

# Out-of-hours construction works for social infrastructure

This document provides general guidance for out-of-hours works applications to the Secretary of the Department of Planning, Housing and Infrastructure. It applies to social infrastructure projects classified as State significant development.

## 1. Statutory context

Social infrastructure projects include schools, hospitals, medical centres, and health research facilities. Projects that are classified State significant development (SSD) under section 4.36 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), are generally declared as such in a State environmental planning policy.

A social infrastructure project is declared to be SSD in Schedule 1 of the State Environmental Planning Policy (Planning Systems) 2021, if it is development for a:

- new school with an estimated development cost (EDC) of more than \$20 million (among other development types), or
- hospital, medical centre or health research facility with an EDC of more than \$30 million.

Typically, SSD consents require construction works to be carried out during standard construction hours as set out in the relevant consent conditions, which are generally informed by the Interim construction noise guideline (DECC 2009)<sup>1</sup>, known as the ICNG.

Construction<sup>2</sup> is generally required by a consent to be undertaken during the following standard construction hours:

- 7 am to 6 pm Mondays to Fridays, inclusive
- 8 am to 1 pm Saturdays

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<sup>1</sup> The ICNG is under review by the NSW Environment Protection Authority; however, it remains current until replaced. See <https://www.epa.nsw.gov.au/your-environment/noise/industrial-noise/construction-noise>.

<sup>2</sup> Construction may include all works required to construct the SSD as described and defined in the relevant development application and consent, the EIS, and other approved documents as applicable, but excludes low impact work as defined in the SSD approval.

- at no time on Sundays or public holidays.

However, an SSD consent may stipulate provisions for OOHW including other approved times for nominated construction works. The management framework for OOHW is based on the ICNG, and the quantitative assessment outcomes from a project's approved environmental impact statement (EIS), submissions report, amendment report, or other documents, as relevant.

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## 2. OOHW management framework

Ideally, Applicants should assess expected OOHW in their EIS prior to determination. Where an Applicant doesn't do this, the Department will usually prescribe limited, standard OOHW exemptions. These are usually for specific activities that may occur outside approved hours such as oversized deliveries and emergency works.

Where OOHW do not meet the prescribed exemptions of a consent and has not been approved under a separate condition, Applicants must submit OOHW applications to the Planning Secretary for approval. The Planning Secretary considers applications on a case-by-case basis and makes decisions following the principles set out in the ICNG. These principles apply to both public and private construction works proposed under an approved SSD, including social infrastructure projects. The ICNG is available for download from the [key guidance section of the NSW Major Projects Planning Portal](#). As noted on the Planning Portal, the ICNG:

*aims to protect the majority of residences and other sensitive land uses from noise pollution most of the time.*

Section 2.3 of the ICNG sets out 5 categories of OOHW:

1. *delivery of oversized plant or structures that police or other authorities determine require special arrangements to transport along public roads*
2. *emergency work to avoid the loss of life or damage to property, or to prevent environmental harm*
3. *maintenance and repair of public infrastructure where disruption to essential services and/or considerations of worker safety do not allow work within standard hours*
4. *public infrastructure works that shorten the length of the project and are supported by the affected community*
5. *works where a proponent demonstrates and justifies a need to operate outside the recommended standard hours.*

Categories 4 and 5 are typically considered on a case-by-case basis through an OOHW application<sup>3</sup> submitted through the Planning Portal. The application must include appropriate justification.

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## 2.1. OOHW Justification

The Department considers that appropriate justification must be provided to support OOHW on any social infrastructure project that is SSD. Section 2.3 of the ICNG outlines that in order to demonstrate and justify the need for OOHW:

*the proponent should provide the relevant authority with clear justification for reasons other than convenience, such as to sustain operational integrity of road, rail and utility networks.*

Therefore, in this regard, the Department considers OOHW can be supported if justification is provided as follows:

- The relevant road authority has advised the Applicant in writing that carrying out the works during approved hours would result in a high risk to road network operational performance.
- The relevant utility operator has advised the Applicant in writing that carrying out the works during approved hours would result in a high risk to the operation and integrity of the utility network.
- An infrastructure operator has advised the Applicant in writing that carrying out the works during approved hours would result in a high risk to the operation and integrity of their asset and/or occupants (for example, hospital, university, public and private schools).
- Transport for NSW's Transport Management Centre, or other relevant road authority, has refused to issue a road occupancy licence (or road opening permit under the *Roads Act 1993*) for approved construction hours.
- A public authority has directed the Applicant to undertake the works outside approved construction hours, for example as a condition of a *Roads Act 1993* approval or other licence.
- Other scenarios determined to be applicable on a case-by-case basis.

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## 3. Application for OOHW

When submitting an application for proposed OOHW, as may be stipulated under an SSD consent, the following information must be provided, including but not limited to:

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<sup>3</sup> OOHW applications are not required if an environment protection licence is in place for 'scheduled activities' listed at [Schedule 1 of the Protection of the Environment Operations Act 1997](#) if consistent with an SSD consent, or where specific construction works meet the OOHW provisions of a consent.

- an informative covering letter that summarises the OOHW application
- appropriate justification including documentary evidence that is in accordance with section 2.1 of this document
- the relevant conditions of consent that clearly identifies the planning pathway that:
  - requires the requested works to be carried out, and
  - allows the Planning Secretary to approve the works to be done outside approved hours of construction
- the proposed dates and hours of works (for example, 6 pm to 6 am, 3 nights a week), specifying if high noise impact works will be undertaken earlier in the night, and the expected overall timeframe of OOHW construction (for example, 6 weeks), and if relevant, contingency dates
- the proposed plant and equipment, tools, and vehicles to be used out-of-hours
- the OOHW construction program detailing activities to complete (for example, excavation works, civil and structural engineering works, tree clearing, line marking)
- a construction noise impact assessment, such as a construction noise and vibration impact statement (CNVIS), prepared by a suitably qualified and experienced person, as a supporting document (see section 4 of this document for details about what must be included in a CNVIS, and see proceeding section 3.1 for circumstances where a CNVIS is not required)
- a copy of the draft OOHW community notification.

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## 3.1 Circumstances where a CNVIS is not required

The Department does not require the submission of a CNVIS if the Applicant proposes to undertake OOHW that is restricted in scale and scope, short in duration over a one-off occasion with limited impacts on nearby noise sensitive receivers. The Department considers these types of OOHW to be exempt from requiring a CNVIS, and include:

- a one-off activity (for example, a concrete pour, crane installation or de-mobilisation, and the like) that occurs continuously over 2 consecutive day, evening and/or night periods, even if the work is likely to be noisy to nearby receivers, or
- work that complies with noise management levels and occurs over a period of no more than 3 consecutive weeks.

Where these OOHW are proposed, the Applicant must provide a detailed description of the reasonable and feasible noise mitigation and management measures, as defined in the ICNG, that will be implemented.

## 4. Noise assessment

An application for OOHW must be supported by an activity-specific construction noise impact assessment, such as a CNVIS or equivalent (except where not required under section 3.1 of this document).

The CNVIS must include the following, but not be limited to:

- a detailed description of the proposed OOHW
- noise modelling methodology
- modelling assumptions used in the assessment (that is, sound power level (SWL) of plant and equipment, times of use, duration, ground type, atmospheric information, and the like)
- a summary results table generated by the noise model for worst-case scenarios (the raw results table may be appended as an Appendix). The summary table must include:
  - the address of noise affected receivers or the noise acoustic catchment
  - rating background noise levels (RBL)
  - noise management levels (NML) as described in section 4 of the ICNG
  - predicted  $LA_{eq}$  (15 minutes) levels at the noise affected receiver location, incorporating any 5dB correction for particularly annoying activities as listed on page 16 of the ICNG
  - the level of the NML exceedance
  - the additional mitigation measures (AMMs) to be applied at the receiver location predicted to exceed NMLs
- geographic information system overlay maps showing the level and extent of noise impacts on noise affected receivers for worst-case scenarios
- plain English discussion interpreting the noise modelling results, including an assessment on sleep disturbance
- an assessment of ground-borne noise and vibration impacts, if any
- consideration of any predicted traffic noise impacts

- discussion of the reasonable and feasible noise mitigation and management measures proposed to be implemented (both the standard measures and the AMMs), and the framework for allocating AMMs
- details of how and when noise affected receivers as defined on page 12 of the ICNG will be notified of the proposed OOHW
- discussion of the complaints handling management system relating to the OOHW.

In cases where an Applicant applies for longer term OOHW (for example, weeks or months), it is the Department's standard practice to require an initial 'trial' of the works. Trials are a useful way to evaluate the performance of OOHW over a limited period of time.

In a trial, Applicants will be required to conduct short-term noise monitoring, and to report to the Department on noise levels and complaint management. Following the trial period, unless otherwise advised by the Department, the Applicant may continue the OOHW to completion.

### Pre-consultation

We encourage you to consult us about noise assessment requirements before submitting an application for OOHW.

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## Contact us

If you have any questions about social infrastructure projects or this guidance, please contact the Social Infrastructure Management Team at the Department.