



Planning &
Environment

Environmental Impact Assessment Improvement Project

*Discussion Paper
October 2016*

Introduction

The Department of Planning and Environment (the Department) is undertaking a review of the Environmental Impact Assessment (EIA) process for State significant projects in NSW (the EIA Improvement Project). This discussion paper describes potential improvements to the EIA process, including the post approval phase of these projects. The purpose of the paper is to inform a discussion with stakeholders, which will shape the next stages of the project.

Opportunities for input

Consultation with stakeholders is being undertaken in three stages. The outcomes of the consultation will inform a series of EIA guidelines and supporting documents in advance of the implementation of any agreed improvements.

We are currently at stage 1:

- Stage 1: engagement with a range of stakeholders on key issues and preliminary initiatives and online engagement with the public.

Consultation will continue during stages 2 and 3:

- Stage 2: engagement with stakeholders on the content of draft guidelines; and
- Stage 3: public exhibition of those draft guidelines. Comments received during exhibition will contribute to the finalisation of the guidelines which will be published to support the implementation of improvements.

Scope of the project

The EIA Improvement Project seeks to streamline the EIA process and improve environmental outcomes by:

- Promoting earlier and better engagement;
- Improving the certainty and efficiency of decision making;
- Building confidence in the integrity of the EIA process;
- Providing clarity and guidance for proponents and the community; and
- Improving the consistency and quality of EIA documents.

The improvements will be supported by EIA guidelines and documents targeted at project proponents and their consultants and the community. The guidelines will be updated over time to incorporate further refinements.

The current scope of potential EIA improvements has been developed by reviewing:

- Issues commonly raised in relation to the NSW EIA process through previous consultations, legal opinion and judgements, inquiries, reviews and academic literature; and
- EIA practice in other jurisdictions particularly Western Australia, Queensland and Victoria, and internationally (European Union, South Africa, Ireland, UK, California, among others).

Some of the issues identified to date

Issues previously raised by stakeholders have been grouped into the overarching themes shown below.

Lack of focus on the most important issues.

Need for earlier and better engagement.

Complex process with long and uncertain timeframes.

Inconsistent quality and accessibility of documentation.

Better consideration of cumulative impacts.

Lack of clarity on the approved project and verifying compliance during construction and operation.

Lack of certainty and understanding of project changes that occur following approval.

Lack of confidence in the project assessment process.

Proposed improvements

Based on the issues identified and preliminary consultations with government agencies and key stakeholders, proposed improvements have been developed for further discussion. The potential initiatives presented below are preliminary ideas, with scope to add and change these following consultation.

An overall framework for the EIA improvements will be established through principles to guide the detailed implementation of the improvements. The principles will address: proportionality, ESD, hierarchy of response to impacts, effective consultation, cumulative assessment, integrity and confidence, consistent conditions / compliance, and a focus on environmental outcomes throughout the entire project cycle.

Initiative 1: Develop a consistent framework for scoping within the EIA process

This initiative aims to establish a consistent framework for scoping the EIA process by proponents, the community and the Department. This will allow EIA to focus on the most important issues as identified during scoping by tailoring the level of examination of an issue to its relative importance. A consistent framework will promote better understanding of the scope of an EIS and streamline the preparation of EIA documents without compromising environmental standards. This initiative would apply to all phases of the EIA process including scoping, assessment, determination and compliance.

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);
- Priorities derived through scoping should inform subsequent stages of the EIA process; and
- Strengthening the role of risk assessment during the scoping stage.

Initiative 2: Earlier and better engagement

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.

Potential improvements include:

- Pre-lodgement meeting to discuss community engagement that is to occur during scoping;
- Proponent led engagement during scoping based on engagement objectives that inform a strategy;
- Proponents and decision makers being required to inform community members how their views have been taken into account, or if not why not;
- Options for Department led engagement on key issues; and
- Identification of options to make EIA documentation publicly available at all stages of the process.

Initiatives one and two, when taken together, represent a move to focus greater effort at the front end of the EIA process so that the most important issues are understood by all EIA participants prior to the commencement of detailed assessment.

Initiative two also recognises that better engagement improves transparency and creates a more consistent approach to how EIA documents and information is made publicly available.

Initiative 3: Improve the consistency and quality of EIA documents

EIA documents are getting larger and more complex without necessarily improving public understanding or decision making.

Potential improvements might include:

- Requirement for a consolidated project description in a chapter of the EIS that can be linked to the conditions on which the approval is provided. Subsequent modifications would be included in this consolidated chapter;
- Introduction of clear summaries of the EIS to promote public understanding;
- Documents being easier to read and understand without compromising technical standards;
- The purpose and intended audience of documentation being better defined; and
- Greater guidance about the form, content and quality of all documentation.

Initiative 4: Set a standard framework for conditioning projects

This initiative 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.

Potential improvements include the introduction of a standard range of condition types that might be:

- Outcome or performance based;
- Prescriptive; and /or
- Management based.

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.

Initiative 5: Improve the accountability of EIA professionals

Potential ways to build public confidence in the integrity of the project assessment process and the environmental / planning profession could be addressed through:

- 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
- Extending the use of peer review of EIA documents.

Initiative 6: Provide greater certainty on EIA timeframes

This initiative aims to reduce the uncertainty of assessment timeframes for all EIA participants.

Potential improvements might include:

- Setting timeframes for each stage of the EIA process, including the post approval phase; and
- Better coordination and communication between Government agencies, proponents and the community.

Initiative 7: Strengthen the monitoring, auditing and reporting of compliance

This initiative aims to develop a clear process for monitoring, auditing and reporting of compliance against conditions of approval.

Potential improvements might include:

- Development of an overall framework for the post-approval stage of projects;
- Development of a common system for monitoring, auditing and reporting compliance;
- Greater accountability by improving public access to post-approval documents; and
- Clarification of the roles, obligations and rights of everyone involved in compliance.

Initiative 8: Project change processes following approval

This initiative 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.

Potential improvements might include:

- Development of a process to communicate information to stakeholders about continuing project development following project approval as well as project changes;
- Greater guidance on the level of assessment and further consultation required for modifications; and
- Development of a process to capture and consolidate project changes, conditions of approval and compliance obligations.

Further reading

If you would like further information on the EIA process internationally and in Australia, a selection of useful references is provided below.

- *European Commission Guidelines on EIA*: <http://ec.europa.eu/environment/eia/eia-support.htm>
- International Association of Impact Assessment Information on EIA: <http://www.iaia.org/fasttips.php>
- International Association of Impact Assessment EIA Best Practice: <http://www.iaia.org/best-practice.php>
- *WA EPA EIA Guidelines*: <http://www.epa.wa.gov.au/EIA/proponent-guides/Pages/default.aspx?cat=Guides%20for%20proponents&url=EIA/proponent-guides>
- Mandy Elliott, 'Environmental Impact Assessment in Australia, Theory and Practice' (6th edition) <http://www.federationpress.com.au/bookstore/book.asp?isbn=9781862879454>
- Macintosh, A, 'Best practice environmental impact assessment: A model framework for Australia', *Australian Journal of Public Administration*, vol. 69, no. 4, pp. 401-417. https://www.researchgate.net/publication/230498724_Best_Practice_Environmental_Impact_Assessment_A_Model_Framework_for_Australia
- Citizen's Guide to the National Environmental Policy Act: https://ceq.doe.gov/publications/citizens_guide_to_nepa.html