



Hunter & Central Coast
Development
Corporation

Review of Environmental Factors Policy

June 2019



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Document Management

Version	Date	Endorsed		Amendment Summary
		Name	Signature	
1	17/6/2019	Valentina Misevska, COO	CM9	
2	30 July 2020	Valentina Misevska, CEO	CM9	12 month review to include REF modifications and clarify review process
3	May 2022	Valentina Misevska, CEO		Changes to reflect changes to SEPP and Regs

Introduction

As a public authority, Hunter and Central Coast Development Corporation have the ability to undertake some works without the need for development consent. Many of these works are enabled through the provisions of the *State Environmental Planning Policy (Transport and Infrastructure) 2021* (TISEPP). Where development consent is not required, the *Environmental Planning and Assessment Act 1979* requires HCCDC to consider the environmental impact of the proposed activity. The initial assessment of this potential impact is through a Review of Environmental Factors (REF). Should this review indicate significant environmental impacts, or the activity be a prescribed activity, then a full Environmental Impact Statement (EIS) must be undertaken.

Generally, for the works being undertaken by HCCDC a REF is the appropriate mechanism for considering the environmental impact of the works. This policy therefore focusses on the REF requirements and processes that will be followed by HCCDC in the development and determination of a REF.

Scope

The TISEPP provides for a wide range of public infrastructure works that can be undertaken by or on behalf of a public authority including park upgrades, road works, wharf facilities, and water and sewer servicing. The TISEPP identifies works that are considered to be:

- exempt development – not requiring development approval
- complying development – requiring a complying development certificate to be issued for the activity
- development permitted without consent – requiring an assessment of the environmental impacts of the activity (generally through a REF)
- development permitted with consent – requiring development consent from the relevant planning authority (but enabling development that may otherwise not be permissible).

Other environmental planning instruments (including other SEPPs and LEPs) may identify works that are exempt, complying or development with or without consent.

This policy will focus on development permitted without consent, as being the area of development for which environmental assessment (in the form of a REF) under Part 5 of the EPA Act is required.

The policy seeks to provide a framework to ensure that all REFs prepared for determination by HCCDC meet the statutory requirements, and enable a full and informed consideration of the environmental impacts of the proposal. The policy also provides a consistent approach to the assessment of the impacts through the provision of a REF template, and establishes the public notification, consultation and publication procedures to be followed by HCCDC.

Legal advice should be obtained to ensure that the correct provisions are being followed.

REF Requirements

Part 5 of the EPA Act requires a determining authority to *examine and take into account to the fullest extent possible all matter affecting or likely to affect the environment by reason of that activity* (s 5.5).

The trigger for the requirement for an EIS to be prepared and considered is activities which are likely to significantly affect the environment. One way to assess whether the environmental impact may be considered significant is through a review of environmental factors or REF. Exemptions are applied where the propose comprises a modification to a previously considered activity which will reduce the impact, a routine activity or an activity that has been assessed by another determining authority (s 5.4 EPA Act).

The *Environmental Planning and Assessment Regulations 2021* (EPA Regs) identify the factors which are to be taken into account when considering the likely impact of the activity. This provides for:

- (a) *any environmental impact on a community,*
- (b) *any transformation of a locality,*
- (c) *any environmental impact on the ecosystems of the locality,*
- (d) *any reduction of the aesthetic, recreational, scientific or other environmental quality or value of a locality,*
- (e) *any effect on a locality, place or building that has*
 - i. *aesthetic, anthropological, archaeological, architectural, cultural, historical, scientific or social significance or*
 - ii. *other special value for present or future generations,*
- (f) *any impact on the habitat of protected animals (within the meaning of the Biodiversity Conservation Act 2016),*
- (g) *endangering of any species of animal, plant or other form of life, whether living on land, in water or in the air,*
- (h) *long-term effects on the environment,*
- (i) *degradation of the quality of the environment,*
- (j) *risk to the safety of the environment,*
- (k) *reduction in the range of beneficial uses of the environment,*
- (l) *pollution of the environment,*
- (m) *environmental problems associated with the disposal of waste,*
- (n) *increased demands on resources (natural or otherwise) that are, or are likely to become, in short supply,*
- (o) *the cumulative environmental effect with other existing or likely future activities,*
- (p) *the impact on coastal processes and coastal hazards, including those under projected climate change conditions*
- (q) *applicable local strategic planning statements, regional strategic plans or district strategic plans made under the Act Division 3.1*
- (r) *other relevant environmental factors*

(Part 8, Div 1 171(2))

Therefore, in order to assess whether an EIS is required, the REF must as a minimum consider the above.

Preparing an REF

REFs are prepared by the proponent, which in the case of HCCDC projects, is generally HCCDC who may also be the determining authority.

It is important that the officer or entity charged with the preparation of the REF is appropriately qualified to undertake the review. This will depend on the scope and nature of the proposed works and the potential environmental factors that need to be considered. For extremely minor works, where there are considered to be no environmental impacts, then it may be appropriate

for an officer to undertake the review. Where environmental impacts are to be considered across multiple areas of expertise, a more thorough REF will be required, and must include consideration by appropriate technical specialists for key aspects.

Legal review of planning pathway

Legal advice or confirmation from an appropriately qualified planning or environmental professional will be required to demonstrate that the planning pathway for the development is appropriate and that works can be undertaken as development without consent. DPE legal can assist in this regard but should be contacted early in the project to ensure that any aspects which may require an alternative planning pathway can be identified.

Determining Authority for an REF

Where the provisions of the TISEPP provide for works that are being undertaken on behalf of a public authority (for example a Council) then the determining authority for the works would generally be the Council. However, section 5.1 of the EPA Act provides for the public authority funding the works to also have a determining role in the impact of the proposal (ie the REF). Where two or more determining authorities are identified, only one authority need to undertake an environmental assessment, with the other authorities able to rely on that determination (s5.4 (c) EPA Act).

This means that HCCDC are able to be the determining authority for a range of environmental assessments for works that are being undertaken on HCCDC owned land, or works on behalf of a local council or other government agency. The relevant determining authority could also be Council, as the authority on whose behalf works are being undertaken, and HCCDC can rely on their determination of the REF to proceed with the works.

Timing of REFs

The REF must be prepared and determined before the carrying out of the activity. In order to ensure that the construction contract reflects any findings and mitigation measures included in the REF, the REF must be determined prior to the release of the tender for construction. The project program must ensure that adequate time is provided to allow for completion and determination of the REF. The program must also consider statutory consultation requirements, peer review of the REF and other required approvals.

Other approvals

The undertaking and determination of a REF does not negate the need for approvals under other legislation, for example, the *Heritage Act 1977* or the *National Parks and Wildlife Act 1974*. Consideration needs to be given to the timing of gaining these approvals in the works program. The REF may need to be revised in response to the other approvals, with the information provided for the REF informing applications for other approvals.

Peer review of REFs

REFs should be peer reviewed prior to determination where:

- the cost of works is greater than \$5m
- the activity has been identified by the Executive as contentious or complex
- the REF has been publicly exhibited and submissions raised issues that could not be adequately addressed through management measures
- sensitive receptors or protected species have been identified in the vicinity of the site
- other matters as determined by the CEO.

The peer review should ensure that the review is appropriate to the proposed development and adequately addresses the obligations of the approval authority to consider environmental impacts. The peer review is not an opportunity for reassessment of the environmental factors.

A panel of experts is to be established to provide the peer review. This may include internal staff with the relevant expertise. However, should internal peer review be proposed, this must be endorsed by the CEO and should consider the reputational and perception risks associated with a “self-approval” role

Consultation

The TISEPP includes requirements for consultation with a public authority, generally Council, under certain circumstances. Cl.13 identifies works which may impact stormwater management services provided by Council, connect to sewer or water systems owned by Council, generate traffic, involve installation of a temporary structure on a public place or involve excavation adjacent to a road. Cl.14 provides for works that are likely to affect the heritage significance of a local heritage item or heritage conservation area. Cl.15 provides for works on flood liable land.

For the works identified above, written notification of the intent to undertake the works, along with a scope of works, is to be provided to Council and any response received within 21 days must be considered.

Consultation with other public authorities may also be required where the proposed development is identified as *specified development* under the TISEPP, including development of a fixed or floating structure in or over navigable waters, certain development in bush fire prone land etc.

The provisions of the specific EPI will identify any consultation requirements for development proposed under an alternative pathway.

In addition to the statutory requirements, consultation can assist in the identification of impacts and ensure that a full and robust consideration of these is undertaken. This should include the relevant local council, adjoining landowners, the Local Aboriginal Land Council, and other government agencies, for example, Transport for NSW, in particular where the proposal may generate impacts outside of the site.

Modification to an endorsed REF

After endorsement it may be necessary to amend the REF, for example to account for changes to the scope of the project or to consider additional information that has come to light during works. Modifications to the REF should reflect the possible level of impact from any change and be considered in the context of the following:

Very minor changes to an activity or to correct misdescriptions, miscalculations or minor errors – for very minor changes to the REF including those resulting from changes to the activity or additions to the scope of works that are able to be undertaken within the provisions of the existing REF, no further assessment is required. Confirmation should be sought that no further approvals under other legislation are required.

Substantially the same development with the same, or a reduction in, the environmental impact – for activities or amendments to the scope of work that provide for no increase in, or reduce, the environmental impact, an addendum to the REF should be provided to consider the changes. The addendum does not require peer review but will require endorsement by the Chief Executive. Any request for endorsement should clearly outline the amendments and the potential change in environmental impact, and declare that the development is substantially

the same. Should the Chief Executive not consider the development to be substantially the same, the modification should be considered as a substantially different proposal. If the amendment has altered the planning pathway then a revised REF will also be required.

Substantially different to the original proposed activity or development – should a substantial change be required to the proposed development, a revised REF will be required. A substantially different activity would be one which is considered under different provisions of an EPI, or under a different EPI altogether, or where there is an increase in the environmental impact. A revised REF can rely on information provided for the original REF but should read as a standalone document and will replace the previously endorsed REF. It is required to follow the process as for a new REF including planning pathway confirmation and peer review, as required.

REF endorsement

Currently, the Chief Executive of HCCDC is the only delegate who may exercise the authority to consider that the REF adequately considers the relevant factors and that an EIS is not required, and consequently the development can be undertaken. Delegations policy may provide for this authority to be undertaken by other officers.

REF signing page

The approval of the REF should follow this wording, with an approval page included at the front of the document:

I, , Chief Executive of the Hunter and Central Coast Development Corporation, have examined and considered the [REF title] Review of Environmental Factors in accordance with the provisions of s5.5 of the *Environmental Planning and Assessment Act 1979* [and the *State Environmental Planning Policy (Transport and Infrastructure) 2021*, or relevant environmental planning instrument under which the works are permissible] and determine that the proposed development may be carried out as development without consent, subject to compliance with the conditions to manage environmental impacts outlined within the REF.

Publication

The Regs require an REF to be published on the determining authority's website or the NSW planning portal before the activity commences or no later than 1 month after commencement where:

- (a) *the activity has a capital investment value of more than \$5 million, or*
- (b) *the activity requires an approval or permit as referred to in any of the following provisions before it may be carried out—*
 - (i) Fisheries Management Act 1994, sections 144, 201, 205 or 219,
 - (ii) Heritage Act 1977, section 57,
 - (iii) National Parks and Wildlife Act 1974, section 90,
 - (iv) Protection of the Environment Operations Act 1997, sections 47–49 or 122, or
- (c) *the determining authority considers that it is in the public interest to publish the review.*

(Part 8, Div 1 171(4))

In addition to the above HCCDC commit to publishing all determined REFs on the webpage. These should be retained in accordance with the provisions for website review.

Compliance with the Policy

It is a requirement that all REFs associated with development being undertaken by HCCDC (whether on HCCDC owned sites, or on behalf of another authority) comply with the provisions of this policy.

In the exceptional circumstances, where a deviation from this policy is proposed, this must be justified and approved by the financial delegate for the policy.

Policy review

This policy will be reviewed 12 months after adoption and every 2 years after.

