30 August 2017

EIA Improvement Project Guidance Series  
NSW Department of Planning and Environment  
GPO Box 39  
Sydney NSW 2001

Environmental Impact Assessment (EIA) Improvement Project

The National Trust of Australia (NSW) (The Trust) welcomes the opportunity to make the following submission to the NSW Planning & Environment publicly exhibited “EIA Improvement Project and its Draft Environmental Impact Assessment Guidance Series, June 2017.”

In this submission, (for the information of the Trust’s members, our expert Technical Advisory Committees and the broader community), the Trust has outlined its understanding of the intention and impacts of the Guideline proposals in terms of the issues that may be relevant to the National Trust (heritage considerations at key points and stakeholder participation). National Trust comments are indicated in italics for consideration by the Department.

Background

- The EIA review is limited to State Significant Projects (State Significant Infrastructure, State Significant Development) which, under the Environmental Planning & Assessment Act, are not subject to certain other statutes, such as the Heritage Act 1977.
- The Review does not apply to other types of projects for which an Environmental Impact Statement (EIS) may be required.
- The review is underpinned by a set of overarching Principles, has identified a range of proposed changes to the EIA process and has produced a series of draft Guidelines.

Guideline 1 - Overview of the EIA Improvement Project

- Guideline 1 outlines the proposed EIA process (summarised in Figure 2) and explains the review process

Proposed changes to the EIA process (Section 3 and Figure 2)

- No legislative change is proposed
- The primary changes to the EIA process proposed are the introduction of a Scoping Phase at the beginning of a project as well as increased transparency and public consultation, cumulative impact identification and peer review to assist impact assessment reporting quality and consistency
- Some additional steps are proscribed for post approval project modifications
- The proposed EIA process is expanded in each of the Guidelines – see comment under each Guideline.

Principles (Section 1.3.2)

- Principles to Guide the EIA review and establish the context for improvements to process, assessment standards and community participation are identified.

Comment/Suggestion:
While ecologically sustainable development and environment considerations are included in the first principle, social, cultural and heritage considerations are not explicitly included.

Principles should be expanded to ensure social, cultural and heritage considerations are as up front as ecological and environmental considerations and not assumed to be included as sub-sets of those.

**Guideline 2 – Community Guide to EIA**

- The Community Guide outlines the EIA process and is designed to assist the community understand and participate in the EIA process. It summarises the other Guidelines

**Readability**

The language used in the Community Guide is sometimes complex and many sentences are too long and contain too many considerations. The Guide itself is too long.

*Comment/Suggestion:*

Review and edit to establish a plain English Guide and consider also producing a simple 2-page fact sheet version with up-front dictionary.

**Statutory Context (Section 2.1)**

- Section 2.1 outlines the statutory context for State Significant Development (SSD) and State Significant Infrastructure (SSI) projects

*Comment/Suggestion*

Section 2.1 does not identify what other Acts, Regulations and Guidelines are ‘turned off’ by virtue of SSD and SSI status.

In the interests of clear community understanding, engagement potential and transparency, section 2.1 should also clearly identify what other Acts do not apply to SSI and SSD projects e.g. Heritage Act 1977.

**Guideline 3 – Scoping an EIS**

- A Scoping phase has been introduced to the EIA process prior to issuing Secretary’s Environmental Assessment Requirements (SEARS) and the EIS submission to clarify assessment pathways and discuss relevant matters and consultation approaches.
- Community and stakeholder consultation will occur during this phase

**Scoping Report**

- A Scoping Report will be produced and it will inform the SEARS
- The Scoping Report will only be published for certain projects with a high level of public interest or likely high levels of impacts such as coal mines (Section 3.2.4)

*Comment/Suggestion*

In the interests of clear community understanding, engagement potential and transparency, all Scoping reports should be published and public feedback sought.

**Identifying Heritage Scope**

- The Scoping Meeting (section 5) and Scoping Report (Section 7) will inform SEARS, which usually only require that an EIA consider statutory heritage lists and Aboriginal places.
- Many heritage places/items are not included on statutory lists, often as a result of previous government policy (e.g. many state-owned sites) or because they are caught up in lengthy strategic planning processes (e.g. complex to administer urban conservation areas) or because they can’t be listed (moveable heritage, archaeology, Commonwealth owned sites)

*Comment/Suggestion*
To ensure the SEARS (Section 8) are comprehensively informed by the Scoping phase and Scoping Report and that appropriate multi-disciplinary specialist heritage teams undertake specialist assessments during preparation of the EIA, include identification of all likely applicable statutory and non-statutory heritage lists and contact with all likely heritage stakeholders as a standard matter to be undertaken during scoping phase.

Include provisions for key non-government heritage stakeholders to participate in Scoping Meetings where heritage is likely to be a primary consideration (e.g. Parramatta North and Parramatta CBD)

Guideline 4 – Preparing an EIS

- Guideline 4 identifies the minimum content requirements of an EIS, the form and content of which is also prescribed in Regulation.
- Maximum parameters for the extent of a project can be identified where further design may be required following approval.

Key Issue Assessment (Section 3:10)

- Key Issue assessments will be required in the EIA where identified by SEARS. They will be appended to the EIS. These often include requirements for detailed heritage impact assessments.

Comment/Suggestion

It is not clear how key issue assessments, which will be required to contain detail about impacts and mitigation options, could be undertaken during the preparation of an EIS where project information is commonly limited to route location or general area of impact. Maximum parameter extent information may assist but cannot identify impacts such as construction vibration and impacts to significant heritage fabric that may be required for drainage, ventilation etc.

Design and construct information, critical to many detailed heritage assessments, is usually not available at this stage but should be required when key issue assessments are specified. Complement Section 3.10 to identify that SEARS will specify that the proponent is responsible for generating design and construct and other relevant documentation relevant to each specialist area, to enable detailed key issue assessments.

Guideline 5 – Responding to Submissions

Submissions Report (Section 4)

- The form and content of the report in response to submissions to the exhibition of the EIS are specified along with requirements to document actions undertaken during and after EIS exhibition, such as public consultation.
- It is the proponent’s, not the Department’s, evaluation and response to submissions. The department takes the submissions report on board during its assessment of the project.

Comment/Suggestion

Having proponents prepare submissions reports obscures the separation between the proponent and the Department’s project assessment.

It does not appear to be consistent with the purpose of the EIA Improvement Project to build community and stakeholder confidence in the process and it is inconsistent with general planning and development assessment practice where consent and approval authorities routinely prepare submission reports.

To reinforce community trust and confidence in the EIS process, the Response to Submissions Report should be undertaken by the Department or an independent third party. The authors of the Submissions Report should not be engaged directly by the proponent and should report directly to the Department.

- Section 3.12 briefly identifies how the end of an EIS should evaluate the proposal as a whole. Some matters to be addressed in conclusions are listed.

Comment/Suggestion
No criteria and thresholds are identified for evaluating whether a project should proceed based on impacts and public interest. Guideline should include examples and/or establish clear go/no go criteria to be employed by the proponent and the Department in their assessment and conclusions for those instances where adverse impacts are so great that they cannot be managed by conditions and mitigation measures.

Guideline 6 – Community and Stakeholder Engagement

- Most community/stakeholder issues that may be relevant to heritage stakeholders (the National Trust, Royal Australian Institute of Architects,) have been identified in comment on Guidelines 1-5 above
- Appendix A – Guidance on the Community and Stakeholder Plan is very detailed and has not been reviewed

Guideline 7 – Approach to Setting Conditions

- Proposed changes to setting conditions of consent include identifying three condition categories – performance based (preferred), prescriptive and management based (Section 4.4 Table 1).
- There is opportunity for further stakeholder engagement post approval via specific conditions of consent.
- New compliance guidelines are being developed
- The Department will monitor compliance

Comment/Suggestion

No criteria and thresholds for evaluating whether a project should proceed based on impacts and public interest, are identified. Guideline should include examples and/or establish clear go/no go criteria to be employed by the proponent and the Department in their assessment and conclusions for those instances where adverse impacts are so great that they cannot be managed by conditions and mitigation measures.

The National Trust would welcome an opportunity to discuss with the Department’s planners the matters raised in this submission.

Yours sincerely,

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