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SUBMISSION ON RAPID ASSESSMENT FRAMEWORK February 2021 - Part 2

PREPARING REPORTS - report guides 7 to 11, 13 to 16, and 18

The above listed reports have similar sections and requirements which are covered in this part of the BPN submission. Comments made in Part 1 of this submission will not be reiterated in this Part 2. It should be taken as a given that the BPN comments, views and recommendations contained within Part 1 are applicable to all parts of Part 2. Only new comments and recommendations will be made in this Part 2.

As a general statement across all documents though, the weight of the wording throughout must be strengthened by replacing words such as "may" and "could" with "shall" and "will", particularly with regard to what the proponent "shall" do.

7. & 13. PREPARING A SCOPING REPORT

3.1 CONTENT OF SCOPING REPORT

- ❖ BPN objects to the proposed change in wording of *Clause 7(1)(b) of Schedule 2 of the EP&A Regulation*. Below are the relevant four excerpts from the *Preparing A Scoping Report*, the *EP&A Regulation* proposed changes and the current wording of the Regulation.

The seemingly small innocuous change to the wording from "*carrying out*" to "*proposed manner of carrying out*", completely changes the whole intent of the clause. It is not just a change to being a proposed action instead of an actual action.

The current wording requires the EIS to analyse whether there are any alternatives to carrying out the whole development. The new wording simply requires the EIS to analyse the manner in which the development is carried out. In other words, the proponent will no longer have to consider whether there are alternatives to the project being carried out in the first place.

The *Rapid Assessment Framework* (RAF) should not be used to make other changes to the EP&A Regulation that have nothing to do with efficiency, clarity and transparency. It is a fundamental change to the intent of this clause which BPN strongly disagrees with. **Other alternatives for a project will no longer have to be considered.**

For instance a hospital might feasibly be better built elsewhere, medium density infill development might be considered to be better than greenfield low density urban development or the building of a new school might feasibly be better than expanding an existing school.

RECOMMENDATION: The wording of *Clause 7(1)(b) of Schedule 2 of the EP&A Regulation* must not be amended as the consequences of the proponent not being required to analyse and consider other feasible alternatives to the project are significant.

the background to the project, including:

- any relevant history
- a high level analysis of any feasible alternatives to the proposed manner of carrying out the development having regard to its objectives, including the consequences of not carrying out the development¹⁰

⁹ See clause 7(1)(b) of schedule 2 of the EP&A Regulation.

¹⁰ See proposed clause 7(1)(c) of the EP&A Regulation in the *Environmental Planning and Assessment (Major Projects) Regulation 2020*.

[26] Schedule 2, clause 7(1)(c)

Omit “carrying out of”. Insert instead “proposed manner of carrying out”.

7 Content of environmental impact statement

(1) An environmental impact statement must also include each of the following—

- (a) a summary of the environmental impact statement,
- (b) a statement of the objectives of the development, activity or infrastructure,
- (c) an analysis of any feasible alternatives to the carrying out of the development, activity or infrastructure, having regard to its objectives, including the consequences of not carrying out the development, activity or infrastructure,

❖ Apart from the applicant's details the details required for the address, including Lot and DP numbers, are difficult to find. This applies to each of the documents reviewed in this Part 2 of the BPN submission. This information must not just be provided somewhere amongst hundreds of pages.

RECOMMENDATION: At the beginning of all reports, details of the site address including Lot and DP numbers must be provided so that the site can be readily identified.

3.6 PROPOSED ASSESSMENT OF IMPACTS

Key factors to consider during scoping

❖ This document recognizes that there are several methodologies that could be used during scoping to help identify the key matters for further assessment in the EIS. However the Department is not requiring the use of any specific methodology such as risk assessment in accordance with the Australian standards.

RECOMMENDATION: The Department must designate the specific methodology to be used, otherwise the methodology that the proponent utilizes may be not produce outcomes that meet the Australian standards.

8. & 14. PREPARING AN EIS

3.5 ENGAGEMENT

Community Views

- ❖ It is noted in this section that the proponent is required to "address" issues raised by the community. This is a far more positive action word than requiring a proponent to simply "consider" issues raised by the community. It is much more likely to ensure that issues are addressed, which is what the community wants, not just have the issues thought about.

RECOMMENDATION: In all of the *Rapid Assessment Framework* documents, particularly the *Undertaking Engagement Guide*, the use of the word "consider" should (or rather must :) be amended to the word "address".

- ❖ **RECOMMENDATION:** The inclusion of community representatives to technical advisory groups, not just Community Consultative Committees, is considered to be important.

3.6 ASSESSMENT OF IMPACTS

Key Content of the Assessment Summary

- ❖ One of the key uncertainties listed as an example in this section is the lack of baseline data. There is an inherent problem with proponents using baseline data produced for other projects in the locality. A recent example occurred where a proponent provided a major traffic survey for an EIS for a proposed greenfield residential development several years ago. The traffic report was resoundingly debunked, including by a peer review, and the proposal refused. The sub-arterial road infrastructure could not support the increased traffic levels and there was no planned infrastructure upgrade.

However that inaccurate traffic survey is now being used by other proponents in the locality in support of other proposals, having even been provided to the Land and Environment Court as part of case Appeals.

This problem would become exponentially exacerbated should three or more proponents of nearby developments combine to produce a cumulative impact statement, as is being suggested in other RAF documents, based on inaccurate baseline data. One bad report could contaminate every proposal.

RECOMMENDATION: Where baseline data is provided by the proponent of a different prior development (whether the proponent's development or otherwise), the Department must engage an independent expert to review the data, including any dissenting reports that have been commissioned by the community.

3.7 EVALUATION OF THE PROJECT

- ❖ It is stated that this section "*is the most important section of the EIS*". Yet it is the shortest part in this Guide. Given that "*This section must provide a comprehensive evaluation of the project as a whole*", this part of the Guide should have provided a far more comprehensive list of requirements, particularly regarding the "Key issues".

One crucial example of the importance of including comprehensive information in this section can be found by referring back to Table 2 of the Guide and cross referencing with the "Key issues" to consider as listed in this section (excerpts below). Table 2 refers to "*The rationale for allowing the project to be carried out on this land*" and that the assessment and evaluation sections of the EIS will contain more detail of that rationale. We have not been able to find anywhere in those sections where the proponent is required to provide that rationale.

RECOMMENDATION 1: "*The rationale for allowing the project to be carried out on this land*" must be included in this section as a key issue to be addressed, together with all of the key issues recommended in Part 1 of the BPN submission with regards to *Industry Specific SEARs*.

RECOMMENDATION 2: The wording "*Key issues to consider in this section may include*" must be amended to "*Key issues to be addressed in this section must include*".

Table 2. Categories to be used to identify the statutory requirements for a project

| Category | Action required |
|-------------------------|---|
| Power to grant approval | Identify the legal pathway under which consent is sought, why the pathway applies, and who the consent authority is. If permissibility is relevant to this section, the discussion here should be cross-referenced rather than repeated. |
| Permissibility | Identify the relevant provisions affecting the permissibility of the project, including any land use zones. If there are inconsistencies in these provisions, identify the inconsistencies and explain which provisions prevail to the extent of any inconsistency. If the project is partly or wholly prohibited ²³ , identify any provisions or actions being taken that would allow the project to be considered on its merits (e.g. making a concurrent amendment to the relevant environmental planning instrument). <i>The rationale for allowing the project to be carried out on this land should be discussed in more detail in the assessment and evaluation sections of the EIS.</i> |

3.7 Evaluation of the Project

Key issues to consider in this section may include:

- the design of the project and what action has been taken to avoid or minimise the impacts of the project (e.g. objectives of the project, alternatives considered, project area, physical layout and design, uses and activities, timing, proposed mitigation measures)
- the consistency of the project with the strategic context (e.g. supported by Government policy, consistent with regional plans, avoids impacts on key natural and built features with significant conservation value, provides economic benefits to regional community, the site is suitable for the project)
- compliance with any relevant statutory requirements
- community views about the project and how they have been addressed in the design of the project or the assessment of the impacts of the project
- the scale and nature of the economic, social and environmental impacts of the project, including any cumulative impacts
- key uncertainties associated with this impact assessment and the actions proposed to address these uncertainties.

9. & 15. PREPARING A SUBMISSIONS REPORT

3.5. UPDATED EVALUATION OF PROJECT

- ❖ This section need more detail. It not sufficient to simply state "*This section must include an updated evaluation of the project as a whole*". This section must include the information from *Preparing an EIS Section 3.7* on what constitutes "*Evaluation of the project*". The proponent should not have to refer to other *Rapid Assessment Framework* documents to obtain this clarification of what "*Evaluation of the project*" entails, particularly when they probably won't even remember which document it is in. For ease of the Department's reference, Section 3.7 happens to be included on the preceding page of this submission.

The additional requirements contained in *Preparing a Modification Report Section 3.7* must also be included (below). After all, the Department must be provided with all relevant information as to whether any amendments made as a result of submissions have regard to economic, environmental and social impacts, the principles of ESD, comply with government legislation etc, and have regard to the guidance in *Preparing an EIS*.

RECOMMENDATION: Section 3.5 of *Preparing a Submissions Report* must include the information regarding "*Evaluation of the Project*" from Sections 3.7 of *Preparing an EIS* and *Preparing a Modification Report*.

3.7 Evaluation of the Modified Project

This section must provide an evaluation of the modified project as a whole, having regard to the economic, environmental and social impacts of the modified project and the principles of ecologically sustainable development.

It is the most important section of the Modification Report and must integrate the findings of each section of the Modification Report and weigh up the positive and negative impacts of the modifications. It must also consider the interaction between these different findings and whether the modified project will comply with any relevant government legislation, plans, policies and guidelines.

This section of the Modification Report must be prepared having regard to the relevant guidance in the Department's *Preparing an Environmental Impact Statement* guide.

- ❖ The concept of an "*Indicative page limit*" for the Submissions Report is not supported. It is considered that it could be a restriction on the analysis of the issues raised in community submissions, particularly where there is huge community interest in a project and hundreds of submissions are received. The indicative limit of 15 pages for the analysis of submissions is particularly unacceptable.

RECOMMENDATION: The indicative page limits must be removed from this Guide to ensure there are no restrictions.

10. & 16. PREPARING AN AMENDMENT REPORT and 11. & 18. PREPARING A MODIFICATION REPORT

3.7 EVALUATION OF THE AMENDED / MODIFIED REPORT

- ❖ This section must be standardised across all reports, regardless of whether they are amended, amended as a result of submissions, or modified. We reiterate, the Department must be provided with all relevant information as to whether any amendments made as a result of submissions have regard to economic, environmental and social impacts, the principles of ESD, comply with government legislation etc, and have regard to the guidance in *Preparing an EIS*.

RECOMMENDATION: Standardise Section 3.7 across all four reports.