



## **Review of the NSW Environmental Planning and Assessment Regulation 2000: Response to the Issues Paper**

### **1 Background**

The Environment Institute of Australia and New Zealand (EIANZ) is pleased to make comments on the Review of the NSW Environmental Planning and Assessment Regulation 2000 being undertaken by the NSW Department of Planning and Environment. This is a response to the Issues Paper (September 2017) issued for consultation purposes.

The EIANZ broadly supports review and updating of NSW legislation relating to environmental planning and assessment to ensure that it remains relevant to contemporary issues and can work effectively.

### **2 About EIANZ**

The EIANZ, as the leading membership based professional organisation for environmental practitioners in Australia and New Zealand, is an advocate for good practice environmental management. It holds members accountable for ethical and competent good practice environmental management.

The Institute regularly delivers professional development activities about a wide range of subjects of interest to environmental practitioners, and delivers an effective training program for early career environmental practitioners in seven core environmental and professional practice proficiencies.

A Certified Environmental Practitioner Scheme ([www.cenvp.org](http://www.cenvp.org)) is also in place to assess and certify competent experienced environmental practitioners working in government, industry and the community. This includes specialist competencies such as Impact Assessment, Ecology and Contaminated Lands.

The EIANZ is an advocate for environmental assessment and monitoring investigations and reports being certified by suitably qualified and experienced persons for the completeness and scientific rigor of the documents. One of the ways of recognising a suitably qualified practitioner is through their membership of, and certification by, an organisation that holds practitioners accountable to a code of ethics and professional conduct, such as the EIANZ.

The EIANZ is a not-for-profit, charitable organisation incorporated in Victoria, and a registerable Australian body under the Corporation Act 2001 (Cwth), allowing it to operate in all Australian jurisdictions.

### **3 Feedback on the issues paper**

Our feedback is outlined in Table 1.

**Table 1. EIANZ Feedback on the issues paper**

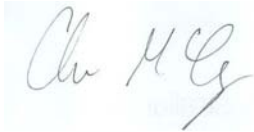
No.	Issue	Response
Box 6	Public submissions on planning matters	<p>The EIANZ supports clear minimum requirements for a formal public submission on a planning matter (such as a development application or planning instrument). Formal public submissions have a continued role as a structured mechanism for feedback and community consultation.</p> <p>We also believe the Department should continue to explore additional, less formal, avenues for communication and consultation. This may include expanding the role of social media and other digital platforms, where appropriate.</p>
1	Environmental planning instruments	<p>The EIANZ support Box 10: Related initiative – Standard format Development Control Plans to follow a standard format in order to improve consistency across local councils and improve user navigation of the planning system and its controls.</p> <p>Initiatives that improve navigation of the planning system and access to related mapping (such as LEP mapping for example) are welcomed.</p>
Box 11	Tracking timeframes for assessment	<p>The EIANZ would support improved transparency in tracking elapsed time during application assessments. An assessment timeline or ‘clock’ would assist consent authorities and applicants have a shared understanding of elapsed time and avoid disputes regarding whether deemed refusal appeal rights exist.</p> <p>Clarity on this administrative issue may help authorities and applicants focus discussion on substantive issues of the application.</p>
2.1	Development assessment and consent: Prescribed policy guidance documents for state significant development	<p>The EIANZ does not support an additional regulatory requirement to ensure proponents for state significant developments consider and comply with key guidelines at an early stage (e.g. as part of the proponent’s request for SEARs). This is normally done as best practice.</p> <p>We fail to see how this would provide proponents with any more certainty regarding SEAR’s and the assessment approach. We note that some SEAR’s do not correspond with NSW Government guidelines.</p>
2.2	Provision for a modification application to be rejected or withdrawn	<p>The EIANZ support an avenue for the formal rejection or withdrawal of <i>modification</i> applications in appropriate circumstances.</p>
2.4	Locating public exhibition requirements	<p>The EIANZ supports streamlining and consolidating these requirements for greater clarity and ease of access. We support greater use of online portals for providing access to exhibition documents, including for designated and integrated development.</p>
2.5	Requirements for notices of determination	<p>The EIANZ supports:</p> <ul style="list-style-type: none"> <li>streamlining these requirements and allowing for this notification to occur via email, with applicants and submitters invited to view the notice of determination and the most relevant documents online via the Planning Portal.</li> <li>requiring all decision-makers to publish reasons for their decisions. This practice will provide greater transparency around how planning decisions are made and how community views have been taken into account, and may</li> </ul>

		reduce the need for a number requirements in Box 12. We would support requiring these reasons to be included in the notice of determination.
2.7	Classes of designated development	<p>The EIANZ supports review of whether the current classes of designated development in Schedule 3 remain appropriate, and to review the level of alignment between these activities and those listed in Schedule 1 of the POEO Act.</p> <p>We note it may be appropriate for designated development thresholds to be lower than those in the POEO Act, for developments where activities below POEO levels may still be significant at the local level.</p>
2.8	Definition of an environmentally sensitive area in Schedule 3	The EIANZ supports review of the definition. The definition should be carefully considered to align appropriately with the new Biodiversity Conservation Act and Regulation, and other legislation. The actual term “environmentally sensitive” itself may need to be reviewed if its prime purpose is to trigger designated development given development in some sensitive areas do not trigger designated development.
3.1	Requirement for public agencies to make their environmental assessments publicly available	<p>The EIANZ supports a requirement for public agencies to make their environmental assessments publicly available to improve transparency.</p> <p>We would also support a general review of the adequacy of Clause 228 of the Regulation (outlines the factors that a public agency must take into account when considering the environmental impacts of their activities pursuant to section 115 of the Act) in line with current practice, NSW Government expectations and considerations of the EIA improvement project.</p>
5.1	Practice notes for VPAs	The EIANZ supports amending the Regulation to ensure planning authorities and developers consider practice notes when parties enter into a VPA.
5.2	Public inspection of draft and final planning agreements	The EIANZ supports requiring all draft and final planning agreements to be exhibited on the Planning Portal, to improve accessibility and transparency around these agreements.
5.3	Council policies on VPAs	The EIANZ supports introducing a regulatory provision to formalise a requirement to publish policies and procedures to guide and explain their use of VPAs, in order to increase accountability and transparency around public benefits that are funded and delivered through VPAs, and to provide greater certainty to developers.
6	Planning certificates	<p>The EIANZ support all applicable encumbrances/land classifications to be included on relevant planning certificates and that where possible such encumbrances should be also presented spatially within the electronic or hard copy certificates by the relevant Council or State mapping system.</p> <p>Mapping of most encumbrances/restrictions/land classifications such as drainage/road easements, flooding, vegetation, bush fire prone land, coastal zone etc should be relatively straightforward via Councils land information systems and would make interpretation of planning certificates much easier.</p> <p>The EIANZ support the Regulation prescribe mapping of relevant information in planning certificates for clarity, transparency and ease of use.</p>

## 12 Conclusion

The EIANZ would be pleased to assist in, and contribute to the further development of the planning reforms. EIANZ can be contacted directly via the NSW Division Policy and Practice Lead: [cmcevoy@niche-eh.com](mailto:cmcevoy@niche-eh.com) or mob 0407 060 163.

For and on behalf of EIANZ NSW Division.



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This submission has been voluntarily authored and reviewed by the following EIANZ member practitioners and EIANZ NSW gratefully acknowledges their efforts in compiling this submission.

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