



Compliance Reporting



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1. Introduction

The purpose of Compliance Reporting is to monitor and report on the compliance status of a project. A Compliance Report communicates the status of a project's performance (in relation to compliance with the conditions of consent).

This document has been prepared by the NSW Department of Planning and Environment (the Department) to set out the minimum requirements to be met when preparing Compliance Monitoring and Reporting Programs and Compliance Reports pursuant to conditions of consent. These requirements apply to State significant projects where compliance monitoring and reporting in accordance with this document is required by the conditions of consent.

Compliance Reporting ensures that:

- i. all requirements in the conditions of consent that apply to each phase of a project are identified and the approach for assessing compliance with them is considered, and where possible, documented, before the commencement of development;
- ii. the project's performance in terms of compliance with conditions of consent is evaluated on the basis of monitoring data and is communicated at various stages during the carrying out of the development;
- iii. the reporting obligations required by the conditions of consent are met; and
- iv. opportunities for improvement are identified and adopted.

These requirements do not replace the obligation to comply with specific requirements in conditions of consent in respect of compliance monitoring and reporting. If there is any inconsistency between the requirements in conditions of consent and the requirements in this document, the conditions of consent prevail.

2. Compliance Monitoring and Reporting Program requirements

A Compliance Monitoring and Reporting Program which meets the requirements set out in Section 2 of this document must be submitted to the Department, for information, no later than six (6) weeks before the commencement of the development.

2.1 Compliance Monitoring and Reporting Schedule

The Compliance Monitoring and Reporting Program must contain a Compliance Monitoring and Reporting Schedule setting out the required frequency of compliance monitoring and reporting.

Unless the conditions of consent state otherwise, the Compliance Monitoring and Reporting Schedule must set out the dates on which Compliance Reports must be submitted to the Department. The minimum frequency for submitting Compliance Reports is set out in Table 1, for the phases that apply to the development. The reports specified in Table 1 must be provided for a development if the conditions of consent require the proponent to notify the Department of the commencement date of the relevant phase (i.e. a Pre-Construction Compliance Report and a Construction Compliance Report are required if conditions of consent require notification of the commencement of construction, a Pre-Operational Compliance Report and an Operational Compliance Report are required if the conditions require notification of Operation, and a Post-Decommissioning Report is required if the conditions require notification of commencement of decommissioning). If a development does not have a construction phase, the minimum frequency required for compliance reporting is that which applies in respect of operation.

In circumstances where different phases of a development are being carried out at the same time (for example, as may occur in respect of the construction and operation of a road), compliance reporting must be undertaken in accordance with the minimum frequency required for those phases that are being carried out as part of the development.

Table 1: Minimum Frequency of Compliance Reporting

Compliance Report	Phase	Timing	Minimum Frequency
Pre-Construction Compliance Report	Pre-construction	Report to be submitted to the Planning Secretary prior to commencement of construction	Single report only
Construction Compliance Report	Construction	Reporting required for the duration of construction	At intervals, no greater than 26 weeks from the date of commencement of construction
Pre-Operational Compliance Report	Pre-Operation	Report to be submitted to the Planning Secretary prior to commencement of operation	Single report only
Operation Compliance Report	Operation	Reporting required for the duration of operation	At intervals, no greater than 52 weeks from the date of commencement of operation
Post-Decommissioning Compliance Report	Decommissioning	Report to be submitted to the Planning Secretary within 12 weeks of completion of decommissioning	Single report only

2.2 Compliance Table

The Compliance Monitoring and Reporting Program must contain a Compliance Table that:

1. identifies the requirements in all conditions of consent that must be complied with during each phase of the development, referred to as a “compliance requirement” in this document;
2. sets out the compliance monitoring methodology that must be used to assess compliance with each compliance requirement; and
3. sets out the type of data or evidence that is to be collected to assess whether compliance has been achieved.

As the Compliance Monitoring and Reporting Program is submitted for information, no later than six (6) weeks before the commencement of development, the monitoring methodology and evidence to be collected may not be known at the time of submission. In that case, the relevant space in the Compliance Table may be left blank when it is submitted.

2.2.1 Compliance Table structure and contents

The Compliance Table must include the following information for each compliance requirement:

1. a unique identification number (ID);
2. the compliance requirement to be complied with;
3. the phase of the development to which the compliance requirement applies. If the development is to be staged, then the relevant stage is to be detailed here;
4. the proposed monitoring methodology for each compliance requirement; and
5. the evidence to be collected to assess compliance with each compliance requirement.

Each of these components is set out in more detail below and an example of the format for a Compliance Table is provided in Appendix A of this document.

2.2.1.1 Identification number (ID)

A compliance requirement must be given the same ID as that of the relevant condition of consent, for example, "condition A1." Where there are multiple compliance requirements in a condition of consent, these must be separately identified, for example, "Schedule 3, condition 1, part A".

2.2.1.2 The compliance requirement

The Compliance Table must set out each compliance requirement. Where a condition of consent contains multiple compliance requirements, each compliance requirement must be set out in a separate line in the Compliance Table.

2.2.1.3 Applicable timing for compliance

The Compliance Table must set out when each compliance requirement is to be met. This may be specified in the relevant condition of consent, for example, "before construction," in which case the Table must replicate the time specified. If the relevant condition of consent does not specify a time at which a compliance requirement is to be met, the most appropriate time for compliance must be stated, for example, "at all times" or "during rehabilitation."

2.2.1.4 Monitoring methodology

Details of the methods to be used to monitor compliance with each compliance requirement must be set out in the Compliance Table.

If conditions of consent expressly require a specific monitoring method, that method must be adopted in the Compliance Table. If no monitoring method is specified, the proponent must determine which method is to be used and document this in the Compliance Table.

2.2.1.5 Evidence

The evidence to be collected and relied upon to assess compliance with each compliance requirement must be set out in the Compliance Table.

Examples of verifiable evidence include:

1. correspondence;

2. documents;
3. photographs;
4. site, vehicle and equipment inspection records;
5. quality assurance and other endorsement/approval records;
6. GIS figures and associated shapefiles;
7. monitoring data and analysis; and
8. delivery records, invoices and receipts.

Proponents must also provide details of the evidence collected where it is relevant to the determination of whether or not compliance has been met.

2.3 Submission

An electronic copy of the Compliance Monitoring and Reporting Program must be emailed to the Department (compliance@planning.nsw.gov.au) no later than six weeks prior to commencement of the development.

The subject line of the email and the electronic file name must contain the name of the project and application number.

If the Compliance Monitoring and Reporting Program is too large to email, the Department must be contacted regarding alternative document transfer arrangements.

2.4 Review

If the Compliance Monitoring and Reporting Program does not adequately address the requirements in the conditions of consent, or meet the requirements in this document, the proponent will be required to revise and resubmit the Program.

3. Compliance Reports

Proponents must prepare a Compliance Report in accordance with the requirements set out in Section 3 of this document.

3.1 Version control

A Compliance Report must clearly and prominently identify:

1. the application number of the project;
2. each version or revision number of the report;
3. the date on which it was prepared and issued; and
4. the title and name of the person who provided the declaration for the Compliance Report.

3.2 Contents

An example of a Table of Contents for a Compliance Report is provided in Appendix B.

In addition to the information provided in the Compliance Table, Compliance Reports must also include the information detailed below.

3.2.1 Introduction

A brief overview of the project including:

1. the project name and project application number;
2. the site address;
3. the name of the Compliance Report as set out in Table 1 (e.g. "Pre-Construction Compliance Report");
4. the dates covered by the Compliance Report;
5. a summary of project activities that occurred during the reporting period;
6. current GIS figures and shapefiles that illustrate development footprints and context, such as lease boundaries, offset areas, construction or operational disturbance areas, and adjacent relevant land uses; and
7. the names and contact details of the key personnel who are responsible for the environmental management of the development.

3.2.2 Compliance status descriptors

The status of each compliance requirement applicable during the reporting period must be recorded by using the relevant descriptors in Table 2 below. No other terms can be used to describe the compliance status.

Table 2: Compliance status descriptors

Status	Description
Compliant	The proponent has collected sufficient verifiable evidence to demonstrate that all elements of the requirement have been complied with.
Non-compliant	The proponent has identified a non-compliance with one or more elements of the requirement.
Not triggered	A requirement has an activation or timing trigger that has not been met at the phase of the development when the compliance assessment is undertaken, therefore an assessment of compliance is not relevant.

The terms partial compliance, partial non-compliance or administrative non-compliance or any other similar terms must not to be used.

3.2.3 Total number of non-compliances

The total number of non-compliances identified during the reporting period must be set out.

3.2.4 Non-compliances

Exceptions reporting of all non-compliances that occurred during the reporting period must be set out including:

1. the relevant compliance requirement and its ID;
2. details of the non-compliance, the date it occurred and the date it was identified;
3. the agency, or agencies to whom the non-compliance was reported; and
4. the proponent's response that have been, or are proposed to be, taken to address the non-compliance, including details of timing for undertaking such actions.

3.2.5 Previous Report actions

A table of actions arising from previous Independent Audit and Compliance Reports including:

1. the progress made to address each action; and
2. the outcomes of each action.

3.2.6 Incidents

A register of all incidents, as defined by the conditions of consent, with the following information:

1. the cause and nature of the incident, the date it occurred and the date it was identified;
2. location of the incident;
3. how the incident was identified;
4. the agency, or agencies to whom the incident was reported;

5. details of any corrective and preventative action required by agencies and any undertaken by the proponent; and
6. the response to the incident, including details of timing for undertaking such actions (i.e. that corrective and preventative action is not required, has commenced or is completed).

3.2.7 Complaints

A list or table of complaints received during the reporting period, unless this is required to be reported in another document under the conditions of consent. This table must include the following information:

1. the number of complaints received; and
2. a summary of the main areas of complaint.

A statement must also be provided as to any emerging trends identified in complaints received and proposed action for addressing complaints or reducing the recurrence of complaints or that 'no further action is required'.

3.3 Declaration

Each Compliance Report submitted to the Department must be accompanied by a declaration by an Authorised Reporting Officer. The Authorised Reporting Officer must complete a Compliance Report Declaration Form and append the Form to the Compliance Report.

The declaration to be given is that:

1. the Compliance Report has been prepared in accordance with the requirements set out in this document;
2. compliance with all relevant conditions of consent was assessed when preparing the Compliance Report;
3. the information contained in the Compliance Report is correct; and
4. the Compliance Report provides an accurate summary of the compliance status of the development during the period.

A template Compliance Report Declaration Form is provided in Appendix C of this document.

3.4 Submission

Compliance Reports must be submitted in accordance with the timeframes set out in Compliance Monitoring and Reporting Schedule.

An electronic copy of the Compliance Report must be emailed to the Department compliance@planning.nsw.gov.au by the proponent.

The subject line of the email and the electronic file name must contain the name of the project and application number.

If the Compliance Report is too large to email, the Department must be contacted regarding alternative document transfer arrangements.

3.5 Review

Compliance Reports will be reviewed by the Department.

The role of the Department in reviewing Compliance Reports is to confirm that:

1. the Compliance Report has been prepared in accordance with the requirements of this document;
2. the proponent has set out the actions to be taken for all identified non-compliances, and that those actions appear to be appropriate; and
3. the Compliance Report is accompanied by a declaration by an Authorised Reporting Officer.

The proponent remains responsible for ensuring that the development is carried out in compliance with all conditions of consent. The Department's review of a Compliance Report does not and is not to be construed as absolving the proponent of such responsibility.

If a Compliance Report does not adequately address the requirements of the conditions of consent or provide sufficient information in relation to the requirements of this document, the proponent will be required to revise and resubmit the Compliance Report.

Non-compliances will be reviewed and the Department will respond to identified non-compliances in accordance with powers under the EP&A Act and processes outlined in the Department's Compliance Policy.

4. Glossary

Term	Definition
Approval	A regulatory approval instrument.
Authorised Reporting Officer	A director, executive, employee or officer of the proponent who is authorised by the proponent to submit formal reporting on the proponent's behalf. An Authorised Reporting Officer is not to be a contracted third party (such as a consultant).
Commencement of construction	The date of the commencement of construction as notified under the conditions of consent.
Conditions of consent	Means conditions imposed on either of the following: <ul style="list-style-type: none"> • development consents for a State significant development • infrastructure approvals for State significant infrastructure • transitional Part 3A project approvals • other approvals or consents granted by the Minister in accordance with the <i>Environmental Planning and Assessment Act 1979</i> .
Construction	Has the same meaning as in the conditions of consent.
Department	NSW Department of Planning and Environment.
Development	Has the same meaning as in the conditions of consent.
Incident	An occurrence or set of circumstances that causes, or threatens to cause material harm and which may or may not be or cause a non-compliance. <ul style="list-style-type: none"> • <i>Note: "Material harm" is also defined in each consent</i>
Minister	NSW Minister for Planning or delegate.
Operation	Has the same meaning as in the conditions of consent.
Proponent	The person or entity that is referred to as the proponent in an approval or the applicant in a consent or any other person carrying out any part of the development to which the approval or consent applies.
Planning Secretary	The Planning Secretary under the <i>Environmental Planning and Assessment Act 1979</i> or nominee.
State significant projects	Means any of the following: <ul style="list-style-type: none"> • State significant development • State significant infrastructure (including critical State significant infrastructure) • transitional Part 3A projects • Part 4 development for which the Minister is the consent authority in accordance with the <i>Environmental Planning and Assessment Act 1979</i> .

5. Appendices

Appendix A – Compliance Table Example

Note that this is an indicative example only

Unique (ID)	Compliance Requirement	Development phase	Monitoring methodology	Evidence and comments
A32	The Planning Secretary must be notified as soon as possible and in any event within 24 hours of any incident.	At all times	Track and compare incident times to Planning Secretary notification times	Incident protocol Incident notification tracking report Compliance Report
E43	Trees identified for retention must be protected on site.	Construction	Daily site inspection Monthly Arborist inspection	Daily inspection checklist Arborist report indicating health of tree
F16	Where local roads are used for construction vehicle traffic, these must be identified in the Traffic Management Sub-plan.	Construction	Confirm that any referenced local roads are identified in the Traffic Management Sub-plan. Monitor implementation of the Sub-plan during regular weekly inspections	Documentation approving the Traffic Management Sub-plan Record of inspections

Appendix B – Compliance Report Table of Contents Example

Note that this is an indicative example only and can be modified or altered by the proponent

Contents

1.	Executive summary	1
2.	Introduction	2
2.1	Project name and project application number	2
2.2	Project addresses	2
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Appendix C – Compliance Report Declaration Form Template

Compliance Report Declaration Form

Project Name

Project Application
Number

Description of Project

Project Address

Proponent

Title of Compliance Report

Date

I declare that I have reviewed relevant evidence and prepared the contents of the attached Compliance Report and to the best of my knowledge:

- the Compliance Report has been prepared in accordance with all relevant conditions of consent;
- the Compliance Report has been prepared in accordance with the Compliance Reporting Post Approval Requirements;
- the findings of the Compliance Report are reported truthfully, accurately and completely;
- due diligence and professional judgement have been exercised in preparing the Compliance Report; and
- the Compliance Report is an accurate summary of the compliance status of the development.

Notes:

- Under section 10.6 of the Environmental Planning and Assessment Act 1979 a person must not include false or misleading information (or provide information for inclusion in) a report of monitoring data or an audit report produced to the Minister in connection with an audit if the person knows that the information is false or misleading in a material respect. The proponent of an approved project must not fail to include information in (or provide information for inclusion in) a report of monitoring data or an audit report produced to the Minister in connection with an audit if the person knows that the information is materially relevant to the monitoring or audit. The maximum penalty is, in the case of a corporation, \$1 million and for an individual, \$250,000; and
- The Crimes Act 1900 contains other offences relating to false and misleading information: section 307B (giving false or misleading information – maximum penalty 2 years' imprisonment or 200 penalty units, or both).

Name of Authorised
Reporting Officer

Title

Signature

Qualification

Company

Company Address

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