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SUBMISSION ON RAPID ASSESSMENT FRAMEWORK February 2021 - Part 1

The Better Planning Network submission on the *Rapid Assessment Framework* is divided into various sections in accordance with the numbered and titled documentation made available on the DPIE Planning Portal. Comments are itemised and detailed under the title and part of each document.

1. EP&A (Major Projects) Regulation 2020 - Policy Paper

2. PLANNING CONTEXT

- ❖ The Department (DPIE) is implementing a Planning Reform Action Plan (PRAP). This policy paper states that is being done in response to the immediate COVID-19 economic crisis, as well as measures to improve the transparency, certainty and timeliness of the NSW planning system, as well as being in response to "consistent calls" for greater transparency, reduced complexity, better government coordination and improved customer service.

BPN however is of the opinion that the reforms proposed in this policy paper reduces input on SEARs assessments from DPIE experts in their fields; reduces statutory requirements; provides only basic requirements for industry-specific SEARs; groups together developments that are completely different in scope and requirements into one 'industry'; provides a weak framework for community engagement, focuses on assessment process rather than outcomes and does not address the fundamental problems of proponent-engaged registered practitioners.

3.1 EFFICIENT LODGEMENT OF APPLICATIONS

- ❖ **BPN strongly objects to the requirements for SSD being transferred from Schedule 1 of the EP&A Regulation to an application form that is informed by a Guideline. By removing the requirements from the Regulation and putting them into a form, they will no longer be statutory requirements. They must be reinstated into Schedule 1.**
- ❖ Standardising application procedures to improve process efficiency should not come at the expense of statutory requirements.

3.2 CHANGES TO SEARS

- ❖ **Better Planning Network does not agree with the basic premise of industry-specific SEARs, that only matters common to a particular type of development should be addressed by the SEARs.**

The proponent would not be required to include matters that are not necessarily common to a particular type of development in the SEARs application. Those matters are frequently the ones that cause the most impact and the most community interest. If the SEARs do not identify information that must be provided in an EIS, then the proponent certainly will not provide it.

- ❖ **If DPIE wishes to increase the efficiency and transparency of administration and assessments by avoiding individual site assessments, then ALL POSSIBLE matters concerning a development must be provided in the SEARs Application Form, not just the common issues.**

Currently DPIE staff assess a location and determine the particular issues with regard to that site. Without that individual assessment then all possible matters must be included on the Application Form, otherwise crucial matters that need to be assessed for the EIS could be omitted by the proponent.

- ❖ The policy paper refers to industry-specific SEARs that include hospitals, schools, warehousing and distribution centres and other urban development. Yet only Hospitals, Warehouses and Identified Sites & Precincts have been provided. The community must be allowed to comment on each of the SEARs as they are developed by DPIE. **Community consultation must be part of the development process for ALL industry-specific SEARs, not just on a couple of examples.**

DPIE must exhibit for public comment the industry-specific SEARs for all of the following: Mining and extraction operations, schools, universities, correctional centres, manufacturing particularly chemical, tourist facilities, port facilities, waste management facilities, energy generating facilities, intensive livestock agriculture, aquaculture, agricultural produce industries, food and beverage processing, timber milling and processing, and all of the other SSDs that are currently listed in *Schedule 1, State Environmental Planning Policy (State and Regional Development) 2011*.

Tailoring industry-specific SEARs

- ❖ The Policy Paper page 9 states that industry-specific SEARs "*will: focus time and effort on key assessment matters common to that type of development*". However matters that are not necessarily common to a particular type of development, such as risk of erosion and landslip or land use conflicts, will be able to be omitted or overlooked by the proponent. It is often matters that are less common that are the cause of most difficulties and most community interest.
- ❖ Reference is needed in all SEARs to all *Issue and Assessment Requirements* because all of them may apply to any industry type. Additional requirements have been recommended in the 3-5. Industry Specific SEARs section of this submissions.
- ❖ It is not logical, practical nor feasible for DPIE to produce one specific SEARs, *Identified Sites and Precincts*, that can cover all SEARs assessment requirements for such a wide diversity of developments as all of those covered in *Schedule 2, State Environmental Planning Policy (State and Regional Development)*

The State Significant Developments for identified sites, as listed in that SEPP, vary widely in type, from the Western Parklands to Darling Harbour, Barangaroo to Penrith Lakes, Sydney Sports Stadium to North Ryde Station Precinct, Gosford City Centre to Luna Park.

- ❖ If DPIE wishes to increase the efficiency and transparency of administration and assessments, then there also needs to be a separate site-specific SEARs for each of the identified sites within *Schedule 2, State Environmental Planning Policy (State and Regional Development)*, including those identified in sub-clauses such as those in Clause 2 (specified sites) and those in Clause 10 (Landcorp sites).
- ❖ The Policy Paper page 9 states that industry-specific SEARS "*will: ensure applicants engage with councils, key agencies and the local community when preparing their EIS*". However the *Undertaking Engagement Guide* only states that "*The proponent is expected to: consider the community's view when making project refinements*". There is no requirement for applicants/proponents to seek the community's views by way of public exhibition of their draft EIS or any other means such as public hearings, only an 'expectation'.

The *Undertaking Engagement Guide* must be more specific as to what engagement methods will be required to ensure the applicant engages with councils, key agencies and in particular the local community. Particularly when the Guide, and it is only a Guide not a statutory requirement, states that detail consultation must be undertaken consistent with the *Undertaking Engagement Guide: Guidance for State Significant Projects*, when the Guide does not describe that consultation.

Scoping and project-specific SEARs

- ❖ BPN agrees that a Scoping Report and project-specific SEARs should be produced for all State Significant Infrastructure (SSI). However the proponent's Scoping Report must not be solely relied upon to inform the Department in its setting of the project-specific SEARs. That must be done, as stated in this Draft, "*in conjunction with public authorities*".
- ❖ BPN does not agree that the proponent should in any way be relied upon to consider the level of assessment required for the project.

Expiry of SEARs

- ❖ BPN agrees that a 2 year automatic expiry should be applied to SEARs for SSD and SSI projects.

3.3 EIA GUIDELINES

- ❖ Detailed discussion of the EIA Guidelines is made later in this submission.

3.4 EIS CONTENTS

- ❖ BPN agrees that a comprehensive 'evaluation of the development' should be provided by the proponent that provides information with regard to the positive and negative impacts of the development. However that must not be allowed to become a simplistic 'all good, no negatives' evaluation. A signed declaration from the author(s) of the EIS, not just the REAP Certifier, must be mandatory, certifying that the information contained within the document is neither false nor misleading and that it contains all available information relevant to the environmental assessment of the project.

3.5 REGISTERED PRACTITIONERS

- ❖ **BPN is of the opinion that there is a fundamental problem with the proposed concept of recognition of registered practitioners. One of the major causes of delays in approvals of any type of development at all, is that the information and documentation provided by some proponents is incorrect, misleading, if not downright false and therefore additional information is needed to be requested.**

- ❖ While proponents continue to be allowed to select their own favourite assessors and certifiers, this problem will not change. Furthermore registration of whole organisations into a REAP scheme will allow their worst members as well as their best, to provide certification. A cursory review of the membership of some of the likely organisations to be recognised, including organisations of high repute, brings up several practitioners that have been flagged by BPN member groups as having provided inaccurate assessments. Once these people are members of such erstwhile organisations, they virtually have to cause an Opal Towers collapse before their membership is refused.

- ❖ **DPIE is tinkering around the edge of the problem without dealing with it in an effective manner. However, there is a simple solution which has been proposed on numerous occasions by well-regarded industry professionals. By all means, set up the REAP scheme, but the selection of the registered practitioner must be on a rotational basis NOT selected by the proponent.**

It would be a simple process that in the initial stages of the Scoping Report and/or EIS and then again when an EIS has been finalised by the proponent, that the proponent logs into the DPIE Planning Portal and is automatically allocated the next available registered practitioner. Proponents would not be given the option to select another Practitioner. Practitioners could be provided with an opt-out from the allocation process on a temporary or permanent basis, depending on their workload.

The REAP author(s) of the EIS must provide certification that the information contained within the document is neither false nor misleading and that it contains all available information relevant to the environmental assessment of the project. A different REAP should in essence provide a peer review and certify the final EIS.

- ❖ Procedures for handling complaints within professional organisations are rarely if ever robust enough to prevent recurrent issues. The most any can do is withdraw membership, which is not robust enough to prevent poor planning outcomes.

BPN is of the view *that “the immediate COVID-19 economic crisis”* will pass in the near future, as COVID-19 appears to have been virtually eliminated in NSW and the vaccines are being rolled out. Therefore much of the claimed justification for PRAP is dubious at best and BPN requests a commitment to return to a much more measured assessment process, as it was before the PRAP, when the economy has returned to 'business as usual'.

Furthermore, BPN notes that the stated objectives of certainty, timeliness, reduced complexity, better government coordination and supposedly improved customer service, all sound like development industry demands which BPN believes will reduce community input and influence and prove to be to the detriment of the public interest and lead to poorer planning outcomes.

3 to 6. INDUSTRY SPECIFIC SEARs

- ❖ **Better Planning Network does not agree with the basic premise of industry-specific SEARs, that only matters common to a particular type of development should be addressed by the SEARs.**

The proponent would not be required to include matters that are not necessarily common to a particular type of development in the SEARs application. Those matters are frequently the ones that cause the most impact and generate the most community interest. If the SEARs do not identify information that must be provided in an EIS then the proponent certainly will not provide it

- ❖ **To increase the efficiency and transparency of administration and assessments and avoid individual site assessments, all potentially relevant issues concerning a development must be listed in the SEARs Application Form, not just the common issues.**

Currently DPIE staff assess a location and determine the particular issues with regard to that site. Without that individual Departmental assessment then all potential issues must be included on the Application Form, otherwise crucial issues that need to be assessed for the EIS could be omitted by the proponent. If an issue is not considered to be applicable, then as this document states, applicants can and should provide reasoning as to why it is not applicable.

INDUSTRY SPECIFIC SEARs - ALL

- ❖ A signed declaration from the author of the SEARs application must be mandatory, certifying that the information contained within the document is neither false nor misleading and that it contains all available information relevant to the assessment of the development
- ❖ Information must be provided regarding who decides what is the "*likely level of community interest in the development*". That should not be at the discretion of the proponent.
- ❖ There are various *Issue and Assessment Requirements* that have been omitted from all industry-specific SEARs which must be included if DPIE proceeds with what BPN believes to be a flawed model for industry-specific SEARs. "*Issue and Assessment Requirements*" for all industry-specific SEARs must include:
 - A baseline site survey of the existing site and immediate surrounds, including buildings and vegetation adjacent to the site, is imperative
 - An additional section titled *Cumulative Impacts* which relates to all relevant issues
 - In "*Capital Investment Value and Employment*" an additional dot point of *Cost Benefit Analysis*
 - In "*Built Form and Urban Design*" add dot point *Assess how the development complies with the relevant local development standards, including providing justification for any variation from those development standards*
 - In "*Built Form and Urban Design*" add dot points for passive energy design, biophilic design, energy and water efficiency, thermal conservation design
 - In "*Visual Impact*" add wording to second dot point - *in particular on heritage buildings and conservation areas*

- In "*Public Space*" add fifth sub-dot point to second dot point - *encourages the use of active transport*
- In "*Public Space - Documentation* " include *Active Transport Plan*
- In "*Trees and Landscaping*" add wording to the first dot point to read "*Assess the number, location, size, condition and SULE (Safe and Useful Life Expectancy) of treesetc*".
- In "*Trees and Landscaping*" insert a new second dot point *Provide a detailed analysis of tree retention / loss proposed with a particular focus on the retention of the maximum number of trees and vegetation possible, especially native trees and vegetation.*
- In "*Trees and Landscaping - Documentation*" include *Site Plan showing trees to be retained / removed*
- In "*Trees and Landscaping - Documentation*" delete "*or Preliminary Tree Assessment*" as this type of documentation contains insufficient for any assessment
- In "*Trees and Landscaping*", in all industry-specific SEARs documents, for clarity ensure the word "heights" is used, not "eights"
- In "*Ecologically Sustainable Development*" add dot point *Identify and assess all ecological communities and threatened species onsite and in the surrounding locality*
- In "*Ecologically Sustainable Development*" amend third dot point to clarify the wording "*relevant industry recognised ... standards*"
- In "*Ecologically Sustainable Development*" amend third dot point to read *Demonstrate how the development incorporates measures to minimise carbon dioxide equivalent (CO₂e) emissions as soon as possible ... etc*". This amendment is because climate change is impacted on by all greenhouse gases, some of which are more damaging than carbon dioxide and some don't have carbon in them.
- In "*Traffic, Transport and Accessibility*" add a new sub-dot point *Proposals for the provision of electrical power, wiring and fast charge points for future electric vehicles future and how this will be consistent with the Government's NSW Electric and Hybrid Vehicle Plan 2019.*
- In "*Traffic, Transport and Accessibility - Documentation*" include *Electric Vehicles charging plan*
- In "*Biodiversity*" insert second dot point *Provide assessment of all Serious and Irreversible Impact (SAIL) Entities on site and in the surrounding locality and show that measures have been taken to avoid impacts. Provide cumulative impact assessment for the sub-bioregion, of all SAIL entities extant on the site and in the surrounding locality.*
- In "*Biodiversity - Documentation*" include *Location of SAIL Entities Plan*
- In "*Air Quality*" insert new first dot point *Provide a baseline assessment of the current air quality.*
- In "*Air Quality - Documentation*" include *Baseline Air Quality Assessment*
- In "*Noise and Vibration*" at the end of the dot point include a new sentence *Outline proposed rectification measures in the event of impact/damage to nearby sensitive receivers.*

- In "Ground and Water Conditions" insert new first dot point *Provide a baseline assessment of the current ground and water conditions.*
- In "Ground and Water Conditions - Documentation" include *Baseline Ground and Water Conditions Assessment*
- In "Ground and Water Conditions" add additional dot points -
 - *Demonstrate that water for the construction and operation of the development can be obtained from an appropriately authorised and reliable supply;*
 - *Assess the potential impacts on soils and land capability including potential erosion and landslip and the proposed mitigation, management and remedial measures (as appropriate);*
 - *Assess potential impacts on landforms (topography), paying particular attention to the long-term geotechnical stability of any new landforms.*
- In "Flooding Risk" add dot point *Provide proposals for monitoring stream and river heights e.g. by a FloodSmart system (where required)*
- In "Hazards and Risks" add additional dot points -
 - *Provide a baseline assessment of any existing site contamination including asbestos*
 - *Provide a preliminary risk screening of all potential construction and operation contamination risks and proposed remediation if required*
- In "Hazards and Risks" in the current second dot point, delete the words "Where required by SEPP 33". That is considered to be too restrictive to obtaining all relevant information
- In "Hazards and Risks" amend current third dot point to include the words "transmission line"
- In "Hazards and Risks - Documentation" include *Baseline Contamination Assessment*
- In "Social Impact" add to the existing dot point ,*Occupational Health and Safety Act and Guidelines and relevant community health and safety guidelines*
- In "Social Impact" add a new dot point *Provide proposed hours of work*
- In "Social Impact" add a new dot point *For SSD residential developments provide proposals for affordable housing*
- In "Bush Fire Risk" add to the existing dot point ,*the Bushfire Environmental Assessment Code for NSW and all relevant NSW Rural Fire Service circulars (e.g. Standards for Asset Protection Zones)*
- In "Aviation" the term "near an airport" needs clarification
- In "Aviation" add the underlined words to the first dot point *"If the site is near an airport, airfield, current or potential future flight path, ... etc"*
- In "Aviation" add another sub-point to the first dot point *Provide details of any aircraft safety surface height limitations*
- In "Consultation" - BPN has made recommendations in this submission for amendments to the *Undertaking Engagement: Guidance for State Significant Projects*. We do not agree that the reference to proportionate consultation with the community is appropriate in the SEARs. Therefore the bracketed wording should be deleted, leaving just the words "the community"

INDUSTRY SPECIFIC SEARs - Warehouses and Distribution Centres

- ❖ There are various *Issue and Assessment Requirements* that have been omitted from this industry-specific SEARs which must be included if DPIE proceeds with what we believe to be a flawed model of industry-specific SEARs. The requirements that need to be included, together with the additional dot points and documentation recommended in the previous part of this submission (INDUSTRY SPECIFIC SEARs - ALL), are as follows:
 - *Environmental Amenity* - with the following points:
 - Assess amenity impacts on the surrounding locality, including lighting impacts, solar access, visual privacy, visual amenity, view loss and view sharing, overshadowing, wind impacts and acoustic impacts. A high level of environmental amenity for any surrounding residential land uses must be demonstrated.
 - Provide a solar access analysis of the overshadowing impacts of the development within the site, on surrounding buildings and public spaces (during summer and winter solstice and spring and autumn equinox) at hourly intervals between 9am and 3pm, when compared to the existing situation and a compliant development (if relevant).
 - *Contributions and Public Benefit* - with the following points for distribution centres:
 - Address the requirements of any relevant contribution plan(s), voluntary planning agreement or EPI requiring a monetary contribution, dedication of land and/or works-in-kind and include details of any proposal for further material public benefit.
 - Where the development proposed alternative public benefits or a departure from an existing contributions framework, this is to be agreed with the local council, the Department and relevant State agencies prior to lodgement.
 - *Trees and Landscaping* - to include the following point as well as the requirement for an *Arboricultural Impact Assessment* as Documentation:
 - Asses the number, location and condition of trees to be removed and retained and note any existing canopy coverage to be retained on-site.

INDUSTRY SPECIFIC SEARs - Hospitals, Medical Centres and Health Research Facilities

- ❖ There are various *Issue and Assessment Requirements* that have been omitted from this industry-specific SEARs which must be included if DPIE proceeds with what we believe to be a flawed model of industry-specific SEARs. The requirements that need to be included, together with the additional dot points and documentation recommended in the previous part of this submission (INDUSTRY SPECIFIC SEARs - ALL), are as follows:
 - *Traffic, Transport and Accessibility* - to include the following point:
 - details of road upgrades, infrastructure works, or new roads or access points required for the development if necessary.
 - *Ground and Water Conditions* - to include the following points:

- Identify predicted water discharge points to surface/groundwater and consider discharge quality against relevant water quality criteria.
- Provide a detailed site water balance including identification of water requirements for the life of the development, and measures to ensure an adequate and secure water supply.

INDUSTRY SPECIFIC SEARs - Identified Sites and Precincts

- ❖ The State Significant Developments for identified sites, as listed in *Schedule 2, State Environmental Planning Policy (State and Regional Development)*, vary widely in type, from the Western Parklands to Darling Harbour, Barangaroo to Penrith Lakes, Sydney Sports Stadium to North Ryde Station Precinct, Gosford City Centre to Luna Park.

Using the proposed model it is not practical nor feasible for DPIE to produce one specific SEARs, *Identified Sites and Precincts*, to cover all SEARs assessment requirements for such a wide diversity of developments as all of those covered in Schedule 2 of that SEPP.

To increase the efficiency and transparency of administration and assessments using the industry-specific model, there would need to be a separate site-specific SEARs for each of the identified sites within Schedule 2, including those identified in sub-clauses such as those in Clause 2 (specified sites) and those in Clause 10 (Landcorp sites).

- ❖ There are various *Issue and Assessment Requirements* that have been omitted from this industry-specific SEARs which must be included if DPIE proceeds with what we believe to be a flawed model of industry-specific SEARs. The requirements that need to be included, together with the additional dot points and documentation recommended in the previous part of this submission (INDUSTRY SPECIFIC SEARs - ALL), are as follows:
 - *Traffic Infrastructure Requirements and Utilities* - this Assessment Requirement should not have been omitted and must be included, together with an *Infrastructure Delivery, Management and Staging Plan*:
 - In consultation with relevant service providers:
 - assess the impacts of the development on existing utility infrastructure and service provider assets surrounding the site.
 - identify any infrastructure upgrades required on-site and off-site to facilitate the development and any arrangements to ensure that the upgrades will be implemented on time and be maintained.
 - provide an infrastructure delivery and staging plan, including a description of how infrastructure requirements would be co-ordinated, funded and delivered to facilitate the development.

- ❖ **PRINCIPAL RECOMMENDATION:** If the intent is to make the process of SEARs for so-called lower impact projects more efficient and transparent and avoid individual site assessment, it would make far more sense to have one standard SEARs for low impact projects that incorporated all possible *Issue and Assessment Requirements* for all of those projects (albeit with the low impact definition needing to be reviewed).

Proponents could simply fill in N/A (not applicable) for issues that were not relevant and provide concise reasons for doing so. That way the Department could be assured that no key issues were ever missed. The proponent would sign a declaration that all relevant information was included and that the information provided was not false or misleading.

6. STATE SIGNIFICANT DEVELOPMENT (SSD) GUIDE and **12. STATE SIGNIFICANT INFRASTRUCTURE (SSI) GUIDE**

As many of the sections for these two Guides overlap, this part of the submission covers the sections which overlap, based on the SSD Guide. Where SSD is referenced, SSI should be taken to also be relevant, where applicable.

3. SSD ASSESSMENT

- ❖ Figure 1 shows a diagram of the SSD assessment and approval process. However it appears to have left out a step. After "*Department Assesses DA*" and before "*Consent Authority Determines DA*", there may be a public hearing where the Consent Authority, in particular the Independent Planning Commission, may hear community views on residual concerns.

RECOMMENDATION: A side box should be included in the diagram between "*Department Assesses DA*" and before "*Consent Authority Determines DA*" which reads ***Community may make additional submissions regarding the Department's Assessment.***

3.3 PROPORTIONATE ASSESSMENT

- ❖ It is a concerning viewpoint that the Department considers large developments such as hospitals, schools, identified sites and precincts as well as urban redevelopments to be "*smaller-scale and lower-impact*". By their very nature, all SSD developments have considerable impacts and generate community interest.

In BPN's extensive experience, private owner-initiated SSDs are

- rarely "*consistent with the strategic planning framework for the site*" (e.g. need rezoning),
- inconsistent with "*detailed planning controls*",
- frequently generate significant cumulative impacts (e.g. on biodiversity including SAIL entities, or on traffic or amenity),
- impacts are not appropriately mitigated, and
- they generate significant community interest

It is considered to be inappropriate and misleading to state that developments at identified sites such as Barangaroo, Darling Harbour, Sydney Olympic Park, Redfern-Waterloo, the Western Parklands, The Rocks, Moore Park Showgrounds, Sydney Sports Stadiums, Penrith Lakes, Gosford City Centre, North West Metro Station Precincts or all of the NSW Landcom sites are smaller-scale and lower-impact.

RECOMMENDATION: If DPIE proceeds with what we believe to be a flawed model for industry-specific SEARs, there are various *Issue and Assessment Requirements* that have been omitted from the industry-specific SEARs which BPN believes must be included. These requirements are detailed in the section of this submission titled ***3-5. Industry Specific SEARs.***

3.4 ROLE OF THE INDEPENDENT PLANNING COMMISSION

- ❖ It is considered the statement that the IPC is an independent body that "*is not subject to the direction or control of the Minister or Department*" is somewhat misleading. Several recent high profile developments have caused the Minister to reduce the remit of the IPC or change their terms of reference (e.g. Star Casino, mining refusals). More recently the Deputy Premier stated that he would seek to either disband the IPC or change the classification of a development refused by the IPC (mining under Sydney's water catchment).

Such actions by the Minister or Cabinet can destroy community confidence in the NSW planning system. Concerns have been raised by BPN members that if judgements are not liked then the Minister can just amend the planning system to align with a predetermined preferred outcome.

RECOMMENDATION: Amend the statement to accurately reflect the powers of the Minister or delete it altogether.

3.6 ROLE OF THE APPLICANT

- ❖ The Department must be unequivocal in expressing the requirements for role of the applicant.

RECOMMENDATION: The list of the requirements for the proponent must start with the wording "*In doing this, the applicant shall*" instead of "*In doing this, the applicant should*".

3.7 COMMUNITY PARTICIPATION

- ❖ As community participation is integral to assessing the merits of SSD projects, the proponent is unlikely to be able to be the arbiter of the amount of interest the community is likely to have. In BPN's experience, the only time that the community does not show significant interest is when the development has not been adequately notified.

The level of community engagement that the proponent must undertake needs to be detailed in both the *State Significant Development Guide* and the *Undertaking Engagement Guide*. It may be that the level is determined on a capital value basis, or some other basis, but it must be detailed, not just left to the proponent to decide the level of engagement.

RECOMMENDATION: The level of community engagement must be determined and defined by the Department's in the *State Significant Development Guide* and the *Undertaking Engagement Guide*, and not by the proponent.

- ❖ The exhibition period of 28 days is insufficient time for the community to make informed submissions on SSDs.

RECOMMENDATION: For projects over a certain capital value, say \$50 million, the exhibition period should be 60 days. Only the smallest projects, with a very low capital value, should be exhibited for just 28 days.

3.8 MAJOR PROJECTS WEBSITE

- ❖ The Major Projects website is to be found at the Planning Portal. It is excellent that projects of all sizes are being migrated across to the Planning Portal. However within the general community, most people have no idea whether a development is a Major Project, an SSD, an SSI, an LEP Gateway or any other type of development, let alone what stage it is at. Nor do they know whether a local or district planning panel, the Department or the Independent Planning Panel is the consent authority. Most people do not have the foggiest idea of how to even find a project.

RECOMMENDATION: There should be a search function on the Home page of the Planning Portal where a search for an address, project name or project type will find any type of development wherever it is located within the Planning Portal.

❖ While it is understood that the new website is still under construction, there is no information regarding any of the following. We trust that this information will be uploaded as per this document, together with all previous Major Projects (which are not yet on the Portal):

- guidance on each step of the SSD assessment
- the government legislation, plans and strategies that set the strategic planning context for SSD projects
- the government plans, policies and guidelines that govern the assessment and determination of SSD projects
- guidance on how to use the Major Projects website, including how to lodge applications, make a submission and get regular updates on SSD projects
- detailed information on SSD projects, including all applications, environmental assessment reports, submissions, decisions, post approval requirements, and reporting on environmental performance and compliance.

RECOMMENDATION: Previous Major Projects must be migrated across to the Planning Portal. At this point in time, only current projects are available.

❖ The second Planning Portal function supporting key actions for SSD assessment is stated as "*making all information on SSD projects publicly available*". While some projects provide all available information, others are badly lacking.

RECOMMENDATION: All relevant information, including non-confidential reports and correspondence between the parties must be made available on the Planning Portal, in the interests of transparency and to increase the community's confidence in the planning process.

4.3 APPLYING FOR SEARS

❖ The applicant/proponent must submit the Scoping Report and the SEARs application to the Department on the Major Projects website.

RECOMMENDATION: The Scoping Report and the SEARs application must be made public for industry-specific SEARs as well as site-specific SEARs.

4.3 INDUSTRY-SPECIFIC SEARs

❖ It is proposed that the Department will issue the relevant industry-specific SEARs for a project within 7 days. As previously raised, BPN believes that the scope of the industry-specific SEARs is far too restricted.

RECOMMENDATION: If DPIE proceeds with what we believe to be a flawed model for industry-specific SEARs, there are various *Issue and Assessment Requirements* that have been omitted from the industry-specific SEARs which BPN believes must be included. These requirements are detailed in the section of this submission titled *3-5. Industry Specific SEARs*.

- ❖ *Figure 2 - Setting requirements* does not include any community consultation. Yet section 3.6 states the applicant *should "encourage community participation at all stages of the project"*, section 3.7 says the Department will be *"encouraging applicants of SSD projects to start their community engagement as soon as possible"* and section 4.4 says that in the Scoping Report (ie prior to the SEARs or EIS) the proponent should *"give an early indication of community views"*.

RECOMMENDATION 1: Figure 2 should include *Community Views* within the box *"Applicant Requests Requirements"*.

RECOMMENDATION 2: The Rapid Assessment Framework documents should have consistent information both within each document and between the various documents.

4.4 PROJECT-SPECIFIC SEARs

- ❖ It should not be the proponent that decides what community engagement will be undertaken, particularly on major SSDs that will require project-specific SEARs.

RECOMMENDATION: The Department must determine the level of community engagement and include that with the project-specific SEARs.

- ❖ It is of concern that the proponent will be providing a summary of the community views to the Department. Clearly it would be in the proponent's best interest to downplay community concerns. BPN has seen that all too often where summaries minimise the amount and range of concerns raised about a key issue, simply recording that as one issue.

RECOMMENDATION: The proponent must provide copies of all community views on which it has based its summary to the Department.

- ❖ The community will not have a chance to read the Scoping Report on the Major Projects website if the community is not aware of the project or that it is on the website. The vast majority (probably 99.99%) of the general public does not regularly look at the Department's Planning Portal to see if there's any nearby project that might be of concern to them.

RECOMMENDATION: The Department must notify neighbours in close proximity to the project, of the lodgement and publishing of the Scoping Report and where it can be found on the Planning Portal.

5.3 HIGH STANDARD

- ❖ The wording "reflect" community views is of concern. The Department must be more specific in its wording.

RECOMMENDATION: The dot point wording should be amended to require information including such information as the number of people expressing views, the proportion of those objecting/agreeing with the project, how many people expresses each view, all views raised.

5.4 CERTIFYING THE EIS

- ❖ As raised in the 22. *Registered Environmental Assessment Practitioners Guide* section of this submission, BPN is of the strong opinion that the practitioner that writes the EIS must not certify the EIS, and that all REAPs must be appointed on a rotational basis, not selected by the proponent.

RECOMMENDATION: The proponent must have the EIS certified by a different REAP than the REAP(s) that produced the EIS, to enable a peer review to be undertaken and to ensure there is no conflict of interest as a result of the EIS author(s) being remunerated by the proponent for producing the EIS. The REAP(s) that produced the EIS must separately certify the same list of items as the peer review REAP.

5.6 CHECKING THE EIS

- ❖ It is proposed that the Department will only carry out a "high-level" cursory check of the EIS before it is put on exhibition (ie a tick-a-box exercise). That leaves the community to do the heavy lifting of fact checking, confirming that report results (which often only the Department has access to), ensuring all key issues are addressed and addressed adequately, that mitigation measures are viable and appropriate, and a whole host of other functions that the community is not qualified, experienced nor paid to do.

The whole foundation of the Rapid Assessment Framework appears to be based on the Department having virtually no input into the SSD planning processes, apart from coordination, until the Department makes its final assessment. BPN considers this to be an unviable and unacceptable business model for the assessment of the State's most significant developments. As a cost-cutting exercise and staff-shedding exercise, the concept would be ideal. As the model for good planning outcomes for Major Projects in NSW it is appalling.

RECOMMENDATION: The Department must carry out a full check of the EIS before it is put on exhibition.

8.8 EXHIBITING THE AMENDMENT REPORT

- ❖ It is BPN's view that all SSD amendments should be re-exhibited. Proponents/applicants are well known for lodging an application, submissions being made on that application, then making amendments that the community cannot then comment on. While DPIE may believe that it can assess whether there is *"a greater than minimal increase in the environmental impacts of the project"*, it is frequently the case that an amendment has further impacts that are clear to the community that has local knowledge, but would not be obvious to someone without that level of local knowledge.

It may be acceptable that a public hearing is held for amendments that have only a *minimal increase in the environmental impacts of the project*, with a subsequent period of seven (7) days for additional written submissions. For amendments with a greater than minimal increase in the environmental impacts of the project, the Department needs to exhibit the Amendment Report for 28 days.

RECOMMENDATION: All SSD amendments must be re-exhibited, with the exception of amendments that have a minimal increase in the environmental impacts of the project, in

which case a public hearing will be provided with a subsequent period of seven (7) days for additional written submissions. For amendments with a greater than minimal increase in the environmental impacts of the project, the Department must exhibit the Amendment Report for 28 days before it considers any new submissions and finalises its assessment.

10.1 CONSENT AUTHORITY

- ❖ The criteria for the Independent Planning Commission determining a SSD includes the point:
 - there are at least 50 objections to the DA (where petitions and submissions that contain substantially the same text count as one objection)

BPN has noted that the criteria for what constitutes a single objection has become more and more stringent as time goes on, the previous iteration being a "unique" objection for Planning Panels. **BPN strongly objects to the continual tightening of the criteria for what constitutes a single objection. The wording in 10.1 is far too stringent.**

DPIE has stated in its Policy Paper that it wishes to increase the efficiency of assessments by doing away with most site specific SEARs. In other words it is reducing the amount of time that the DPIE spends in doing individual SEARs assessments. Why then does DPIE think that every person in the community that is concerned about any SSD project has the time to write a complete submission? Unpaid, unlike DPIE staff and unlike the applicant's consultants.

Many concerns will be similar, with just a few individual particular concerns. If those similar concerns are not expressed by a great number of people, we all know that the applicant will say, that only one person commented on (noticed) a particular issue, so the applicant does not consider that to be important. BPN's membership is increasingly vocal about their concern that their input on developments is being further and further restricted. If DPIE wants to make the community consultation more inclusive the wording of 10.1 must change.

BPN is of the opinion that the wording of 10.1 is far too restrictive and should ONLY apply to petitions, not submissions, however similar they may be. Such restrictions on the interpretation of "submission" disenfranchises a large proportion of the community who do not have time to read all documents and write a whole submission by themselves.

Many people rely on community groups such as BPN for crystallisation of key points. BPN considers the continual tightening of the criteria for what constitutes a single objection has put its members at a disadvantage and works against the principals of BPN's support for its members.

RECOMMENDATION: The wording of the dot point should be amended to read "there are at least 50 objections to the DA (where petitions count as one objection).

10.8 MERIT APPEALS

- ❖ While it is understood that this is outside the scope of this exhibition, BPN is of the opinion that third party objectors should have the right to appeal SSD DAs, whether or not they meet the criteria for designated development.

11.4 OTHER APPROVALS

- ❖ **Approvals under the Commonwealth EPBC Act should be obtained prior to SSD consent, not as part of the post approval framework.** There would be instances whereby consistency with the EPBC Act would prevent consent. By obtaining EPBC Act consent post approval, conditions that otherwise would not have been permissible may be enabled or enforced by the SSD consent.

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intentionally blank***

To insert additional section

20. UNDERTAKING ENGAGEMENT GUIDE

- ❖ The *Undertaking Engagement Guide* must be more specific as to the what engagement methods will be required to ensure the applicant engages with councils, key agencies and in particular the local community. Particularly when the Guide, and it is only a Guide not a statutory requirement, states that detail consultation must be undertaken consistent with the *Undertaking Engagement Guide: Guidance for State Significant Projects*, if the Guide does not describe that consultation.

RECOMMENDATION: The *Undertaking Engagement Guide* must be more specific as to the what engagement methods the proponent will be required to take.

3. EFFECTIVE ENGAGEMENT

The UEG states that *"effective engagement occurs when the community, local councils and government agencies have the information they need to understand a project and its impacts, and are given the opportunity to participate in a meaningful way"*.

Participation in a meaningful way is the crux of many of the issues that the community has with engagement of developments. While the Department can at times be responsive to community input, too often the community feels that there is a predetermined outcome expected for proposals, with Departmental reports using planning jargon to justify the lack of meaningful improvements.

RECOMMENDATION: The Department's assessment report must be more balanced in providing both the positive and negative attributes of any viewpoints and decisions.

- ❖ The UEG states that *"effective engagement means the community acknowledges the assessment was fair and transparent and understands how various and diverse views and concerns were considered"*. In BPN's experience, from its communications with members and member groups, BPN has found that the community rarely believes assessments are fair and transparent.

There are two major reasons for this:

- The documentation provided by proponents, even when complete in the number and type of documents provided, is unfortunately most often full of falsehoods, is misleading and/or (usually and) omits vital information needed for assessment.
- The differential in the level of access to the Department provided for the proponent and for the community is vast. Proponents have high level access to Heads of Departments, Government Ministers, and all levels of bureaucracy.

The community on the other hand, can no longer even speak by phone to any member of the Department through the DPIE switchboard. People that call in are told that the switchboard no longer has directories for any of the people or departments. Callers are directed to use the online portal to make enquiries which routinely do not get answered. The reason for the change, as for almost every recent change to DPIE policy, procedure or regulation, is given as being the COVID pandemic. Even the most basic query by the general public is no longer being answered which makes it difficult to make informed submissions.

While this gross imbalance exists, the community cannot have any confidence that effective engagement with the community occurs, only with the proponents who are most often major developers.

RECOMMENDATION 1: The Department must not give biased weighting to proponent's assessments where conflicting information of a significant nature is provided by the community in their submissions. In the event of conflicting information the Department must obtain an independent expert assessment at the proponent's expense.

RECOMMENDATION 1: The Department must provide reasonable access to the Department so that the community can obtain any relevant information needed for submissions. All communication or correspondence to the Department, whether by phone, email or through the Planning Portal, must be responded to in the first instance within 2 working days, providing preliminary advice regarding how the contact will be handled. All communication or correspondence must be subsequently be responded to within 7 days and finalised within 14 days.

3.1 INNOVATIVE ENGAGEMENT

- ❖ It is not appropriate for the Department to "*encourage innovative approaches to engagement*". It is DPIE's responsibility to set the parameters for community engagement, not allow the proponent to 'innovate' with obscure, not widely known media, such as their own private website. Such platforms can restrict input, provide only a limited number of ways to provide views (such as multiple choice questions - a new favourite of DPIE), or may edit, delete or block dissenting views. Traditional print offers provides little if any opportunity for community input.

Even the concept of Community Reference Groups is open to abuse, with the groups stacked with people that are supportive of the development (a favourite of big developers). The developer sets the Terms of Reference and selects the group members. The meetings which are now mostly online (again supposedly because of COVID) and not in person, are tightly controlled with group members being muted for most of the meeting and even 'chats' are often not visible to other members of the group.

RECOMMENDATION: The Department must provide the parameters for community engagement, not allow the proponent to 'innovate'.

3.3 HOW PROPONENT CAN IMPLEMENT THE COMMUNITY PARTICIPATION OBJECTIVES

- ❖ The Department only provides the viewpoint that the engagement will be effective IF the proponent undertakes certain activities. For the community to have any confidence in this process, the wording needs to be amended. from "*A proponent will engage effectively if they:*" to "*A proponent must engage effectively by:*" The grammatical structure of most of the points will then need to change for example from "identify" to "identifying".

RECOMMENDATION: Amend the wording "*A proponent will engage effectively if they:*" to "*A proponent must engage effectively by:*"

3.4 PROPORTIONATE ENGAGEMENT

- ❖ This is a concerning viewpoint. For all SSD and SSI the community routinely feels that there is insufficient engagement. All SSD and SSI developments have considerable impacts and generate community interest. The proponent should not be the arbiter of "*the likely interest the community might have*". In BPN's experience, the only time that the community does not show significant interest is when the development has not been adequately notified.

Community engagement is always meaningful and the only "consultation fatigue" is experienced by proponents who want as little community engagement as possible. Any engagement costs should be borne by the proponent. The cost of community engagement is so miniscule against the capital value of any SSD or SSI development as to have a negligible impact on the development.

The level of engagement that the proponent must undertake must be provided by the Department and detailed in the *Undertaking Engagement Guide*. It may be that the level is determined on a capital value basis, or some other basis, but it must be detailed not just mentioned in passing in the *Guide* and certainly not determined by the proponent.

RECOMMENDATION: The Department must determine the level of community engagement, not the proponent. The requirements must be included in the *Undertaking Engagement Guide*.

4. REQUIREMENTS TO ENGAGE

- ❖ As this section describes, there are "*statutory tools that give the department the ability to COMPEL proponents to undertake certain engagement activities for the purpose of facilitating a better planning outcome*". These must be rigorously applied, together with the statutory requirements.

RECOMMENDATION: The Department must determine the level of community engagement, not the proponent.

4.1. STATUTORY REQUIREMENTS

Making information publicly available

- ❖ The list of information to be included in development applications as required under the *EP&A Regulation Schedule 1 Part 1* has been dramatically reduced in the last few years. The list of information in those repealed subclauses includes such basic information as the name and address of the application and the address and formal particulars of title, which makes even identification of the actual site difficult if not impossible.

Other repealed subclauses include owner's consent for the development to be carried out, the estimated cost of the development and various subclauses pertaining to threatened species and critical habitat.

If this important information is not included as the Statutory requirements, then the ability for the Department to "compel" proponents to provide this information under the EP&A Regulation is not available, as is being suggested in this Section 4.1 Statutory Requirements.

RECOMMENDATION: The following subclauses should be reinstated into the *EP&A Regulation Schedule 1 Part 1* to ensure that proponents are compelled provide all relevant information:

- the name and address of the applicant,*
- a description of the development to be carried out,*
- the address, and formal particulars of title, of the land on which the development is to be carried out,*
- an indication as to whether the land is, or is part of, critical habitat,*

- (e) *an indication as to whether the development is likely to significantly affect threatened species, populations or ecological communities, or their habitats, unless the development is taken to be development that is not likely to have such an effect because it is biodiversity compliant development,*
- (g1) *in the case of State significant development, a list of any authorisations that must be provided under section 89K of the Act in relation to the development,*
- (h) *the estimated cost of the development,*
- (h1) *in the case of State significant development, the capital investment value of the development,*
- (i) *evidence that the owner of the land on which the development is to be carried out consents to the application, but only if the application is made by a person other than the owner and the owner's consent is required by this Regulation,*
- (j) *a list of the documents accompanying the application.*

❖ Similarly the subclauses below pertaining to names, addresses, registered number of the development consent and estimated cost have been repealed from Construction Certificates.

RECOMMENDATION: The following subclauses should be reinstated into the *EP&A Regulation Schedule 1 Part 3* to ensure that proponents are compelled provide all relevant information:

Part 3 Construction certificates

5 Information to be included in application for construction certificate

An application for a construction certificate must contain the following information:

- (a) *the name and address of the applicant,*
- (b) *a description of the building work or subdivision work to be carried out,*
- (c) *the address, and formal particulars of title, of the land on which the building work or subdivision work is to be carried out,*
- (d) *in the case of building work, the class of the building under the Building Code of Australia,*
- (e) *the registered number and date of issue of the relevant development consent, if consent has already been granted for the proposed development,*
- (f) *the estimated cost of the development,*
- (g) *(Repealed)*
- (h) *a list of the documents accompanying the application.*

❖ The need for this information was well illustrated when the *Planning System Acceleration Fast Tracked Assessments* were introduced. It was virtually impossible for the fast track proposals to be identified against their relevant LEP developments because there was inconsistency in the naming of the proposals and street addresses were almost never provided.

It is still difficult to find proposals in the *Planning Portal - State Significant Development*, unless the Department's ID number or the name that the Department have given to the development is known. Many people in the general community would only know of an SSD near to them by where the development is, not by the Department's naming or numbering system.

RECOMMENDATION: The information identifying proposals should include, and be searchable by, the address of the property, formal particulars of title, applicant and registered number of any current proposal, to ensure that all interested parties are able to search, find and comment on proposals in a timely manner.

❖ There is frequent communication between the Department and the proponent between each stage of SEARs, EIS, public submissions, proponent's response, department's assessment and the decision. Information that is relevant to the public's submissions is often not provided in the

documentation accompanying the application. The communication is only rarely of a commercial-in-confidence nature. It is often only when information is provided under a GIPA Application that crucial information comes to light. This type of private communication restricts the scope of issues that the community can raise and undermines the community's confidence in the assessment process.

RECOMMENDATION: All communication between the Department and the proponent of an SSD or SSI, and vice versa, pertaining to the development should be published on the Planning Portal.

- ❖ The list of information published - SEARs, EIS, public submissions, proponent's response, department's assessment and the decision - does not include the public hearing between the department's assessment and the decision.

RECOMMENDATION: The public hearing that may be held after the department's assessment is published should be included in this section of the Guide.

Mandatory public exhibition timeframes

- ❖ The minimum period of 28 days for public exhibition is far too short for an SSD or SSI. The community struggles to learn of, read, research and make comprehensive submissions within that time frame. If the Department wants informed submissions, the minimum exhibition for these projects should be 40 days. It may be that proposals of a larger scope (calculated by the estimated cost of the development) could require up to 60 days.

RECOMMENDATION: The minimum period of 28 days should be extended to 40 days, with proposals of a larger scope being 60 days.

- ❖ It is concerning that the Department only considers that *"in some cases, adjoining land owners or occupiers must also be notified"*. By their very nature any SSD or SSI will have an impact on the adjoining land owners. There will also be an impact on properties in the general locality.

RECOMMENDATION: The phrase *"in some cases"* should be deleted and the sentence should read *"Adjoining land owners or occupiers, as well as those in the immediate locality, must also be notified"*.

Consideration of community views

- ❖ BPN members have repeatedly raised concerns that the consent authority only has to "consider" the issues raised in submissions, but does not have to take the issues "into consideration". This is not simply semantics regarding a difference in the part of speech, it is the difference in how issues raised in submissions are dealt with. To "consider", a consent authority only has to think about the issues. If the issues were "taken into consideration", the consent authority would need to either incorporate recommendations or provide reasons why a recommendation in a submission was or was not taken up.

It is the difference between the decision-maker incorporating good recommendations and a simple justification being made against a recommendation.

RECOMMENDATION: The phrase "*the decision-maker is required to consider the issues raised in submissions*" should be amended to "*the decision-maker is required to take into consideration the issues raised in submissions*".

Coordinating input from key stakeholders and weighing up the merits of the project

- ❖ There is a fundamental problem with obtaining feedback (submissions) from "*key government agencies, local council*" at the same time as seeking community submissions. It is not unusual for feedback provided by government agencies and local councils to be based on information provided by the proponent that is incorrect. Thus these agencies and councils reiterate this incorrect information in their submissions, giving it an air of credibility that is unwarranted. Some recent examples raised by BPN members include:
 - Rural Fire Service providing General Terms of Approval to clear an Asset Protection Zone when the applicant's Vegetation Management Plan had failed to identify the area as containing a Critically Endangered Ecological Community;
 - The Department's assessment reiterating a Council's statement that the development was needed to prevent a heritage item from being subdivided in the future and enable its long-term use. Yet similar heritage properties in the surrounding district were snapped up for similar prices to the price of this property and retained for prestige private residential usage;
 - A decision-maker approving a proposal for land that was not wholly owned by the proponent. A portion of the site was owned by Roads and Maritime Services. It was only after the approval that the information was able to be obtained under a GIPA Application.

In addition, government agencies and local councils often have information that is not available to the community which is important for the community to know so that they can better comment on the impacts of the proposal. Examples would include information such as historical records, land use records, previous contamination etc.

- A recent example was for a proposal on asbestos-contaminated land where there had been a prosecution by the EPA.

RECOMMENDATION: The feedback/submissions provided by government agencies and local councils should be exhibited with the proposal.

4.2 STATUTORY TOOLS

Secretary's Environmental Assessment Requirements (SEARs)

- ❖ The proposed industry specific SEARS will not provide anywhere near the depth and breadth of information required for the consent authority to make a fully informed decision. The speeding up of assessments of the documentation does not justify the dumbing down or restriction of the information required to be provided. There will be less if any scrutiny of environmental impacts that are outside of the scope of any industry specific SEARS forms.

Specific industries such as schools and hospitals do not necessarily have a lower environmental impact particularly depending on the location.

RECOMMENDATION: BPN does not agree with the principle of industry-specific SEARS and this concept should be rejected.

Requesting additional information

- ❖ There are far too many instances throughout this document where instead of the Department providing criteria for the proponent to adhere to, the Department uses words such as "may", "might", "should" or "is expected to". The Department must set strong Guidelines that are to be followed, not provide what are essentially ways and means of a proponent avoiding being "required" to undertake certain actions or provide certain information.

The sentence "*The proponent may need to undertake additional engagement to respond to these requests*" is one such example.

RECOMMENDATION: The above sentence should be amended to read "*The proponent will need to undertake additional engagement to respond to these requests if the information is substantially different or new to the information already provided*".

Conditions of approval

- ❖ Again the Department should provide strong affirmative wording. The words "as relevant" are sufficient to ensure the engagement is proportional. Facilitating a community consultative committee on any development will ensure that issues that arise can be dealt with in a cost effective and time efficient manner where possible. There is no cost to the Department for this important community initiative.

RECOMMENDATION: The conditions of approval will require the proponent to conduct further engagement during detailed design, construction, operation, decommissioning and/or rehabilitation of the project, as relevant. The proponent will be required to establish a community consultative committee (CCC) for projects with an estimated cost exceeding \$xxx (suggest \$20M).

4.3 COMMONWEALTH ENVIRONMENTAL MATTERS

- ❖ The minimum period of 28 days for public exhibition of proposals that impact on areas and species of such environmental value as to be listed under the *Environment Protection and Biodiversity Conservation Act 1999*, is woefully inadequate.

RECOMMENDATION: The minimum period of 28 days must be extended to 60 days (equivalent of double the length of time).

- ❖ The final paragraph in this section should include modifications to mining and gas development and delineate what constitutes "large" mining and gas developments.

RECOMMENDATION: The final paragraph should be amended to read "The department and the Australian Government are required to jointly seek advice from the *Independent Expert Scientific Committee (IESC)* for all large (delineate large) coal mining and coal seam gas developments and modifications".

- ❖ The final paragraph in this section must include reference to all species and areas protected under the EPBC Act. The use of the word "etc" at the end of the paragraph is far too open to evasion and misinterpretation.

RECOMMENDATION: The department will also seek advice from other expert advisory bodies established under the EPBC Act or from the Australian Government. This includes guidance in relation to assessing the impacts on Ramsar wetlands, world and national heritage areas and migratory species, critically endangered ecological communities, endangered species and all other species and areas protected under the EPBC Act etc.

5. GLOSSARY

- ❖ The word "Feedback" is defined as being *"Material that is provided to the department or proponent outside of a public exhibition period, including material received through social media or other public forums"*.

However the Guide refers to information provided by government agencies and local councils during the exhibition period as being "feedback", as well as in some places referring to submissions made by the community as being "feedback".

RECOMMENDATION: The Guide terminology should be consistent throughout - where government agencies, local councils or the community are providing submissions, it must not be referred to as feedback. The Guide must be reworded in those places.

APPENDIX A - EXPECTATIONS FOR ENGAGEMENT

- ❖ Throughout this whole section, the *Undertaking Engagement Guide* states what the Department WILL do, what the proponent is EXPECTED to do, and what the community CAN do. For the community to have any confidence in this process, the wording for the proponent has to change from "The proponent is EXPECTED to:" to "The proponent MUST:"

RECOMMENDATION: The Expectations for Engagement must be amended to require the listed actions to be undertaken. Where the wording *"The proponent is expected to"* is used, it must be amended to *"The proponent is required to"*.

Project Design/Scoping

Proponent:

- ❖ It should not be left up to the proponent to decide who will be interested in or affected by the project and whether to contact government agencies or local councils. The Department must provide clear guidelines as to when and who will be affected. It is unrealistic to expect a proponent to identify individuals or special interest groups that will have an interest in a project.

It is again unrealistic to leave it up to the proponent to make the decisions on how to engage with the community and inform the community about the project. It would be in the proponents best interests to limit engagement with the community.

RECOMMENDATION: The first three actions in this section must be undertaken by the Department. Thus a new subclause should be included at the beginning of this section as follows-

The department will:

- ***identify the individuals, special interest groups, local councils and government agencies with an interest in or likely to be affected by the project***

- *advise the proponent how to engage with the community*
- *inform the community about the project*

❖ There is nothing in the fourth to eighth points regarding how the "expectations" are to be carried out.

RECOMMENDATION: The Department must set specific parameters. Wording should at the very least include the following advice as underlined-

The proponent will:

- *establish working relationships and open lines of communication between the project team and the community by providing contact details of project manager/liason officer, establishing a social media presence and advising residents in the immediate locality of the project*
- *give the community the opportunity to voice their concerns or share local knowledge by providing an opportunity for comments to be made direct to the project manager/liason officer and through a social media presence and/or website commentary page*
- *enable the community's views to be considered early on in the planning, design and assessment process by facilitating direct communication between the proponent and community as described above*
- *inform the community about the opportunities to participate during the preparation of the EIS through direct contact with residents in the locality and local community groups and providing advice on the proponents social media/website*
- *explain how community feedback will be considered and documented by direct contact with residents in the locality and local community groups and providing advice on the proponents social media/website*

Preparing the EIS

❖ The second point for the proponent seems to be a circular argument - the point states "*implement any engagement activities required by the SEARs*". But the industry specific SEARs state the proponent is to "*Detail consultation undertaken consistent with the Undertaking Engagement: Guidance for State Significant Projects*". Either the SEARs or the Guidance must detail the engagement activities, not simply refer back to each other without either of them detailing the activities. Only a list of potential organisations to contact is provided.

RECOMMENDATION: The Department must provide the parameters for engagement activities and consultation in both Guides.

Assessment

❖ A point must be included indicating that the Department's Assessment will be published on the Major projects website. This is an important point to include, particularly if there is to be a public hearing between the Assessment and the Decision (for instance by the Independent Planning Commission).

RECOMMENDATION 1: A new second point should be included as follows -

- *publish the Department's assessment on the Major projects website*

❖ The second point of this section states the Department will request additional information etc (if required). That additional information must also be published on the planning portal.

RECOMMENDATION 2: A fourth point should be included as follows -

- *publish any additional information provided by the proponent, local councils, government agencies and/or independent experts on the Major Projects website.*

❖ It is common for the Department, in conjunction with the proponent, to prepare draft conditions of consent for the decision-maker, rather than the decision-maker (if it is a different consent authority such as the IPC) preparing the conditions of consent. This is considered to be unfair to the community who do not have such access to the Department and it makes the process less than transparent. Additional points are needed in this section -

RECOMMENDATION 3: A fifth point should be included which will more accurately describe the process as follows -

The department will:

- *prepare and publish draft conditions of consent*

RECOMMENDATION 4: Where a public hearing is not held between the Assessment and the Decision (see next heading) to hear the community's views on the conditions of consent, the Department should seek community input into the conditions of consent. A sixth point should be included as follows -

The department will:

- *notify the public exhibition in accordance with the same requirements as the EIS exhibition*

Assessment / Decision

❖ Between the Phases of Assessment and of Decision, an additional Phase must be included for the times when a consent authority holds a public hearing for oral submissions regarding the Department's assessment. A recent example was of a school SSD where the Independent Planning Commission (the consent authority) held a hearing after the Department's assessment was published but before their decision was made.

RECOMMENDATION: An additional Phase be included between Assessment and Decision titled "Public Hearing" with the following point -

The decision-maker will:

- *notify the Department, the proponent and submitters of the public hearing*
- *publish the public hearing information on the relevant page of the NSW Planning Portal*
- *hold a public hearing where all parties are able to provide oral and written submissions*

Decision

❖ Please refer to the section "Assessment" above, with regards to preparing conditions of consent.

❖ In the sub-section "*The community is able to*" the Guide states that the community can "*seek clarification from the department about any aspects of the approval that are unclear*". Information should be provided in this Guide as to how to contact at the Department when queries regularly go unanswered.

RECOMMENDATION: The point should read as follows -

The community is able to:

- *seek clarification from the department about any aspects of the approval that are unclear. Departmental contact details can be found on the Major projects website*

Post approval

- ❖ The community wants to see action taken on breaches of conditions of consent not just the Department responding to complaints.

RECOMMENDATION: A additional point should be included as follows -

The Department will:

- ***instigate proceedings and/or issue penalties as appropriate***

Furthermore as raised by BPN in previous DPIE forums and in submissions, the Guide should have published and accessible rules and procedures, provide for effective formalized public participation and extend fairness to all parties. However feedback from BPN members is that this does not happen adequately because policies and procedures are complex, opaque and difficult to access, which puts the public at a great disadvantage. Particularly given that the Department's staffing levels seem to be insufficient for the community's demand for information and explanation.

All of the steps for Major Projects are inadequately notified in advance to the community even for those impacted near the development. There needs to be improved timelines for public participation, wider public notification and increased notification periods including with community and environmental organisations.

There should also be greater prescription of the support necessary for encouragement of the public to participate, such as information sessions, and plain English and other language explanations.

21. ASSESSING CUMULATIVE IMPACTS GUIDE

- ❖ BPN fundamentally disagrees with several presuppositions in this Guide:
 - ❖ It is only the cumulative impacts of future projects that are considered in this Guide. Current and past cumulative impacts are said to already be dealt with in the regular assessment of the impacts of State significant projects using the incremental and combined incremental assessment approaches. However by excluding past and current cumulative impacts we believe that this distorts the cumulative impact assessment.

RECOMMENDATION: Past, current and future cumulative impacts must not be separated into two different assessment streams.

- ❖ The proponent should not be permitted to decide matters that have traditionally been the Department's responsibility. These matters include but are not limited to -
 - identifying the key matters requiring cumulative impact assessment
 - identifying future and potentially future projects that are not undertaken by the proponent themselves ie what projects to include
 - deciding whether a cumulative impact assessment is required
 - the study area
 - the length of time over which cumulative impacts will be assessed

RECOMMENDATION: The Department must include these parameters in any SEARs, whether industry-specific or otherwise.

- ❖ The Guide consistently refers to the Planning Secretary setting the SEARs. One such example in Section 3. *Scoping the Assessment* states that after considering the Scoping Report the Planning Secretary will set the SEARs. Yet according to the Industry-Specific SEARs Guidelines, it is the proponent that decides which SEARs will be utilized, not the Planning Secretary / Department. Likewise in Section 2.2 Integrated Assessment Figure 1, the second step states "*Department Sets Requirements*".

We acknowledge that we are not planning experts and we may have missed something here, but it seems that the *Assessing Cumulative Impacts Guide* was created separately from the concept of the *Industry-Specific SEARs* and therefore does not contain the same information or the correct steps if Industry-Specific SEARs are to be introduced.

RECOMMENDATION: The Department should check that all 22 documents exhibited as part of the Rapid Assessment Framework are consistent with each other.

1.1 STRATEGIC LEVEL

- ❖ There is extensive discussion in this section of the "*comprehensive framework in place to manage cumulative impacts*". However it only provides information on what the State Government is supposed to do, not what it will do, what it will commit to doing, or what it does do.

For instance, this section details that the framework includes strategic and land use planning to integrate the provision of infrastructure and services with the development of land (eg roads, railways etc).

However this is not the experience of the community. The integration has not been well managed, with proponent led developments being approved long before there is adequate infrastructure.

Likewise the protection of natural and cultural resources (eg heritage places and items, threatened species and endangered ecological communities) have become secondary to economic benefit, particularly since the COVID-19 pandemic.

Holding inquiries and reviews and receiving expert advice (eg from the Chief Scientist or the Independent Planning Commission) cannot address the cumulative impacts when the expert advice is ignored (eg on Koala habitat in the Macarthur Region) or government ministers call for Panels to be disbanded or overruled if they don't like their decisions (eg IPC on extension of mining under Sydney's water catchment).

RECOMMENDATION: This section must be more definitive with regards to what the Government will commit to doing to manage cumulative impacts, not simply provide planning jargon on what the Government is supposed to do.

❖ Similarly the *"Key issues addressed in recent years"* reads like a litany of failed Government policies -

- mitigating impacts of climate change - last year's mega bushfires and the planning response to natural disasters have not been good examples of the mitigation of impacts. Both boundary clearing for bushfires and the recent LEP natural disasters clause were rejected by large numbers of local councils due to the unintended consequences of those initiatives
- securing affordable housing in major urban areas - the number of major residential developments that include affordable housing has been woeful. The fast track tranches should have specified requirements for affordable housing - instead it was a criteria that was hardly utilised.
- managing the cumulative impacts and land use conflicts of coal mining in the Hunter Valley has not been a success, with almost every local resident fighting against the impacts on industries such as horse studs and arguing that the health of local communities is impacted
- protecting Sydney's drinking water catchments from the impacts of coal mining has been unsuccessful - the latest IPC refusal looks set to be overturned by government ministers.
- protecting prime agricultural land around Narrabri - we doubt whether the locals would agree that the coal seam gas approvals are a success story for mitigating impacts on the ground waters.

RECOMMENDATION: It is respectfully suggested that this list of what the community considers almost complete failures to consider and mitigate the cumulative impacts of these developments, be deleted from this document. Providing this list does not engender community confidence in the success of the Department's management of cumulative impact assessments.

1.2 PROJECT LEVEL

❖ This section states that *"The main purpose of this cumulative impact assessment is to inform decision-making on the merits of the project, and the setting of conditions of approval if the project is approved"*. It would seem far more logical if cumulative impacts for all key issues were included in the SEARs, whether industry-specific or otherwise. Yet the only cumulative impact assessment required in the proposed industry-specific SEARs is for traffic impacts.

RECOMMENDATION: Cumulative impacts must be considered for all key issues in the preparation of the SEARs.

1.3 PURPOSE OF THIS GUIDE

- ❖ There is a fundamental problem with the proponent deciding on what are "*the things that matter*" and on the proportionality of the impacts of the project. This goes to the heart of the Rapid Assessment Framework, whereby to reduce costs and "uncertainties" for the proponent, the proponent will be able to decide what information is provided to the Department, including but not limited to which key issues will be included in the SEARs, the level of community engagement, summation of community submissions, what cumulative impacts will be considered and the selection of a REAP, to list just a few.

This is a fundamental shift in the accountability and responsibility of the Department.

RECOMMENDATION: All of the Guides in the Rapid Assessment Framework must be adjusted so that, even if the proponent still makes those decisions, there are tight parameters to be adhered to, not just vague planning jargon which does little to ensure the proponent will provide improved outcomes.

Throughout this BPN submission there are numerous recommendations that, although each is small in themselves, will contribute significantly to ensuring what is supposed to be the main aim of the Rapid Assessment Framework, better, more efficient planning outcomes. Robust parameters across the board are the only way that the Department will regain the community's confidence in the NSW planning system.

2.1 CUMULATIVE IMPACT ASSESSMENT - INTRODUCTION

- ❖ Current and past cumulative impacts are said to already be dealt with in the regular assessment of the impacts of State significant projects using the incremental and combined incremental assessment approaches. However by excluding past and current cumulative impacts we believe that this distorts the cumulative impact assessment.

RECOMMENDATION: Past, current and future cumulative impacts must not be separated into two different assessment streams.

2.2 INTEGRATED ASSESSMENT

- ❖ If an industry specific SEARs is used, which for all intents and purposes is proposed to be the main format for SEARs, then the Department doesn't set the requirements as suggested in this section. Figure 1 should therefore read Proponent Scopes Cumulative Assessment → Proponent Completes SEARs (or Department provides industry-specific or project-specific SEARS) → Proponent Assesses Cumulative Impacts, all before there is any input from the Department in terms of cumulative impact (if an industry-specific SEARs is utilized).

It seems that there has not been sufficient collaboration within the Department on the preparation of the totality of the Rapid Framework Assessment documents as this Guide repeatedly suggests there will be Departmental input where it appears there will not be input.

RECOMMENDATION: Clarification of the steps involved in a Cumulative Impact Assessment should be provided.

- ❖ In Figure 1 it is not made clear there will be community input at the first stage of Proponent Scopes Cumulative Assessment.

RECOMMENDATION: A side box for "*Community Input*", with an arrow towards "*Proponent Scopes Cumulative Assessment*", should be included in the diagram.

- ❖ At the top of page 12 of this Guide, it is stated that "*the proponent must prepare the EIS for the project and undertake the cumulative impact assessment in accordance with the SEARs*". But as raised previously, it is the Department's intent to utilize industry-specific SEARs for most SSDs and SSIs. Yet the ONLY cumulative impact assessment required in any of the exhibited industry-specific SEARs, is to do with "*Traffic, Transport and Accessibility*" including "*road capacity, intersection performance and road safety (pedestrian and cycle conflict)*". That even applies to all *Identified Sites and Precincts*.

The greatest cumulative impacts could be on environmental amenity, public space, trees and landscaping, biodiversity, air quality, noise, ground and water conditions, stormwater, flooding, contamination, heritage or bush fire risk. Yet the industry-specific SEARs does NOT include cumulative impacts in any of these *Issue and Assessment Requirements*.

To make this point clear, cumulative impact assessments will not be undertaken by the proponent for the EIS with regard to a whole range of issues because they are NOT required in the proposed industry-specific SEARs.

RECOMMENDATION: Cumulative impact assessment must be included for all key issues, in all of the industry-specific SEARs.

- ❖ Evaluation of the project should have regard to incremental and combined incremental assessment approaches, as well as types three (cumulative impacts of the project with other projects) and four (combined effect of different cumulative impacts of the project with other projects) cumulative impacts. By excluding past and current cumulative impacts we believe that this distorts the cumulative impact assessment.

RECOMMENDATION: Past, current and future cumulative impacts must not be separated into two different assessment streams.

- ❖ An exhibition timeframe for the Cumulative Impact Assessment, together with the rest of the EIS, is insufficient at 28 days. This will not give the community the chance to consider all of the documents contained in the EIS, including the Cumulative Impact Assessment.

RECOMMENDATION: The minimum exhibition period for low impact projects should be 28 days with significant impact projects being exhibited for 60 days.

2.3 PROPORTIONATE CUMULATIVE IMPACT ASSESSMENT

- ❖ This section lists key matters that should be considered. Yet we reiterate, in accordance with the industry-specific SEARs, not one of those key matters are included as cumulative impacts to be considered in an industry-specific SEARs., Yet this Guide states that "*the proponent must prepare the EIS for the project and undertake the cumulative impact assessment in accordance with the SEARs*".

RECOMMENDATION: The *Assessing Cumulative Impacts Guide* must be consistent with the *Industry-Specific SEARs Guidelines*.

- ❖ The list of key matters that could be materially affected by the cumulative impacts of projects is woefully inadequate. The only examples provided of the *"features of the economy, environment or society that are valued because of their rarity or their importance, including the critical role they play in supporting systems which are essential for people, the environment and the economy"* are National Parks, World Heritage Sites, population centres, strategic agricultural land, air sheds and industry or employment centres.

It should be argued that air and water quality are essential for people, areas of critically endangered ecological communities, threatened species and heritage items other than World Heritage Sites are essential for the environment and natural disaster risk such as flooding and bushfires can have a significant cumulative impact on the economy.

The phrase that *"not every conceivable cumulative impact on every matter"* should be assessed, is devaluing other features of the economy, environment and society that are essential. **That phrase should be removed from this Guide.**

RECOMMENDATION: The list of key matters that should potentially be addressed in the Cumulative Impact Assessment must be expanded and properly detailed, not just provided as "Examples" only. Providing examples instead of precise parameters is considered to be inadequate in this Guide.

2.4 COLLABORATION

- ❖ Precise language must be used in this Guide. The repeated use of words such as "may" does not define the necessary requirements. It allows proponents to avoid undertaking actions that would be expected by the community and theoretically by the Department.

RECOMMENDATION: The wording *"This engagement may involve"* must be amended to read *"This engagement will involve"*.

3. SCOPING THE ASSESSMENT

- ❖ While it is agreed that not every State significant project would require a cumulative impact assessment, by their very nature these are significant projects so most would have significant impacts, particularly cumulative impacts. We therefore do not agree with the proposition that it is only future projects that need to be considered in a cumulative impact assessment.

By not taking into account past projects, the baseline against which any cumulative impact must be assessed, is consistently moving. Usually it is increasing by increments, the so called death by a thousand cuts. Past impacts on critically endangered ecological communities or on Koalas are relevant to any cumulative impact assessment.

RECOMMENDATION: Any assessment of whether a cumulative impact assessment is required must take into account impacts from projects undertaken in the past.

3.1 WHAT TO ASSESS

- ❖ The key matters listed in this section vary considerably from those listed in the previous section.

RECOMMENDATION: This Guide needs to be proof read so that there is consistency from section to section and between this and other Guides as well as the SEARs.

- ❖ The terminology "*high-level review*" in this section does not appear to have the same meaning when used in the REAP Guide. In that instance, it is used to denote a cursory 2-day overview of the EIS. The use of the term in this Guide cannot be the same as there is considerable information to be ascertained, including future projects and key matters and the scale and nature of the cumulative impacts. While it is understood that the general meaning of the term could be considered to be an "overarching view", essential information may be overlooked at this stage if the proponent is not clear on the Department's expectations.

RECOMMENDATION: Clearer wording rather than planning jargon like "high-level review" must be used to explain exactly what is expected of the proponent at this stage.

3.2 WHAT STUDY AREA

- ❖ Reference is made to an example of a study area where the focus is on those species that are at risk of serious or irreversible harm. The DPIE document *Guidance to assist a decision-maker to determine a serious and irreversible impact* is referenced. However it is noted that the recently updated version of this DPIE document has omitted to include appendices of the *List of potential species (and their habitat) that meet the SAll principles and criteria*, as well as the *List of potential ecological communities that meet the SAll principles and criteria*.

This oversight when reprinting the document means that proponents will not have access to these lists from the suggested references, because the Biodiversity Conservation Act also does not list all of the species and communities that meet the SAll principles and criteria. For example, Schedule 1 of the Biodiversity Conservation Act lists only three of the threatened Eucalyptus species out of a total of 20 Eucalyptus species that are considered to be Serious and Irreversible Impact (SAll) entities. **17 species of just one genus alone would be able to be ignored by proponents. This is a serious oversight that could have significant impacts on critically endangered species and communities and overall biodiversity.**

Proponents will be unable to assess cumulative impacts on SAll entities if they do not even know what species and communities are considered to be SAll entities.

RECOMMENDATION: The Department must republish the *List of potential species (and their habitat) that meet the SAll principles and criteria*, as well as the *List of potential ecological communities that meet the SAll principles and criteria* and reference the document in this Guide.

- ❖ The "baseline condition" of the relevant key issue is referred to in this section. As raised previously if past projects are not taken into consideration, there can be no consistent baseline for any issue. It will be a constantly moving target with each new project, which makes assessment of the cumulative impact meaningless.

RECOMMENDATION: Any assessment of whether a cumulative impact assessment is required must take into account impacts from projects undertaken in the past, to ensure there is a stable "baseline condition".

The Department must indicate an appropriate period of years for past projects. In some cases such as CEECs the appropriate period may be a lot longer than for other key issues.

3.3 OVER WHAT TIME PERIOD

- ❖ The proponent should not select the period of time for cumulative impacts of future projects either. It would be within the Department's capabilities to provide a list of timeframes for each potential key issue (for example traffic impacts or impacts on ground water). If the proponent wishes to vary the period of time, justification would need to be provided.

RECOMMENDATION: The Department must include a list of timeframes for cumulative impacts for the most common key issues.

3.4 WHAT PROJECTS TO INCLUDE

- ❖ This section states that *"the proponent must document the relevant future projects for each matter requiring cumulative impact assessment in the Scoping Report and explain why these projects were selected"*. Clearly this is not the "high-level" review that is suggested in section 3.1 which includes the requirements of this section 3.4..

RECOMMENDATION: We suggest deleting the term "high-level" review from all documents because the meaning is not the same across the documents or even within one document.

- ❖ The proponent must be required to consider types of projects outside of the list provided. The inclusion of an additional criteria could be projects over a certain capital value, say of \$50 million. That would capture large residential and other types of projects that have not been classified as SSD or SSI. Large residential projects in greenfield areas in particular can have a significant cumulative impact on SAI entities.

RECOMMENDATION: An additional criteria must be included based on high capital value of over \$50 million.

- ❖ As described in this section, potentially relevant future projects may become relevant future projects shortly before the EIS is submitted.

RECOMMENDATION: If an updated cumulative impact assessment is required, it should be publicly exhibited. A shorter timeframe for exhibition could be considered such as 14 days, depending on the complexity of the amendments.

- ❖ As described in this section, where three State significant projects are in close proximity to each other, a joint assessment of the relevant cumulative impacts would be required. However, as suggested in the next section of this Guide, it is unlikely that proponents would be willing to share potentially confidential information with each other.

RECOMMENDATION: Where three State significant projects are in close proximity to each other, a joint assessment of the relevant cumulative impacts by an independent expert must be commissioned by the Department and paid for by the proponents.

3.5 WHAT IS THE APPROACH TO ASSESSMENT

- ❖ The consideration of the use of data, avoidance or mitigation of impacts, predictions, key assumptions and any other relevant criteria is well detailed. However the Department only suggests that the proponent must identify them, it is not clear that the proponent must include these approaches in the EIS.

RECOMMENDATION: The phrase *"the proponent must identify the proposed approach"* must be amended to read *"the proponent must identify the proposed approach in the EIS "*

- ❖ This section refers to the possibility of *"clear government guidance on how to undertake the cumulative impact assessment on a relevant matter"*.

RECOMMENDATION: The Department should include a comprehensive list of what government guidance is available on relevant matters, not simply make an oblique reference to them which the proponent may be unable to find, or worse, say they were unable to find them.

4 ASSESSING AND EVALUATING CUMULATIVE IMPACTS

- ❖ Here again there is the requirement for the cumulative impact assessment to be undertaken in accordance with the requirements in the SEARs, of which the industry-specific SEARs only have requirements for cumulative impacts on traffic.

It is also suggested in this section that either the proponents of multiple projects in close proximity should assist each other or that the Department may co-ordinate discussions between multiple proponents. Whereas in section 3.4 it is suggested that the Department may appoint an independent assessor.

RECOMMENDATION: There must be consistency from section to section and between this and other Guides as well as the SEARs, otherwise proponents will not be clear what is expected of them and the community will not be clear as to whether the proponent is following requirements.

22. REGISTERED ENVIRONMENTAL ASSESSMENT PRACTITIONER

BPN is of the opinion that there are several fundamental problems with the proposed concept of recognition of registered practitioners to certify Environmental Impact Assessments.

- ❖ There is a fundamental problem with the registration of a whole organisation's "Scheme", rather than registration of individuals. While it is understood that this methodology would save the Department significant time and resources, registration of whole organisations into a REAP scheme could allow some of their worst members as well as their best, to provide certification.

A cursory review of the membership of some of the organisations likely to be recognised under the scheme, including organisations of high repute, brings up several practitioners that have been raised by BPN member groups as having provided inaccurate assessments. Once practitioners are members of such erstwhile organisations, they virtually have to cause an Opal Towers collapse before their membership is withdrawn.

The Guide's Criteria for individual REAPs included in an organisation's scheme, could in effect apply to virtually every person in their organisation. It would enable individuals with little if any expertise outside their particular field to certify EIS that have wide-ranging key issues.

RECOMMENDATION: The concept of accreditation of a "Scheme" for a whole organisation should be rejected. Individual practitioners must be registered, not organisations.

- ❖ One of the major causes of delays in approvals of any type of development at all, is that the information and documentation provided by some proponents is incorrect, misleading, if not downright false. While proponents continue to be allowed to select their own favourite assessors and certifiers, this problem will not change.

However, there is a simple solution which has been proposed on numerous occasions by well-regarded industry professionals. The selection of registered practitioners must be made on a rotational basis, NOT selected by the proponent. The proponent could for instance log into the DPIE Planning Portal and be automatically allocated the next available registered practitioner. Proponents would not be given the option to select another practitioner. Practitioners could be provided with an opt-out from the allocation process on a temporary or permanent basis, depending on their workload.

RECOMMENDATION: The selection of registered practitioners must be made on a rotational basis, NOT selected by the proponent.

- ❖ It is considered highly unlikely that any one practitioner would have the necessary qualifications or technical expertise to certify the accuracy of an entire EIS. Having analytical and high level communication skills will not improve the quality of all of the technical information in an EIS.

RECOMMENDATION: For larger more complex projects that have multiple key issues, a single REAP should not be assigned to certify a whole EIS.

- ❖ The concept of a REAP signing off on their own EIS without a peer review is fundamentally flawed. There are insufficient safeguards in a system whereby the Department only provides a cursory review (2 days is stated in this Guide) of the registration of the REAP and a "high-level" review of the EIS (presumably simply checking that all the EIS sections have been filled in).

RECOMMENDATION: The REAP that signs off on the EIS must be different to any REAP that has input into the EIS.

- ❖ Procedures for handling complaints within professional organisations are rarely if ever robust enough to prevent recurrent issues. The most any can do is withdraw membership, which is not robust enough to prevent poor planning outcomes. It would reflect badly on the organisation if it was seen to be refusing membership to REAPs as a result of poor certification. An independent body must be set up to investigate complaints. The EP&A Regulation must include penalties for bad practice. It should be an offence for a REAP to knowingly certify an EIS that is false or misleading.

RECOMMENDATION: An independent body must be set up to investigate complaints against individual REAPS. They must have the power under the EP&A Regulation to issue penalties including fines and decertification.

1.1 MAJOR PROJECTS REFORMS

- ❖ The two initiatives of SSD and SSI Guides, together with the REAP Scheme, do not necessarily ensure assessments and evaluations are carried out by suitably qualified and experienced practitioners. While providing a standard format of information required from the proponent is good, that in itself will not ensure a high standard of EIS. A robust certification process is also needed. It is considered, for the reasons provided in this part of the BPN submission, that the REAP scheme does not provide a robust certification process.

While a standard format may make it somewhat easier for the community to understand the potential impacts included in the EIS, these will be limited to the key issues that the proponent and their selected REAP have included in the Scoping Report.

We maintain that the two initiatives will not produce any significant improvement in the standard of the information contained in EISs and as such the Rapid Assessment Framework will not increase public confidence in the planning system.

RECOMMENDATION: See all of the above recommendations.

1.2 PURPOSE OF THIS GUIDELINE

- ❖ It is considered that the criteria that will be used to recognise REAPs is not sufficiently specific enough to ensure only suitably qualified practitioners will be able to certify EISs. The qualifications only require "*an environmental or planning-related degree*". A degree in forestry, agriculture or water technology would fit that criteria. Yet these individuals would clearly not have the necessary knowledge of large scale urban redevelopment, warehousing, schools or hospitals.

RECOMMENDATION: The requisite qualifications for a REAP must be specified in detail, not just provided as a generalisation.

- ❖ The Guide does not explain in any detail the steps involved in assessing and accrediting professional schemes. It simply states that organisations will "fill out the approved form" and "attach an accreditation application", which is then evaluated and determined. Likewise the requirements for admitting organisations into a scheme consists of a whole 3 dot points on page 10 of the Guide.

The "approved form" has not been exhibited in this Guide, nor any format for an "accreditation application". These should have been included in the Guide for public comment. As it is the accreditation process appears to have a very low bar and is nowhere near robust enough

The introduction of the REAP Scheme is an important initiative which should ensure a high standard in the quality of EISs, as well as transparency and clarity. Three dot points (below) will not engender confidence by the community in the introduction of this scheme. Even the smallest organisation could fill in a form that would meet these criteria -

The professional scheme must:

- have strong corporate governance, including
 - a governing body
 - established ethical or professional codes of conduct;
 - clear operational policies and procedures, including procedures for handling complaints and taking disciplinary action against members if necessary
- have a robust process for evaluating the qualifications, experience and competencies of members before they are admitted to the scheme
- require members to undertake continuing professional development (e.g. studying, presenting at conferences, publishing research or journal articles, lecturing, providing evidence in court, mentoring junior practitioners, giving pro bono advice to community groups).

RECOMMENDATION: The process of application for accreditation must be clearly detailed, the "approved form" published and the requirements for accreditation of the schemes must be made much more robust than just three dot points.

2.2 RECOGNITION OF PROFESSIONAL SCHEMES

- ❖ The proposal to provide accreditation to existing professional schemes is flawed. As mentioned above, not all members of the major organisations have the same expertise, qualifications nor unfortunately ethical outlook, to be allowed to become REAPs by default of their belonging to these organisations.

RECOMMENDATION 1: The larger organisations must create a REAP scheme as a subset within their membership, not simply have all members of the organisation automatically become REAPs basically just because they've paid membership fees for 10 years.

RECOMMENDATION 2: Information must be provided by the Department regarding how an existing organisational scheme could be recognised without an extensive review by the organisation of the skill set of each member and significant cost to the organisation.

2.4 TIMEFRAME FOR IMPLEMENTING THE REAP SCHEME

- ❖ The timeframe of 6 to 12 months for implementing the REAP scheme is far too short. While it is understood that the Department wants the Rapid Assessment Framework as soon as possible, this timeframe is insufficient for industry organisations, who have only a few paid employees and are run primarily by volunteers, to assess the suitability for this scheme of each of its members.

That is no doubt why the Department is looking at any registering organisations, rather than individuals, which would be a much longer process. However any gains made by a hurried implementation will be far outweighed by the problems created by having large numbers of REAPs enter the scheme, who have not been individually accredited for this task.

Given the time taken for problems to become apparent, the inherent slow mechanisms of complaint investigation by large organisations, and the likelihood of a reluctance to penalise its own members, significant numbers of projects could be certified before any problems with a grim REAPER or an overall scheme were identified.

A similar situation occurred during the tenure of the Building Professionals Board - time and again the same offenders were penalised by the Board, while the practitioners continued certifying illegal works. By not undertaking individual accreditation, the Department risks expanding this problem exponentially.

RECOMMENDATION: The timeframe should be at least 12 to 24 months to allow for the accreditation of individual REAPs.

2.6 REVIEW OF THE REAP SCHEME

- ❖ The lengths of time until the first review and subsequent reviews are too long. The response to poor practices in areas such as complaints handling and taking disciplinary action will be insufficient.

RECOMMENDATION: The first review should be after 12 months with reviews every three years after that.

- ❖ Reference to "*the quality of EISs*" should be better defined. There must be an evaluation of not just the number of forms correctly filled in but also of whether the information provided was true.

RECOMMENDATION: The reference to "*quality of the EISs*" needs to be better defined.

- ❖ The calculated costs of the new scheme should not be restricted just to Departmental costs as obviously the Department's costs will be less than current costs.

RECOMMENDATION: The costs to the organisations of implementing and maintaining their own schemes should be assessed.

3. CRITERIA FOR REAP SCHEMES

- ❖ Qualifications

RECOMMENDATION: The required qualifications for individual REAPs needs to be better defined.

❖ Experience

RECOMMENDATION: The required experience for individual REAPs must not be simply within the broad category of "*environmental or planning-related degree*", it must be within the specific field of experience of the REAP.

❖ Skills

RECOMMENDATION: The skill set required is far too abstract and must be better defined. Furthermore these organisations, that are essentially representative bodies, would not necessarily have a sufficient amount of detail which would be required for each member. **The organisation must obtain and assess that information from their members prior to certification of each individual REAP in their organisation.**

❖ Member of professional scheme

RECOMMENDATION 1: The requirements are far too simplistic - almost every organisation, right down to the smallest group, has a governing body, codes of conduct and complaints handling procedures. **Minimum criteria must be established with regard to each requirement, including how privacy issues will be dealt with as these organisations are not government agencies with the attendant requirements under the PPIP and GIPA Acts.**

RECOMMENDATION 2: The responsibility for disciplinary action must not lie solely with the member organisation. Virtually none of them have the power to do anything more than expel a member. **Penalties must be included in the EP&A Regulations and it must be considered an offence for a REAP to provide false or misleading information. An independent body must be used to investigate serious complaints which may lead to disciplinary action.**

RECOMMENDATION 3: Minimum criteria must be established with regard to continuing professional development, not just be listed as "*for example*". Specific CPD schemes should be listed.

4.1 APPLYING FOR ACCREDITATION

This section states "*An organisation may apply to the Planning Secretary for the accreditation of a professional scheme with members who have expertise in the environmental assessment of development*". Not all of the members of an organisation will have that expertise. It will require organisations to create a new subset of eligible practitioners from their membership. There would be a cost and resource impact for the organisation for any assessment of its membership. It is considered inequitable that this impact is borne by the organisation, even if they are able to be reimbursed by their members for processing their accreditation.

RECOMMENDATION: Sufficient time must be allowed for organisations to assess their members for eligibility for the scheme.

4.2 EVALUATING AN ACCREDITATION APPLICATION

- ❖ The composition of the Panel is not made clear, either in terms of the numbers of representatives of each of the four groups, the range of agencies that are involved, or how community representative(s) will be selected. Furthermore, by including the environmental assessment industry, these representatives would be evaluating their own peak bodies which is a distinct conflict of interest.

RECOMMENDATION: More detailed information should be provided regarding the composition of the Panel. It should be carefully considered whether it is advisable to include representatives from the environmental assessment industry.

4.5 REVIEWING AND AMENDING SCHEME ACCREDITATION

- ❖ The Terms of Reference for any review must be clarified. It is not sufficient for the Guide to state that the Panel "may" carry out certain activities, in particular seeking submissions.

RECOMMENDATION: The wording must be amended from "*the Panel may*" to "*the Panel will*".

5.1 SELECTING A REAP

- ❖ As stated previously, BPN is of the firm view that SSD and SSI proponents must not be responsible for selecting their own REAP, nor should the REAP work on the EIS and then certify their own work.

BPN is concerned that some proponents do consider the quality of assessor's previous work and their judgement leads to the selection of assessors whose work is sub-standard.

RECOMMENDATION: The selection of registered practitioners must be made on a rotational basis, NOT selected by the proponent.

5.2 CERTIFYING DOCUMENTS

- ❖ As stated previously, BPN is of the firm view that REAPs should not certify their own EISs, they should be peer reviewed.

RECOMMENDATION: Separate REAPs must be engaged to write the EIS than the REAP that certifies the EIS.

5.3 CHECKING DOCUMENTS PRIOR TO EXHIBITION

- ❖ The Guide states that the Department will only carry out "*a high level check of the EIS*" and a review of the REAP's certification, before putting the EIS on public exhibition. "High Level Check" is not included in the glossary so there is no indication of what it entails. However given that the Department expects it to only take "a couple of days", it can be presumed that there will be no review of the comprehensiveness and accuracy of the information contained in the EIS, only that all the required sections have been filled in and any requisite documents attached. In other words, a cursory check of the EIS.

This is considered to be an abdication of what the community understandably views as the responsibility of the Department. Instead it will be solely at the discretion of the proponent to provide the parameters for the Scoping Report, select the REAP, engage the community and have the EIS written and certified by the same REAP. What could possibly go wrong?

It will be left up to the UNPAID community to find the inaccuracies and misinformation in the EIS, prove it as such, and write a submission. All within 28 days.

The Department must not expect the community to do its job for it. Two day Departmental reviews of EISs will NOT give the general public greater confidence in these reports.

RECOMMENDATION: EIS that have only had a cursory review and not properly reviewed by the Department must NOT be put on public exhibition. Any inaccuracies and misinformation must be corrected at Departmental level prior to public exhibition.

5.4 MAKING COMPLAINTS ABOUT REAPs

- ❖ The organisations that would be administering the relevant REAP schemes are not Government agencies and therefore would not be subject to the requirements of the PPIP and GIPA Act. This raises concerns regarding the privacy and access to information that would be available to a complainant dealing with a Government agency regarding complaints, that may not be available through a non-governmental organisation. Issues pertaining to claims of defamation could also arise.

Furthermore, as previously mentioned, the organisation will have few avenues available to undertake disciplinary action, other than cancellation of accreditation.

RECOMMENDATION: Penalties must be included in the EP&A Regulations and it must be considered an offence for a REAP to provide false or misleading information. An independent body must be used to investigate serious complaints which may lead to disciplinary action.