information required?	The Secretary has the power under the EP&A Regulation to request additional information where she acts on behalf of a relevant approval body.	<p><u>Question</u> Do you have all the information required to make the decision? For example, has the applicant:</p> <ul style="list-style-type: none"> • demonstrated tenure over the subject land? • considered any relevant guides or provided information regarding discussions with the approval body? • Provided: <ul style="list-style-type: none"> ○ any relevant maps? ○ a proposal in respect of how the water will be used? ○ information about the impact of the water use on surrounding areas, soil impacts, drainage management, flood protection, local heritage, native vegetation or other environmental issues? <p>Prospective outcome depending upon answer: If answer is: 3. yes, go to Step 6; or</p>	The Secretary must consider the information available before her to determine whether it is sufficient to make the decision. Refer to step 4 for more information regarding what may be required.

Water Management Act 2000 - Water use approval under section 89

Step	Requirement	Explanation	Considerations	Additional information
			4. no, seek additional information from an applicant following the process specified 70AB of the EP&A Regulation.	

Stage 3 - Making the decision

6.	What should the decision maker consider including any relevant policies or guidelines that should be followed.	<p>The key test under the WM Act is the minimal harm test in section 97(1). It provides that a water use approval cannot be granted unless the decision-maker is satisfied that adequate arrangements are in force to ensure that no more than minimal harm will be done to any water source or its dependent ecosystems because of the proposed use of the water.</p> <p>There is no precise definition or guidance as to what exactly constitutes minimal harm. This needs to be determined on a case by case basis.</p> <p>To work this out, the decision maker is required to consider the objects of the WM Act, the water management principles in section 5, and any matter they consider relevant to determining the application (section 96).</p> <p>The Regulations can also prescribe matters that are required to be taken into consideration.</p>	<p>The decision-maker should consider the following matters:</p> <ol style="list-style-type: none"> 1. Would the proposal do more than minimal harm? 2. If it would, can those impacts be avoided or mitigated? 3. Is what is proposed consistent with the objects and principles of the WM Act? 4. Are the considerations in the regulation relevant to the proposal? If so, are they relevant to the decision? 5. Is there anything else that may be relevant to the consideration of granting the approval? 6. Is there is anything else in guidelines which could assist the Secretary in making the decision? 	Not applicable
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Stage 4 - Giving general terms of approval

Water Management Act 2000 - Water use approval under section 89

Step	Requirement	Explanation	Considerations	Additional information
7	What are relevant statutory considerations?	Under section 95, after considering an application and all matters relevant to an application, the decision maker can grant the approval, which may be subject to conditions, or refuse the application. In deciding whether to grant an approval, the decision maker must consider the extent to which the application, if approved, would affect any water sources and dependent ecosystems, and be satisfied that adequate arrangements are in place to ensure that no more than minimal harm will be done to any water source, or its dependent ecosystems, because of the proposed use of water water (section 97).	In light of the Secretary's consideration of the matters outlined in Step 6, should an approval be granted in these circumstances and should conditions be applied, or should it be refused? See additional information for situations in which an application should be refused.	
8.	What conditions should be imposed?	Under the WM Act, an approval may be granted unconditionally or subject to such conditions as are required or permitted to be imposed under the WM Act (section 95(1A)). Section 100 provides that it must include such conditions as may be required under the Act or a relevant management plan. These are called "mandatory conditions". Section 100 also provides that it may include conditions to give effect to an agreement between an applicant and objector under section 93, or that the Minister thinks appropriate in the relevant circumstances, such as conditions relating to the protection of the environment.	<p><u>Matters the Secretary should consider when making a decision about the terms upon which an approval should be granted</u></p> <ol style="list-style-type: none"> 4. What conditions must be imposed by the WM Act? 5. Should other conditions be imposed? If yes, what is the basis and what form should they take? 	The Secretary should consider any additional or relevant issues raised in the information provided by the applicant and consider whether conditions relevant to the circumstances should be imposed. If the Secretary is minded to impose conditions, any resulting condition must be for a proclaimed purpose, there must be a nexus between what is proposed and the condition that is proposed and it must be reasonable.

Water Management Act 2000 - Water supply work approval under section 90

Step	Requirement	Explanation	Considerations	Additional information
Stage 1 - Identifying the approval				
1.	What approval is required?	<p>General Terms of Approval in accordance with s.4.47 of the EP&A Act in respect to water management work approval.</p> <p>An approval is required under section 90 of the WM Act to construct and then use a water supply work (that is, the work which enables a person to physically pump or extract water from a water source) to:</p> <ul style="list-style-type: none"> • extract water from a river (for example via a pump), unless you are taking water under a basic landholder right (although an approval is required to construct a dam or water bore regardless of whether it is for a basic landholder right) • extract water from a groundwater body (for example via a bore) • capture more rainwater run-off than your harvestable right (for example in a farm dam) • store water taken from a river or aquifer, in tanks or off-river storages • convey water to another location via irrigation channels • divert water away from an area, via banks or levees, includes floodplain banks • hold back water in a river, via a weir or in a dam other than under a harvestable right. 	Not applicable.	<p><u>Water supply works</u> A water supply work approval authorises its holder to construct and use a specified water supply work at a specified location. Approvals cannot be traded to another property or location.</p>
2.	Who is the approval body and what is their role?	NRAR has been established under the <i>Natural Resources Access Regulator Act 2017</i> to be an independent, transparent and effective water regulator with total responsibility for the compliance and enforcement of water laws in NSW.	Not applicable.	Water is a limited resource and must be managed sustainably for immediate and long-term needs.

Water Management Act 2000 - Water supply work approval under section 90

Step	Requirement	Explanation	Considerations	Additional information
		<p>NRAR is responsible for the administration (including assessment and determination) of water supply work approvals required by or for:</p> <ul style="list-style-type: none"> • Government agencies, including other NSW government agencies, local councils and the Commonwealth • State owned corporations • Water utilities, water supply authorities and licensed network operators under the Water Industry Competition Act 2006 • Major developments (state significant developments and state significant infrastructure) • Mining • Irrigation corporations • Schools and hospitals • Aboriginal communities and businesses • Floodplain harvesting <p>WaterNSW is a State-Owned Corporation established under the <i>Water NSW Act 2014</i> and operates the state's rivers and water supply systems in accordance with the rules set out by regulators. WaterNSW is responsible for water supply work approvals required by:</p> <ul style="list-style-type: none"> • Rural landholders • Rural industries • Developments which are not state significant development or state significant infrastructure 		

Water Management Act 2000 - Water supply work approval under section 90

Step	Requirement	Explanation	Considerations	Additional information
Stage 2 - Obtaining the information needed for the assessment				
3.	What are the general legislative requirements?	<p><u>Water supply works</u></p> <p>A water supply work approval is required to construct and use a work on land to extract water from a water source for all purposes.</p> <p>Some exemptions to this approval requirement apply under the <i>Water Management Act 2000</i>:</p> <ul style="list-style-type: none"> • pumps, pipes, troughs or tanks to take and store water from a river under a basic landholder right. This exemption does not apply to bores which take groundwater or dams which capture surface water. • Harvestable rights dams • Works to take water to be used in the exercise of native title rights <p>Some exemptions to this approval requirement apply under the <i>Water Management (General) Regulation 2018</i>:</p> <p>See the additional information section.</p>	<p><u>Question 1</u> Will the water supply work be used to extract water for a basic landholder right but does involve constructing a bore or dam? Prospective outcome depending upon answer: If answer is:</p> <ol style="list-style-type: none"> 1. yes, nothing further is required under section 90 of the WM Act. The Secretary is not required to make any decision; or 2. no or it involves constructing bore or dam go to question 2. <p><u>Question 2</u> <u>Will the water supply work be a harvestable rights dam?</u> Prospective outcome depending upon answer: If answer is:</p> <ol style="list-style-type: none"> 1. yes, nothing further is required under section 90 of the WM Act. The Secretary is not required to make any decision; or 2. no, go to question 3. <p><u>Question 3</u> <u>Will the water supply work be used to extract water for a native title right but does involve constructing a bore or dam?</u> Prospective outcome depending upon answer: If answer is:</p> <ol style="list-style-type: none"> 1. yes, nothing further is required under section 90 of the WM Act. The 	<p><u>Basic landholder rights</u></p> <p>Below are the three types of basic landholder water rights in NSW, click here for more information these rights:</p> <ul style="list-style-type: none"> • Domestic and stock rights • Harvestable rights – dams • Native Title <p><u>Regulation exemptions</u></p> <ul style="list-style-type: none"> • Exemption from the requirement for a water supply work approval <p><u>Embargoes and water restrictions</u></p> <p>Embargoes and water restrictions under the WM Act may impact on proposed development. An embargo is a partial or complete prohibition of access, extraction or use of water from a defined water management area (i.e. a catchment, aquifer or water source). Temporary water restrictions may also be in operation and these may prohibit access to water or limit water trading.</p> <p>Embargoes are made by the Governor by proclamation and published in the gazette. To find out if an embargo or restriction is in place you will either need to search the gazette for the relevant water source or contact WaterNSW.</p>

Water Management Act 2000 - Water supply work approval under section 90

Step	Requirement	Explanation	Considerations	Additional information
			<p>Secretary is not required to make any decision; or</p> <p>2. no or it involves constructing bore or dam go to question 4.</p> <p><u>Question 4</u> Is the proposed work exempt from the need for an approval under the WM Regulation? Prospective outcome depending upon answer: If answer is:</p> <ol style="list-style-type: none"> 1. yes, nothing further is required under section 90 of the WM Act. The Secretary is not required to make any decision; or 2. no, go to question 4. <p><u>Question 5</u> Is an embargo or temporary water restriction in place in the relevant water source? Prospective outcome depending upon answer: If answer is:</p> <ol style="list-style-type: none"> 1. yes, nothing further is required under section 90 of the WM Act. The Secretary cannot grant general terms of approval; or 2. no, go to question 5. <p><u>Question 6</u> What is the relevant Water Sharing Plan for the water source? Are there any restrictions in it to the grant of an approval? Prospective outcome depending upon answer: If answer is:</p> <ol style="list-style-type: none"> 1. yes, the Secretary may not be able to grant the approval; or 2. no, go to Step 4. 	<p><u>Water management plans</u> Under the WM ACT, all water that flows into an identified water source is allocated to consumptive and non-consumptive uses through water sharing plans.</p> <p>A water sharing plan must deal with certain matters, including the establishment of environmental water rules for the area or water source, the identification of requirements for water to satisfy basic landholder rights and extraction under water access licences, the establishment of water access licence dealing rules, and the establishment of a bulk access regime for the extraction of water under water access licences.</p> <p>The application should specify which water source it is. Water sharing plans for each water source can be found in the Regulation section of the NSW legislation website. Please check the relevant water sharing plan to ensure the correct water source and water management zone are identified.</p>

Water Management Act 2000 - Water supply work approval under section 90

Step	Requirement	Explanation	Considerations	Additional information
4.	<p>What information does the approval body usually require, including key policies, publications and guidelines?</p>	<p>The WM Act provides that an approval should not be granted unless there are adequate arrangements in place to ensure no more than minimal harm is done to any water source (including an aquifer), or its dependent ecosystems, because of the construction or use of the proposed work. To assist the decision-maker work out the impact of a proposed development on a water source, generally the following information is required:</p> <ul style="list-style-type: none"> • Relevant property details, including the lot or portion, deposited plan, section number (if applicable), house number, street, suburb or town. Location plans must clearly identify (using GPS co-ordinates where possible) the site of the work or activity in relation to the water source or waterfront land. The coordinate projection must be clearly identified (such as GDA 94 for longitude and latitude of MGA 94) and include zone, easting/northing. • Plans or diagrams showing: <ul style="list-style-type: none"> ○ the width of any setbacks from water source – river, stream, lake, wetland or estuary; ○ indicative footprint (dimensions and size) of the proposed work - if dam or diversion structure include the height of embankments or walls; 	<p><u>Question 1</u> Does the application include the required information and is there enough in that material for the decision-maker to assess whether there are adequate arrangements in place to ensure no more than minimal harm is done to the water source?</p> <p>Prospective outcome depending upon answer: If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to Step 6; or 2. no, go to Step 5 and seek additional information from an applicant. 	<p>All applicants must also provide a detailed Statement of Environmental Effects to demonstrate (where relevant) how their proposal will minimise or mitigate impacts (including accumulative impacts) on the following matters:</p> <ul style="list-style-type: none"> • water sources, floodplains and dependent ecosystems (including groundwater dependent ecosystems and wetlands, swamps, bogs, depressions and perennial streams) which should be protected and restored where possible, • habitats, animals and plants that benefit from water, • water quality including sediment and dissolved oxygen, its beneficial use classification and impacts, • groundwater pollution, disposal and contamination, including short and long-term protection measures, • acidity, waterlogging, or salinity (including dryland salinity where relevant),

Water Management Act 2000 - Water supply work approval under section 90

Step	Requirement	Explanation	Considerations	Additional information
		<ul style="list-style-type: none"> ○ distances of setbacks from water source and areas of water front land including width of riparian corridors; ● flow characteristics or flow regime of the water source or floodplain, ● amount of water to be extracted including annual extraction volumes and purpose of extraction (including through inflow and seepage.) ● Detailed description of the work (if relevant, include pump outlet sizes and capacity) ● Information on site rehabilitation (restoration, replanting or rehabilitation of disturbed area, rehabilitation of affected water sources,) ● <i>Acid Sulphate Soil Management Plan</i> and <i>Flood Management Plan</i> (discuss with WaterNSW if your proposal requires these plans). 		<ul style="list-style-type: none"> ● cumulative impacts associated with other approvals, and impacts on existing groundwater users, ● geographical and other features of indigenous, major cultural, heritage or spiritual significance (natural or built), ● soil erosion and compaction (impact of final land form on groundwater regime), ● vegetation clearing (include dimensions of area and details of native species to be cleared). ● contamination of soils, sediment control, contamination of water and other relevant sites, ● geomorphic instability and impacts on other users.
5.	Is further information required?	The Secretary has the power under the EP&A Regulation to request additional information where she acts on behalf of a relevant approval body.	<p><u>Question</u> Do you have all the information required to make the decision? For example, has the applicant:</p> <ul style="list-style-type: none"> ● demonstrated tenure over the subject land? ● considered any relevant guides or provided information regarding discussions with the approval body? ● Provided: <ul style="list-style-type: none"> ○ any relevant maps? ○ a proposal in respect of how the water will be used? ○ information about the impact of the water use on 	The Secretary must consider the information available before her to determine whether it is enough to make the decision. Refer to step 4 for more information regarding what may be required.

Water Management Act 2000 - Water supply work approval under section 90

Step	Requirement	Explanation	Considerations	Additional information
			<p>surrounding areas, soil impacts, drainage management, flood protection, local heritage, native vegetation or other environmental issues?</p> <p>Prospective outcome depending upon answer: If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to Step 6; or 2. no, seek additional information from an applicant following the process specified 70AB of the EP&A Regulation. 	
<p>Stage 3 - Making the decision</p>				
6.	<p>What should the decision maker consider including any relevant policies or guidelines that should be followed.</p>	<p>The key test under the WM Act is the minimal harm test in section 97. It provides that a water supply work approval cannot be granted unless the decision-maker is satisfied that adequate arrangements are in force to ensure that no more than minimal harm will be done to any water source or its dependent ecosystems because of the proposed construction and use of the work.</p> <p>There is no precise definition or guidance as to what exactly constitutes minimal harm. This needs to be determined on a case by case basis.</p> <p>To work this out, the decision maker is required to consider the objects of the WM Act, the water</p>	<p>The decision-maker should consider the following matters:</p> <ol style="list-style-type: none"> 1. Would the proposal do more than minimal harm? 2. If it would, can those impacts be avoided or mitigated? 3. Is what is proposed consistent with the objects and principles of the WM Act? 4. Is there a water sharing plan that applies? If so, does the proposal conflict with the rules for granting water supply work approvals in that relevant water sharing plan? 5. Are the considerations in the regulation relevant to the proposal? If so, are they relevant to the decision? 	<p>Not applicable</p>

Water Management Act 2000 - Water supply work approval under section 90

Step	Requirement	Explanation	Considerations	Additional information
		<p>management principles in section 5, the requirements of any relevant water sharing plan as required under section 48, and any matter they consider relevant to determining the application (section 96).</p> <p>The Regulations can also prescribe matters that are required to be taken into consideration.</p>	<p>6. Is there anything else that may be relevant to the consideration of granting the approval?</p> <p>7. Is there is anything else in guidelines which could assist the Secretary in making the decision.</p>	
<p>Stage 4 - Giving general terms of approval</p>				
7	<p>What are relevant statutory considerations?</p>	<p>Under section 95, after considering an application and all matters relevant to an application, the decision maker can grant the approval or refuse the application. In deciding whether to grant an approval, the decision maker must consider the extent to which the application, if approved, would affect any impacted water sources and dependent ecosystems, and be satisfied that adequate arrangements will ensure that no more than minimal harm will be done to any water source, or its dependent ecosystems, because of the construction or use of the proposed water supply work (section 97).</p> <p>In addition, it should not be granted if:</p> <ol style="list-style-type: none"> 1. the water supply work is proposed to be situated on land not owned by the applicant, unless the decision-maker is satisfied the applicant will become the owner within a reasonable time, the land is subject to an easement, or the applicant is otherwise entitled (section 97(5) of the WM Act); or 	<p>In light of the Secretary's consideration of the matters outlined in Step 6, should an approval be granted in these circumstances or should it be refused? See additional information for situations in which an application should be refused.</p>	<p>Not applicable.</p>

Water Management Act 2000 - Water supply work approval under section 90

Step	Requirement	Explanation	Considerations	Additional information
		<p>2. it would contravene any provisions of a relevant management plan (i.e. water sharing plan or resource plan) (section 95(3) of the WM Act.</p>		
8.	What conditions should be imposed?	<p>Under the WM Act, an approval may be granted unconditionally or subject to such conditions as are required or permitted to be imposed under the WM Act (section 95(1A)). Section 100 provides that it must include such conditions as may be required under the Act or a relevant management plan. These are called “mandatory conditions”. Section 100 also provides that it may include conditions to give effect to an agreement between an applicant and objector under section 93(5), or that the Minister thinks appropriate in the relevant circumstances, such as conditions relating to the protection of the environment.</p>	<p><u>Matters the Secretary should consider when making a decision about the terms upon which an approval should be granted</u></p> <ol style="list-style-type: none"> 1. What conditions must be imposed by the WM Act or the water sharing plan? 2. Should other conditions be imposed? If yes, what is the basis and what form should they take? 	<p>The Secretary should consider any additional or relevant issues raised in the information provided by the applicant and consider whether conditions relevant to the circumstances should be imposed. If the Secretary is minded to impose a condition, any resulting condition must be for a proclaimed purpose, there must be a nexus between what is proposed and the condition that is proposed and it must be reasonable.</p>

Water Management Act 2000 - Flood work approval under section 90

Step	Requirement	Explanation	Considerations	Additional information
Stage 1 - Identifying the approval				
1.	What approval is required?	<p>General Terms of Approval in accordance with s.4.47 of the EP&A Act in respect to flood work approval.</p> <p>A flood work approval confers a right on its holder to construct and use a specified flood work at a specified location.</p>	Not applicable.	<p>A flood work means:</p> <p>a work (such as a barrage, causeway, cutting or embankment):</p> <p>(a) that is situated:</p> <p style="padding-left: 20px;">(i) in or in the vicinity of a river, estuary or lake, or</p> <p style="padding-left: 20px;">(ii) within a floodplain, and</p> <p>(b) that is of such a size or configuration that, regardless of the purpose for which it is constructed or used, it is likely to have an effect on:</p> <p style="padding-left: 20px;">(i) the flow of water to or from a river, estuary or lake, or</p> <p style="padding-left: 20px;">(ii) the distribution or flow of floodwater in times of flood,</p> <p>and includes all associated pipes, valves, metering equipment and other equipment, but does not include any work declared by the regulations not to be a flood work.</p>
2.	Who is the approval body and what is their role?	<p>NRAR has been established under the Natural Resources Access Regulator Act 2017 to be an independent, transparent and effective water regulator with total responsibility for the compliance and enforcement of water laws in NSW.</p> <p>NRAR is responsible for flood work approvals required by or for:</p> <ul style="list-style-type: none"> • Government agencies, including other NSW government agencies, local councils and the Commonwealth 	Not applicable.	Water is a limited resource and must be managed sustainably for immediate and long-term needs.

Water Management Act 2000 - Flood work approval under section 90

Step	Requirement	Explanation	Considerations	Additional information
		<ul style="list-style-type: none"> • State owned corporations • Water utilities, water supply authorities and licensed network operators under the Water Industry Competition Act 2006 • Major developments (state significant developments and state significant infrastructure) • Mining • Irrigation corporations • Schools and hospitals • Aboriginal communities and businesses • Floodplain harvesting <p>WaterNSW is a State-Owned Corporation established under the <i>Water NSW Act 2014</i> and operates the state's rivers and water supply systems in accordance with the rules set out by regulators. WaterNSW is responsible for flood work approvals required by:</p> <ul style="list-style-type: none"> • Rural landholders • Rural industries • Developments which are not state significant development or state significant infrastructure 		

Stage 2 - Obtaining the information needed for the assessment

3.	What are the general legislative requirements?	<p>Flood work approvals help to manage water on floodplains.</p> <p>Applications are governed by floodplain management plans development under the WM Act. However, a number of these types of works do not require an approval. These exemptions are set out in the WM Regulation, and include works constructed following a direction given in a flood emergency, for ring</p>	<p><u>Question 1</u> Is the work a flood work? Prospective outcome depending upon answer: If answer is:</p> <ol style="list-style-type: none"> 1. yes, you need the relevant flood plain management plan for the area, which are available on the Department of Industry website. These plans set out what is permitted and prohibited and other relevant considerations. Go to question 2; 	<p><u>Regulation exemptions</u></p> <ul style="list-style-type: none"> • <u>Exemptions from the requirement for a flood work approval</u> <p><u>Floodplain management plans</u> Under the WM ACT, management</p>
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Water Management Act 2000 - Flood work approval under section 90

Step	Requirement	Explanation	Considerations	Additional information
		<p>embankments i.e. flood protection around a house, shed or silo, and for certain other earthworks.</p>	<p>2. no, nothing further is required under section 90 of the WM Act. The Secretary is not required to make any decision.</p> <p><u>Question 2</u> Are there any applicable restrictions in the relevant floodplain management plan to the grant of the approval?</p> <p>1. yes, nothing further is required under section 90 of the WM Act. The Secretary cannot grant general terms of approval; or</p> <p>2. no, go to question 3.</p> <p><u>Question 3</u> Is the proposed work exempt from the need for an approval under the WM Regulation? Prospective outcome depending upon answer: If answer is:</p> <p>1. yes, nothing further is required under section 90 of the WM Act. The Secretary is not required to make any decision; or</p> <p>2. no, go to question 4.</p> <p><u>Question 4</u> Is an embargo in place in the relevant water source? Prospective outcome depending upon answer: If answer is:</p> <p>1. yes, nothing further is required under section 90 of the WM Act. The Secretary cannot grant general terms of approval; or</p> <p>2. no, go to question 4.</p>	<p>plans can deal with floodplain management.</p> <p>A floodplain management plan must deal with certain matters, including identification of the existing and natural flooding regimes in the area, identification of the ecological benefits of flooding in the area, with particular regard to wetlands and other floodplain ecosystems and groundwater recharge, identification of existing flood works in the area and the way they are managed, their benefits in terms of the protection they give to life and property, and their ecological impacts, including cumulative impacts, and the risk to life and property from the effects of flooding.</p>
4.	What information does the approval body	The WM Act provides that an approval should not be granted unless there are adequate arrangements in	<u>Question 1</u>	All applicants must also provide a detailed Statement of Environmental

Water Management Act 2000 - Flood work approval under section 90

Step	Requirement	Explanation	Considerations	Additional information
	usually require, including key policies, publications and guidelines?	<p>place to ensure no more than minimal harm is done to any water source (including an aquifer), or its dependent ecosystems, because of the construction or use of the proposed work. To assist the decision-maker work out the impact of a proposed development on a water source, generally the following information is required:</p> <ul style="list-style-type: none"> • Relevant property details, including the lot or portion, deposited plan, section number (if applicable), house number, street, suburb or town. Location plans must clearly identify (using GPS co-ordinates where possible) the site of the work or activity in relation to the water source or waterfront land. The coordinate projection must be clearly identified (such as GDA 94 for longitude and latitude of MGA 94) and include zone, easting/northing. • Plans or diagrams showing: <ul style="list-style-type: none"> ○ the width of any setbacks from water source – river, stream, lake, wetland or estuary; ○ indicative footprint (dimensions and size) of the proposed work ○ distances of setbacks from water source and areas of water front land including width of riparian corridors; • flow characteristics or flow regime of the water source or floodplain, • Detailed description of the work (if relevant, include outlet sizes and capacity) • Information on site rehabilitation (restoration, replanting or rehabilitation of disturbed area, rehabilitation of affected water sources,) • <i>Flood Management Plan</i> 	<p>Does the application include the required information and is there enough in that material for the decision-maker to assess whether there are adequate arrangements in place to ensure no more than minimal harm is done to the water source?</p> <p>Prospective outcome depending upon answer: If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to Step 6; or 2. no, go to Step 5 and seek additional information from an applicant. 	<p>Effects to demonstrate (where relevant) how their proposal will minimise or mitigate impacts (including accumulative impacts) on the following matters:</p> <ul style="list-style-type: none"> • water sources, floodplains and dependent ecosystems (including groundwater dependent ecosystems and wetlands, swamps, bogs, depressions and perennial streams) which should be protected and restored where possible, • habitats, animals and plants that benefit from water, • water quality including sediment and dissolved oxygen, its beneficial use classification and impacts, • groundwater pollution, disposal and contamination, including short and long-term protection measures, • acidity, waterlogging, or salinity (including dryland salinity where relevant), • cumulative impacts associated with other approvals, and impacts on existing groundwater users, • geographical and other features of indigenous, major cultural, heritage or spiritual significance (natural or built), • soil erosion and compaction (impact of final land form on groundwater regime),

Water Management Act 2000 - Flood work approval under section 90

Step	Requirement	Explanation	Considerations	Additional information
				<ul style="list-style-type: none"> • vegetation clearing (include dimensions of area and details of native species to be cleared). • contamination of soils, sediment control, contamination of water and other relevant sites, • geomorphic instability and impacts on other users.
5.	Is further information required?	The Secretary has the power under the EP&A Regulation to request additional information where she acts on behalf of a relevant approval body.	<p><u>Question</u> Do you have all the information required to make the decision? For example, has the applicant:</p> <ul style="list-style-type: none"> • demonstrated tenure over the subject land? • considered any relevant guides or provided information regarding discussions with the approval body? • Provided: <ul style="list-style-type: none"> ○ any relevant maps? ○ information about, soil impacts, drainage management, flood protection, local heritage, native vegetation or other environmental issues? <p>Prospective outcome depending upon answer: If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to Step 6; or 2. no, seek additional information from an applicant following the process 	The Secretary must consider the information available before her to determine whether it is enough to make the decision. Refer to step 4 for more information regarding what may be required.

Water Management Act 2000 - Flood work approval under section 90

Step	Requirement	Explanation	Considerations	Additional information
			specified 70AB of the EP&A Regulation.	

Stage 3 - Making the decision

6.	What should the decision maker consider including any relevant policies or guidelines that should be followed.	<p>The key test under the WM Act is the minimal harm test in section 97. It provides that a flood work approval cannot be granted unless the decision-maker is satisfied that adequate arrangements are in force to ensure that no more than minimal harm will be done to any water source or its dependent ecosystems because of the proposed construction and use of the work.</p> <p>There is no precise definition or guidance as to what exactly constitutes minimal harm. This needs to be determined on a case by case basis.</p> <p>To work this out, the decision maker is required to consider the objects of the WM Act, the water management principles in section 5, the requirements of any relevant floodplain management plan, and any matter they consider relevant to determining the application (section 96).</p> <p>The Regulations can also prescribe matters that are required to be taken into consideration.</p>	<p>The decision-maker should consider the following matters:</p> <ol style="list-style-type: none"> 1. Would the proposal do more than minimal harm? 2. If it would, can those impacts be avoided or mitigated? 3. Is what is proposed consistent with the objects and principles of the WM Act? 4. Is there a floodplain management plan that applies? If so, does the proposal conflict with the contents of that relevant management plan? 5. Are the considerations in the regulation relevant to the proposal? If so, are they relevant to the decision? 6. Is there anything else that may be relevant to the consideration of granting the approval? 7. Is there is anything else in guidelines which could assist the Secretary in making the decision. 	Not applicable
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Stage 4 - Giving general terms of approval

Water Management Act 2000 - Flood work approval under section 90

Step	Requirement	Explanation	Considerations	Additional information
7	What are relevant statutory considerations?	<p>Under section 95, after considering an application and all matters relevant to an application, the decision maker can grant the approval or refuse the application. In deciding whether to grant an approval, the decision maker must consider the extent to which the application, if approved, would affect any impacted water sources or dependent ecosystems, and be satisfied that adequate arrangements will ensure that no more than minimal harm will be done to any water source, or its dependent ecosystems, because of the construction or use of the proposed flood work (section 97).</p> <p>In addition, it should not be granted if:</p> <ol style="list-style-type: none"> 3. the work is proposed to be situated on land not owned by the applicant, unless the decision-maker is satisfied the applicant will become the owner within a reasonable time, the land is subject to an easement, or the applicant is otherwise entitled (section 97(5) of the WM Act); or 4. it would contravene any provisions of a relevant floodplain management plan. <p>The decision maker is also required to consider any matters set out in the floodplain management plan and whether the work may have significant impacts on the floodplain environment, neighbouring properties or health and safety, or whether particular conditions to minimise any impacts may be required.</p>	In light of the Secretary's consideration of the matters outlined in Step 6, should an approval be granted in these circumstances or should it be refused? See additional information for situations in which an application should be refused.	Not applicable.

Water Management Act 2000 - Flood work approval under section 90

Step	Requirement	Explanation	Considerations	Additional information
8.	What conditions should be imposed?	Under the WM Act, an approval may be granted unconditionally or subject to such conditions as are required or permitted to be imposed under the WM Act (section 95(1A)). Section 100 provides that it must include such conditions as may be required under the Act or a relevant management plan. These are called “mandatory conditions”. Section 100 also provides that it may include conditions to give effect to an agreement between an applicant and objector under section 93(5), or that the Minister thinks appropriate in the relevant circumstances, such as conditions relating to the protection of the environment.	<p><u>Matters the Secretary should consider when making a decision about the terms upon which an approval should be granted</u></p> <ol style="list-style-type: none"> 1. What conditions must be imposed by the WM Act or the water sharing plan? 2. Should other conditions be imposed? If yes, what is the basis and what form should they take? 	The Secretary should consider any additional or relevant issues raised in the information provided by the applicant and consider whether conditions relevant to the circumstances should be imposed. If the Secretary is minded to impose a condition, any resulting condition must be for a proclaimed purpose, there must be a nexus between what is proposed and the condition that is proposed and it must be reasonable.

Water Management Act 2000- Controlled activity approval under section 91

Step	Requirement	Explanation	Considerations	Additional information
Stage 1 - Identifying the approval				
1.	What approval is required?	<p>General Terms of Approval in accordance with s.4.47 of the EP&A Act in respect to activity approval.</p> <p>An approval is required under section 91 of the WM Act to authorise the carrying out of a controlled activity.</p>	Not applicable.	<p><u>Controlled activity</u> Are certain types of activities (the erection of a building, the carrying out of a work, removing or depositing material from that area, etc) carried out on waterfront land (the bed of any river, lake or estuary, or land within 40 metres of the river banks, lake, shore or estuary).</p>
2.	Who is the approval body and what is their role?	<p>NRAR has been established under the Natural Resources Access Regulator Act 2017 to be an independent, transparent and effective water regulator with total responsibility for the compliance and enforcement of water laws in NSW. NRAR is responsible for all controlled activity approvals.</p>	Not applicable.	<p>Healthy, productive water sources are vital to the community and the environment.</p>
Stage 2 - Obtaining the information needed for the assessment				
3.	What are the general legislative requirements?	<p>A controlled activity approval is required to authorise the carrying out of a controlled activity on waterfront land, unless an exemption in the WM Gen Regulation applies. See additional information regarding exemptions.</p>	<p><u>Question 1</u> Is it a controlled activity (i.e. does what is proposed fit within the definition in the WM Act and will be carried out in the area described)? Prospective outcome depending upon answer: If answer is: <ol style="list-style-type: none"> 1. yes, go to question 2; or 2. no, no approval is required under section 91. <u>Question 2</u></p>	<p><u>Regulation exemption</u> <u>Exemption from the requirement for a controlled activity approval</u></p>

Water Management Act 2000- Controlled activity approval under section 91

Step	Requirement	Explanation	Considerations	Additional information
			<p>Is the activity exempt from the need for an approval under the WM Regulation? Prospective outcome depending upon answer: If answer is:</p> <ol style="list-style-type: none"> 1. yes, nothing further is required under section 91 of the WM Act. The Secretary is not required to make any decision; or 2. no, go to step 4. 	
4.	<p>What information does the approval body usually require, including key policies, publications and guidelines?</p>	<p>For controlled activity approvals, the following information is generally required:</p> <ul style="list-style-type: none"> • Relevant property details, including the lot or portion, deposited plan, section number (if applicable), house number, street, suburb or town. Location plans must clearly identify (using GPS co-ordinates where possible) the site of the work or activity in relation to the water source or waterfront land. The coordinate projection must be clearly identified (such as GDA 94 for longitude and latitude of MGA 94) and include zone, easting/northing. A map should also be provided should showing the boundary of all tenures. • Information regarding relevant planning controls. • Property owner details or landowner's consent. If works are proposed on Crown land the application should be supported by a letter from the Department of Industry. • A clear description of the site and it's environment and all proposed works in those areas. • A topographic map and/or aerial photos showing where the work or controlled activity is to occur. • Plans, surveys and diagrams showing: <ul style="list-style-type: none"> ○ The location of the proposed work or activity (to scale with scale bar) 	<p>Does the application include the required information and is there enough in that material for the decision-maker to assess whether there are adequate arrangements in place to ensure no more than minimal harm is done to the water source? Prospective outcome depending upon answer: If answer is:</p> <ol style="list-style-type: none"> 1. yes, go to Step 6; or 2. no, go to Step 5 and seek additional information from an applicant. 	<p>All applicants must also provide a detailed Statement of Environmental Effects to demonstrate (where relevant) how their proposal will minimise or mitigate impacts (including accumulative impacts) on the following matters:</p> <ul style="list-style-type: none"> • water sources, floodplains and dependent ecosystems (including groundwater dependent ecosystems and wetlands, swamps, bogs, depressions and perennial streams) which should be protected and restored where possible, • habitats, animals and plants that benefit from water, • water quality including sediment and dissolved oxygen, its beneficial use classification and impacts, • groundwater pollution, disposal and contamination, including short and long-term protection measures,

Water Management Act 2000- Controlled activity approval under section 91

Step	Requirement	Explanation	Considerations	Additional information
		<ul style="list-style-type: none"> ○ the width of any setbacks from water source – river, stream, lake, wetland or estuary; ○ indicative footprint (dimensions and size) of the proposed activity ○ distances of setbacks from water source and areas of water front land including width of riparian corridors; <ul style="list-style-type: none"> ● If the proposal includes an extractive operation or is for the purpose of operating an extractive industry, describe this in detail including the material to be extracted, the extent of extraction, the location and method of extraction. ● Details of the water source (i.e. is it a river, lake, and its flow characteristics or flow regime ● Assessment report detailing the environmental impacts of the work or controlled activity on waterfront land. ● An impact assessment to any existing vegetation and threatened species and evidence of discussions with NSW Fisheries if appropriate. ● Information on site rehabilitation (restoration, replanting or rehabilitation of disturbed area, rehabilitation of affected water sources,) ● <i>Acid Sulphate Soil Management Plan</i> and <i>Flood Management Plan</i> (discuss with WaterNSW if your proposal requires these plans). <p>Guidelines for controlled activities</p> <p>The following published guidelines on certain types of controlled activities and the protection of waterfront land may assist:</p> <ul style="list-style-type: none"> ● <u>Guideline for completing a controlled activity approval</u> ● <u>In-stream works</u> ● <u>Laying pipes and cables in watercourses</u> ● <u>Outlet structures</u> 		<ul style="list-style-type: none"> ● acidity, waterlogging, or salinity (including dryland salinity where relevant), ● cumulative impacts associated with other approvals, and impacts on existing groundwater users, ● geographical and other features of indigenous, major cultural, heritage or spiritual significance (natural or built), ● soil erosion and compaction (impact of final land form on groundwater regime), ● vegetation clearing (include dimensions of area and details of native species to be cleared). ● contamination of soils, sediment control, contamination of water and other relevant sites, ● geomorphic instability and impacts on other users.

Water Management Act 2000- Controlled activity approval under section 91

Step	Requirement	Explanation	Considerations	Additional information
		<ul style="list-style-type: none"> <u>Riparian corridors</u> <u>Vegetation Management Plans</u> <u>Watercourse crossings</u> 		
5.	Is further information required?	The Secretary has the power under the EP&A Regulation to request additional information where she acts on behalf of a relevant approval body.	<p><u>Question</u> Do you have all the information required to make the decision?</p> <p>Prospective outcome depending upon answer: If answer is:</p> <ol style="list-style-type: none"> yes, go to Step 6; or no, seek additional information from an applicant following the process specified 70AB of the EP&A Regulation. 	The Secretary must consider the information available before her to determine whether it is enough to make the decision. Refer to step 4 for more information regarding what may be required for each activity approval.

Stage 3 - Making the decision

6.	What should the decision maker consider including any relevant policies or guidelines that should be followed.	<p>The key test under the WM Act is the minimal harm test in section 97. It provides that a controlled activity approval cannot be granted unless the decision-maker is satisfied that adequate arrangements are in force to ensure that no more than minimal harm will be done to any waterfront land because of the carrying out of the controlled activity.</p> <p>There is no precise definition or guidance as to what exactly constitutes minimal harm. This needs to be determined on a case by case basis.</p> <p>To work this out, the decision maker is required to consider the objects of the WM Act, the water management principles in section 5, , and any matter</p>	<p>The decision-maker should consider the following matters:</p> <ol style="list-style-type: none"> Would the proposal do more than minimal harm? If it would, can those impacts be avoided or mitigated? Is what is proposed consistent with the objects and principles of the WM Act? Are the considerations in the regulation relevant to the proposal? If so, are they relevant to the decision? Is there anything else that may be relevant to the consideration of granting the approval? 	<p>The decision-maker must consider the identified risks in carrying out the controlled activity and how that risk will be minimised or mitigated particularly in relation to the following issues:</p> <ul style="list-style-type: none"> Land degradation, including soil erosion Geomorphic instability Water quality impacts including contamination Acidity Salinity Water logging
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Water Management Act 2000- Controlled activity approval under section 91


Step	Requirement	Explanation	Considerations	Additional information
		<p>they consider relevant to determining the application (section 96).</p> <p>The Regulations can also prescribe matters that are required to be taken into consideration.</p>	<p>6. Is there is anything else in guidelines which could assist the Secretary in making the decision.</p>	<ul style="list-style-type: none"> • The decline of native vegetation • The rehabilitation of the water course, floodplain and any dependent ecosystem. <p>Cumulative effects and impacts on other waters should also be addressed.</p>

Stage 4 - Giving general terms of approval

7	What are relevant statutory considerations?	<p>Under section 95, after considering an application and all matters relevant to an application, the decision maker can grant the approval or refuse the application. Controlled activity approvals are not to be granted unless the decision-maker is satisfied that adequate arrangements are in force to ensure that no more than minimal harm will be done to any waterfront land because of the carrying out the proposed controlled activity (section 97).</p>	<p>In light of the Secretary's consideration of the matters outlined in Step 6, should an approval be granted in these circumstances or should it be refused? See additional information for situations in which an application should be refused.</p>	
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Water Management Act 2000- Controlled activity approval under section 91

Step	Requirement	Explanation	Considerations	Additional information
8.	What conditions should be imposed?	Under the WM Act, an approval may be granted unconditionally or subject to such conditions as are required or permitted to be imposed under the WM Act (section 95(1A)). Section 100 provides that it must include such conditions as may be required under the Act or a relevant management plan. These are called “mandatory conditions”. Section 100 also provides that it may include conditions to give effect to an agreement between an applicant and objector under section 93(5), or that the Minister thinks appropriate in the relevant circumstances, such as conditions relating to the protection of the environment.	<p><u>Matters the Secretary should consider when making a decision about the terms upon which an approval should be granted</u></p> <ol style="list-style-type: none"> 1. Should conditions be imposed? If yes, what is the basis and what form should they take? 	The Secretary should consider any additional or relevant issues raised in the information provided by the applicant and consider whether conditions relevant to the circumstances should be imposed. If the Secretary is minded to impose a condition, any resulting condition must be for a proclaimed purpose, there must be a nexus between what is proposed and the condition that is proposed and it must be reasonable.



**○ Part 3-Guidance
Principles**

Guidance Principles

The Guidance Principles serve as matters for consideration by the Secretary when resolving an inconsistency between the conflicting GTAs of two or more approval bodies (i.e. advice that cannot be implemented together as they are contradictory).

The Secretary will only act on behalf of approval bodies when they have demonstrated that they have exhausted all negotiations and are unable to resolve the issue. Such a situation might arise, for example, when two or more State Agencies issue advice that cannot be concurrently implemented.

Guidance Principles

In circumstances where the Secretary is requested to resolve an inconsistency between two or more approval bodies, the following Guidance Principles will assist the Secretary, a proposal should:

Environment:	<ul style="list-style-type: none"> encourage the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment seek to sustainably manage the State's natural assets and minimise any impacts of development on water, air, land and biodiversity adopt a balanced approach to development to ensure that it conserves our natural environment for future generations. encourage the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats encourage ecologically sustainable development
Economic:	<ul style="list-style-type: none"> supports industry growth if it involves the provision of infrastructure create jobs and investment enable the creation of strong vibrant communities and successful industry drive economic growth in regional NSW encourage the promotion and co-ordination of the orderly and economic use and development of land
Social:	<ul style="list-style-type: none"> build liveable, inclusive centres and communities encourage the provision of land for public purposes encourage the provision and coordination of community services and facilities encourage the protection, provision and co-ordination of communication and utility services encourage the provision and maintenance of affordable housing
Community input:	<ul style="list-style-type: none"> have regard to public submissions received in response to the development application provide increased opportunity for public involvement and participation in environmental planning and assessment promote the sharing of the responsibility for environmental planning between the various levels of government in the State
Life safety	<ul style="list-style-type: none"> should not jeopardise lives (e.g. on bush fire prone land must comply with Planning for Bush Fire Protection) ensure that drinking water remains contaminant free ensure that hazardous substances should not be unreasonably omitted into the atmosphere

