



Nature Conservation Council

The voice for nature in NSW

Director Industry and Infrastructure Policy
NSW Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

7 April 2017

NCC Submission on the draft State Environmental Planning Policy (Infrastructure) Amendment (Review) 2016

Dear Sir/Madam,

The Nature Conservation Council of New South Wales (NCC) is the state's peak environment organisation. We represent over 150 environment groups across NSW. Together we are dedicated to protecting and conserving the wildlife, landscapes and natural resources of NSW.

We welcome the opportunity to comment on the draft *State Environmental Planning Policy (Infrastructure) Amendment (Review) 2016* (draft infrastructure SEPP).

Our members have a strong interest in planning and environment decisions across the State and in their local areas. Land-use planning and development is intrinsically linked with environmental protection, nature conservation and natural resource management. Effective planning can help us tackle our most pressing environmental challenges, including: loss and fragmentation of native vegetation and wildlife habitat; degradation of rivers, wetlands and water catchments; urban sprawl, traffic congestion and urban air pollution; and carbon pollution and impacts of climate change.

NSW needs robust planning laws that truly implement the principles of ecologically sustainable development and deliver positive outcomes for the environment and communities. The draft Infrastructure SEPP will not achieve this.

We urge the Government to reconsider proposals in the draft Infrastructure SEPP that will reduce important environmental protections, reduce transparent and accountable decision making and remove public participation in the assessment of projects. These changes will contribute to ongoing community dissatisfaction with the planning system.

Yours sincerely,

Kate Smolski

Chief Executive Officer

NCC SUBMISSION ON THE DRAFT STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) AMENDMENT (REVIEW) 2016

GENERAL COMMENTS

The draft *State Environmental Planning Policy (Infrastructure) Amendment (Review) 2016* (draft Infrastructure SEPP) focuses on the provision of infrastructure with the stated aims of stimulating the State's economy and "ensuring our welfare". This approach is inconsistent with application of the principles of ecologically sustainable development that require consideration of environmental issues as well as economic ones.

We consider that the draft Infrastructure SEPP contains inadequate measures to protect the environment and communities from the impacts of the types of infrastructure addressed in it.

NCC is concerned that making many types of infrastructure development either exempt or complying development removes the opportunity of local communities to have input into decisions about the provision of infrastructure which they will use and/or live alongside. They will no longer be able to raise issues about loss of amenity, likely environmental impacts of the development and the suitability of sites for specified new or expanded infrastructure.

We consider that Council should be the certifier for all complying development certificates issued pursuant to these amendments. This should ensure better compliance with requirements for complying development consent and greater consistency in the application of these provisions across the State. The public does not have confidence in private accredited certifiers to adequately oversee complying development nor enforce provisions of complying development certificates.

We are also concerned that many types of development are made development without consent. Although this may require an environmental impact statement (EIS) or a species impact statement (SIS) to be prepared where a determining authority considers that there is likely to be a significant environmental impact, if the determining authority does not consider this to be so, there is unlikely to be public consultation about the development. We consider that in these circumstances, public exhibition of a review of environmental factors (REF) and public submissions on the REF should be mandatory. Alternatively, we consider that the types of development made development without consent should require development consent.

The draft Infrastructure SEPP also aims to streamline assessment of infrastructure and primarily does this by reducing public participation in the assessment of developments by making development exempt or complying development or development without consent, as discussed above. The time that would be involved in seeking and assessing public input on projects is small and NCC considers would be well spent. Allowing the public to consider and have input into projects in their local area helps people to "own" the project and is likely to reduce future conflicts over amenity and other issues arising after infrastructure is constructed.

The draft Infrastructure SEPP further complicates the planning system under the *Environmental Planning and Assessment Act* making it more opaque and less accountable to the community. We consider that the draft Infrastructure SEPP does not provide greater certainty because of its complexity.

SPECIFIC COMMENTS

NCC opposes the proposed amendment of cl 20(2)(g) of *State Environmental Planning Policy (Infrastructure) 2007* relating to exempt development which requires a permit or development consent, where required, to be obtained for the removal or pruning of a tree or other vegetation. This provision should be retained.

Schedule 2 Item [8]

We support the additional requirements relating to the discovery of non-Aboriginal and Aboriginal heritage items or sites.

We suggest that a clause be added requiring immediate stopping of work and notification of the Office of Environment and Heritage (OEH) if a threatened species or population or endangered ecological community is found during the carrying out of work. OEH must then advise what steps should be undertaken to protect the threatened species or population or endangered ecological community.

Schedule 6 Item [7]

We oppose proposed cl 43(1)(c)(i) and (ii). We consider that re-alignment of electricity lines and the installation of new electricity lines of specified capacity should require development consent.

Schedule 9 item [5] Health Services Facilities

We oppose proposed cl 58(1) (d). We consider that helipads including at health services facilities should require development consent because of noise impacts on the neighbourhood.

We also oppose proposed cl 58(2)(a) making clearing of vegetation and “associated rectification and landscaping” development without consent for reasons outline above.

Trees and other vegetation provide many important functions in urban environments including providing clean air and controlling stormwater run-off. Native trees and vegetation are often important remnant vegetation providing habitat for native animals. Destruction of trees and vegetation also increases CO₂ emissions and reduces urban amenity.

NCC is concerned by proposed cl 58B(f). The scope and nature of “environmental management works” should be defined. In the absence of such a definition, we oppose these works being made exempt development. (See also Schedule 22, item [4].

Schedule 10

Proposed cl 58(E) - NCC opposes this clause. We are concerned that Councils will not adequately assess environmental impacts including the clearing of native vegetation and that unless an EIS or SIS is required the public will not have the opportunity to comment on the development.

We also oppose proposed cl 58F(2)(b). Clearing of native vegetation particularly threatened species, populations and endangered ecological communities currently could trigger requirements for a SIS. We consider that clearing of native vegetation should require development consent. Native vegetation increasingly is being cleared and remnant patches of vegetation are becoming increasingly valuable,

particularly in urban environments. Further native vegetation provides habitat for animals that may also be threatened species of populations. The same issue arises in proposed cl 66(3)(c).

Schedule 12

NCC considers that it is unfortunate that the public has not been advised how the commencement of the *Crown Lands Management Act 2016* will impinge on provisions in the draft Infrastructure SEPP relating to parks and reserves.

We also are concerned that by the breadth of development permitted as exempt development under proposed clause 66.

Schedule 13

NCC opposes the breadth of proposed amendments related to port, wharf or boating facilities. In particular, we do not support permitting dredging of new navigation channels as development without consent.

As discussed above unless an EIS or SIS is required, Part 5 development is subject to less public scrutiny and input than development that requires consent. We recommend that the proposed expansion of development without consent for certain port, wharf and boating facilities should not proceed.

We also recommend that consideration should be given to the impact of climate change on ports, wharves and boating facilities in the SEPP. It is important that development for this type of development does not inadvertently exacerbate the impacts of climate change.

Schedule 15

We oppose permitting temporary crushing plants or temporary concrete batching plants operated by public authorities as development without consent because although it is likely there will be impacts such as noise, vibration and dust, there is unlikely to be any public consultation about the development. We consider that they should require development consent.

If these types of development are made development without consent we suggest the following should occur to minimise the potential for negative impacts:

1. industrial plants be located a minimum distance from sensitive locations such as homes and sensitive environmental locations such as watercourses;
2. neighbours be notified of and be given the opportunity to comment on the scope, duration, impact and hours of works;
3. neighbours have access to the REF and conditions to minimise impacts;
4. neighbours be able to utilise an Environment Protection Authority or the Department of Planning and Environment complaint-handling line; and
5. notification be given to neighbours if contamination is found during the course of works.

Schedule 19

NCC objects to the proposal to allow public authorities to replace or upgrade telecommunication facilities in national parks or on land acquired under Part 11 of the *National Parks and Wildlife Act 1974* as exempt development. Given the environmental sensitivity and significance of these lands, greater oversight and assessment of these types of development is required than would be provided by exempt development. Accordingly we suggest that replacing or upgrading telecommunication facilities in national parks (or on land acquired under Part 11) require, at a minimum, assessment under Part 5 instead of being exempt development. At a minimum, consultation requirements with the local council and the National Parks and Wildlife Service should also occur.

Other

We propose that any complying development and not just construction and demolition be restricted to being carried out 7.00 am and 5.00 pm Monday to Saturday. No work for complying development should be allowed on Sundays or public holidays.

CONCLUSION

Overall, the NCC does not support the draft Infrastructure SEPP for reasons set out above. We urge the Government to revise it to ensure that:

- local communities have meaningful input on infrastructure in their area; and
- there are adequate safeguards to ensure protection of the environment and the amenity of communities.