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Creating for Generations

16 February 2021

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Dear Ms Greenway

Rapid Assessment Framework

The Property Council welcomes the opportunity to provide comments to the Department of Planning, Industry and Environment (the Department) on the Rapid Assessment Framework package of documents.

As Australia's peak representative of the property and construction industry, the Property Council's members include investors, owners, managers and developers of property across all asset classes. The following comments are provided for your consideration.

The Property Council welcomes the steps that are being taken by the Department to improve the SSD and SSI approval pathways.

In most cases, the types of projects falling into these categories of development are significant investments and usually involve the creation of a large number of jobs and provide a positive economic impact to communities and regions. Accordingly, it is critical that the assessment processes are robust and streamlined.

Our submission has raised concern with the introduction of a Registered Environmental Assessment Practitioners Scheme (REAP). The benefits of this scheme have not been fully explained in the documents and we would request the Department undertake further discussions about the establishment and operation of this proposal with affected stakeholders.

We are also concerned to ensure that the promulgated proposals (within the Rapid Assessment Framework) are such that the June 2020 targets around time improvements for major projects are met (20 days/17% reduction). Apart from our concern that the proposed REAP scheme may worsen, rather than improve, delays. There is not sufficient precision about which measures will reduce delays and how they will contribute to the already set targets.

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Yours sincerely



Jane Fitzgerald
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Property Council of Australia

Submission to Department of Planning, Industry and Environment

Rapid Assessment Framework

16 February 2021

1.0 Introduction

The Property Council supports the implementation of the Planning Reform Action Plan (PRAP), including the development of the “Rapid Assessments Framework” intended to cut unnecessary steps in the assessment of major development projects. Planning reforms that deliver improved transparency, certainty and timeliness are welcomed. The Government announced in July 2020 that these reforms would slash decision times on major projects of State significance by 20 days (17% time savings).

These changes come almost a decade after the Government repealed Part 3A of the *Environmental Planning and Assessment Act 1979* and introduced the new framework of State Significant Development (SSD) and State Significant Infrastructure (SSI). We support reforms that will improve assessment timeframes and deliver greater certainty around the steps for the assessment of these projects that represent significant economic investment in the NSW economy.

2.0 Proposed Regulation Amendment

A series of changes to the *Environmental Planning and Assessment Regulation 2000* (the Regulation) have been proposed to give effect to the new guidance materials. Appendix A of the EIE outlines the 28 proposed amendments that will implement the proposed reforms to State Significant Development framework.

The changes to the Regulation will ensure appropriate legal weight for the proposed procedures to the requirements for the preparation of environmental impact statements, making, amending and modifying SSD and SSI applications. It will also give effect to the establishment of the scheme for registered environmental assessment practitioners and certification of environmental impact statements. These amendments are considered appropriate and supported.

It is also proposed to amend the Regulation in respect of the current requirement whereby an environmental impact statement must provide justification for carrying out the development in the manner proposed. Applicants will instead be required to provide a more objective weighing up of the positive and negative impacts of the project. This change is supported.

3.0 Industry Specific SEARs

Generally, we support the publication and availability of standard Secretary Environmental Assessment Requirements (SEARs) for specific industry types.

3.1 Tailoring industry specific SEARs

The concept of issuing standard templates requirements for specific industries is supported in principle. This submission will focus on the SEARs templates for identified sites/ precincts and warehouses/distribution centres, which are relevant to our members. We note the intention is for these requirements to be issued by the Department within seven (7) days of receipt of each project application. **We support this move and request the Department clarify whether the timeframe for provision of the assessment requirements refers to calendar or working days.**

The industry-specific SEARs are very explicit in terms of the type of information required to satisfy the relevant SEAR and many of the documents listed do not appear to directly align with the respective SEAR. For example, a cost summary report implies an overview of the cost, whereas the respective SEAR requires a detailed calculation of the capital investment value of the project. Another example is the requirement related to design excellence. It notes that this should be addressed in the environmental impact statement, however this may be better addressed in the architect's design statement. The industry-specific SEARs may create

some confusion as to the level and type of documentation to be prepared for those not well-experienced in the preparation of these applications.

Some flexibility should be built into the standard SEARs template to enable applicants to best determine the documentation required in response to each SEAR. Alternatively, consideration should be given to the Department preparing a list or matrix appended to the SEARs to identify mandatory submission requirements and discretionary submission requirements.

Where a reference is made to a guideline within the SEARs, it is suggested that an up-to-date hyperlink be provided to access that guideline rather than the overarching policy section on the Department's website to avoid confusion and make the SEARs more user-friendly.

Industry-specific SEARs for hospitals, warehouses, specific sites are currently on exhibition. The Department has indicated they will also be prepared for schools, distribution centres and other urban development. **We would like to see the entire suite of industry-specific SEARs be made available for public consultation and feedback.**

A key benefit of the industry-specific SEARs is that they are intended to eliminate the need to consult with agencies prior to the requirements being issued. The industry-specific SEARs do not extend to all developments within those industries. Designated development, partially or wholly prohibited development and concept applications (staged development) are excluded. It is not clear why concept applications should be excluded if they relate to a particular industry where specific SEARs have been developed. It seems onerous to require concept proposals to undergo detailed pre-lodgement, scoping process (including consultation with public authorities), particularly given the industry-specific SEARs state the following:

"Some issues, assessment requirements and documentation may not apply to all developments. Applicants should identify and respond to the requirements that are applicable to the proposed development. If an issue is not considered to apply, applicant provide reasoning as to why."

The above statement provides enough flexibility to enable applicants for a concept proposal to address where an issue or document may not be required given the conceptual nature of that proposal. **We suggest the Department consider the preparation of industry-specific guidelines for concept proposals or inclusion of a series of guidelines within the overarching SSD Guide.**

Warehouse and Distribution Centres

The draft template for major warehouse and distribution centre developments is generally consistent with SEARs issued by the Department for this category of development, although we note that some additional matters have only recently been introduced.

The design excellence provisions (item 3) has potential to be of concern to our members as an expectation for an industrial shed to exhibit design excellence within an industrial precinct context is unusual. **Any obligations expected for warehouses and distribution centres should not go beyond what currently is expected in a SEPP, LEP or DCP applying to the land.** We understand the template requirements refer to the relevant provisions of *Better Placed* which are not expected to require additional documentation beyond what would already be required with an Environmental Impact Statement.

Item 5 of the template requiring applicants to provide a visual analysis of the development (including photomontages or perspectives) could in some contexts be excessive. We note that most State Significant Development applications for warehouses and distribution centres involve substantial structures (valued in excess of \$50m) and can benefit from a visual impact assessment, particularly where a site is located along a major transport corridor or adjacent to a residential zone. As the template requirements make provision for irrelevant matters to be removed and the relevance of preparing a visual impact assessment on a particular site context based will be determined based on a site by basis, this aspect is supported.

We understand another recent addition to the template requirement is item 7 – Trees and Landscaping, that requires the applicant to *“provide a detailed site-wide landscape plan, that demonstrates how the proposed development would mitigate the urban heat island effect and ensure appropriate comfort levels on-site”*. This may need the engagement of separate advice from a specialist consultant to confirm the delivery of appropriate comfort levels on-site. **It would be helpful if the Department provided guidance on what level of information or provide several examples of what would be required to satisfy this (item 7) requirement.**

Items 10 and 11 of the template requirements that require air quality and noise/vibration assessments appear to be standard issues for consideration with warehouse and distribution centre proposals. The requirements are appropriate and we would suggest they are default requirements for this type of development and determine the level of assessment needed. Should they not be required, we would support the process whereby applicants can argue for their deletion.

The inclusion of social impact assessment as part of the environmental impact statement as a standard part of the template requirements is in our view unnecessary, this should not be part of the template. In most cases, the social impacts of a warehouse or distribution centre should be able to be adequately addressed within the environmental impact statement rather than a social impact assessment which can be a time-consuming and expensive document to prepare when prepared in accordance with the relevant guidelines.

3.2 Expiry of SEARs

Schedule 2 (*clause 3(7)*) of the Regulation sets out the current provisions regarding the expiry of SEARs issued by the Department.

It is proposed to introduce an automatic expiry on SEARs for SSD and SSI projects two years after they have been issued. It is also intended to allow the Planning Secretary to extend the expiry date of SEARs by three (3) months if the SSD proponent makes a written request for an extension before the SEARs expire.

We have no objection to the proposed 2-year expiry of SEARs for SSD after they have been issued and support the opportunity for their validity to be extended by 3 months.

4.0 State Significant Development Guide

The Property Council is grateful for the opportunity to provide the Department with comments on the draft Guide. We welcome the preparation of detailed guidance material to support the often complex and contentious State Significant Development pathway.

We note the purpose of draft Guide and agree that it should set clear expectations for everyone involved in State Significant Development assessment by outlining how the assessment should work and what must be considered in the assessment of each project. It is therefore important that the Guide set clear boundaries around the matters that are relevant to an assessment and make it clear that irrelevant matters do not require consideration.

4.1 Proportionate Assessment

We support the concept of proportionate assessment whereby the level of community engagement and assessment carried out for a project is proportionate to the scale and likely impacts of the project.

The development of industry-specific templates requirements is an appropriate response to these types of projects with a view to achieving a more streamlined assessment and determination process.

We agree that more complex and larger scale projects require project specific assessment requirements that address project-specific issues.

4.2 General comments

The proposed Guide has been reviewed by members and we provide the following feedback for the Department's consideration:

- Whilst clarifications are useful, the current drafting does not provide any concrete assessment timeframes. It is unclear how this Guideline will assist in cutting assessment times.
- Often a large volume of submissions are received during public exhibition and not all the issues are relevant to the planning application. Instead of requiring the applicant to respond to all submissions, the Department should synthesise the submissions and identify the key issues that require a response (such as matters identified in the SEARs).
- Clarification should be provided within the Guide as to the expected timeframe to submit a Submissions Report so that the Department and applicants are equally aware of the requirements, noting that these can be varied to meet the project needs.
- The Submissions Report should not be required to address issues beyond those identified in the SEARs.
- The Guide states that the Submissions Report cannot be staged but is silent on whether the Department's request for information (RFI) must be completed at this point and not after the Submissions Report is made.
- It is unclear whether the Amendment Report is separate to the Submissions Report (like the former Preferred Project Report) or whether these can be combined into a single report which is the predominant standard currently. The Guide is currently duplicating a process instead of streamlining.
- It is unclear whether approval for submitting an amendment is required where the changes to the project have been required by the Department,
- No timeframes have been prescribed for the Department to complete the assessment report following receipt of the Submissions Report.
- Whilst some improvements have been made to the major projects website, it continues to lack the functionality of the previous system, particularly in relation to the search functions and being able to filter all applications by development type, LGA, status. The stage of assessment was also previously colour-coded which was a useful tool. Dates for the exhibition of project should also be clearly identified.

5.0 Appendix A - Preparing a Scoping Report

Section 4.4 of the SSD Guide sets out the process that applies to projects that require project-specific SEARs. These projects will require the submission of a scoping report, describing the project and identifying key matters to be considered during the assessment, to the Department.

Appendix A of the Guide provides a detailed explanation of the Department's form and content requirements for scoping reports. **The availability of specific guidance for the preparation of scoping reports is welcome.** As a scoping report is the initial planning document prepared for many projects, it is important that these documents are fit for purpose and meet the Department's needs for preparing SEARs. In this regard, the information provided in Appendices A, B, C, D and E are appropriate.

6.0 Appendix B - Preparing an Environmental Impact Statement

Appendix B of the Guide provides detailed technical guidance to applicants regarding the format and content of environmental impact statements, that supports the requirements contained in Schedule 2 of the Regulation.

The Property Council has considered the draft of this document and it is supported.

7.0 Appendix C - Preparing a Submissions Report

Appendix C of the Guide provides detailed technical guidance to applicants regarding the format and content of submissions reports (also referred to as a response to submissions), particularly section 3.2 which sets out how applicants should analyse submissions received during the exhibition of their project.

The Property Council has considered the draft of this document and it is supported.

8.0 Appendix D - Preparing an Amendment Report

Appendix D of the Guide provides technical guidance to applicants regarding the format and content of amendment reports, particularly sections 3.6 and 3.7 which requires an applicant to provide an assessment of impacts and evaluation of the amended project.

The Property Council has considered the draft of this document and it is supported.

9.0 Appendix E - Preparing a Modification Report

Appendix E of the Guide provides technical guidance to applicants regarding the format and content of modification reports, particularly sections 3.6 and 3.7 which requires an applicant to provide an assessment of impacts and evaluation of the modified project.

It is unclear whether applicants need to seek new or updated SEARs regarding modifications of projects. Whilst minor modifications may proceed without the need for updated environmental assessment requirements, the modification of some other more complex projects may need revised assessment requirements. It would be helpful if the Department provided clear advice on this issue.

The Property Council has considered the draft of this document and it is supported.

10.0 Undertaking Engagement Guide

From our review of the draft Undertaking Engagement Guide (the Engagement Guide), there appear to be three key principles that the Department is directing applicants to follow:

- 1) Early engagement – as early as possible, with the community and other stakeholders, is encouraged.
- 2) Effective engagement – means stakeholders should have sufficient information to properly understand what is being proposed, and be able to respond in a meaningful way.
- 3) Clear communication – providing information that is easily understood, in a format that can be accessed by as broad a range of stakeholders as possible.
- 4) Proportionate engagement – the Department is encouraging applicants to engage in a manner that is proportional to the scale and impact of the proposal.

The Engagement Guide provides clarity in relation to the Department's expectation that applicants engage early, and in a manner that leaves stakeholders well-informed and helps to build trust. The reference to alternative methods of engagement, including digital, is also timely, given the current situation in relation to COVID, but also in recognition that members of the community are time-poor and may prefer to engage on a digital platform.

While opposition to a State significant proposal is often what gets most attention from both approval authorities and the media, many proposals are supported by a 'silent majority', who are silent on their support for a project, despite their wish to see the proposal proceed. **We would like to see the Engagement Guide include reference to the opportunity for the applicant to hear from those in the community who support a proposal, as well as explain the benefits, in addition to outlining the impacts.**

The benefits of early engagement and timely information can only be reaped when all participants are open to hear what the other has to say. The benefits can also be realised where there is a willingness to consider that all parties are well-intentioned, and trust that there is genuine interest in achieving the best overall outcome. The Property Council encourages the Department to remind all participants that there is more to be gained through listening and respect.

10.1 Effective Engagement

While we agree wholeheartedly with the Department on the use of digital communications as a way of improving access and convenience, we also note that some form of digital communication, in particular social media, can involve unverified sources of information that stakeholders may rely on.

Just as with traditional media, the need to monitor and maintain a reliable source of information for stakeholders remains, and stakeholders as well as applicants should periodically be reminded to check the source of their information, and verify it either with the applicant or the Department.

In addition to digital technologies being used to provide information, the Department could make mention of the benefit of using visual supporting materials, which have been made vastly more accessible and cost-effective in recent years with the improvement in digital technologies and the widespread use of high-speed broadband. The cost of digital technology is also now much more reasonable, and can be a practical solution for stakeholders who would otherwise have difficulty with physical access to representation such as maps, models and site layouts. There should be opportunities for applicants to use digital technologies as a way of articulating and visualising their concepts and plans in support of other information.

10.2 Best practice engagement

We commend the Department on the reminder to applicants of the engagement objectives, and the additional information available in the Department's Community Participation Plan.

10.3 How applicant can implement

Again, the guidance on how to implement engagement is appreciated. While it is ideal to identify the stakeholders who will be both interested in, and impacted by, a proposal early, it is also important to recognise that engagement is more often than not iterative and not a linear process. Just as a proposal can evolve over time, the impacts can also evolve, and proponents should not be penalised or discouraged from engaging with new stakeholders in line with the proposal's evolution, or developing additional mitigation measures as new issues are discovered.

10.4 Proportionate engagement

The Property Council is pleased to see reference here to proportionate engagement, and agrees with the need to avoid unnecessary consultation that can lead to engagement fatigue.

10.5 Requirements to engage

The statutory requirements for engagement are generally well-understood by the industry, having been in place for a number of years now. The Department's requirements to make information publicly available, for statutory timeframes for exhibition, the need to consider community views and to weigh up all views, regardless of how many or who has expressed them, is sensible and speaks to procedural fairness, as well as supporting access for stakeholders more broadly to information on proposals. The Property Council also acknowledges that there may be additional engagement requirements arising from an approval, and we would encourage the Department to, wherever possible, also provide as much clarity as possible on post-approval engagement expectations.

11.0 Assessing Cumulative Impacts Guide

The Property Council welcomes the development of the new guidance material for assessing cumulative impacts for State significant projects (Cumulative Impacts Guide) and its release for public consultation.

We have considered section 3 of the Cumulative Impacts Guide that sets out when a project should be supported by an assessment of cumulative impacts and the matters that applicants should consider in their scoping reports. It is appropriate that applicants respond to the six (6) questions detailed in sections 3.1 to 3.6.

Section 4 of the Cumulative Impacts Guide is a good tool for applicants and consultants undertaking an assessment of cumulative impacts. **This section could be improved by providing reference to specific examples or case studies, which may either be real or hypothetical examples.**

The Property Council has considered the draft Cumulative Impacts Guide and it is supported.

12.0 Registered Environmental Assessment Practitioners

The package includes the introduction of a scheme to allow for the registration of environmental assessment practitioners. The purpose of this scheme would create a new layer of quality assurance for Environmental Impact Statements before they reach the Department for assessment. It is unclear what the ultimate benefit of the scheme will be.

The package of material indicates that Environmental Assessment Practitioners will need to seek accreditation under an approved scheme and then this will allow them to review and certify an Environmental Impact Statement and its supporting documents prior to the SSD or SSI being lodged with the Department.

The proposed guideline provides details about this process and the requirements regarding becoming a registered EAP. Whilst there is much information contained within the guideline, we suggest that it could be improved with further detail regarding the following matters;

- **The scheme will require an Environmental Impact Statement to be ‘certified’ by a registered EAP prior to the application being formally lodged, the concern around this is that it will introduce another layer and gateway in the assessment process. Applicants will need to satisfy to a certifier that they have addressed all relevant matters and be required to obtain that certification before they can submit the application to the Department. This has the potential to slow down the assessment process rather than speed it up. Further details around how this will work need to be provided.**
- **A point a clarification for the Department is to confirm if the certifier of an Environmental Impact Statement can be from the same company as the person who has prepared it. Further, could they in fact be the same person? Does the certifier need to be completely independent from the project team? If so, it could add considerable time to the assessment timeframe.**
- **Will all planners be required to seek to become registered in order to prepare SSD or SSI applications? If this is the case, does the Scheme inadvertently mandate the need for membership of industry bodies such as the Planning Institute of Australia?**
- **Will assessment officers within the Department also need to be accredited in order to assess SSD or SSI applications? It would seem logical that a person having responsibility for reviewing Environmental Impact Statements would also hold same accreditation as registered practitioners.**
- **It is unclear who can apply for registration. Will this be something that will be administered by the Department or is the intention to allow for professional bodies to accredit their members as part of the Scheme’s operation?**
- **The document does not make it clear what type of liability the REAP is taking on about certifying the document, but does make it clear that individuals could be subject to disciplinary action. Does this mean that the REAP is liable for the quality and accuracy of the information contained in the supporting consultant reports?**
- **Depending upon the availability and number of registered practitioners in NSW, this may add delays in the preparation stages of projects if there is a shortage of registered practitioners.**

13.0 Conclusion

The Property Council welcomes the steps that are being taken by the Department to improve the SSD and SSI approval pathways.

In most cases, the types of projects falling into these categories of development are significant investments and usually involve the creation of a large number of jobs and provide a positive economic impact to communities and regions. Accordingly, it is critical that the assessment processes are robust and streamlined.

We support the preparation of new guidance material to support the preparation of applications and subsequent amendments or modifications to projects. These documents, and the introduction of industry-specific SEARs, should provide better information for applicants undertaking project assessment reports and, in most cases, support faster approval times from the Department. A general concern is the volume of guidance material that has been prepared and will apply to both the SSD and the SSI assessment pathways. We support the development of useful guidance material but note the large amount of material that must be taken into consideration in the early stages of preparing a SSD application.

We have noted the proposed amendments to the Regulation that give effect to the implementation of the new guidelines and we support these changes being made. We welcome the development of new Engagement Guide and the Cumulative Impacts Guide, which are positive developments.

This submission raises some concerns with the proposal to introduce a Registered Environmental Assessment Practitioners Scheme. The benefits of this scheme have not been fully explained in the documents and we would request the Department undertake further discussions about the establishment and operation of this proposal with affected stakeholders.