

27 November 2016

Director, EIA Improvement Project
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Madame / Sir,

Environmental Impact Assessment Improvement Project Discussion Paper October 2016

NSW Ports welcomes the opportunity to provide feedback on the Department of Planning and Environment's (Department's) review of the Environmental Impact Assessment (EIA) for State significant projects for NSW. NSW Ports has reviewed the Discussion Paper and has provided feedback on each of the eight initiatives within the attached table.

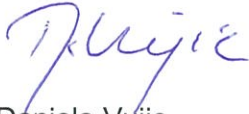
NSW Ports is generally supportive of improvements to the EIA process which do not add additional costs to the preparation of EISs as well as the timeframes for delivering State significant development projects. The Department needs to balance the intended outcomes in order to ensure the EIA process does not deter investment in NSW or add further costs and delays to the delivery of developments.

A matter which has not been addressed in our response to the eight initiatives is the current Planning Assessment Commission (PAC) process. NSW Ports requests that the Department review the matters which are referred to the PAC for determination. Specifically, the Department's current process requires any modification application which a local council objects to (whether the objection is reasonable or otherwise) to be referred to a PAC. Hence, the minimum time frame for dealing with a modification to a major project approval is likely to extend beyond a 4-6 month period if a referral to a PAC is required. Most matters raised by local councils during the exhibition period of a modification could be dealt with by the Department e.g. further assessment of traffic impacts. An objection by a local council to incomplete environmental assessment documentation should not be adequate grounds for referral to a PAC if the matter can be resolved by the Department.

NSW Ports recognises that fair and equitable processes by the Department are important, however we would encourage that such processes incorporate a test of 'reasonableness' so as to avoid third parties using planning processes to frustrate or delay development and hence economic growth. The consequence otherwise is additional cost burdens, significant delays and uncertainties, all of which contribute to added costs of doing business in NSW and missed opportunities.

Should you wish to discuss any of the above matters further, please do not hesitate to contact me via email on daniela.vujic@nswports.com.au or by phone on 9316 1131.

Yours sincerely,



Daniela Vujic
Planning Manager

Comment on Environmental Impact Assessment Improvement Project Discussion Paper (October 2016)

Initiatives, aims and potential improvements	NSW Ports response
Initiative 1: Develop a consistent framework for scoping within the EIA process	
<p><i>Aims to establish a consistent framework for scoping the EIA process by proponents, the community and the Department.</i></p>	<p>A consistent EIA framework may ensure that all EISs incorporate an assessment of likely impacts however, we are of the opinion that it will not necessarily ensure the most important issues are identified and addressed during the EIA process, particularly during the scoping and assessment of an EIS. There is potentially more of a risk that environmental matters which are not of relative importance being addressed at length versus environmental matters which require detailed consideration because they are set in a policy or guideline published by the Department.</p> <p>We are concerned that setting a standard framework would result in planners within the Department being uncertain of knowing when to adapt the framework to suit the project or the environmental context. This has been our experience to date with the Department's standard conditions of approval template. Assessment planners continue to rely upon the standard conditions template which has been developed for a group / category of project types but does not consider the context or environment in which the development is being undertaken. Hence unnecessary costs are imposed on a project either as part of the construction and / or operational phase of the development.</p> <p>We do however support the EIA process tailoring the determination and compliance of developments based on relative environmental importance. How this is implemented in practice will be challenging particularly if the Department continues to rely on standard conditions of approval for projects.</p>

Potential improvements include:

- *Development of a robust methodology to prioritise environmental issues during scoping, and to balance technical and community issues;*
- *Requirement to respond to a hierarchy of issues identified during scoping using Secretary's Environmental Assessment Requirements (SEARs);*
- *Prioritise derived through scoping should inform subsequent stages of the EIA process; and*
- *Strengthening the role of risk assessment during the scoping stage.*

We are of the view that dictating to proponents at the SEARs stage or scoping of an EIS as to the environmental matters which need priority during the assessment period may actually impose a risk to the Department. Consultants preparing EISs should be well aware of the main assessment matters which require assessment and technical analysis and hence there is little value add for the Department in this process, particularly to establish a hierarchy of issues which is ultimately subjective. Our experience is that if a matter is not addressed or not addressed in detail within an EIS, either a community member or an agency (including the Department) will raise this during the assessment process.

We do support EISs undertaking an environmental risk assessment approach of matters which do not need to be examined at length. This environmental risk assessment could be incorporated at the beginning of the environmental impact assessment section of an EIS. Therefore, matters of minimal or low environmental impact should not need to be assessed in further detail within the EIS report. Matters which pose medium to high risk should require further assessment.

The current EIA process could be improved to better manage the complexities and challenges associated with assessing and delivering major infrastructure projects. Significant time and resources are often required to undertake the planning and assessment process for State significant projects. NSW Ports is of the opinion that the current requirement for detailed environmental impact assessment for major infrastructure projects is inflexible as proponents are required to have all aspects of their proposal confirmed in order to obtain planning approval, even though certain details of the proposal could be suitably dealt with post-approval, or are likely to be insignificant / have little material effect when considering the overall environmental impact of the proposal. This often means that any changes to the proposal as a result of design development or minor design change requires an approval modification and associated environmental impact assessment that takes additional time and resources.

NSW Ports is of the opinion that the EIA and development approval system would benefit from increased flexibility in the delivery of a development where minor changes to a project are required. Hence when considering whether a modification application is required, the focus should be on the environmental impacts assessed /

	approved (i.e. an environmental envelop / outcome of the project) rather than the detailed change / amendment subject to the change being “lawful”.
Initiative 2: Earlier and better engagement	
<p><i>The need to involve the community earlier in the EIA process and to improve the quality of engagement between all EIA participants has been identified as a key area for improvement. Better engagement is expected to result in better planning outcomes and build confidence and trust in the assessment process.</i></p>	<p>NSW Ports is of the opinion that community engagement should be greatest during the strategic planning phase of the planning process to ensure broad community support of the planning outcomes being pursued.</p> <p>The current planning process places greater emphasis on public / community consultation during the development proposal phase rather than the strategic planning phase. While we support community engagement being carried out during the planning application preparation phase of a development, the focus of this engagement should be on the form of the development and the nature of the mitigation and management measures to be implemented. Strategic plans therefore need to provide sufficient detail to give certainty that a development can proceed in accordance with the strategic plans. Any amendments to the EIA process should acknowledge this.</p>
<p><i>Potential improvements include:</i></p> <ul style="list-style-type: none"> • <i>Pre-lodgement meeting to discuss community engagement that is to occur during scoping;</i> • <i>Proponent led engagement during scoping based on engagement objectives that inform a strategy;</i> • <i>Proponents and decision makers being required to inform community members how their views have been taken into account, or if not why not;</i> • <i>Options for Department led engagement on key issues; and</i> • <i>Identification of options to make EIA documentation publicly available at all stages of the process.</i> 	<p>We support pre-lodgement meetings which discuss the type and method of engagement that could be undertaken with the community during the scoping stage of an EIS however, we are of the view that this should only be an advisory role by the Department. Also, the method and type of engagement should be proportionate to the potential impacts of the project and not a one size fits all approach.</p> <p>Once a project has approval, the need for community engagement should be minimised for modification applications. We are of the view that public exhibition of environmental assessment documentation should continue to be adopted by the Department for modification applications where the proposed modification has the potential to impact on the community.</p>

Initiative 3: Improve the consistency and quality of EIA documents	
<i>EIA documents are getting larger and more complex without necessarily improving public understanding or decision making.</i>	<p>Consideration needs to be given to reducing the detail of SEARs as well as the Department not being too prescriptive at the scoping stage of an EIS. Environmental assessments often include assessment information because it was specifically requested / required by an agency or was listed in the project SEARs as a general assessment requirement.</p> <p>The inclusion of an environmental risk assessment analysis within an EIS which only requires further assessment of matters which are of medium and high risk should be further explored as it may reduce the length of an EIS. For example, the Department may wish to review the “Is an EIS required” checklist prepared by the Department of Urban Affairs and Planning (i.e. the checklist used by public authorities when determining if an ‘activity’ is able to be determined under Part 5 of the EP&A Act 1979) for adoption in the EIA process. Matters which are of low or minimal impact would therefore not require further assessment or consideration.</p>
Initiative 4: Set a standard framework for conditioning projects	
<i>Aims to develop a standard approach to setting consent conditions, giving priority to outcome or performance-based conditions rather than relying on management plans to guide the project through construction and operation phases.</i>	<p>Outcome or performance-based conditions are appropriate where the required outcome/performance is clearly justified, feasible to achieve and readily verifiable. Consent authorities should not seek outcomes and performance targets that require disproportionately high levels of effort and cost to attain, measure and report.</p>
<p><i>Potential improvements include the introduction of a standard range of condition types that might be:</i></p> <ul style="list-style-type: none"> • <i>Outcome or performance based;</i> • <i>Prescriptive; and/or</i> • <i>Management based.</i> 	<p>Standard condition types may improve the consistency of outcomes across approvals. However, there is a risk that consent authorities and stakeholders may regard standard conditions as de facto policy or regulatory requirements. There should always be an appropriate level of discretion and flexibility to ensure conditions are appropriate to the nature and scale of the development proposed and its associated impacts. For environmental aspects that are addressed by other more adaptive approvals (e.g. an environmental protection licence), consent conditions should be written to allow the adaptive approvals to prevail to the extent of any inconsistency.</p>

<i>Proponents will be provided with guidance on drafting of mitigation measures in the EIS in a way that can be incorporated into the conditioning framework.</i>	NSW Ports supports opportunities for proponents to have constructive input to the drafting of conditions. It is hoped that the proposed guidance will ensure greater consistency between the EIS and approval conditions, more certainty for proponents regarding expected conditions and improved efficiency in the assessment and determination processes.
Initiative 5: Improve the consistency and quality of EIA documents	
<p><i>Potential ways to build public confidence in the integrity of the project assessment process and the environmental / planning profession could be addressed through:</i></p> <ul style="list-style-type: none"> <i>A requirement for those leading EIA processes, such as EIS Lead Authors and Specialist Report Lead Authors, to adhere to a code of practice; and</i> <i>Extending the use of peer review of EIA documents.</i> 	NSW Ports does not support the proposed recommendations of the Discussion Paper aimed to improve the consistency and quality of EIA documentation. While we appreciate that the Department would like to have certainty of the quality of the environmental assessment documentation submitted for assessment, we are of the view that the proposed recommendations would delay the lodgement of environmental assessments as well as add additional costs to the preparation of EISs. EISs for State significant developments are currently prepared by qualified environmental and planning consultants; requiring a peer review process only adds further red tape to the assessment process and potentially passes on professional liability to another consultant. The Department has the ability to review EISs before they are accepted formally for public exhibition and are in the best position to flag any gaps in assessment reports.
Initiative 6: Provide greater certainty on EIA timeframes	
<i>Aims to reduce the uncertainty of assessment timeframes for all EIA participants.</i>	We support greater certainty being provided on EIA timeframes however, we believe only certain aspects of the EIA process should have clear timeframes in order not to deter investment in NSW or add further costs and delays to the delivery of development.
<p><i>Potential improvements might include:</i></p> <ul style="list-style-type: none"> <i>Setting timeframes for each stage of the EIA process, including the post approval phase; and</i> 	We are generally supportive of the current timeframes in place for EISs such as the timeframe for the issue of SEARs, public exhibition periods, environmental assessment periods by the consent authority as well as the expiry timeframes imposed on SEARs issued by the Department. We would be concerned if timeframes were imposed on

<ul style="list-style-type: none"> • <i>Better coordination and communication between Government agencies, proponents and the community.</i> 	<p>when proponents needed to submit an EIS and additional information requests or on the submission of documentation “post approval phase” of a project.</p> <p>The Department currently imposes requirements and conditions to consult with government agencies and the community as part of the preparation of an EIS as well as part of the delivery of a project. It is important for the Department to clarify with stakeholders on a project basis whether stakeholders wish to continue to be involved in the EIA process once a determination has been issued, including the type of involvement and timeframe. For example, conditions are often imposed for agencies to review, comment and / or approval environmental management plans however, some agencies do not wish to be part of this process or be required to “approve” documentation. Also, the requirement to hold regular community meetings during the construction and during the start up of a project may be appropriate however, ongoing face to face community meetings could be replaced with other forms of communication where attendance by community members has reduced. Being too prescriptive in the post approval phase can be ineffective and add little value to the process.</p>
Initiative 7: Strengthen the monitoring, auditing and reporting of compliance	
<p><i>Aims to develop a clear process for monitoring, auditing and reporting of compliance against conditions of approval.</i></p>	<p>NSW Ports supports this aim. The processes set out in approvals held by NSW Ports are already clear and transparent.</p>
<p><i>Potential improvements might include:</i></p> <ul style="list-style-type: none"> • <i>Development of an overall framework for the post-approval stage of projects;</i> • <i>Development of a common system for monitoring, auditing and reporting compliance;</i> • <i>Greater accountability by improving public access to post-approval documents; and</i> • <i>Clarification of the roles, obligation and rights of everyone involved in compliance.</i> 	<p>The merits of an “overall framework” and “common system” cannot be determined at this stage until further detail is provided regarding these potential improvements. Over-reliance on documentary evidence (i.e. self-reports and audits) of compliance imposes an unnecessary and inefficient burden on both proponents and regulators.</p> <p>Conditions should be drafted such that if projects demonstrate consistent compliance in the operational phase, post-approval obligations can be relaxed at the discretion of the Secretary. The role of the environmental representative (ER) needs to be reconsidered.</p>

	The Department is currently too focussed on ensuring the “independence” of the ER at the expense of selecting persons with more knowledge and experience of the operation and authority to manage environmental risk.
Initiative 8: Project change processes following approval	
<i>Aims to define the process for addressing and communicating changes to approved projects to make these changes evident to all stakeholders to increase public confidence that projects are consistent with their approvals.</i>	Responsible proponents keep stakeholders informed of project status and any modifications through the consultation and communication mechanisms set out in existing approval conditions.
<i>Potential improvements might include:</i> <ul style="list-style-type: none"> • <i>Development of a process to communicate information to stakeholders about continuing project development following project approval as well as project changes;</i> • <i>Greater guidance on the level of assessment and further consultation required for modifications; and</i> • <i>Development of a process to capture and consolidate project changes, conditions of approval and compliance obligations.</i> 	<p>Consent authorities should have discretion to set assessment and consultation requirements for modifications according to the scale and significance of the proposed changes.</p> <p>The use of dedicated “modification” teams to assess proposed changes is counter-productive as it disrupts the continuity of previous assessments. As a result assessing officer tend to require overly detailed assessments for relatively minor changes.</p>