

Environmental Representative Protocol

October 2018



Planning &
Environment

This protocol is a policy document only and does not affect or replace relevant statutory requirements. If any inconsistency arises between the provisions of this protocol and an instrument or any relevant statutory provisions, the statutory provisions or instrument will prevail.

While every effort has been made to ensure that this document is correct at the time of printing, the State of New South Wales, its agents and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.

The protocol is not intended to give rise to any rights, claims, benefits, privileges, liabilities or obligations with respect to matters the subject of the protocol.

The protocol may be subject to revision without notice.

Environmental Representative Protocol

© State of New South Wales

October 2018

Contents

1.	Introduction	1
1.1	Scope	1
2.	Expectations and minimum standards	2
2.1	Role of the Environmental Representative	2
2.2	Skills and qualifications	3
2.3	Experience	4
2.4	Availability	4
2.5	Departmental communication	4
2.6	Site inspections	5
2.7	Environmental Representative monthly reports	5
2.8	Non-compliances and incident reporting	6
3.	Environmental Representative engagement	7
3.1	Endorsement	7
3.2	Engagement of the Environmental Representative	7
3.3	Alternate and additional Environmental Representatives	7
3.4	Environmental Representative Performance	7
4.	Glossary	8

1. Introduction

This document sets out the expectations, administrative arrangements and general procedures in respect of an Environmental Representative (ER) required to be appointed by conditions of consent or approval¹ for a project. It is to be reviewed at least every two years.

These requirements do not replace the need to comply with the conditions of approval in respect of the role of an ER. If there is any inconsistency between the requirements of a project's conditions of approval and the requirements of this document, the conditions of approval prevail.

1.1 Scope

ERs are engaged by proponents² to assist with achieving compliance in a proactive and coordinated manner and are required on projects where stipulated by conditions of approval.

An ER is a suitably qualified and experienced person who was not involved in the preparation of the EIS or Response to Submissions, and is independent of the construction and design personnel for the project and those involved in delivery of it.

ERs are expected to act in an independent manner. A declaration of associations and interests will need to be completed by the ER and provided to the Department to demonstrate their independence in relation to the preparation of the EIS and Submissions Report and the construction, design and delivery of the project. This declaration should be provided to the Department together with documentation requesting approval of the Planning Secretary of a proposed ER (refer to section 3 of this protocol).

¹ For the purposes of this document, the term 'approval' includes consent for SSD projects, approval of SSI projects and approvals of modifications to those consents and approvals

² For the purposes of this document, the term "proponent" includes applicants for SSD projects that are assessed under Part 4 of the EP&A Act and proponents for SSI projects that are assessed under Part 5.1 of the EP&A Act.

2. Expectations and minimum standards

2.1 Role of the Environmental Representative

Below are the minimum requirements and expectations for the role of an ER, subject to express requirements in conditions of approval.

2.1.1 General

- provide oversight of environmental and planning performance and communicate this to the Department
- assist with achieving compliance in a proactive and coordinated manner
- facilitate proactive management of environmental issues.

2.1.2 Advice

- provide guidance and advice to the proponent and communicate with the Department on environmental risks and compliance issues and recommendations to mitigate or avoid such risks and issues
- consider and recommend to the proponent any improvements to be made to work practices to avoid or minimise adverse impacts to the environment and the community
- be a point of communication between the proponent and the Department in relation to the environmental performance of a project, noting there are also other points of communication between the proponent and the Department
- consider and inform the Planning Secretary on matters specified in the conditions of approval
- assist the proponent and/or Department in developing solutions to respond to complainants
- consider and recommend measures to the proponent to improve compliance performance.

2.1.3 Documents

- review relevant documents as specified by the conditions of approval³, ensure they are consistent with requirements in or under the approval and if so, make a written statement to this effect prior to submission to the Planning Secretary for approval or implementation as required
- regularly monitor the implementation of all relevant documents required to be prepared under the conditions of approval to ensure implementation is being carried out in accordance with what is stated in the document and the conditions of approval

³ Following submission for the approval of the Planning Secretary, the Department may conduct a broader review of the document

- prepare and submit to the Planning Secretary and other relevant regulatory agencies, for information, a monthly report detailing the ER's actions and decisions on matters for which the ER was responsible in the preceding month (or another timeframe agreed with the Planning Secretary).
- if specified by the conditions of approval, consider any minor amendments to be made to management plans, sub plans, monitoring programs and other relevant documents, plans or procedures that comprise updating or are of an administrative nature, and are consistent with the conditions of approval. If satisfied such amendment is necessary, and consistent with the conditions of approval, approve the amendment. This does not include any modifications to the approval.

2.1.4 Compliance

- identify potential non-compliances and poor environmental management practices and provide recommendations to the proponent for rectification. Monitor the implementation of any recommendations made
- monitor and report on the implementation of the environmental documentation required under the conditions of approval
- help plan, attend or undertake Department audits of the project including scoping audits, programming audits, briefings, and site visits.

To ensure that the ER role is performed appropriately, it is important that the ER does not undertake the following activities:

- prepare project environmental documentation
- maintain project environmental controls
- liaise with regulatory authorities on behalf of the Department or proponent, unless requested by the Department in writing
- respond directly to complainants unless otherwise requested by the Department in writing
- provide project training or inductions
- undertake Independent Audits as required by the conditions of approval
- prepare environmental documentation for project modifications.

2.2 Skills and qualifications

An ER must have the following skills and qualifications to be considered suitable for approval by the Planning Secretary:

- higher education qualifications (generally provided by universities and by other higher education institutions such as Technical and Further Education institutes and Registered Training Organisations) in either science, environmental engineering, environmental management or an equivalent field
- excellent communication, report writing, negotiation and inter-personal skills
- relevant industry association recognition (preferred, although not essential)

- formal audit training and experience undertaking audits
- proven understanding and application of NSW State and Local environment and planning legislation, relevant Australian Standards, NSW environmental regulatory requirements, Federal environmental legislation and environmental best practice.

2.3 Experience

An ER must have the following experience to be considered suitable for approval by the Planning Secretary:

- demonstrated site-based experience in construction environmental management and compliance
- relevant experience in senior environmental management and/or ER/auditing roles on large/ complex projects, including a site-based component
- relevant experience in the development and implementation of environmental management systems and plans
- for larger, more complex projects, it is preferable that the proposed ER has previous experience as an ER in NSW.

2.4 Availability and capacity

An ER must be available to attend, as requested, any site inspections or meetings or to provide any reports to the Department as required.

Although ERs are not precluded from being appointed for more than one project at a time, they must also have the capacity to undertake the ER role as required for the duration of the project.

2.5 Departmental communication

To assist the ER to perform their role effectively, the Department will:

- advise key contacts for each project to ensure that the ER has a clear line of communication
- notify the ER that ER reports are to be submitted to compliance@planning.nsw.gov.au
- work with the ER to undertake joint site inspections where feasible and desirable
- where considered appropriate, advise the ER when compliance investigations are being undertaken by the Department
- work with the ER on the resolution of environmental management issues that may be identified by the community
- provide feedback to the ER relating to their performance in implementing ER responsibilities as appropriate.

2.6 Site inspections

The ER is required to inspect project work sites at regular intervals, typically weekly, although the frequency may vary depending on the level of project activity and associated risks. The inspection frequency and schedule must be agreed with the proponent and be made known to the Department in accordance with the conditions of approval and the requirements of any relevant sub-plans. The ER can seek the advice of the Department in relation to the frequency of inspections.

The ER should undertake additional inspections as appropriate in response to incidents, non-compliances and poor performance.

The ER may also undertake other site inspection activities as part of project specific environmental coordination or reference groups.

The ER must be present during an indicative period of high risk project activities identified in the proponent's environmental risk assessment or CEMP, and specific activities as considered necessary by the ER, the Department or the proponent.

The ER must provide a summary of details of site inspections conducted in the reporting period in their monthly reports to the Department.

2.7 Environmental Representative monthly reports

ERs are to submit a monthly report to Planning Secretary and other relevant regulatory agencies. ER monthly reports must be concise, report by exception and focus on the key environmental or compliance issues for the relevant reporting period. The ER report must be separate and independent from any inspection report otherwise produced by the proponent or those involved in the delivery of construction of the project. It is recommended that the ER include recent photographs that illustrate the environmental performance or project stage in monthly reports.

The format and content of the ER report is to be agreed with the Department prior to submission of the first ER report. As a minimum, the ER report must contain the following information for the relevant reporting period:

- construction activities carried out during the reporting period
- proposed upcoming construction works where known
- ER activities undertaken during the reporting period including:
 - site inspections
 - audits undertaken as part of the ER role
- a summary of community consultation undertaken by the proponent and complaints received
- evaluation of environmental performance, including any incidents or non-compliances
- an analysis of lessons learnt and opportunities identified for improvement
- any changes to the project, including changes to:
 - CEMP, AFMPs and sub plans
 - the approved project

- any meetings attended by the ER
- summary of documentation issued by the ER, including:
 - any advice or requests
 - corrective action requests or non-compliance reports
 - out of hours works approval(s)
 - other, such as certifications and minor ancillary facilities approvals
- closing remarks.

The monthly reports will form the basis of discussion at the regular joint ER and Department meetings.

2.8 Non-compliances and incident reporting

In respect of non-compliances and incidents, the role of an ER is to identify actual or potential non-compliances, incidents and poor environmental management practices that become apparent while undertaking the role of the ER and to provide advice to the proponent for rectification.

The ER is to notify the proponent of any of the above immediately. The proponent remains responsible for notifying the Department of any actual or potential non-compliance or incident in accordance with the conditions of approval. It is not the role of the ER to notify the Department of these at the time they occur, but details of any actual or potential non-compliances, incidents and poor environmental management practices must be included in the ER's monthly reports to the Department.

The Department has enforcement powers in relation to the conditions of approval and may carry out enforcement action if considered appropriate having regard to relevant policies.

3. Environmental Representative engagement

3.1 Endorsement and approval

The proponent must propose an ER (and any alternate or additional ERs) to the Department for endorsement in accordance with the conditions of approval. The Department will review the nominated person (s) and if satisfied, make a recommendation to the Planning Secretary to approve the ER (s) nominated for the project.

To be considered appropriate for approval the proponent must provide sufficient information to demonstrate that the ER meets the skills, qualifications and experience requirements noted above, was not involved in the preparation of the EIS or Response to Submissions, and is independent of the construction and design personnel for the project and those involved in delivery of it. If the Department is not satisfied that the ER is independent, the ER will not be endorsed.

3.2 Engagement of the Environmental Representative

ERs may be engaged on a single or multiple portions or for a program of works depending on the scale and complexity of the project.

ERs must be engaged prior to the commencement of any works until the completion of all relevant works, as required by the conditions of approval.

3.3 Alternate and additional Environmental Representatives

Depending on the scale and complexity of a project there may be one or more alternate or additional ERs engaged on a project. An alternate ER may be required for periods when the principal ER may not be available and an additional ER may be required due to the scale and complexity of a project.

When nominating an ER, the proponent should make note of any alternates or additional ERs (including their contact details) that may be used on a project. Alternate and additional ER's must also be approved by the Planning Secretary.

It should be made clear under what circumstances the alternate or additional ERs would be utilised and what procedures would be put in place to ensure the alternate or additional ERs are appropriately informed to take on the ER role.

3.4 Environmental Representative Performance

The performance of the ER against the requirements of the conditions of approval and this protocol may be reviewed by the Department throughout the engagement. The ER should seek regular feedback from the Department relating to their performance in implementing ER responsibilities.

Previous performance of an ER will be taken into consideration by the Department for any future engagements.

4. Glossary

Abbreviation	Meaning
AFMP	Ancillary Facilities Management Plan
CEMP	Construction Environmental Management Plan
Department	Department of Planning and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
ER	Environmental Representative
Minister	Minister for Planning
Planning Secretary	Planning Secretary of the Department, or nominee

