

Director, Assessment Policy
Department of Planning and Environment
GPO Box 39
Sydney, NSW 2001

Dear Sir / Madam

Draft NSW Code of Practice for Authorised Network Operators

I refer to the exhibition of the draft NSW Code of Practice for Authorised Network Operators (Code of Practice). It is understood that the Code of Practice will be an Approved Code in accordance with clause 244K of the *Environmental Planning and Assessment Regulation 2000 (EP&AR)* and will not be a specific guideline under clause 228 of the EP&AR.

Water NSW's roles under the *Water NSW Act 2014* includes managing and protecting water storage and supply infrastructure across NSW, and the water quality and catchment health within the Sydney drinking water catchment and Special Areas.

Water NSW's key interests regarding the activities associated with electricity transmission and distribution networks are the protection of:

- 1) water storage and water supply infrastructure
- 2) water quality and quantity in the Sydney drinking water catchment
- 3) the ecological integrity of the Special Areas.

Water NSW notes that electricity transmission and distribution networks are located within the Sydney drinking water catchment, within Special Areas and cross critical water supply infrastructure, including that within Controlled Areas. Under the *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*, a public authority must consider whether an activity within the drinking water catchment will have a neutral or beneficial effect on water quality. Access to Schedule 1 Special Areas and to Controlled Areas is prohibited unless a consent has been issued by Water NSW in accordance with the *Water NSW Act 2014* and *Water NSW Regulation 2013*.

The Code of Practice generally provides a clear explanation of the levels of environmental impact assessment for activities under the EP&A Act and clear explanation of the environmental impact assessment to which the Code applies. The Code focuses on the outcomes to be achieved rather than prescribing the form of the documentation or specific processes to be followed. Water NSW recognizes that this approach provides certainty to the community and other stakeholders of the outcomes while enabling operators to tailor processes to best serve their business.

While Water NSW generally supports the draft Code of Practice, we request that the following matters are more explicitly addressed:

Purpose of environmental impact assessment

There is no guidance within the draft Code of Practice as to the ultimate purpose of the environmental impact assessment. The duty to consider environmental impacts under Part 5 of the EP&A Act is identified in section 111 (1) as being for the purpose of '*attaining the objects of this Act relating to the protection and enhancement of the environment*'. While the draft Code of Practice clearly identifies the quality controls for the environmental impact assessment process, it is silent about the purpose for which this process is being undertaken. While the purpose of the environmental impact assessment is clearly articulated in sections 5 and 111(1) of the EP&A Act, the draft Code of Practice would benefit from more explicitly articulating the overarching purpose of the environmental impact assessment process is seeking to deliver.

Mitigation of impacts

The draft Code of Practice does not explicitly identify a requirement for SERs or REFs to identify measures by which impacts can or shall be mitigated. The Frequently Asked Questions accompanying the exhibition of the draft Code does note that environmental impact assessments must '*describe mitigation measures used to reduce impacts*'. Identifying mitigation measures is an integral part of the contemporary culture and practice of project development and environmental impact assessment.

The principle and hierarchy of mitigation is widely recognized, and will generally include preferential application of:

- Avoid negative impacts to the greatest extent possible
- Minimise (or reduce) what cannot be avoided
- Remedy (or restore) what cannot be reduced
- Compensate (or offset) what cannot be remedied

Given the critical role of mitigation measures in reducing impacts and facilitating the protection and enhancement of the environment, the Code should explicitly include mitigation of impacts as a key component and specific step in the environmental impact assessment process.

Clause 228 of the *Environmental Planning and Assessment Regulation 2000*

The Code of Practice for ANOs is not proposed to be issued as a specific guideline under clause 228(1)(a) of the EP&AR. Clause 228(1)(b) would continue to be relevant to the consideration of likely impacts of activities on the environment. The factors referred to in the general guideline '*Is and EIS required? Best practice guideline for Part 5 of the environmental Planning and Assessment Act 1979*' would remain relevant to environmental impact assessment under this Code.

The draft Code of Practice does not prescribe the process or form of the environmental impact assessment to be undertaken. For completeness and transparency, the Code of Practice should identify the complementary role of any general or specific guidelines in force under clause 228.

Environmentally Sensitive Area of State Significance

Water NSW requests that if the definition of '*Environmentally Sensitive Area of State Significance*' from the *Environmental Planning Policy (State and Regional Development) 2011* (SRD SEPP) is used in this Code, that the definition is amended to include the Special Areas identified under the *Water NSW Act 2014*.

The Special Areas surround the drinking water storages and perform a critical role in protecting drinking water quality in the Sydney drinking water catchment. These storages supply drinking water to around 60% of the State's population.

The current definition of *Environmentally Sensitive Area of State Significance* taken from the SRD SEPP does not include Special Areas and should be amended to ensure the definition is relevant to the area of operations of transmission and distribution networks.

Additional specific comments on these four key issues, and other minor matters, is provided in Attachment 1. Should you have any questions regarding the above, please contact Rachel Hannan, Senior Land Use Planner on 4724 2278.

Yours sincerely



MALCOLM HUGHES
Senior Manager, Planning and Environment

24/8/13

Attachment 1: Water NSW comments on draft Code of Practice for Authorised Network Operators

Page	Reference	Comment
1	1.2 The statutory scheme and background to the introduction of this Code	<p>This section very clearly describes the current and proposed operation of assessments under Part 5 of the EP&A Act. This section does not identify the overall purpose of undertaking the assessment. Suggest that an additional paragraph, such as the following, is added to this section:</p> <p><i>The purpose of the undertaking an assessment under Part 5 of the EP&A Act is set out in section 111(1) as: 'for the purpose of attaining the objects of this Act relating to the protection and enhancement of the environment'. This means that an integral component of a determining authority's consideration of an Activity's environmental impact is identifying how the environment is to be protected from deleterious impacts.</i></p>
2	1.2 The statutory scheme and background to the introduction of this Code	<p>It is recommended that the following information is added for completeness:</p> <p><i>This Code regulates an ANO's decision making process that leads up to determining whether an EIS or SIS is required. However processes and requirements associated with preparing and submitting those documents are outside the scope of this Code. <u>These matters are addressed through other mechanisms, including the general guideline in force under clause 228 of the EP&A Regulation 'Is an EIS required? Best practice guidelines for Part 5 of the EP&A Act 1979'.</u></i></p>
2	1.3 Why this Code has been prepared	<p>Second paragraph – this discussion focusses on the outcomes for the 'process' of environmental assessment. This section would benefit from discussion of the outcome this process is seeking to achieve. Suggest addition of further discussion on this aspect such as the following:</p> <p><i>Preparing an environmental impact assessment is an important mechanism for ANOs to gather and document the information base used to inform decision making about Activities. This process facilitates evidence based decision making and enables ANOs to undertake its activities in a way that avoids and minimizes impacts to the environment and communities.</i></p>
2	1.4 Purpose	<p>Request an additional sentence be added to first paragraph:</p> <p><i>The principal purpose of the Code is to provide for how ANOs must exercise their assessment and self-determination powers under Part 5 of the EP&A Act when conducting environmental assessments. <u>This process enables determining authorities to identify the relevant evidence base for their decision making and identify the mechanisms for protecting the environment while undertaking Activities.</u></i></p>
2	1.4 Purpose	<p>Suggest the following change to the second dot point:</p> <ul style="list-style-type: none"> <i>Identifying <u>ensuring</u> best practice for environmental assessment to ensure is followed so that current levels of environmental assessment <u>performance</u> are maintained <u>or improved</u></i>

Page	Reference	Comment
3	1.4 Purpose	<p>The final dot point is somewhat inconsistent with current practice of incorporating mitigation measures within the overall Activity proposal. Suggest the following amendment:</p> <ul style="list-style-type: none"> ensuring an Activity <u>proposal determination provides clear, practical and enforceable mitigation measures conditions, and an Activity determination requires these measures to be implemented. where a conditional determination is appropriate.</u>
3	1.4 Purpose	<p>Suggest the following amendments to the first paragraph to reflect the overall purpose of an environmental impact assessment, and the separate role and function of general guidelines in force under clause 228 of the EP&A Regulation.</p> <p><u>The aim of Part 5 of the EP&A Act is to ensure that in undertaking any Activity, determining authorities ensure that the environment is protected or enhanced. The duty under section 111 of the EP&A Act to examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of carrying out an Activity to achieve this aim is at the heart of Part 5. It applies to every aspect of a proposed Activity and applies at every stage of the assessment and approval process. When considering the likely impact of an Activity on the environment, ANOs are required to take into account the environmental factors listed in clause 228(2) of the EP&A Regs. These are listed at Box 1. Those factors must be considered under this Code, regardless of whether there are any applicable general or specific guidelines in force under cl 228 of the EP&A Regs. For avoidance of doubt, this Code does not affect or remove the requirement under clause 228 for a determining authority to have considered of those relevant factors referred to in an applicable general or specific guideline.</u></p>
3	1.4 Purpose	<p>The draft Code of Practice does not address the procedures for carrying out assessments. It identifies the levels of assessment available, and the performance outcomes to be achieved in relation to the assessment process – but does not provide procedural direction.</p> <p><i>The Code addresses the following key points:</i></p> <ul style="list-style-type: none"> procedures for carrying out <u>outcomes to be delivered through the assessments process</u>
6	2.1 Environmental Assessment Framework	<p>For completeness, suggest addition of a third dot point as follows:</p> <p><i>When assessing the environmental impact of a Part 5 Activity, an ANO is obliged to:</i></p> <ul style="list-style-type: none"> fulfil its section 111 duty under the EP&A Act; and address, as part of fulfilling that duty, the environmental factors listed in clause 228(2) of the EP&A Regs.; <u>and</u> <u>address the requirements of any other relevant guidelines.</u>

Page	Reference	Comment
12	2.3.3 Phase 2 Assessment and Evaluation	<p>While mitigation of impacts is an integral component of assessment and evaluation of a proposal, the development and implementation of mitigation measures is critical to ensuring protection and enhancement of the environment and warrants identification of an explicit step in the Assessment and Evaluation of a proposal. Request that this section is revised to include a third step:</p> <p>iii) Mitigation of environmental impacts</p>
12	2.3.3 Phase 2 Assessment and Evaluation	<p>Amend the second last paragraph as follows:</p> <p><i>Finally, an ANO must adequately document all aspects of the assessment process including:</i></p> <ul style="list-style-type: none"> • <i>Identifying the information collected and environmental impacts identified;</i> • <i>Identifying resources and expertise used; and</i> • <i>Outlining the assessment and consideration of impacts and how they informed any conditions that may be proposed <u>the mitigation measures to be implemented.</u></i>
13	2.3.4 Outcome from phase 2	<p>Insert an additional requirement:</p> <ul style="list-style-type: none"> • <u>identifies mitigation measures that will be implemented as part of the Activity to protect or enhance the environment</u>
15	Interim Additional Consultation Requirements for Class 4 and 5 Activities	<p>In relation to item (1)(d) request that an amendment is made to the definition of 'Environmentally Sensitive Area of State Significance' in the <i>State Environmental Planning Policy (State and Regional Development) 2011</i> if this definition is to be used in this Code of Practice.</p> <p>Transmission and distribution networks occur across a broad land area, including in Special Areas.</p> <p>To ensure it is relevant to the area of operation of transmission and distribution networks, request that the definition of 'Environmentally Sensitive Area of State Significance' is amended to include</p> <p><u>Land identified as a Special Area under the Water NSW Act 2014</u></p>
18	2.4.2 Summary environmental report (SER)	<p>Request an additional dot point be included:</p> <ul style="list-style-type: none"> • <u>Mitigation measures – the SER should identify the mitigation measures that will be implemented to protect or enhance the environment.</u>

Page	Reference	Comment
22	Stage 5 Implementation	<p>This section deals primarily with the documentation requirements for implementation. Suggest inclusion of a paragraph directly before section 2.6.1 to identify what is to be implemented, such as:</p> <p><i>This Code requires ANOs to implement Activities in accordance with the proposal outlined in the environmental impact assessment documentation for all classes of Activity. This includes ensuring all relevant mitigation measures are undertaken to ensure the protection of the environment while undertaking those Activities.</i></p>
23	2.6.3 Outcomes from Stage 5	<p>Suggest the following amendment</p> <p><i>2. in a case where the determination is subject to a condition requiring the ANO to prepare documentation prior to the commencement of implementation, such as a CEMP or the like, that document must be prepared <u>and approved</u> before implementation of the Activity commences.</i></p>
25	4.2 What documents are subject to Section 4 of this Code?	<p>In relation to 1(d), suggest that a decision to not proceed with a project is a determination under the EP&A Act, and this documentation should be considered Final EIA Documentation.</p>
26	4.3 What documents must an ANO retain	<p>Suggest that retention of documentation should be measured from the expiry of the approval.</p> <p>This would address the issue of environmental impact assessment that is undertaken for ongoing activities, or operational aspects which may be issued for several years or issued with no expiration date.</p>
31	Appendix A: Definitions	<p>Request that an amendment is made to the definition of 'Environmentally Sensitive Area of State Significance' in the <i>State Environmental Planning Policy (State and Regional Development) 2011</i> if this definition is to be used in this Code of Practice.</p> <p>Transmission and distribution networks occur across a broad land area, including in Special Areas. To ensure it is relevant to the area of operation of transmission and distribution networks, request that the definition of 'Environmentally Sensitive Area of State Significance' is amended to include <u>Land identified as a Special Area under the Water NSW Act 2014</u></p>
33	Appendix B	<p>Request the addition of 'Conservation lands' – such as land that is the subject of biobanking, conservation areas for biocertification, conservation areas under property vegetation plans, and other conservation measures on private lands.</p>