

# Guideline

## Assessing applications

### Assessment requirements for making a decision for an environmental authority for an environmentally relevant activity

*This guideline applies to a site-specific application for an environmental authority (EA) for an environmentally relevant activity (ERA) under the Environmental Protection Act 1994 (EP Act). It gives an overview of the assessment process. For more detailed information about approval processes for ERAs, please refer to the guideline 'Approval processes for environmental authorities' (available at [www.qld.gov.au](http://www.qld.gov.au) using ESR/2015/1743 as a search term).*

*This guideline does not cover every circumstance and is written for circumstances where the Department of Environment and Science (the department) is the administering authority. It does not cover the development approval (DA) process as from 1 July 2013 because the department does not have a concurrence agency or assessment manager role under the Planning Act 2016 (Planning Act). The State Assessment and Referral Agency in the Department of State Development, Infrastructure, Local Government and Planning fulfils those roles for most of the state government triggers. For the triggers which the local government is responsible for, the local government fulfils those roles.*

*This guideline does not cover the resource tenure process as the department does not have a role in that process.*

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# Assessment requirements for making a decision for an environmental authority for an environmentally relevant activity

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## 1. Introduction

A number of decisions under the *Environmental Protection Act 1994* (EP Act) require a decision maker to comply with the regulatory requirements and consider the standard criteria.

The **regulatory requirements** are a series of considerations, prohibitions, as well as an environmental objective assessment specified in the Environmental Protection Regulation 2019 (EP Reg).

The **standard criteria** are a list of considerations and are specified in Schedule 4 Dictionary of the EP Act.

This guideline outlines the administering authority's approach to using the regulatory requirements and the standard criteria when deciding a site-specific application for an EA for one or more ERAs. As part of the decision process the decision maker must comply with any relevant regulatory requirement and have regard to, or consider, the standard criteria. The regulatory requirements and standard criteria apply to other environmental management decisions under the EP Act.

There may be additional requirements that a decision maker must consider under each of these decisions. This guideline should be used in conjunction with the additional criteria for each decision as specified in the relevant sections of the EP Act.

## 2. Environmentally relevant activities (ERAs)

An ERA is an activity (s. 18 of the EP Act) that is:

- an agricultural ERA defined under s. 79
- a resource activity defined under s. 107
- an activity prescribed under s. 19 as an ERA.

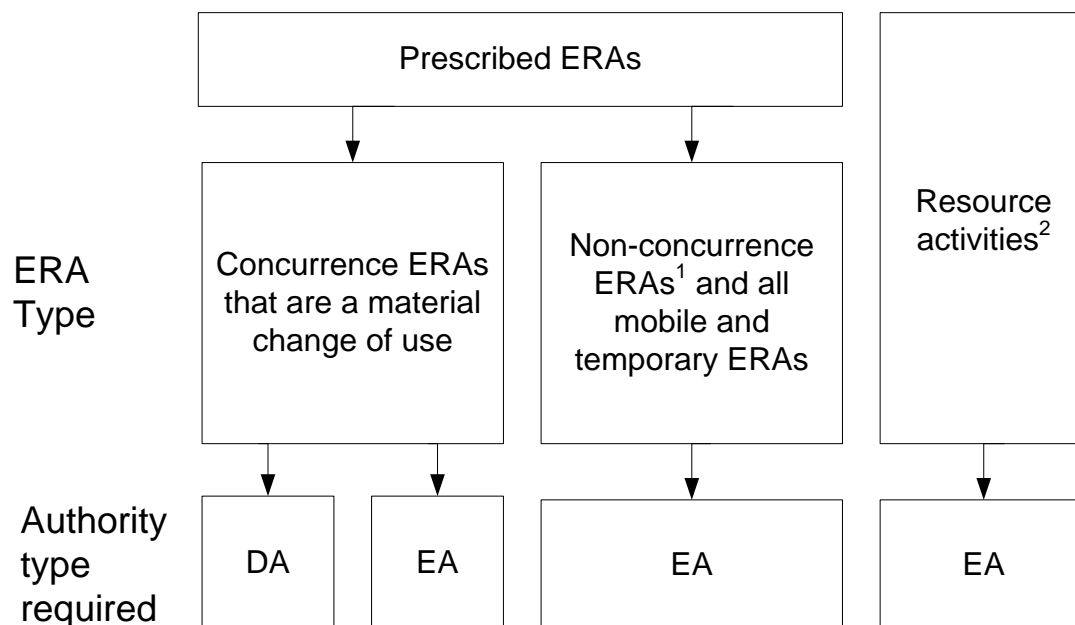
### 2.1. ERA categories and the relevant assessment requirements

The regulatory requirements and standard criteria apply to decisions related to ERAs. Additionally, some ERAs will require both a DA and an EA. Typically the DA will contain land use conditions, while the EA will contain operational conditions. Resource activities will require a resource authority (e.g. mining or petroleum tenure) under the relevant resource legislation and an EA under the EP Act which will contain operational and land use conditions.

Figure 1 on the next page specifies the ERA types and the required authorities for each.

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**Figure 1 ERA types and authorities required**



<sup>1</sup> Including concurrence ERAs that are not a material change of use.

<sup>2</sup> A resource authority is also required for a resource activity, but the resource authority process is not linked to the EA process.

## 2.2. Prescribed ERAs

A prescribed ERA is an activity that is defined under s. 19 of the EP Act and listed in Schedule 2 of the EP Reg. Activities in Schedule 2 that are labelled with a 'C' in column 3 are known as 'concurrency ERAs'. Other prescribed ERAs are 'non-concurrency ERAs'.

Concurrency ERAs are typically higher risk ERAs that may require a material change of use under the Planning Act for the ERA trigger. If a concurrence ERA triggers a material change of use, both a DA and an EA are required. If a concurrence ERA does not trigger a material change of use for the ERA, it is treated as a non-concurrency ERA. A DA may still be required because other aspects of the proposed development may trigger the Planning Regulation 2017.

Non-concurrency ERAs may only require an EA if they do not require development assessment under the local planning scheme or another development trigger.

All mobile or temporary ERAs (concurrency and non-concurrency) will only require an EA.

## 2.3. Resource activities

Resource activities are specified in s. 107 of the EP Act and include:

- a mining activity
- a petroleum activity
- a geothermal activity
- a greenhouse gas storage activity.

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Resource activities require a resource authority under the relevant resource legislation, as well as an EA under the EP Act. An activity that is also a prescribed ERA can be authorised under an EA for a resource activity, if the activity forms part of the resource activity (i.e. the prescribed ERA is an ancillary activity under section 19A of the EP Act). Ancillary activities are activities which are listed in Schedule 2 of the EP Reg and are carried out as part of the resource activity.

### 3. Relevant application pathways for each ERA type

There is a single application process for ERA applications; however different ERA types may take different application pathways depending on the authorities that are required. For example, a concurrence ERA that is a material change of use requires a DA and an EA. Under s. 115 of the EP Act the development application will be considered to be an EA application and both authorities will be processed under the Planning Act timeframes.

An EA application for a resource activity takes a different path. It will be processed only under the EP Act provided that the resource activity occurs on the resource tenure.

The assessment criteria are tailored for each ERA type. For example, the two parts of the environmental objective assessment in Schedule 8 of the EP Reg (the operational assessment and the land use assessment) will only apply to certain decisions. Specifically, an EA application for a non-concurrence ERA<sup>1</sup> or a mobile or temporary ERA will only require an operational assessment (Schedule 8, Part 3, Division 1), whereas an application for an EA for a resource activity will require both an operational assessment (Schedule 8, Part 3, Division 1) and a land use assessment (Schedule 8, Part 3, Division 2).

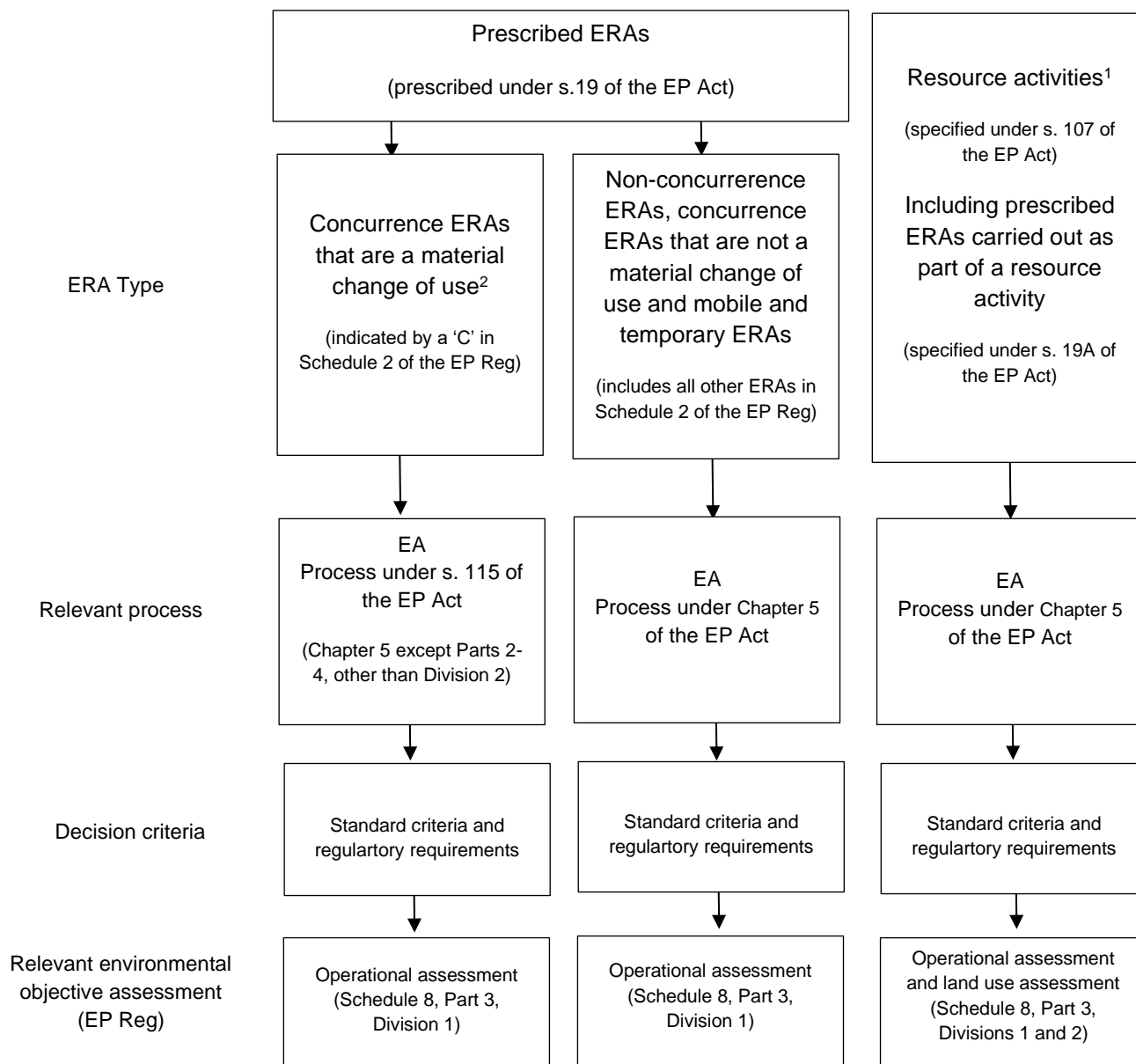
Figure 2 on the next page specifies the relevant process, decision criteria, and relevant environmental objective assessment for each of the ERA and authority types.

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<sup>1</sup> Or a concurrence ERA that is not a material change of use.

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**Figure 2 ERA types, assessment process and criteria, and relevant sections of the environmental objective assessment.**



<sup>1</sup> A resource tenure is also required for a resource activity, but the resource tenure process is not linked to the EA process.

<sup>2</sup>A DA is required under *Planning Act 2016* where there is a material changed of use. This is an additional process that is not shown in this diagram. Where a DA application includes the ERA trigger, the development application will also be considered to an EA application that is assessed within the same timeframe.

A material change of use will not need assessment for the ERA trigger it the ERA will be conducted with an existing licensed concurrence ERA with a higher aggregate environmental score. The ERAs must meet the requirements of the single integrated operational definition in the EP Act.

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## 4. The regulatory requirements

The regulatory requirements are specified in Chapter 4 of the EP Reg. The regulatory requirements must be complied with and include three broad types of requirements:

### 1) Considerations

These include: matters to be complied with for environmental management decisions (s. 35); conditions to be considered for environmental management decisions (s. 36); and matters to be considered for decisions imposing monitoring conditions (s.37).

### 2) Prohibitions

These include:

- the release of water or waste to wetlands for treatment if the *wetland* will be destroyed or reduced in size; or the biological integrity of the wetland may not be maintained (s. 40);
- activities involving direct release of waste to groundwater (s. 41) where:
  - the waste may not be released entirely within a confined aquifer and the application is not for a petroleum activity;
  - there may be an adverse impact on a surface ecological system; or
  - there may be a deterioration of the environmental values of the receiving groundwater.

### 3) Environmental objective assessment

For detail on how to apply the environmental objective assessment in Schedule 8 of the EP Reg, refer to s. 35. This assessment includes the operational assessment (Division 1) and the land use assessment (Division 2).

## 4.1. Considerations

Matters to be complied with for environmental management decisions (s. 35).

When an environmental management decision is made relating to an ERA the administering authority must:

- carry out an environmental objective assessment against the environmental objective and performance outcomes mentioned in:
  - Schedule 8, Part 3, Divisions 1 and 2 for a resource activity;
  - Schedule 8, Part 3, Division 1 for a prescribed ERA;
- consider the environmental values declared under the EP Reg;
- if the activity is to be carried out in a strategic environmental area, consider the impacts of the activity on the environmental attributes for the area under the *Regional Planning Interests Act 2014*; and
- for ERAs other than prescribed ERAs, if a bilateral agreement requires the matters of national environmental significance to be considered, consider those matters (note, this section does not apply to an environmental approval for a coordinated project).

There are further considerations relating to environmental protection policies, in particular:

- the management hierarchy;
- environmental values impacted by the activity;
- quality objectives; and
- the management intent.

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### Conditions that may be imposed (s. 36)

This section requires the decision maker to consider imposing conditions about a range of specified matters. Examples of such matters are:

- implementing a system for managing risks to the environment
- implementing measures for avoiding or minimising the release of contaminants or waste
- ensuring an adequate distance between any sensitive receptors and the activity site
- limiting or reducing the size of any initial mixing zone or attenuation zone, if any, which may be affected by the release of contaminants
- treating contaminants before they are released.

### Imposing monitoring conditions (s. 37)

This section requires the decision maker to consider imposing monitoring conditions about the impact of an activity's release of contaminants on the receiving environment. When considering whether or not to impose monitoring conditions, a range of matters must be considered, including but not limited to the following:

- the potential impact on the receiving environment
- the characteristics of the contaminant
- the potential for a control measure to fail and the effect of a failure of a control measure on the receiving environment
- the protocols relevant to monitoring the release of the contaminant
- whether the monitoring should be continuous or intermittent.

### **How are sections 35, 36, and 37 considered?**

Complying with the regulatory requirements to make the considerations under sections 35, 36, and 37, includes assessing:

- the possible impacts on environmental values, their nature, scale and likelihood;
- whether any of those impacts might cause serious environmental harm, and what is the likelihood of that harm;
- what an acceptable level of impact on the environmental values is, taking into account any management objectives for those values;
- any existing control measures that are implemented to minimise impacts on environmental values; and
- whether any conditions need to be imposed to prescribe how impacts that carry a risk of causing serious environmental harm must be managed.

In most cases, the administering authority will impose conditions that set the outcome the activity must achieve, such as 'do not cause dust nuisance' or 'wastewater discharges must not exceed the limits set out in Division 1'. Where there is a risk of serious environmental harm being caused, the administering authority may impose conditions that are necessary and desirable in making sure that the risk will be managed appropriately.

If a particular risk of a proposed activity must be managed in a particular way, the administering authority will consider imposing a condition which prescribes how an activity is to be conducted. Prescriptive conditions will

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not be imposed that tell the client how to manage nuisance issues (such as odour, noise or dust) or how to manage other issues that are unlikely to cause serious harm if they are not managed properly.

### 4.2. Prohibitions

Two prohibitions are clearly stated in the regulatory requirements. These prohibitions require the refusal of an application that involves or may involve:

- the release of water or waste to a wetland for treatment if because of this activity the *wetland* will be destroyed or reduced in size; or the biological integrity of the wetland may not be maintained (s. 40); and
- the direct release of waste to groundwater (s. 41) where:
  - the waste may not be released entirely within a confined aquifer and the application is not for a petroleum activity;
  - there may be an adverse impact on a surface ecological system; or
  - there may be a deterioration of the environmental values of the receiving groundwater.

*Wetland* means an area shown as a wetland on the 'Map of referable wetlands' published by the department (available at <http://www.des.qld.gov.au>).

Note: the environmental values of wetlands are defined in the Environmental Protection (Water and Wetland Biodiversity) Policy 2019.

### 4.3. Environmental objective assessment

The environmental objective assessment is specified in Schedule 8 of the EP Reg. Part 1 and 2 of this Schedule specify preliminary and general matters to be addressed in the two assessment types in Part 3, and provide definitions and guidance on how the assessments are to be applied. Part 3 includes the two separate assessment types: the operational assessment (Division 1), and the land use assessment (Division 2).

Both divisions are structured similarly in that they state the environmental objectives to be achieved, and the performance outcomes which provide ways an operator can demonstrate the achievement of the relevant environmental objective. Further guidance is provided in Appendix 1.

The environmental objective assessment is a regulatory requirement used to assess applications and guide the conditioning of EAs to manage environmental risks. An assessment involves determining the extent to which an application can meet the stated environmental objectives. Not meeting an environmental objective does not necessarily mean that an application should be refused, as the requirement is to assess the extent to which the application meets each objective. There may also be a consideration under the standard criteria that will favour approval of the activity, despite its potential environmental risk. However, if there is no such consideration and the risk to the environment is considered to be too high, not meeting an environmental objective may be grounds for considering refusal in some circumstances.

The environmental objective assessments can be used to inform the drafting of EA conditions that are deemed necessary or desirable (under s. 203 of the EP Act, or after considering conditions and matters to be considered under s. 36 or 37 of the EP Reg).

Conditions identified through the operational assessment will be imposed on the EA for both prescribed ERAs and resource activities. Conditions identified through the land use assessment will be imposed on the EA for resource activities. The land use assessment does not apply for prescribed ERAs. Land use conditions for prescribed ERAs are set through the Planning Act processes and the EP Act processes do not apply.



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### 4.4. Operational assessment for all ERA types

The operational assessment in Schedule 8, Part 3, Division 1 applies to an EA application for **all** of the ERA types, that is concurrence and non-concurrence prescribed ERAs, and resource activities.

### 4.5. Environmental objectives

The environmental objectives in Schedule 8, Part 3, Division 1 are based on environmental values to be protected, with the exception of the waste objective. An application should demonstrate how the proposed activity will be managed in a way to achieve these environmental objectives.

### 4.6. Performance outcomes

The assessment tables in Divisions 1 and 2 also provide performance outcomes to give applicants guidance on how to demonstrate they are meeting the environmental objective. There are usually two performance outcomes. The first performance outcome is usually the 'no impact' option, which makes it clear that if there is to be no impact on an environmental value, then the environmental objective is achieved. The second performance outcome should be considered when the first is not met. The second performance outcome specifies a series of measures or actions that can be taken to adequately manage the risks the activity poses to the relevant environmental values.

If an application does not meet either performance outcome for an environmental objective, the application may meet the performance outcome through alternative measures. Consistent with the department's regulatory strategy, it is the applicant's responsibility to achieve the outcomes set by the department. While the department will need to be satisfied that the alternative measures can meet the environment objective, it is not the department's role to check the suitability of the design. For example, the applicant may propose a treatment plant for a waste stream. The department could decide that that is a suitable way to meet the environmental objective and would set conditions relating to the effluent volume and quality. The department would not be assessing the suitability of the particular type of treatment plant for the situation as that is the responsibility of the operator.

### 4.7. Land use assessment for resource activities

The land use assessment in Schedule 8, Part 3, Division 2 only applies to an EA application for a resource activity. The land use assessment works similarly to the operational assessment. However, the environmental objectives are more closely related to land use, and how the land impacts can be managed to protect environmental values.

For example, the 'Location on site' environmental objective states that 'the location for the activity on a site protects all environmental values relevant to adjacent sensitive uses'. This objective seeks to ensure that infrastructure is located on a site in a way that protects environmental values. This might involve building infrastructure away from a boundary that is shared with a sensitive environment, such as a wetland.

### 4.8. Land use assessment for prescribed ERAs

There is no land use assessment for the EA for prescribed ERAs. The land use assessment for prescribed ERAs is done through the DA process. The ERA component of any DA will be assessed against module 4 of the State development assessment provisions.

With regards to land use assessments for prescribed ERAs, the Planning Act contains the relevant provisions and planning instruments for local governments to make local planning schemes that require applicants to consider the suitability of adjacent land uses (and in particular the proximity of industrial activities to sensitive

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land uses). The Planning Act and local laws are therefore the most appropriate means for implementing land use planning decisions, identifying and preserving local amenity (and decisions about transport and infrastructure needed to service new or expanding industrial uses) within the jurisdiction of local governments. It is not intended that the requirements under Division 2 of Schedule 8 of the EP Reg will remove or alter these powers of local government authorities.

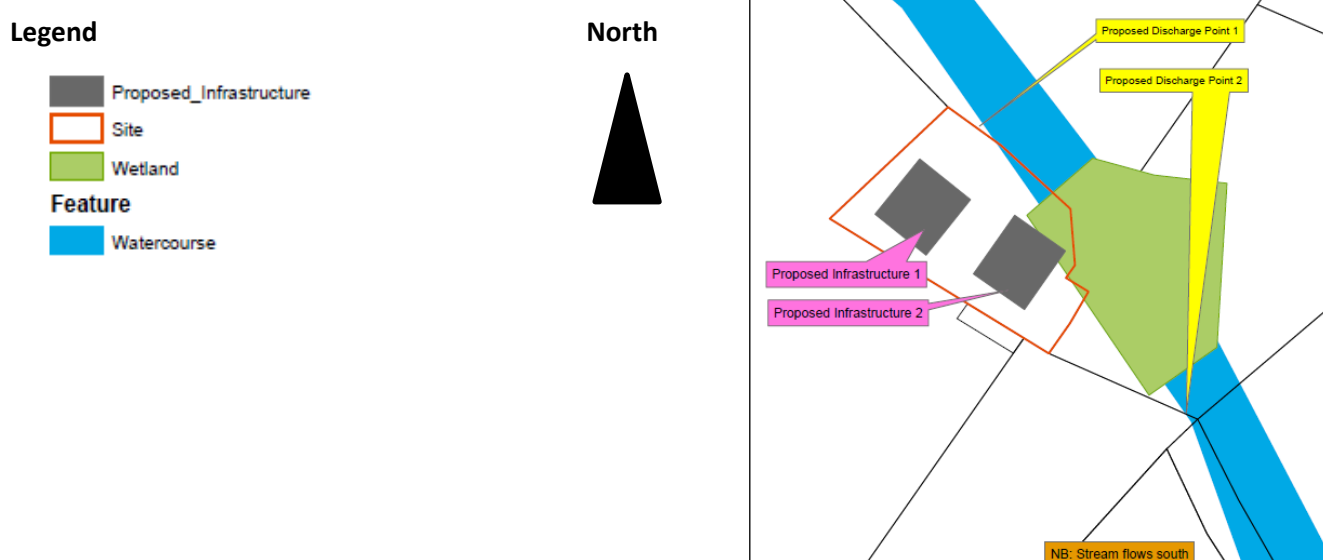
The Queensland Government identifies land use matters that are of state significance by developing State interest planning policies, regional plans and other State planning instruments that must be adopted during the development of local planning schemes. The Queensland Government will continue to apply those instruments, but also holds power in its role as a concurrence agency to decide and place conditions regarding the suitability of development facilities and their position within a site to minimise environmental impacts.

### 4.9. Operational assessment and land use assessment for prescribed ERAs

It is not always clear what considerations need to be made for the EA and the development permit, for EA applications that trigger both operational assessment and land use assessment.. In some cases, this will be straight forward, but some environmental issues may appear to be relevant for both the operational assessment and the land use assessment. The following example demonstrates how to separate these considerations, and assess and condition each authority type.

Figure 3 displays a proposed project involving building and operating a sewage treatment plant (STP) and discharging treated effluent to waters which has an associated wetland. The wetland extends on to an area that is a conservation reserve. On the map there are two possible discharge points. The application documents have detailed descriptions on how the impacts to environmental values will be minimised. In addition, commitment is made to use part of the treated effluent to irrigate neighbouring farms.

**Figure 3 Assessment example**



#### Operational assessment:

The operational assessment for wetlands has the environmental objective of ensuring the activity is operated in a way that protects the environmental values of the wetland. The application will be assessed on this basis, having regard to the performance outcomes in Division 1 of Schedule 8 in the EP Reg. Minimising the discharges to the wetland by discharging downstream in wet weather events and irrigating neighbouring farms

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will reduce the emissions of nutrients to that wetland. Conditions on the EA would address, for example, discharge point(s), effluent release volumes and quality limits.

### Land use assessment:

The land use assessment is through the DA. The ERA component of a development will be assessed against module 4 of the State development assessment provisions.

Some things cannot be changed because the STP needs to be in reasonable proximity to the population it will serve. However, the location of infrastructure such as storage facilities/holding ponds and sludge drying beds can be located to minimise the impacts on sensitive receptors, such as nearby residents. The application will be assessed to ensure the activity is located onsite to protect environmental values relevant to adjacent sensitive uses. The example would show that building the STP away from the wetland and conservation reserve, and locating the discharge point downstream would minimise harm to environmental values. Conditions of the DA would include the location of the proposed treatment plant, but not the discharge location as this is more appropriate to condition through the EA. The condition on the DA could stipulate the required distance from the sensitive areas as opposed to stipulating the exact location. This reduces unnecessary amendments if the applicant wishes to move the infrastructure without resulting in increased risk to adjacent land uses.

## 5. Standard criteria

The standard criteria are a series of considerations defined in Schedule 4 Dictionary of the EP Act. These criteria must be considered under s. 176 of the EP Act as part of deciding the EA application.

Consideration of the standard criteria is subject to the regulatory requirements for a number of decisions. This means that if a prohibition under the regulatory requirements applies, this cannot be overridden by a consideration in the standard criteria.

When considering the standard criteria, an assessing officer should bear in mind that not all criteria will be relevant to every application. Consideration of only the relevant standard criteria will be documented in the assessment report.

Considering the standard criteria is a balancing act. An application that is inconsistent with one or more criteria should not be automatically refused. Instead, consider whether the inconsistency is outweighed by the environmental, social and economic benefits that would come from approving the application.

The standard criteria and some example considerations are outlined below:

- (a) the following principles of environmental policy as set out in the Intergovernmental Agreement on the Environment-**
  - (i) the precautionary principle;**
  - (ii) intergenerational equity;**
  - (iii) conservation of biological diversity and ecological integrity.**

Generally, more intensive or larger scale activities are expected to have more serious possible environmental impacts to which these principles might apply. For example, odour issues being assessed as part of an application for a small abattoir are not likely to trigger consideration of the precautionary principle or intergenerational equity. This is partly because the impacts from abattoirs are well known and suitable control measures are available. New industry types with large potential environmental impacts and no history of use in Australia are more likely to trigger consideration of the precautionary principle or intergenerational equity.

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### **Precautionary principle**

Has due regard been given to the precautionary principle? In other words, where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. Applications should propose actions to prevent or minimise serious harm even though there may not be full scientific certainty about the scale or causes of the harm.

### **Intergenerational equity**

Will approving the application impact on future generations? This principle requires that the current generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

It is likely that an activity which would result in widespread and/or irreversible environmental harm, would not meet the principle of intergenerational equity.

### **Conservation of biological diversity and ecological integrity**

Considerations of the conservation of biological diversity and ecological integrity are required under the “Intergovernmental Agreement on the Environment”. These considerations will be covered to some extent when the regulatory requirements are considered for those applications that must use the assessment under Schedule 8, Part 3, Division 1 of the EP Reg.

#### **(b) any Commonwealth or State government plans, standards, agreements or requirements about environmental protection or ecologically sustainable development.**

Examples of such documents include, but are not limited to, the Queensland Coastal Plan, Regional Plans (i.e. Central Queensland Regional Plan), planning schemes, Australian Standards, State Planning Policies, Port Land Use Plans, National Health and Medical Research Council (NHMRC) guidelines, Australian and New Zealand Environment and Conservation Council (ANZECC) guidelines and the Queensland Water Quality Guidelines.

Consider whether there are any documents that are relevant to the application. If they are relevant, how do the commitments in the application compare to any objectives or recommendations in the documents that are related to environmental protection or ecologically sustainable development? If the application is not consistent with the documents, consider whether the inconsistency is significant enough to warrant an alternate conditioning of the approval or its refusal. Innovative solutions can be supported as long as environmental outcomes are achieved.

#### **(d)<sup>2</sup> any relevant environmental impact study, assessment or report.**

Any findings or recommendations that are relevant to the application are to be considered. It is recommended that a review of the findings and/or recommendations of applicable environmental impact study, assessment or report relevant to the subject site be undertaken to ensure that they are considered. Are the commitments in the application consistent with the findings and recommendations of these reports?

Relevant reports are those reports addressed or prepared for the original application and/or subsequent applications, if applicable. Other relevant reports may be current reports on the local ecosystem or river system health. For example, does the proposed activity avoid impacts on endangered flora and fauna identified in a report prepared for the EA?

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<sup>2</sup> These have the same numbering as the standard criteria definition in Schedule 4 of the EP Act. Item (c) was removed from the definition as a result of one of the amendments of the EP Act but the other items were not renumbered.

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### **(e) the character, resilience and values of the receiving environment.**

In what ways does the application have regard to the environmental values of the receiving environment?

Ensure that the application considers the site specific aspects of the receiving environment. Reference should be made to the documents identified as part of consideration (d) above. This requirement is also considered as part of the regulatory requirements, specifically in relation to the environmental values associated with an Environmental Protection Policy (EPP).

Does the proposed activity include monitoring of the receiving environment to ensure the actions are achieving the objectives outlined in the application? Is monitoring proposed to be undertaken within an adequate timeframe (i.e. sampling is at the time of discharge)? Are there processes in place to report the findings of the monitoring to the administering authority?

What is the impact on the values of the receiving environment of the proposed actions? Given the nature of the receiving environment, is it appropriate to approve the application, and therefore authorise a certain level of impact on those values?

This is the focus of any assessment and should have been adequately addressed at the start of any assessment.

### **(f) all submissions made by the applicant and submitters**

Any properly made submissions about the application are to be considered in the decision process. When considering submissions the amount of weight to be given to a particular submission will be determined by factors such as the extent to which it is based on credible evidence and its relevance to the proposed activity. No further action is required if issues raised in the submission have been adequately addressed in the application documents. If the submission raises a legitimate issue that has not been considered previously, it will need to be determined if it is a relevant issue to the proposed activity. If so, consider whether the application should be appropriately conditioned or refused as a result of the submission.

Where there has been no formal public notification process, a lack of submissions must not be taken as a lack of community concern about the proposed project. A lack of submissions is not to be considered a relevant factor when assessing an EA, where no formal notification process has occurred.

**submitter**, for an application, means an entity who makes a properly made submission about the application (from Schedule 4 of the EP Act).

### **(g) the best practice environmental management for activities under any relevant instrument, or proposed instrument, as follows-**

- (i) an environmental authority**
- (ii) a transitional environmental program**
- (iii) an environmental protection order**
- (iv) a disposal permit**
- (v) a development approval.**

How is the activity going to be managed such that the activity's environmental harm will be minimised through the most current cost-effective nationally and internationally recognised measures? Have alternative measures been considered? Does the application suggest best practice solutions to the anticipated impacts and risks? If not, does it demonstrate that the applicant is adopting the most effective acceptable solution that is cost-effective for its operations? It is the applicant's responsibility to work out how to achieve the outcomes that the

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department will set, not the department's. So the absence of best practice measures is not a reason to refuse an application, nor - in general - a reason to impose conditions that require the applicant to implement best practice measures. If, however, a particular aspect of an activity carries a high risk of causing serious environmental harm, it may be appropriate to consider whether best practice measures are required to satisfy the department that the risk will be appropriately managed.

**(h) the financial implications of the requirements under an instrument, or proposed instrument, mentioned in paragraph (g) as they would relate to the type of activity or industry carried out, or proposed to be carried out, under the instrument.**

The financial implications for the applicant of meeting their requirements must be considered. Are they reasonable in the circumstances having regard to the costs of the action and the capacity of the enterprise to manage the costs? If the cost of one action is double that of another to reduce environmental harm but only achieves a marginally better outcome, that marginal gain may not justify the additional expense.

Monitoring, including water quality monitoring, soil monitoring, receiving environment monitoring programs and direct toxicity assessment can have significant financial impacts. Monitoring imposed on an approval should be appropriate and necessary considering the size and risk of the proposed activity.

**(i) the public interest**

Is it in the interest of the community that the application be approved? Does the proposed activity/action benefit or advantage the whole community? Public interest has been described as referring to considerations affecting the good order and functioning of the community and government affairs for the wellbeing of citizens. It has also been described as the benefit for society, the public or the community as a whole. This public interest distinguishes between interests that are private interests that benefit particular persons, and the interests of the wider community. It is not whether the public is interested or there have been stories in the media. As outlined above, where no formal public notification process has occurred, a lack of submissions must not be taken as a lack of community concern or public interest about the proposed project.

**(j) any relevant site management plan**

If there is a site management plan for contaminated land (approved under chapter 7, part 8 of the Act), is the application consistent with the site management plan?

**(k) any relevant integrated environmental management system or proposed integrated environmental management system (IEMS).**

Entities often develop management systems to manage their activity to minimise environmental harm. Note, an IEMS for an environmentally relevant activity or activities means a system for managing the environmental impacts of carrying out the activity or activities, and may include a site-based management plan or an activity-based management plan.

**(l) any other matter prescribed under a regulation.**

For certain activities, and for certain decision types, there may be other matters prescribed under a regulation that must also be taken into consideration.

### **6. Suggested approach to making assessments using the regulatory requirements and the standard criteria**

The flow chart in figure 4 is a suggested approach to making a decision under the EP Act including the regulatory requirements and the standard criteria. This is not a complete listing of the assessment process under the EP Act and there will be other considerations to be made for each particular decision and these

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should be identified in the relevant decision criteria section in the EP Act. For more detailed information about approval processes for ERAs under the EP Act, please refer to the guideline 'Approval processes for environmental authorities' (available at [www.qld.gov.au](http://www.qld.gov.au) using ESR/2015/1743 as a search term).

### 7. Considering refusal

In addition to the prohibitions mentioned in sections 40 and 41 of EP Reg., the administering authority may consider refusing an application in certain circumstances.

If, following assessment against the regulatory requirements and consideration of the standard criteria, approval of the application would result in one or more of the environmental objectives not being met and/or serious or material environmental harm occurring and there is no, or insufficient, considerations to warrant approval of the application, the administering authority may consider refusal.

For example: if a proposed extraction operation will result in significant loss of biodiversity values (including loss of endangered species habitat) associated with a significant wetland through clearing and direct impacts; and the proposed site is not in a key resource area; and alternative sites for this type of operation exist in the same region; then it may be appropriate to consider refusal of the application.

Another circumstance when refusal should be considered is when assessing officers cannot, based on the available information, satisfy themselves that either:

- environmental values will be adequately protected, or
- that an EA can be conditioned to protect environmental values.

In the absence of sufficient information the assessing officers may form the opinion that the environmental objectives will not be achieved, or that relevant environmental values will not be protected. Refusal due to insufficient information in these circumstances should only occur after the applicant has an opportunity to provide further information in the information stage under either the Planning Act or the EP Act (whichever applies).

For example, if a proposed activity involves a point source release of toxic contaminants to air and the applicant has not provided information on the stack concentration of contaminants or dispersal modelling to demonstrate that the environmental objective for air will be met, the assessing officer may refuse the application if an EA cannot be conditioned to ensure that the relevant environmental values are protected.

It may not be possible to approve the application with appropriate conditions in the absence of any information about the point source air emissions. The only alternative is to condition for no release to air which would not allow the activity to be conducted.

When considering refusal the applicant must be afforded natural justice. At the earliest opportunity the department must advise the applicant that their application will be refused due to the situations mentioned above.

# Assessment requirements for making a decision for an environmental authority for an environmentally relevant activity

**Figure 4 Using the regulatory requirements and standard criteria in assessing and conditioning an EA**

<sup>1</sup>The regulatory requirements in the EP Reg that need to be complied with include s. 35 (Matters to be complied with for environmental management decisions, s.36 (Conditions to be considered for environmental management decisions) s.37 (Matters to be considered for decisions imposing monitoring conditions), and the prohibitions in s.40. Section 35(1)(a) also requires the environmental objective assessment (see below).

<sup>2</sup>The environmental objective assessment in schedule 8 of the EP Reg will apply for environmental management decisions.

<sup>3</sup>At this stage the application should be assessed against a number of the standard criteria. These include:

- a) The principles of environmental policy as set out in the Intergovernmental Agreement on the Environment.
- b) Commonwealth or State government plans
- c) any relevant environmental impact study, assessment or report
- d) the character, resilience and values of the receiving environment
- e) all submissions made by the applicant and submitters
- f) best practice environmental management
- g) (j) any relevant site management plan
- h) (k) any relevant integrated environmental management system

<sup>4</sup>Conditions should protect the environment while allowed for development (sections 3 and 5, EP Act.) Note conditions should be outcomes focussed unless the risk warrants a more prescriptive approach.

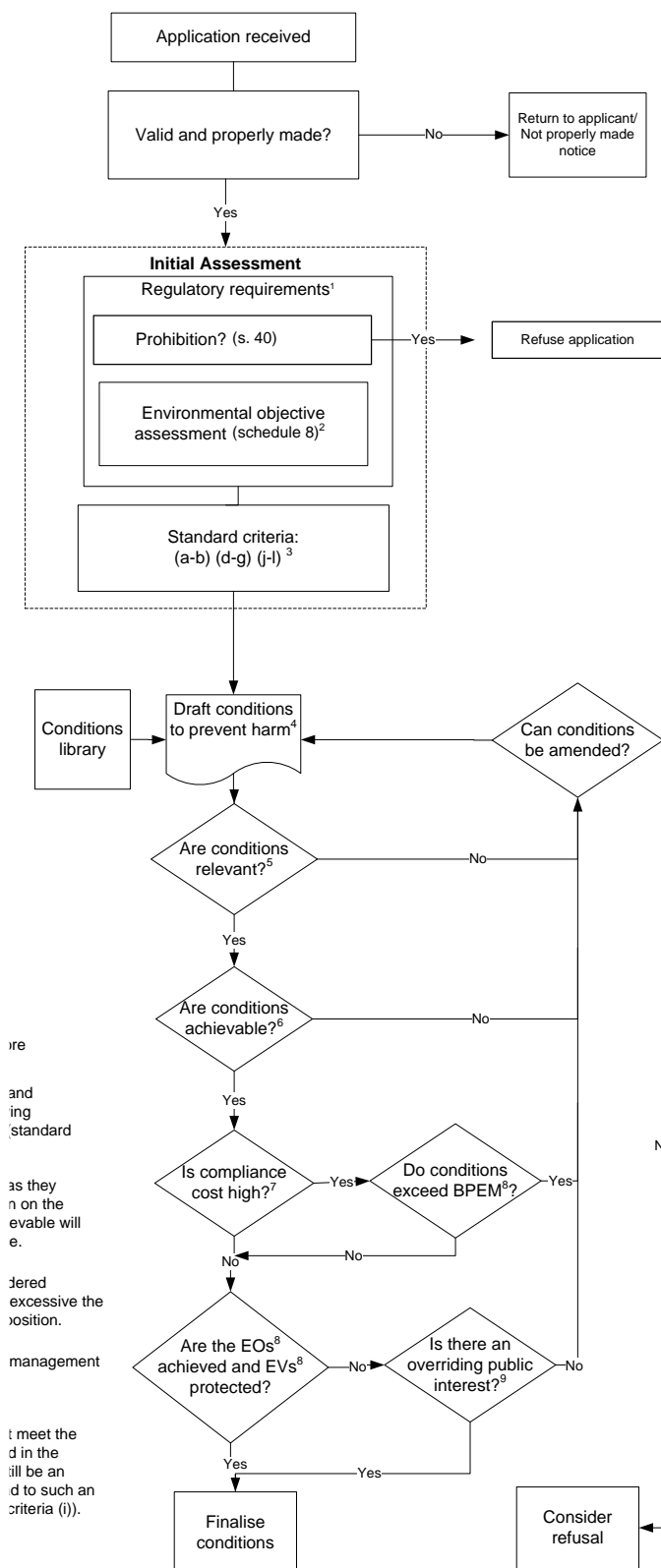
<sup>5</sup>The conditions should be relevant to and reasonably required for the activity having considered the receiving environment (standard criteria (e)).

<sup>6</sup>The conditions should be achievable as they must not be unreasonable impositions on the activity. Requirements that are not achievable will result in issues with ongoing compliance.

<sup>7</sup>The cost of compliance must be considered (standard criteria (h)). Where costs are excessive the conditions may not be a reasonable imposition.

<sup>8</sup>BPEM – best practice environment management  
EOs – environmental objectives  
EVs – environmental values

<sup>9</sup>If the activity as conditioned does not meet the requirements of the EP Act as specified in the assessments undertaken, there may still be an overriding public interest that might lead to such an activity being approached (see standard criteria (i)).





## Assessment requirements for making a decision for an environmental authority for an environmentally relevant activity

### Appendix 1 Environmental objective assessment and guiding notes

The following is a copy of the assessment tables in Divisions 1 and 2 of the EP Reg, including some additional notes to assist assessing officers and clients understand how the environmental objective assessment will be conducted. Not meeting both of the two performance outcomes does not indicate that the environmental objective is not achieved. An applicant may seek to achieve the environmental objective by another means.

#### Division 1 Operational assessment

Air	Notes
<b>Environmental objective</b>	
The activity will be operated in a way that protects the environmental values of air.	The intention of this environmental objective is to ensure that any discharges to air, including contaminant releases from point sources, fugitive emissions, and wind borne dust, do not impact on environmental values. Consideration should be given to the values as defined in the Environmental Protection Policy (Air).
<b>Performance outcomes</b>	
<p>1. There is no discharge to air of contaminants that may cause an adverse effect on the environment from the operation of the activity.</p> <p>2. All of the following—</p> <p style="padding-left: 20px;">(a) fugitive emissions of contaminants from storage, handling and processing of materials and transporting materials within the site are prevented or minimised;</p> <p style="padding-left: 20px;">(b) contingency measures will prevent or minimise adverse effects on the environment from unplanned emissions and shut down and start up emissions of contaminants to air; and</p> <p style="padding-left: 20px;">(c) releases of contaminants to the atmosphere for dispersion will be managed to prevent or minimise adverse effects on environmental values.</p>	<p>1. By demonstrating that there is no actual or potential release of contaminants to air from the activity, the applicant can meet performance outcome one and therefore meet the environmental objective for air.</p> <p>2. If there is an actual or potential release of contaminants to air, the applicant must demonstrate how they intend to meet the environmental objective. Meeting all the requirements of performance outcome 2 demonstrates compliance with the environmental objective.</p> <p>More information on the management of air impacts is available in the guideline 'Application requirements for activities with impacts to air' (available at <a href="http://www.qld.gov.au">www.qld.gov.au</a> using ESR/2015/1840 as a search term) and in the forms and fees finder (available at <a href="http://www.business.qld.gov.au">www.business.qld.gov.au</a> using 'forms and fees finder' as a search term).</p>

# Assessment requirements for making a decision for an environmental authority for an environmentally relevant activity

	Note: Section (c) of performance outcome 2 may be satisfied by conducting dispersion modelling to demonstrate that any planned release of contaminants to the atmosphere (for example, from a point source), will not cause an adverse effect on an environmental value.
Water	Notes
<b>Environmental objective</b>	
The activity will be operated in a way that protects environmental values of waters.	The intention of this environmental objective is to ensure that any discharges to water do not impact on environmental values. Consideration should be given to the values as defined in the Environmental Protection (Water and Wetland Biodiversity) Policy 2019.
<b>Performance outcomes</b>	
<p>1. There is no actual or potential discharge to waters of contaminants that may cause an adverse effect on an environmental value from the operation of the activity.</p> <p>2. All of the following—</p> <p>(a) the storage and handling of contaminants will include effective means of secondary containment to prevent or minimise releases to the environment from spillage or leaks;</p> <p>(b) contingency measures will prevent or minimise adverse effects on the environment due to unplanned releases or discharges of contaminants to water;</p> <p>(c) the activity will be managed so that stormwater contaminated by the activity that may cause an adverse effect on an environmental value will not leave the site without prior treatment;</p>	<p>1. This is the ‘no impact’ option for water. If the proposed activity does not include any actual or potential discharges to water, then this performance outcome indicated that the water environmental objective has been achieved.</p> <p>2. If there is an actual or potential discharge to waters, the applicant must demonstrate how they intend to meet the environmental objective. Meeting all the requirements of performance outcome demonstrates compliance with the environmental objective.</p> <p>More information on the management of water impacts is available in the guideline ‘Application requirements for activities with impacts to water’ (available at <a href="http://www.qld.gov.au">www.qld.gov.au</a> using ESR/2015/1837 as a search term) and in the forms and fees finder (available at <a href="http://www.business.qld.gov.au">www.business.qld.gov.au</a> using ‘forms and fees finder’ as a search term).</p>

Assessment requirements for making a decision for an environmental authority for an environmentally relevant activity

<p>(d) the disturbance of any acid sulfate soil, or potential acid sulphate soil, will be managed to prevent or minimise adverse effects on environmental values;</p> <p>(e) acid producing rock will be managed to ensure that the production and release of acidic waste is prevented or minimised, including impacts during operation and after the environmental authority has been surrendered;</p> <p>(f) any discharge to water or a watercourse or wetland will be managed so that there will be no adverse effects due to the altering of existing flow regimes for water or a watercourse or wetland;</p> <p>(g) for a petroleum activity, the activity will be managed in a way that is consistent with the coal seam gas water management policy, including the prioritisation hierarchy for managing and using coal seam gas water and the prioritisation hierarchy for managing saline waste;</p> <p>(h) the activity will be managed so that adverse effects on environmental values are prevented or minimised.</p>	<p>Notes on sections of performance outcome:</p> <p>2(a) – an example of an effective means of secondary containment may be a bund that can contain the total amount of contaminant being stored, including consideration of issues such as stormwater inflows.</p> <p>2(d) – where the activity is located in an area with no potential acid sulphate soils, then no further action is required for this performance outcome.</p> <p>2(h) – where there will be a planned discharge of contaminants, further information will be required.</p>
<p>Wetlands</p>	
<p><b>Environmental objective</b></p>	
<p>The activity will be operated in a way that protects the environmental values of wetlands.</p>	<p>Wetlands are defined in the Environmental Protection (Water and Wetland Biodiversity) Policy 2019.</p>
<p><b>Performance outcomes</b></p>	
<p>1. There will be no potential or actual adverse effect on a wetland as part of carrying out the activity.</p> <p>2. The activity will be managed in a way that prevents or minimises adverse effects on wetlands.</p>	<p>1. This performance outcome is met if the activity will not potentially or actually impact on a wetland. For example, the activity may be located in an area without any wetlands nearby. The map of referable wetlands, available on the DES website may be used to identify proximate referable wetlands.</p>

## Assessment requirements for making a decision for an environmental authority for an environmentally relevant activity

	<p>2. Where there will be an impact to a wetland, the application should demonstrate how the impacts will be prevented or minimised. The application should address, where applicable, the map of referable wetlands (available at <a href="http://www.des.qld.gov.au">http://www.des.qld.gov.au</a>), the State Planning Policy (available at <a href="https://www.statedevelopment.qld.gov.au/">https://www.statedevelopment.qld.gov.au/</a>) and the Wetland <i>Info</i> (available at <a href="http://www.des.qld.gov.au">http://www.des.qld.gov.au</a>).</p>
Groundwater	
<b>Environmental objective</b>	
The activity will be operated in a way that protects the environmental values of groundwater and any associated surface ecological systems.	<p>Groundwater is defined in Schedule 19 Dictionary of the EP Reg and means 'underground water'.</p> <p>Surface water is defined in s. 31 of the EP Reg as 'water other than groundwater'.</p>
<b>Performance outcomes</b>	
<p>1 Both of the following apply—</p> <p>(a) there will be no direct or indirect release of contaminants to groundwater from the operation of the activity;</p> <p>(b) there will be no actual or potential adverse effect on groundwater from the operation of the activity.</p> <p>2 The activity will be managed to prevent or minimise adverse effects on groundwater or any associated surface ecological systems.</p> <p><i>Note—</i></p> <p>Some activities involving direct releases to groundwater are prohibited under s. 41 of the EP Reg.</p>	<p>1. This performance outcome is met if the activity does not involve the intentional injections or release of contaminants to groundwater, and does not involve any activities that might lead to an unintentional release to groundwater, for example, by spillage of contaminants. An activity that could meet performance outcome 1 is an activity that does not involve the handling or storage of any contaminants that may cause an impact on groundwater. If management action or infrastructure is required to manage contaminants, for example secondary containment, then performance outcome 2 is relevant.</p>

Assessment requirements for making a decision for an environmental authority for an environmentally relevant activity

Noise	
<b>Environmental objective</b>	
The activity will be operated in a way that protects the environmental values of the acoustic environment.	
<b>Performance outcomes</b>	
<p>1. Sound from the activity is not audible at a sensitive receptor.</p> <p>2. The release of sound to the environment from the activity is managed so that adverse effects on environmental values including health and wellbeing and sensitive ecosystems are prevented or minimised.</p>	<p>1. Sensitive receptors for noise issues are specified in the Environmental Protection Policy (Noise).</p> <p>2. More information on the management of noise impacts is available in the forms and fees finder (available at <a href="http://www.business.qld.gov.au">www.business.qld.gov.au</a> using 'forms and fees finder' as a search term) and in the following guidelines:</p> <ul style="list-style-type: none"> <li>• 'Application requirements for activities with noise impacts' available at <a href="http://www.qld.gov.au">www.qld.gov.au</a> using ESR/2015/1838 as a search term</li> <li>• 'Prescribing noise conditions for environmental authorities for petroleum and gas activities (for non-mining resource activities)' available at <a href="http://www.qld.gov.au">www.qld.gov.au</a> using ESR/2016/1935 as a search term.</li> </ul>
Waste	
<b>Environmental objective</b>	
Any waste generated, transported, or received as part of carrying out the activity is managed in a way that protects all environmental values.	The intention of this environmental objective is to ensure that waste issues are adequately addressed.
<b>Performance outcomes</b>	
1 Both of the following apply—	<p>Performance outcome 1 applies to all activities that generate, transport, receive, or dispose of waste.</p> <p>More information on the management of waste impacts is available:</p>

# Assessment requirements for making a decision for an environmental authority for an environmentally relevant activity

<p>(a) waste generated, transported or received is managed in accordance with the waste and resource management hierarchy in the <i>Waste Reduction and Recycling Act 2011</i>;</p> <p>(b) if waste is disposed of, it is disposed of in a way that prevents or minimises adverse effects on environmental values.</p>	<ul style="list-style-type: none"> <li>on the department’s website <a href="http://www.des.qld.gov.au">http://www.des.qld.gov.au</a></li> <li>in the forms and fees finder (available at <a href="http://www.business.qld.gov.au">www.business.qld.gov.au</a> using ‘forms and fees finder’ as a search term)</li> <li>in the guideline ‘Application requirements for activities with waste impacts’ (available at <a href="http://www.qld.gov.au">www.qld.gov.au</a> using ESR/2015/1836 as a search term).</li> </ul>
Land	
<b>Environmental objective</b>	
<p>The activity is operated in a way that protects the environmental values of land including soils, subsoils, landforms and associated flora and fauna.</p>	<p>The intention of this environmental objective includes management of land issues during the operational phase of the activity, as well as rehabilitation of significantly disturbed land once operational activities have ceased.</p>
<b>Performance outcomes</b>	
<p>1 There is no actual or potential disturbance or adverse effect to the environmental values of land as part of carrying out the activity.</p> <p>2 All of the following—</p> <p>(a) activities that disturb land, soils, subsoils, landforms and associated flora and fauna will be managed in a way that prevents or minimises adverse effects on the environmental values of land;</p> <p>(b) areas disturbed will be rehabilitated or restored to achieve sites that are—</p> <ul style="list-style-type: none"> <li>(i) safe to humans and wildlife; and</li> <li>(ii) non-polluting; and</li> <li>(iii) stable; and</li> <li>(iv) able to sustain an appropriate land use after rehabilitation or restoration;</li> </ul>	<p>1. An example of when this performance outcome may be achieved is when an ERA is being carried out on an existing concrete pad in a building.</p> <p>2. More information on the management of land impacts is available in the guideline ‘Application requirements for activities with impacts to land’ (available at <a href="http://www.qld.gov.au">www.qld.gov.au</a> using ESR/2015/1839 as a search term) and in the forms and fees finder (available at <a href="http://www.business.qld.gov.au">www.business.qld.gov.au</a> using ‘forms and fees finder’ as a search term).</p>

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<p>(c) the activity will be managed to prevent or minimise adverse effects on the environmental values of land due to unplanned releases or discharges, including spills and leaks of contaminants;</p> <p>(d) the application of water or waste to the land is sustainable and is managed to prevent or minimise adverse effects on the composition or structure of soils and subsoils.</p>	
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**Division 2 Land use assessment**

<p>Site suitability</p>	
<p><b>Environmental objective</b></p>	
<p>The choice of the site at which the activity is to be carried out, minimises serious environmental harm on areas of high conservation value and special significance and sensitive land uses at adjacent places.</p>	<p>The intention of the environmental objective is to ensure appropriate siting of the activity in terms of causing serious environmental harm. This objective relates only to the jurisdiction of the EP Act and does not vary or replace any other planning considerations under the Planning Act.</p> <p>For example, areas of high conservation value should be avoided and siting of the activity within a site should consider the adjacent land uses.</p>
<p><b>Performance outcomes</b></p>	
<p>1. Both of the following apply—</p> <p>(a) areas of high conservation value and special significance likely to be affected by the proposal are identified and evaluated and any adverse effects on the areas are minimised, including any edge effects on the areas;</p> <p>(b) the activity does not have an adverse effect beyond the site.</p> <p>2. Both of the following apply—</p>	<p>Performance outcomes 1 and 2 both require the applicant to identify and evaluate the impacts that the activity will have on areas of high conservation value and special significance.</p> <p>1. Apart from the requirements outlined above, performance outcome 1 is the ‘no impact’ option to be used when there is no actual or potential adverse effect beyond the site of the activity.</p> <p>2. Performance outcome 2 requires that the activity is designed such that it can be carried out in a way that will not cause irreversible or widespread impacts on adjacent areas.</p>

Assessment requirements for making a decision for an environmental authority for an environmentally relevant activity

<p>(a) areas of high conservation value and special significance likely to be affected by the proposal are identified and evaluated and any adverse effects on the areas are minimised, including any edge effects on the areas; and</p> <p>(b) critical design requirements will prevent emissions having an irreversible or widespread impact on adjacent areas.</p>	
<p>Location on site</p>	
<p><b>Environmental objective</b></p>	
<p>The location for the activity on a site protects all environmental values relevant to adjacent sensitive uses.</p>	<p>This environmental objective seeks to ensure that infrastructure is located on the site in a way that minimises environmental impacts on adjacent sensitive uses. For example, if one edge of a site is shared with a wetland, then infrastructure should be located away from this boundary if possible to protect the environmental values of the wetland, for example, minimising the disturbance at nesting sites.</p>
<p><b>Performance outcomes</b></p>	
<p>1. The location for the activity means there will be no adverse effect on any environmental values.</p> <p>2. Both of the following apply—</p> <p>(a) the activity, and components of the activity, are carried out on the site in a way that prevents or minimises adverse effects on the use of surrounding land and allows for effective management of the environmental impacts of the activity; and</p> <p>(b) areas used for storing environmentally hazardous materials in bulk are located taking into consideration the likelihood of flooding.</p>	<p>1. Performance outcome 1 is the 'no impact' option. For example, if the proposed activity does not involve sensitive adjacent land uses, or the location of the activity on the site will not change the level of impact.</p> <p>Notes on sections of performance outcome 2:</p> <p>2(a). Planned activities and infrastructure should be located on a site to minimise or prevent impacts. For example, if a site boundary is shared with a sensitive land use, then infrastructure should be located away from this boundary where appropriate.</p>



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	2(b). Storages of hazardous materials should be located in areas that are not flood prone, or should be located in areas on the site that are less likely to be affected in the event of a flood.
<b>Critical design requirements</b>	
<b>Environmental objective</b>	
The design of the facility permits the operation of the site, at which the activity is to be carried out, in accordance with best practice environmental management.	<p>The aim of this performance outcome is to ensure that the facility is designed in a way that allows both:</p> <ul style="list-style-type: none"> <li>• the effective management of hazardous contaminants as defined in the EP Act; and</li> <li>• that regulated structures are designed and constructed to ensure they meet the requirements of the 'Manual for assessing consequence categories and hydraulic performance of dams'.</li> </ul>
<b>Performance outcomes</b>	
<p>1. The activity does not involve the storage, production, treatment or release of hazardous contaminants, or involve a regulated structure.</p> <p>2. All of the following apply—</p> <p>(a) all storage provided for hazardous contaminants includes secondary containment to prevent or minimise releases to the environment from spillage or leaks;</p> <p>(b) regulated structures comply with the 'Manual for assessing consequence categories and hydraulic performance of dams' published by the department;</p>	<p>1. The critical design requirements environmental objective can be achieved if the activity will not involve hazardous contaminants or a regulated structure.</p> <p>2. If the proposed activity will involve hazardous contaminants or a regulated structure, then all relevant parts of performance outcome 2 will apply. These include the 'Manual for assessing consequence categories and hydraulic performance of dams' (available at <a href="http://www.qld.gov.au">www.qld.gov.au</a> using ESR/2016/1933 as a search term).</p> <p>The manual relates to, and should be read in conjunction with, the guideline 'Structures which are dams or levees constructed as part of environmentally relevant activities' (available at <a href="http://www.qld.gov.au">www.qld.gov.au</a> using ESR/2016/1934 as a search term).</p>

**Assessment requirements for making a decision for an environmental authority for an environmentally relevant activity**

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<p>(c) provide containers for the storage of hazardous contaminants that are secured to prevent the removal of the containers from the site by a flood event;</p> <p>(d) the design of the facility prevents or minimises the production of hazardous contaminants and waste; and</p> <p>(e) if the production of hazardous contaminants and waste is not prevented or minimised under paragraph (d)—the design of the facility contains and treats hazardous contaminants rather than releasing them.</p>	
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# Assessment requirements for making a decision for an environmental authority for an environmentally relevant activity

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## Disclaimer

While this document has been prepared with care it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Department of Environment and Science should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action. This document will be reviewed on an ongoing basis and is subject to change without notice.

## Approved:

Date: 24 March 2015

## Enquiries:

Permit and Licence Management  
Ph: 1300 130 372 (select option 4)  
Email: palm@des.qld.gov.au

## Version history

Version	Date	Description of changes
1.00	24 March 2015	Original externally published document
1.01	15 August 2016	Updated publication numbers
1.02	3 July 2017	Replaced <i>Sustainable Planning Act 2009</i> with <i>Planning Act 2016</i> .
1.03	11 June 2018	Document rebranded to align with machinery of government changes
1.04	08 October 2019	Updated for the commencement of Environmental Protection Regulation 2019
1.05	15 February 2021	Changed department name from DSDMIP to Department of State Development, Infrastructure, Local Government and Planning (DSDILGP)
1.06	04 April 2022	Facsimile number removed