



Ms Kristy Chan
Director Regulation Reform
Department of Planning, Industry and Environment
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Dear Ms Chan

Re: Proposed EP&A Regulation 2021

Thank you for the opportunity to provide feedback on the Department of Planning, Industry and Environment's (DPIE) proposed EP&A Regulation 2021. The Waste Management and Resource Recovery Association of Australia is the national peak body for all stakeholders in the essential \$15 billion waste and resource recovery (WARR) industry.

We have more than 2,000 members across the nation, representing a broad range of business organisations, the three (3) tiers of government, universities, and NGOs. Our members are involved in a range of important WARR activities within the Australian economy, including community engagement and education, infrastructure investment and operations, collection, manufacturing of valuable products from resourced recovered materials, energy recovery, and responsible management of residuals.

In NSW, the WARR sector remains a key contributor to the state's economy and environment. The value of NSW's WARR sector is estimated to be about \$5.3 billion in 2017-18 across the collection, transport, processing, disposal and recovery (including energy) of MSW (\$1.65 billion), C&I (\$1.54 billion), and C&D (\$1.1 billion); the approximate value of recovered materials for that period was \$1 billion¹.

WMRR acknowledges that existing regulatory requirements will, for the most part, continue, and that the amendments in the proposed EP&A regulation have been informed by an issues paper released in 2017 as well as targeted consultation with stakeholders on certain aspects.

WMRR supports DPIE's intent to reduce administrative burden, increase procedural efficiency, and establish a simpler, more modern and transparent planning system. Several of the amendments in the proposed regulation will likely meet these goals and are welcome by industry, including the simplification of language, deleting unnecessary provisions, clarity around stop the clock times, and consolidated consents for modification applications. WMRR also notes that in broad terms, changes to designated development may level the playing field for, and provide certainty to, industry by placing the approval process in the hands of one (1) central regulator, that being the state.

¹ Inside Waste Industry Report 2017-18: Volumes and Values

WMRR notes however, that the NSW WARR sector is highly regulated and while we recognise DPIE's intent to balance a range of factors, including community concerns, changes in technology, and the growth and development of industry, there remain regulatory and planning gaps that need to be addressed to enable a robust regulatory framework for industry to operate and thrive in. Further, there is still little consideration of regulations that eradicate poor practices while creating a level playing field and building industry certainty, and WMRR believes that there is still much work to be done in the regulatory space to ensure that NSW has a regulatory framework that does not add significant pressure on the industry and further penalise legitimate operators. Thus, WMRR is proposing the recommendations below for consideration as DPIE finalises its EP&A regulation.

1. Approval and development timeframes: WMRR notes that at a DPIE presentation to WMRR members in August, DPIE indicated that while the proposed regulation amendments attempt to simplify how development approval timeframes are calculated, there will be a separate piece of work in 2022 to review current timeframes. This is imperative for industry as there is currently little certainty in the progress of projects due to exceedingly lengthy approval and development timeframes (~25 months from lodgement to approval) for WARR infrastructure, during which time, as was recently evidenced in the energy from waste sector, the government can significantly alter its regulatory settings, putting project proponents at great financial risk. WMRR points to the recently implemented "Planning Delivery Unit" objectives as part of the Rapid Assessment framework implementation and request that complex WARR projects are automatically transferred to the Planning Delivery Unit rather than waiting for one (1) of the triggers to be reached.
2. WARR SEPP: further to the point above, WMRR recommends that DPIE develops a specific WARR State Environmental Planning Policy (SEPP) to address the specific challenges and provide clear pathways for this infrastructure given it is essential infrastructure. WARR facilities fulfil the strategic planning needs of NSW as a whole and should be allocated clear planning pathways, milestones, locations, and precincts. Having a WARR SEPP has the dual benefit of providing industry with much-needed certainty to invest and develop infrastructure to meet the state's WARR needs (as seen in the regional Special Activation Precincts where having a masterplan, to an extent, has mitigated the risk of changing and overly onerous and complex regulations), as well as drives many of the goals that the amendments of this regulation seek to meet.
3. Clarity of changes: while DPIE has provided a number of clear and concise fact sheets on the proposed amendments to the regulation, there are areas that require further clarity, including:
 - The changes, if any, to complying development applications to allow developments such as apartment buildings to make changes without needing a separate DA, for example amendment to bin rooms.
 - Whether energy recovery is specific to thermal energy from waste or includes all forms of energy creation - the latter will have implications in areas such as resource-

derived fuel and FOGO (which the government has mandated for all of NSW by 2030) – and if the government intends to create multiple approval definitions for waste that do not fall within the classification (e.g., liquid waste) but are sent to energy recovery facilities such as anaerobic digestion plants.

- The thresholds that will determine if an EfW facility will require an EPL.
- WMRR notes that EfW facilities will come under “designated development” due to, as stated by the government, the “substantial level of community concern about this development type, and the significant uncertainties around mitigation and human health impacts”. These provisions however, are not intended to apply to Special Activation Precincts; WMRR is seeking clarity over how the government will ensure that all developments across the state (within and outside of precincts) are subject to consistent assessment criteria.
- Whether there will be a transition period (and for how long) as well as guidance documents for project proponents when the regulations are rolled out, specifically for the new approved DA forms, as the new requirements may increase the risk of applications being rejected.

Please do not hesitate to contact the undersigned if you would like to further discuss WMRR’s submission.

Yours sincerely



Gayle Sloan
Chief Executive Officer
Waste Management and Resource Recovery Association of Australia