



Voluntary Land Acquisition and Mitigation Policy

For State Significant Mining, Petroleum and Extractive Industry Developments



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PRELIMINARY

Purpose

This document describes the NSW Government's policy for voluntary mitigation and land acquisition to address noise and dust (particulate matter) impacts from State significant mining, petroleum and extractive industry developments.

Application

This policy is to be applied by consent authorities when assessing and determining development applications and modification applications for mining, petroleum and extractive industry developments, subject to the State significant development provisions of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Commencement

This policy commences from the date it is approved, and applies to new applications as well as existing applications that were not yet determined when the policy commenced.

Review of this policy

This policy documents current NSW Government practice. Any revisions or updates to this policy will be made subsequent to:

- Review of the NSW Industrial Noise Policy (EPA 2000);
- Review of standards for particulate matter under the National Environment Protection (Ambient Air Quality) Measure (NEPC 1998);
- Review of the Approved Methods for the Modelling and Assessment of Air Pollutants in NSW (EPA 2005); and
- Revision of The Health Effects of Environmental Noise (enHealth 2004).

These reviews are anticipated to be completed in 2015.

Regulatory responsibilities

There are two key regulators involved in the regulation of noise and particulate matter from State significant mining and extractive industry developments in NSW:

- The Department of Planning and Environment (DPE) is responsible for assessing development applications and enforcing development consents for State significant developments under the EP&A Act on behalf of the Minister for Planning¹.
- The Environment Protection Authority (EPA) is responsible for issuing and enforcing Environment Protection Licences under the *Protection of the Environment Operations Act 1997* (POEO Act).

¹ The Planning Assessment Commission is responsible for the determination of development applications when those matters are delegated to it by the Minister, and the provision of independent expert advice to the Minister on a range of planning and development matters.

Background

Importance of the mining and extractive industries

NSW has a long history of mining and extractive industry activity. Mining is a major contributor to the NSW economy, providing direct employment for around 33,000 people, as well as 130,000 people indirectly. Mining is also the State's largest export industry. In 2013-14, NSW mining exports generated \$19 billion in revenue and contributed 30% of the State's total exports. The State receives \$1.3 billion in royalties which helps fund infrastructure and services.

The wealth generated by the NSW minerals and extractive industries is derived from some 56 coal mines, 17 large metallic mineral mines, many smaller metallic and mineral mines, and numerous construction material operations.

Despite the importance of these industries to NSW, mining, petroleum and extractive industry developments can have significant noise and dust impacts on their surrounding communities which warrant comprehensive mitigation and management, including the use of voluntary acquisition in some circumstances.

Noise impacts on the community

In assessing and approving developments, the Government aims to protect health, preserve amenity and control intrusive noise.

Noise can interfere with daily activities including conversation, entertainment and studying and can result in increased annoyance and stress. Studies have shown that excessive noise can lead to sleep disturbance and other health impacts as well as annoyance. As noise levels rise, health impacts can become more serious.

Dust impacts on the community

Concerns about amenity often relate to visible dust and are usually associated with particles larger than 10 micrometers (μm) in diameter. Amenity impacts include dust depositing on fabrics (e.g. washing) or on house roofs, and the transport of dust from roofs to water tanks during rain.

Particulate matter (PM) is the term used to describe airborne particles. Both long term (over years) and short term (hours or days) exposure to particulate matter has been linked to health problems.

Policy rationale

The Government has established a range of policies and guidelines to guide the assessment of the potential impacts of mining, petroleum and extractive industry developments in NSW. These policies and guidelines include assessment criteria to protect the amenity, health and safety of people. They typically require applicants to implement all reasonable and feasible avoidance and/or mitigation measures to minimise the impacts of a development.

In some circumstances, however, it may not be possible to comply with these assessment criteria even with the implementation of all reasonable and feasible avoidance and/or mitigation measures. This can commonly occur with large resource projects – such as large open cut mines - where the resources are fixed, and there is limited scope for avoiding and/or mitigating impacts.

However, it is important to recognise that:

- Some landowners may be prepared to accept higher impacts on their land subject to entering into suitable negotiated agreements with applicants, which may include the payment of compensation.
- Not all exceedances of the relevant assessment criteria equate to unacceptable impacts.
- Consent authorities may decide that it is in the public interest to allow the development to proceed, even though there would be exceedances of the relevant assessment criteria, because of the broader social and economic benefits of the development.

Consequently, the assessment process can lead to a range of possible outcomes.

Approach to decision-making

There are five essential steps in the assessment process:

1. The applicant must employ all reasonable and feasible avoidance and mitigation measures to comply with the relevant assessment criteria.
2. If the applicant cannot comply with the relevant assessment criteria, or the acquisition or mitigation criteria are likely to be exceeded, then the applicant should consider a negotiated agreement with the affected landowner or acquisition of the affected land. If the applicant acquires the land, then this land is considered to be part of the buffer land for the project, and treated as part of the development.
3. If a negotiated agreement has not been entered into with the landowner, then it is up to the consent authority to weigh up the relevant economic, social and environmental impacts of the development, in accordance with the requirements of section 79C of the *Environmental Planning & Assessment Act 1979*, and decide whether the development should be approved or not.
4. If the consent authority decides to approve the development, then appropriate conditions need to be imposed on the approval.
5. The applicant must comply with the terms of any negotiated agreement and the conditions of approval. The application of voluntary acquisition rights through a development consent should be seen as a mitigation measure of last resort to ensure landowners have the option to avoid higher noise or particulate matter impacts without personally incurring financial costs.

These steps are outlined in Figure 1 below.

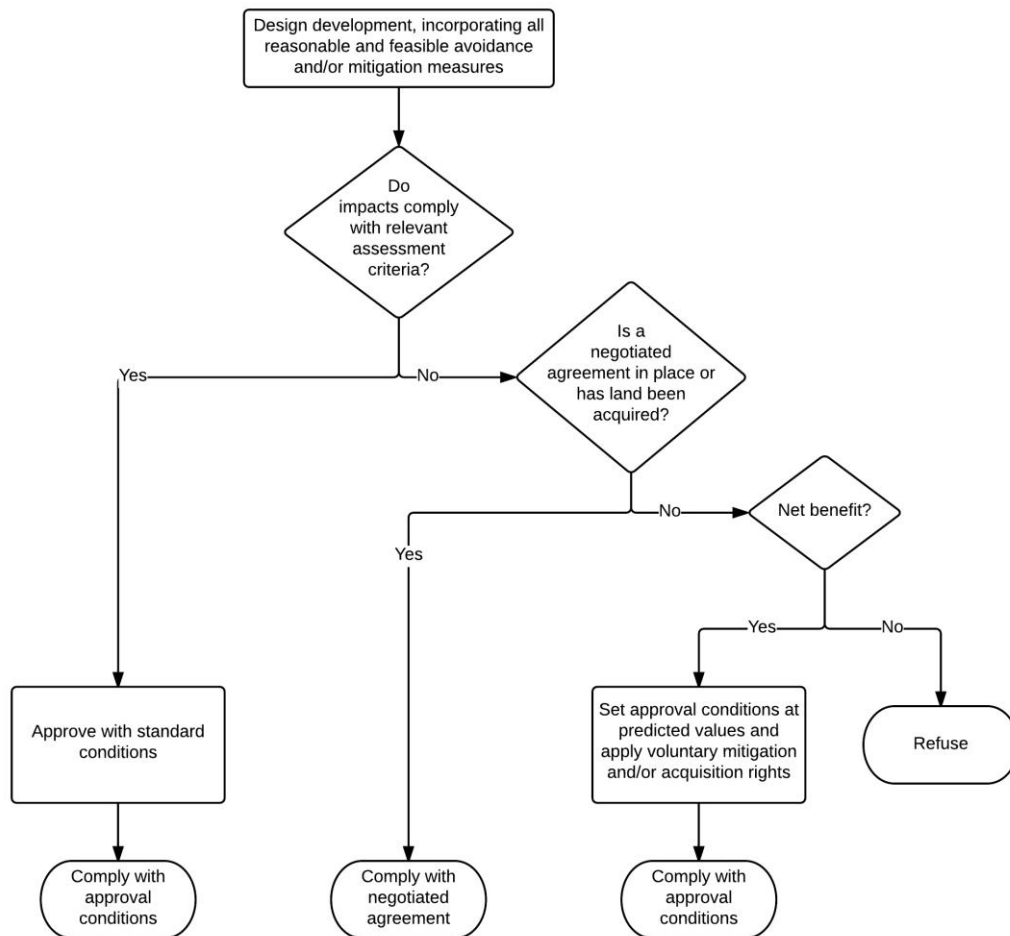


Figure 1 – General approach to decision-making during the assessment process.



POLICY

GENERAL

This section explains the general concepts and tools covered in this policy.

Negotiated agreements

Negotiated agreements between applicants and landowners are the preferred mechanism for managing any exceedances of the relevant assessment criteria, as they:

- Can be specifically tailored to the individual circumstances of the landowner;
- Provide for the implementation of a broader suite of measures, such as financial compensation for impacts, acoustic treatments to buildings and the provision of alternative accommodation (particularly when the exceedances would only occur over short periods).

Nevertheless, applicants must ensure that landowners are fully informed of the implications of entering into such agreements, and have a good understanding of:

- The scale and nature of the predicted impacts; and
- The health risks, if any, of being exposed to such impacts.

To ensure these agreements are effective, it is also important to ensure that they comply with certain minimum standards. Negotiated agreements must:

- Be enforceable in a court of law;
- Remain in force for the life of the development;
- Provide for the transfer of obligations to any new landowner if the property is subsequently sold;
- Clearly identify the upper limit of any impacts which are the subject of the agreement;
- Provide for ongoing monitoring (if required); and
- Provide for the review of the agreement in the event that those upper limits are exceeded.

Finally, the applicant should bear all the costs associated with entering into the agreement. This may include the costs associated with:

- Providing expert advice to landowners to enable them to make informed choices about whether to enter into an agreement;
- Drafting any agreement; and
- Making any agreement.

Voluntary mitigation

Mitigation works can only be carried out by applicants on private land when requested by the landowner.

Voluntary mitigation rights should be applied to affected landowners when:

- A development cannot comply with the relevant assessment criteria even with the implementation of all reasonable and feasible avoidance and/or mitigation measures at the source or via the applicant's negotiations with landowners;
- The impacts of the development are predicted to exceed the relevant voluntary mitigation criteria; and
- The consent authority is satisfied that the development is still in the public interest and should be approved.

These mitigation measures must be:

- Proportionate to the predicted impact;
- Agreed to between the applicant and the landowner (or consistent with any ruling of the Secretary if there is a dispute between the applicant and landowner);
- Reasonable and feasible; and
- Directed towards reducing the impacts of the development on any residence on the land.

Because the application of voluntary mitigation rights are intended to protect human health and amenity, those rights should not be applied to vacant land other than in the circumstances specifically identified in this policy.

The process for obtaining these mitigation measures will be set out in any conditions of the development consent, and is summarised in Figure 2 below.

Finally, the applicant must bear all the costs associated with the provision of the voluntary mitigation measures. This may include the costs of:

- Obtaining independent expert advice to determine the reasonable and feasible mitigation measures that should be implemented;
- Installing the measures;
- Operating the measures over time; and
- Any dispute resolution.

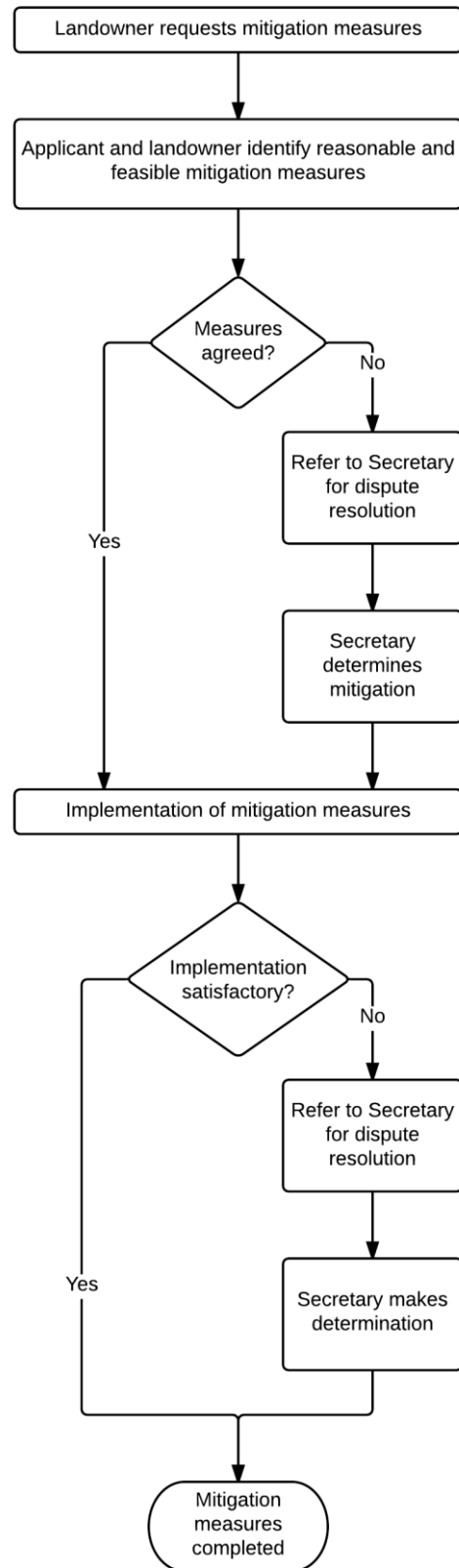


Figure 2 – Process for obtaining voluntary mitigation measures.



Voluntary acquisition

Voluntary land acquisition rights should be applied to affected landowners when:

- A development cannot comply with the relevant assessment criteria even with the implementation of all reasonable and feasible avoidance and/or mitigation measures;
- The impacts of the development are predicted to exceed the relevant voluntary land acquisition criteria; and
- The consent authority is satisfied that the development is still in the public interest and should be approved.

The development consent conditions will specify both:

- The terms of any acquisition; and
- The process for securing acquisition.

Under these conditions, applicants will generally be required to acquire the relevant land where the voluntary acquisition criteria are exceeded and any contiguous lots owned by the same landowner at the date of the approval.

The acquisition price must, as a minimum, include:

- A sale price no less favourable than market value calculated in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* as if the land was unaffected by the development; and
- An amount no less favourable than an amount calculated with respect to the matters referred to in section 55 of the *Land Acquisition (Just Terms Compensation) Act 1991* other than market value.

However, the cost of installing voluntary mitigation measures may be excluded from the acquisition price if the installation of these measures has increased the market value of the land.

Because the application of voluntary acquisition rights are intended to protect human health and amenity, those rights should not be applied to vacant land other than in the circumstances specifically identified in this policy.

The process for securing acquisition is summarised in Figure 3 below.

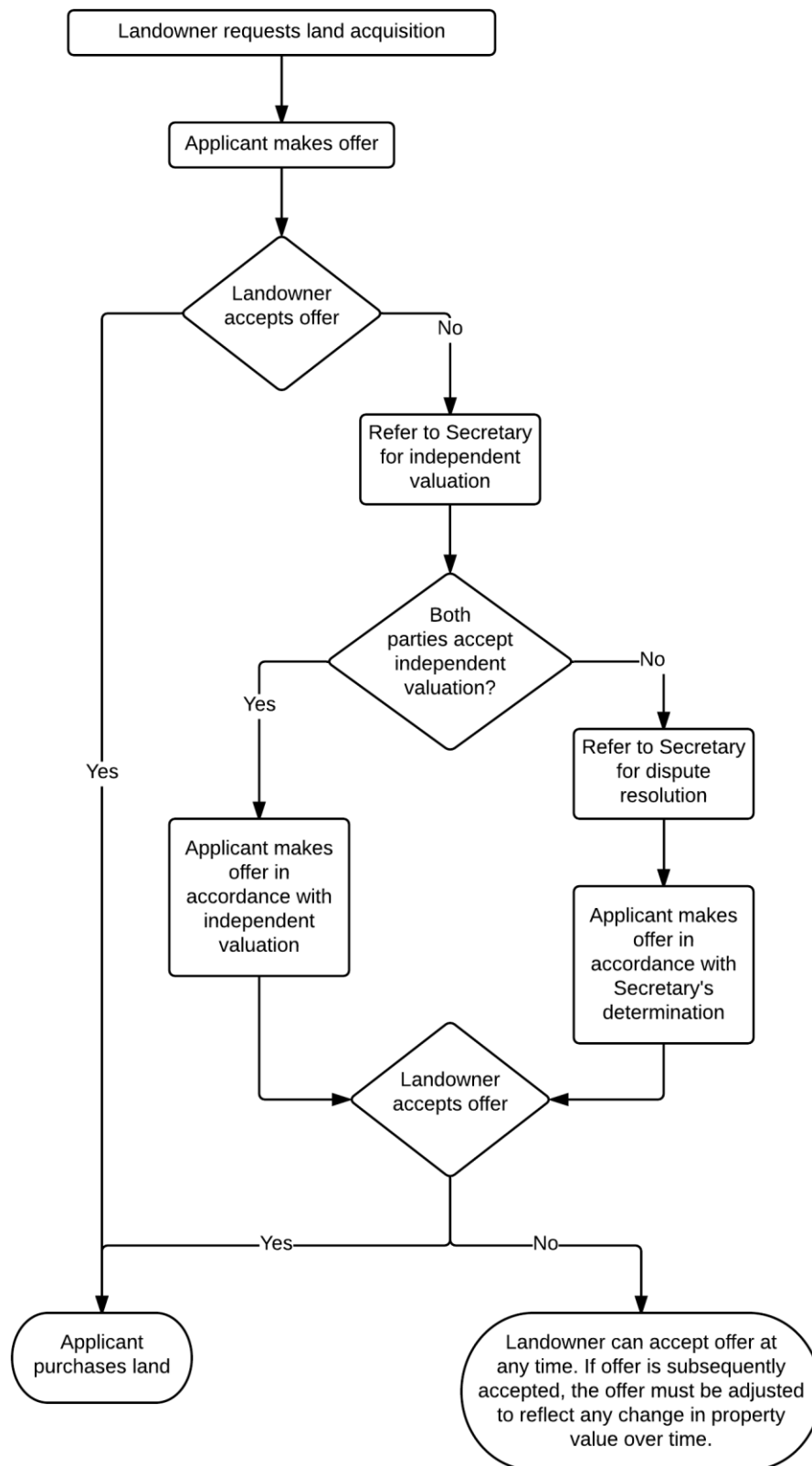


Figure 3 – Voluntary land acquisition process.



Use of land in buffer zones (acquisition land)

When an applicant acquires land to mitigate the impacts of a development, then this land should be treated as part of the buffer land of the development. This land could have existing tenants or be leased to new tenants.

In circumstances where relevant assessment criteria are likely to be exceeded on this land, applicants must ensure:

- Existing, prospective and/or new tenants are fully informed of:
 - the scale and nature of the predicted impacts;
 - the health risks, if any, of being exposed to such impacts;
- Tenants can terminate their lease agreement without penalty at any time during the development; and
- In the case where an existing tenant decides to move to avoid the impacts of the development, pay the costs associated with moving to alternative accommodation.

In areas with intensive mining development, there may be an overlap between the buffer area of one mining company and another. In such circumstances, each mining company should be responsible for managing the impacts of any mining development on its land. However, in some circumstances, it may be appropriate to require one mining company to provide voluntary mitigation rights to another mining company.

NOISE

This section details how the policy applies to noise impacts.

Assessment criteria

Applicants are required to assess the impacts of the development in accordance with the:

- NSW Industrial Noise Policy (EPA 2000) (INP);
- Rail Infrastructure Noise Guideline (EPA 2013) (RING);
- Road Noise Policy (DECCW 2011) (RNP); and the
- Interim Construction Noise Guideline (DECC 2009) (ICNG).

These policies and guidelines seek to strike an appropriate balance between supporting the economic development of NSW and protecting the amenity and wellbeing of the community. They recommend standards for regulating the construction, operational, road and rail noise impacts of a development, and require applicants to implement all reasonable and feasible avoidance and mitigation measures.

These standards are generally conservative, and it does not automatically follow that exceedances of the relevant criteria will result in unacceptable outcomes.

Mitigation and acquisition criteria

A consent authority can grant voluntary mitigation and acquisition rights to reduce:

- Operational noise impacts of a development on privately-owned land; and
- Rail noise impacts of a development on privately-owned land near non-network rail lines (private rail lines) on or exclusively servicing industrial sites (see Appendix 3 of the RING);

But not:

- Construction noise impacts, as these impacts are shorter term and can be controlled;
- Noise impacts on the public road or rail network; or
- Modifications of existing developments with legacy noise issues, where the modification would have beneficial or negligible noise impacts. In such cases, these legacy noise issues should be addressed through site-specific pollution reduction programs under the *Protection of the Environment Operations Act 1997*.

Process for decision-making on noise impacts

The decision-making process which should be applied by a consent authority under this policy is summarised in Figure 4 below.

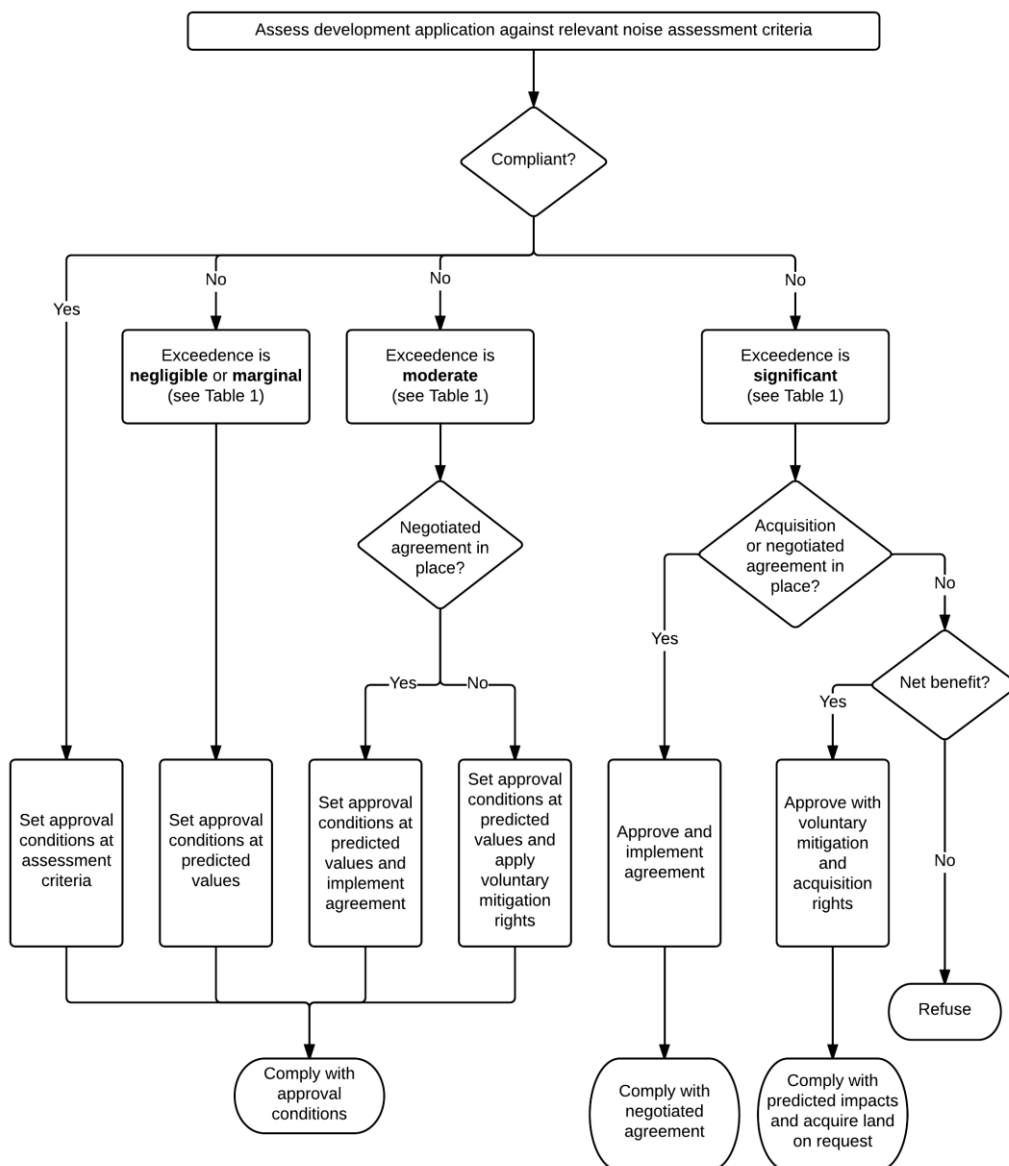


Figure 4 – Decision-making process for noise impacts.

Table 1 below summarises the NSW Government’s interpretation of the significance of any potential exceedances of the relevant noise assessment criteria, and identifies potential treatments for these exceedances.

Table 1 - Characterisation of noise impacts & potential treatments

Residual noise exceeds INP criteria by	Characterisation of impacts	Potential treatment
0-2dB(A) above the project-specific noise level (PSNL)	Impacts are considered to be negligible	The exceedances would not be discernable by the average listener and therefore would not warrant receiver based treatments or controls
3-5dB(A) above the PSNL in the INP <i>but</i> the development would contribute less than 1dB to the total industrial noise level	Impacts are considered to be marginal	Provide mechanical ventilation / comfort condition systems to enable windows to be closed without compromising internal air quality / amenity.
3-5dB(A) above the PSNL in the INP <i>and</i> the development would contribute more than 1dB to the total industrial noise level	Impacts are considered to be moderate	As for marginal impacts but also upgraded façade elements like windows, doors, roof insulation etc. to further increase the ability of the building façade to reduce noise levels.
>5dB(A) above the PSNL in the INP	Impacts are considered to be significant	Provide mitigation as for moderate impacts and see voluntary land acquisition provisions below.

Voluntary mitigation rights

A consent authority should only grant voluntary mitigation rights:

- If the noise generated by the development would be equal to or greater than 3dB(A) above the INP project-specific noise level at any residence on privately-owned land; or
- If the development would increase the total industrial noise level at any residence on privately-owned land by more than 1dB(A), and noise levels at the residence are already above the recommended amenity criteria in Table 2.1 of the INP; or
- If the development includes a private rail line and the use of that private rail line would cause exceedances of the recommended acceptable levels in Table 6 of Appendix 3 of the RING (see Appendix B) by greater than or equal to 3dB(A) at any residence on privately-owned land.

All noise levels must be calculated in accordance with the INP or RING (as applicable).

The selection of mitigation measures should be guided by the potential treatments identified in Table 1 above.

Voluntary land acquisition rights

A consent authority should only grant voluntary land acquisition rights where:

- The noise generated by the development would be more than 5dB(A) above the project specific noise level at any residence on privately-owned land; or
- The noise generated by the development would contribute to exceedances of the recommended maximum noise levels in Table 2.1 of the INP on more than 25% of any privately owned land, and a dwelling could be built on that land under existing planning controls²; or
- If the development includes a private rail line and the use of that private rail line would cause exceedances of the recommended maximum criteria in Table 6 of Appendix 3 of the RING at any residence on privately owned land.

All noise levels must be calculated in accordance with the INP or RING (as applicable).

PARTICULATE MATTER

This section details how the policy applies to particulate matter impacts.

Assessment criteria

Applicants are required to assess the impacts of the development in accordance with the Approved Methods for the Modelling and Assessment of Air Pollutants in NSW (EPA 2005) (Approved Methods).

While exceedances of these criteria will increase the human health risks of a development, the consent authority may determine the additional risk to be acceptable, particularly when the broader social and economic benefits of the development are taken into consideration.

Mitigation and acquisition criteria

Process for decision-making on air quality impacts

The decision-making process which should be applied by a consent authority under this policy is summarised in Figure 5 below.

² Voluntary land acquisition rights should not be applied to address noise levels on vacant land other than to vacant land specifically meeting these criteria.

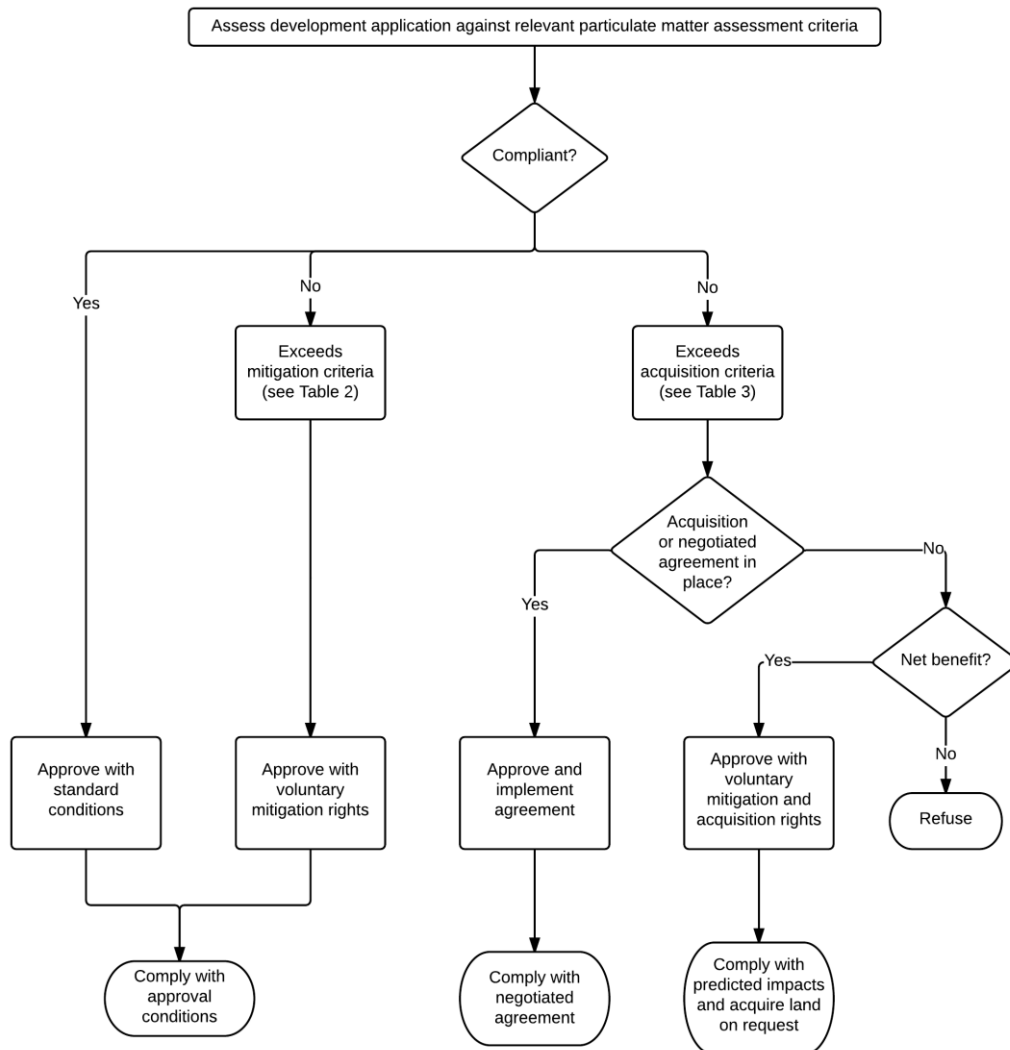


Figure 5 - Decision-making process for particulate matter impacts.

Voluntary mitigation rights

A consent authority should only apply voluntary mitigation rights where the residual impact is greater than the criteria set out in Table 2.

Table 2 - Particulate matter mitigation criteria³

POLLUTANT	AVERAGING PERIOD	MITIGATION CRITERION		IMPACT TYPE
PM ₁₀	Annual	30 µg/m ³ *		Human health
PM ₁₀	24 hour	50 µg/m ³ **		Human health
Total suspended particulates (TSP)	Annual	90 µg/m ³ *		Amenity
Deposited dust	Annual	2 g/m ² /month**	4 g/m ² /month*	Amenity

* Cumulative impact (i.e. increase in concentrations due to the development plus background concentrations due to all other sources).

** Incremental impact (i.e. increase in concentrations due to the development alone).

Mitigation measures in these circumstances should be directed towards reducing the potential human health and amenity impacts of the development, and may include:

- Air conditioning, including heating;
- Insulation;
- First flush water systems;
- Clothes dryers;
- Installation and regular replacement of water filters; and
- Regular cleaning of any residence and its related amenities, such as barbeque areas and swimming pools.

Voluntary land acquisition rights

A consent authority should only apply voluntary acquisition rights where the residual impact is greater than the criteria set out in Table 3:

Voluntary land acquisition rights should only be granted:

- If the development contributes to exceedances of the acquisition criteria in Table 3 at any residence or workplace on privately owned land; or
- If the development contributes to exceedances of the acquisition criteria in Table 3 on more than 25% of any privately-owned land, and a dwelling could be built on that land under existing planning controls⁴.

³ Criteria are derived from Approved Methods for the Modelling and Assessment of Air Pollutants in NSW (EPA 2005).

⁴ Voluntary land acquisition rights should not be applied to address particulate matter levels on vacant land other than to vacant land specifically meeting these criteria.



Table 3: Particulate matter acquisition criteria⁵

POLLUTANT	AVERAGING PERIOD	ACQUISITION CRITERION		IMPACT TYPE
PM ₁₀	Annual	30 µg/m ³ *		Human health
PM ₁₀	24 hour	50 µg/m ³ **		Human health
Total suspended particulates (TSP)	Annual	90 µg/m ³ *		Amenity
Deposited dust	Annual	2 g/m ² /month**	4 g/m ² /month*	Amenity

* Cumulative impact (i.e. increase in concentrations due to the development plus background concentrations due to all other sources).

** Incremental impact (i.e. increase in concentrations due to the development alone).

All particulate matter levels must be calculated in accordance with Approved Methods.

⁵ Criteria are derived from Approved Methods for the Modelling and Assessment of Air Pollutants in NSW (EPA 2005).



DEFINITIONS

feasible	relates to engineering considerations and what is practical to build or implement.
land	means the whole of a lot, including contiguous lots owned by the same landowner.
negotiated agreement	means an agreement involving the negotiation of a package of mitigation and/or compensatory benefits for landowners of affected land. The agreement is negotiated between the applicant and the landowner.
applicant	means the person entitled to the benefit of the development consent that authorises a mining or extractive industry development.
privately-owned land	means land that is not owned by a public agency or a mining, petroleum or extractive industry company (or its subsidiary).
reasonable	relates to the application of judgment in arriving at a decision, taking into account: mitigation benefits, costs versus benefits provided and the nature and extent of potential improvements.
Secretary	means the Secretary of the Department of Planning and Environment or any person authorised to act on their behalf.
workplace	includes an office, industrial premises or intensive agricultural enterprise where employees are grouped together in a defined location, but does not include broad-acre agricultural land.