



ENGINEERS  
AUSTRALIA

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# Environmental Planning and Assessment Act

Consultation Paper Response

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14 April 2017

## ABOUT ENGINEERS AUSTRALIA

The Institution of Engineers Australia (Engineers Australia) is the not-for-profit professional association for engineers. Established in 1919, Engineers Australia is constituted by Royal Charter to advance the science and practice of engineering for the benefit of the community.

Engineers Australia is the trusted voice of the profession. We are the global home for engineering professionals renowned as leaders in shaping a sustainable world.

### Introduction

Engineers Australia would like to thank the Department of Planning and Environment for the opportunity to respond to the public consultation on the Environmental Planning and Assessment Amendment Bill 2017 (NSW) (EP&A Act).

Engineers are a vital component in planning, construction and infrastructure; from civil and structural engineering through to fire safety and cost engineering, engineers and engineering contribute to these multi- billion dollar sectors of the NSW economy.

Engineers are active throughout the certification and building process where civil engineering degrees are a requirement for licensing for general building and within the current framework as accredited certifiers. Furthermore, registration on the Engineers Australia National Engineering Register (NER) is mentioned within the current Building Professionals Board's Accreditation Scheme. Applicants who are registered with Engineers Australia's NER are... *"taken to satisfy all the specialty skills, specialty knowledge, specialty underpinning knowledge, specialty qualifications and experience requirements for the relevant accreditation statement."*

The National Engineering Register (NER) is the largest industry run register in Australia and sets benchmarks for engineers to practice. The NER is used by governments as an alternative to state-run registers and provides consumers of engineering services with a means for assessing an engineer's qualifications.

Ensuring a vibrant and inclusive planning system that can adapt to rapid changes in design, construction and planning, as well as providing established and clear frameworks is critical to connecting communities in NSW, and developing new communities that have access to streamlined planning systems that utilise space with quality of design and sustainable interaction with the environment.

### Submission

Engineers Australia is in general supportive of the NSW State Government's moves to improve the *Environmental Planning and Assessment Act* in response to recommendations from the Lambert Review.

Improving processes to provide greater clarity in the planning and construction sector can only lead to better quality of buildings and better integration in the planning process.

Ensuring compliance within the new Act will be a challenge for both government and the industry, and it is a challenge that Engineers Australia believes will work well when all parties are focussed on outcomes that benefit the community as a whole.

Engineers Australia welcomes measures within the Amendment Bill that expand the experience of members on planning committees to include engineering. Engineers Australia sees this as a positive step in recognising the contribution that professionals within industry can bring to the planning process.

We also welcome changes in the Act that will encourage the participation of communities in the planning process. For too long planning and the institutional frameworks within which they occur have too often been short term, reactive, piecemeal and inconsistent. Planning has too often been implemented with little community engagement.

Engineers Australia believes that communities should be comprehensively engaged to ensure that land use is designed to support the community's needs.

The use of umbrella organisations with multi-disciplinary teams specialising in engineering, architecture and planning will assist the government in better land use by providing comprehensive advice on integrating communities in NSW.

Supporting the community also requires an understanding by the public of the processes and applications.

To this end, Local Environmental Plans (LEPs) are a key component where the community needs to understand and be consulted on any proposed changes. The localisation of LEPs means that any changes can alter plans, designs and requirements of the public, especially where renovations to houses are being undertaken.

What may appear to be simple matters at a council level have a flow on effect to residents, and can change streetscapes and the amenity of properties. Ensuring that LEPs are up to date should be a focus of local government.

According to the Planning Legislation Update issued by the Department, the average age of LEPs in NSW was 14 years. Considering the rapid rate of change that is occurring in areas such as technology and building methodologies it would seem inconceivable that an instrument that is vital to the planning process would not be amended more regularly.

Engineers Australia agrees with the Government's proposal that Local Environmental Plans (LEPs) are assessed every five years, however Engineers Australia believes these reviews should be comprehensive, rather than the proposal that a simplified check box review is undertaken by councils.

While it may be that some councils may see little change in the plans over the proposed period, best practice would be that a comprehensive review is undertaken as a full review allows for better research into new methodologies, provides adaptability to processes and assists councils in future proofing their local areas which can only benefit the community.

Simplification of quite complex issues - such as planning instruments, council requirements and certification - can only lead to a better understanding of these issues and thereby make the process simpler for all participants.

The proposed changes to standardise Development Control Plans (DCPs) should also contribute to a more transparent system for the public. While red tape reduction for industry should remain a goal, ensuring transparency for the public should be the primary and first goal, and to that end Engineers Australia is in general agreement with the proposed changes to the DCP regime.

The addition in the Bill of the Owners Building Manual is one such measure that Engineers Australia sees as a step in the right direction of empowerment to the person who seeks the benefit of building work.

Ensuring, through the Regulations, that the Manual must be written in plain English would be an advantage to the owner, especially in regards to fire and safety in more complex buildings.

As mentioned earlier in this submission compliance to the new Act will be a measure of its success.

The Amendment Bill's provisions for enforcement, including the new penalty provisions, goes some way to ensuring that the compliance is front of mind. This is especially important in clamping down on unauthorised works and the issuing of certificates such as under S6.5(5) of the Amendment Act. Further, Engineers Australia supports, in principle, changes to the Act that will allow for the rejection of work carried out that is inconsistent with development consents. We see this as an extension of the guiding principles of the department, that finalised work matches both what is designed and what is consented to, provided that reasonable amendments during the construction phase can be accommodated.

An extension of this are the provisions that allow a court to invalidate construction certificates. The previous construct, as noted in the Department's guide, that the construction certificate could not be invalidated even though the final construction had deviated markedly from the design was indeed flawed. Engineers Australia sees the addition of these provisions as a positive step.

Engineers Australia looks forward, however, to seeing more detail in the Regulations as they are developed. While the Act allows for a three month window for application to invalidate the construction certificate, ensuring that this window cannot be exploited by either party should be examined in more detail.

However, there does appear within the changes to the Act, no provisions for the transfer of liability from the certifier to the builder/developer responsible for any non-compliance issues, and again Engineers Australia would be happy to have discussions with the Department on this matter to gain some further clarity.

Engineers Australia supports the need to complete design work prior to construction and to then build in accordance with the design. However, issues may arise as any changes in the compliance certification may prevent the completion of design by other parties until after the development consent, which may cause significant disruption to current construction practices.

Finalisation of design by the installing contractor is common in the industry and necessary, due to the current spread of skills, hence any reform should allow the commercial opportunities in this process to be considered and only ensure that the compliance is improved.

Safety of buildings should always be the paramount objective of any regulation or legislation dealing with construction and planning. This can be done by ensuring compliance to safety standards, as well as ensuring that building products used are matched to Australian standards.

Engineers Australia supports the proposals in the Amendment Act that work ensure the safety of building and through that the safety of the public.

Engineers Australia looks forward to examining guidance that will be issued by the Department in relation to issues raised in this review, especially in relation to infrastructure through S94 and under Part 5 of the EP&A Act.

Clear lines of communications between agencies and state owned corporations is essential for the development of cost effective delivery of infrastructure.

Ensuring that guidance is provided to industry should involve strong collaboration with industry.

Under s6.5(5), the Amendment Act notes, for example, that the Minister may issue guidance to certifiers. To ensure that the guidance from the Minister to certifiers is timely and current,

consultation should be held with key industry bodies involved in certification, such as the Australian Institute of Building Surveyors (AIBS).

Similarly, within the provisions of the Amendment Bill it is noted within the draft Regulations that Regulation Part 6 (f) may provide for exemption of construction certificates and occupational certificates for manufactured homes or temporary structures. Again, consultation with industry would be highly recommended before undertaking any exemptions. Risks of allowing some structures to be exempted from certification could lead to the use of non-conforming products, or structural issues in the manufacturing process.

With regard to the proposed Regulations, Part 6 within the published Amendment Act notes that the regulations may outline requirements to comply with provisions of the Building Code of Australia in relation to building work. This would again be a positive step, however, there is also an opportunity within the regulations to ensure that building products being used comply with the list of accredited products issued by the Australian Building Codes Board (ABCB).

Ensuring that a person has sufficient experience in the area in which they are contracted to undertake work should be a primary focus of any regulatory framework, and that there is suitable separation from the commercial interest and the need to uphold the public good.

There is concern that the issuance of certificates can be undertaken by a person who may not have the sufficient experience in their field to competently undertake the work.

It may be that the regulations can clarify this position in greater detail; and Engineers Australia would be happy to discuss this in more detail with the Department.

Also Engineers Australia would like to clarify with the Department how directions by principle certifiers could be applied to a development after the building has been certified and what the potential outcomes might be? At this juncture it is unclear on whether the occupancy certificate will equate to the end of the liability period for the builder/developer.

Clear definitions on the replacement of a certifier would also be an area under the regulations where Engineers Australia believes that clear guidance is given. Within other jurisdictions clear lines and parameters are given for the replacement of a certifier, however it would be recommended that any guidance through the regulations are done with the consultation of peak bodies such as the AIBS and that any definitions in the regulations ensure that the system cannot be exploited.

## Recommendations

**Recommendation 1:** Require all councils to comprehensively review Local Environment Plans at least every five years.

**Recommendation 2:** Develop guidelines to enable LEP reviews to include best practice community consultation processes.

**Recommendation 3:** Retain the proposed penalty and enforcement provisions.

**Recommendation 4:** Conduct further consultation on proposed provisions to provide for the invalidation of construction certificates

## Conclusion

The future planning needs of NSW requires a dynamic and robust Act that has the capability to adapt to rapid changes, whilst maintaining a strong set of processes that are clearly defined for all actors in the construction and development line.

Providing an Act and set of regulations that can ensure cleaner communications between councils, the state, developers, engineers, certifiers and the public should be the aim of this new Act.

Engineers are a cornerstone in both the planning and delivery of our state. Critical infrastructure, housing, roads, rail and transport that connect our communities and strengthen our economy are delivered and used by engineers.

Engineers Australia welcomes the changes proposed by the State Government and the Department and we look forward to working collaboratively with the Government to ensure that the future needs of NSW can be met through the amended EP&A Act.

If the Department would like to discuss this submission or any other proposed changes to the Act with Engineers Australia, please contact Greg Ewing, General Manager Sydney Division on (02) 9410 5629 or send an email to [gewing@engineersaustralia.org.au](mailto:gewing@engineersaustralia.org.au).



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