

- A description of the greenhouse gas cycle of the project including estimates of net tonnages of greenhouse gas to be produced both during construction and operation. The description should also identify methods such as alternative fuel sources for construction machinery to reduce greenhouse gases.

In preparing the EIS, you should approach relevant State and Commonwealth government agencies, councils and appropriate community groups and take into account any comments they may have regarding the proposal.

Under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), approval of the Commonwealth Minister for the Environment is required for actions that may have a significant impact on matters of National Environmental Significance, except in circumstances which are set out in the EPBC Act. Approval from the Commonwealth is in addition to any approvals under NSW legislation.

Please do not hesitate to contact either Lisa Mitchell (02 9762 8152) or Jan Parsons (02 9762 8107) should you have any queries.

Yours sincerely

 1/10/04

Jan Parsons
Manager, Transport/Water
Major Infrastructure Assessments
As delegate for the Director-General

Encl.

**DEPARTMENT OF INFRASTRUCTURE, PLANNING
AND NATURAL RESOURCES**

Attachment No. 1

**STATUTORY REQUIREMENTS FOR THE PREPARATION AND EXHIBITION
OF AN ENVIRONMENTAL IMPACT STATEMENT UNDER PART 5 OF
THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

In accordance with the *Environmental Planning and Assessment Act 1979* (the Act), an environmental impact statement (EIS) must meet the following requirements.

Content of EIS

Pursuant to Schedule 2 and clause 230 of the *Environmental Planning and Assessment Regulation 2000* (the Regulation), an EIS must include:

1. A summary of the environmental impact statement.
2. A statement of the objectives of the development or activity.
3. An analysis of any feasible alternatives to the carrying out of the development or activity, having regard to its objectives, including the consequences of not carrying out the development or activity.
4. An analysis of the development or activity, including:
 - (a) a full description of the development or activity, and
 - (b) a general description of the environment likely to be affected by the development or activity, together with a detailed description of those aspects of the environment that are likely to be significantly affected, and
 - (c) the likely impact on the environment of the development or activity, and
 - (d) a full description of the measures proposed to mitigate any adverse effects of the development or activity on the environment and
 - (e) a list of any approvals that must be obtained under any other Act or law before the development or activity may lawfully be carried out.
5. A compilation, (in a single section of the environmental impact statement) of the measures referred to in item 4(d).
6. (1) The reasons justifying the carrying out of the development or activity in the manner

proposed, having regard to biophysical, economic and social considerations, including the following principles of ecologically sustainable development:

- (a) the **precautionary principle**, namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

- (i) careful evaluation to avoid, wherever possible, serious or irreversible damage to the environment, and
 - (ii) an assessment of the risk-weighted consequences of various options,
- (b) **inter-generational equity**, namely, that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations,
- (c) **conservation of biological diversity and ecological integrity**, namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,
- (d) **improved valuation pricing and incentive mechanisms**, namely, that environmental factors should be included in the valuation of assets and services, such as:
 - (i) polluter pays, that is, those who generate pollution and waste should bear the cost of

- containment, avoidance or abatement,
- (ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,
- (iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

Note

The matters to be included in item (4)(c) might include such of the following as are relevant to the development or activity:

- (a) the likelihood of soil contamination arising from the development or activity;
- (b) the impact of the development or activity on flora and fauna;
- (c) the likelihood of air, noise or water pollution arising from the development or activity;
- (d) the impact of the development or activity on the health of people in the neighbourhood of the development or activity;
- (e) any hazards arising from the development or activity;
- (f) the impact of the development or activity on traffic in the neighbourhood of the development or activity;
- (g) the effect of the development or activity on local climate;
- (h) the social and economic impact of the development or activity;
- (i) the visual impact of the development or activity on the scenic quality of land in the neighbourhood of the development or activity;
- (j) the effect of the development or activity on soil erosion and the silting up of rivers or lakes;
- (k) the effect of the development or activity on the cultural and heritage significance of the land.

An environmental impact statement referred to in Section 112(1) of the Act shall be accompanied by the information specified in clause 229 of the

Regulation.

The EIS must also take into account any matters required by the Director-General pursuant to clause 231 of the Regulation, which may be included in the attached letter. A copy of the Director-General's requirements should be included as an appendix to the EIS.

Attention is also drawn to clause 283 of the Regulation regarding false or misleading statements in EISs.

Nominated Determining Authority

Where there are a number of determining authorities (as defined under Part 5 of the Act), Section 110A of the Act provides for the Minister to make one of them the nominated determining authority. This avoids duplication of certain procedures and simplifies the exhibition of the EIS.

It is recommended that you discuss with the other determining authorities which one should become the nominated determining authority and advise the Department accordingly. Normally it is the proponent agency that becomes the nominated determining authority. The written agreements of all other determining authorities must be forwarded with the request to be made the nominated determining authority.

It should be noted that the onus is on the proponent agency to identify all other potential determining authorities.

Public Exhibition

When the EIS has been completed, four (4) copies should be forwarded to the Director-General (Attention: Director, Major Infrastructure Assessment) pursuant to Section 112(2) of the Act, together with details of the exhibition period and public display locations.

This should occur prior to public exhibition of the EIS in order that simultaneous exhibition of the EIS occurs in the offices of the Department and determining authority as required by Section 113 of the Act and clause 235 of the Regulation.

It is requested that a copy of the text of the EIS also be supplied on either a 1.44 MB floppy disk or CD ROM. This should be in a format readable by Microsoft Word or as plain text (RTF file format). Inclusion of files of supporting maps and diagrams is optional.

Procedures for public exhibition of the EIS are set down in clauses 234 and 235 of the Regulation.

Note

Should the EIS not be exhibited within 2 years from the date of issue of the Director-General's requirements, under clause 231 (e) of the Regulation the proponent is required to re-consult with the Director-General.

Representations

Any representations made in response to public exhibition of the EIS should, as soon as practicable and not less than 21 days before determining the activity, be forwarded to the Secretary in accordance with Section 113(3) of the Act.

Seeking the Minister's Approval

If Division 4 of Part 5 of the Act applies to the proposal, the proponent, pursuant to Section 115B, should seek the Minister's approval once it has obtained and exhibited an EIS, examined and

considered any representations, and forwarded copies of all representations to the Department.

If a Species Impact Statement (SIS) has been prepared, the Proponent must have complied with Sections 112B and/or 112C of the Act (i.e. concurrence and/or consultation requirements) before seeking the Minister's approval.

The Department's *Best Practice Guidelines* encourage proponents when seeking approval to provide:

- a comprehensive report which addresses in detail its consideration of issues raised in representations;
- any proposed changes to the activity, and any further measures to mitigate impacts; and,
- all relevant technical information relating to the proposed activity.

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SEPP 14 – Coastal Wetlands

COMPENSATORY WETLANDS POLICY

The aim of SEPP 14 is to protect and preserve coastal wetlands in the environmental and economic interest of the State

Wetlands are critical elements within natural coastal ecosystems, and are important for both the environment and the economy, as well as places people enjoy for recreational values and their scenic quality.

The coastal wetlands of NSW encompass a range of habitat and vegetation types, some of which are restricted in occurrence and a number of which are poorly reserved on public land. In coastal NSW a major threat to wetlands is development pressure from urban expansion and public infrastructure. In 1985, when State Environmental Planning Policy No.14 – Coastal Wetlands (SEPP 14) was introduced, an estimated 60% of the original area of coastal wetlands remained.

As so little of this valuable resource remains it is essential that every effort is made to conserve what is left. Even small wetlands and those that have a history of disturbance are regarded as valuable. All coastal wetlands included in SEPP 14 are of State significance.

Pressure for development continues today and development applications are still being lodged for coastal wetland areas. PlanningNSW's position on such development can be summarised as follows:

1. **AVOID** impacts (direct or indirect) on wetland areas before and during the development process;
2. If there is no alternative to the development, and no alternative location in an area of lesser environmental value then it is necessary to **MINIMISE** impacts (direct or indirect) on wetland areas before and during the development process and the life of the development; and
3. **COMPENSATE** for any impacts on wetland areas (through a variety of options) if the impact is unavoidable.

The **AVOID**, **MINIMISE**, **COMPENSATE** approach is intrinsic to SEPP 14. This document aims to provide clarification of what it means to compensate.

The concept of wetland compensation aims to achieve no net loss of coastal wetlands in NSW and if possible to help reverse the historical trend in wetland decline.

Assessment of development applications in coastal wetland areas according to the principles of ESD ensures that wetlands are not seen as the 'soft option' for development.

Applying the principles of ecologically sustainable development

The *compensatory wetlands policy* is formulated within the principles of ESD, the Coastal Policy and the spirit of SEPP 14. The 1992 National Strategy for Ecologically Sustainable Development defines the goals of ESD as:

'Development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends.'

1. **The precautionary principle** - if there are threats of a serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In applying this principle, decisions should be guided by:
 - 1) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment; and
 - 2) an assessment of the risk-weighted consequences of various options.

➤ ***Development in SEPP 14 coastal wetlands should be avoided wherever possible.***
2. **Inter-generational equity** - the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

➤ ***Compensation should aim to offset the natural values and functions of the wetland being damaged or destroyed. The principle of "like for like" should be prominent in the selection of compensation areas.***
3. **Conservation of biological diversity and ecological integrity** - Biological diversity is the total variety of life. It includes genetic diversity, species diversity and ecosystem diversity.

➤ ***For compensation purposes, restoration of previously degraded wetlands is preferable to creation of artificial wetlands;***

The area selected to be restored should be as close to the wetland to be disturbed as possible, and preferably within the same catchment. This principle also applies to artificial compensatory wetlands;
4. **Improved valuation and pricing of environmental resources** - Our environmental resources are not "free". The total values of a resource may include the direct benefits it brings, its ecological function value, its value in maintaining options for future or alternative uses and its bequest (inherited) value.

➤ ***If disturbance is allowed to occur and wetland areas are to be damaged or destroyed then there should be some form of compensation;***

If a compensatory wetland is required it should be undertaken at the ratio of 10:1, to the wetland area destroyed and/or permanently impacted.

Compensatory wetlands principles

When planning a development in a SEPP 14 wetland, a compensation project must be considered and costed in as part of the development. In considering a compensation project, the following principles must be taken into account:

- All wetlands included in SEPP 14 are, by definition, of State significance,
- Development in SEPP 14 areas should be avoided wherever possible,
- Where it is not possible to avoid areas of SEPP 14, the following principles should apply:
 - SEPP 14 wetlands with high levels of natural value should not be disturbed;
 - If disturbance is allowed to occur, causing a net loss of wetland area, then there should be some form of compensation for that disturbance;
 - For compensation purposes, restoration of existing wetlands is preferable to creation of artificial wetlands;
 - If compensation is required it should be undertaken at least at the ratio of 10:1, to the wetland area destroyed;
 - Compensation should aim to address and enhance the natural values and functions of the wetland being lost;
 - The wetland selected to be restored should be as close to the wetland to be disturbed as possible, and preferably within the same catchment.
 - Like for like compensation should be provided in terms of wetland type and species composition
 - The restoration project should be monitored, by the developer, for at least 10 years to ensure the system is stable. Reports on the progress of the wetland compensation project should be submitted to PlanningNSW or the relevant Council annually.
 - The requirements of the Threatened Species Conservation Act must be taken into consideration if applicable;
 - Where compensatory wetlands are being proposed, proponents should submit a document containing two sections: *An Assessment of the Existing Wetland Site*, and a *Compensatory Wetland Agreement* containing provisions for a contingency plan should compensation measures fail.

The Ratio of 10:1

The standard level of compensation required for disturbance of a SEPP 14 wetland has been placed at 10 ha of compensatory wetland for every 1 ha of wetland disturbed. This ratio is a guide. It is anticipated that 10:1 will be a minimum level of compensation.

Negotiating different levels of compensation is an option in special circumstances, such as where the wetland to be destroyed is considered to be very degraded or of a particularly rare or important type. In many instances level of function and significance are not easy to determine and a precautionary approach must be taken.

Compensation options

Compensation for loss of wetlands can take a number of forms.

1. Restoration and protection in perpetuity of previously degraded wetland areas
2. Restoration of areas set aside as specific wetland banks
3. Provision of funds to the long-term maintenance or repair to existing (but perhaps stressed or degraded) wetland areas.
4. Protection in perpetuity and/or acquisition of the catchment of a healthy wetland.

Of these options the Department favours the first option: the restoration of previously degraded wetland areas. The options of maintenance money and catchment protection if used individually will still result in a **net loss** of actual wetland area.

These options may be suitable for use in conjunction with other wetland compensation works.

Restoration and protection in perpetuity of compensatory wetland

As so much wetland has been lost along the coast of NSW the Department's preferred option is for degraded or previously destroyed areas to be restored. This option is reliant on areas being successfully established and maintained in perpetuity. The area of land to be restored should be well in excess of the area to be destroyed by the current application. A ratio of 10:1 for compensation area to wetland area destroyed is a reasonable guide.

The restoration activity most appropriate to each site will be dependent on the history and characteristics of the individual site. Wetland enhancement and restoration activities may include:

- Erecting fences to exclude stock,
- Redirection/treatment of waste water entering the wetland,
- Rubbish removal / weed removal program / control of feral animals,
- Facilitation of regeneration of wetland plant species, or planting of wetland species,
- Provision of signage / fencing to exclude vehicular access,
- Removal of barriers to the flow of fresh/salt water.

Defining the Area of Impact

When wetland area is destroyed, temporarily or permanently, wetland value and function is impaired, even after the area has been restored. A lack of scientific information in this area has resulted in the need for a precautionary approach to wetland compensation.

The area of wetland that requires compensation include:

1. Areas permanently destroyed by the proposal,
2. Areas not directly damaged or destroyed by the proposal but likely to suffer a permanent impact over time and,
3. Areas damaged or destroyed by the proposal that will be rehabilitated as part of the development once construction is complete.

For more information about SEPP 14 and wetland compensation, contact the Strategic Policy and Planning Branch of the Department of Planning on (02) 9762 8181.