

**Australian and New Zealand Environment and
Conservation Council**

**A NATIONAL APPROACH TO
ENVIRONMENTAL IMPACT ASSESSMENT
IN AUSTRALIA**

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Australian and New Zealand Environment and Conservation Council

A NATIONAL APPROACH TO ENVIRONMENTAL IMPACT ASSESSMENT IN AUSTRALIA

The Ministers of the Australian and New Zealand Environment and and Conservation Council (ANZECC) are pleased to recommend this report to the Prime Minister and First Ministers for consideration as an essential component of the inaugural Intergovernmental Agreement on the Environment.

The joint communique issued from the Special Premiers' Conference of October 1990, which established the need for the Intergovernmental Agreement, set as an objective for the Agreement: "the development of a national approach to environmental impact assessment procedures throughout Australia and greater streamlining of EIA and other approvals processes".

Working in the spirit of co-operative federalism and realising that such an approach has the potential to achieve substantial gains which would not be possible otherwise, the principles and practice of Environmental Impact Assessment (EIA) in Australia have been reviewed to identify common ground.

While pursuing the benefits of a national focus on EIA it is evident that, notwithstanding variations in practice among governments, there is a high degree of similarity in principles: common threads do exist and a statement of national principles regarding the process of EIA would serve to clarify directions and inform all participants.

The Ministers comprising ANZECC have taken this opportunity to address currently perceived issues surrounding the EIA process and to identify the most effective and efficient approach for this basic tool of environmental management in the 1990s. As EIA is a dynamic process and one that must continually evolve to meet the needs of the Australian community, this review and statement of principles will be re-evaluated within five years.

It should be understood that this statement of a national approach is not a compilation of the status quo. Rather, it is forward-looking in scope and intended to provide incentive to all governments in ensuring that the EIA process provides the environmental perspective that is sought. The National Approach immediately following provides a clear indication of the intent of the review and the substance of the common principles for EIA. It is also important to note that there is a commitment from all jurisdictions to progressively implement these principles, including moving toward a compatible statutory basis, subject to their endorsement through the Intergovernmental Agreement on the Environment.

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1. INTRODUCTION

In accordance with Terms of Reference provided by the Ministers of ANZECC to the Working Group on a National Approach to Environmental Impact Assessment (EIA) in Australia, the purpose, process and directions of EIA have been examined with a view to identifying common ground and increasing both effectiveness and efficiency in application.

In most governments in Australia EIA is a proven and valuable process for providing advice to decision-makers for the purpose of environmental protection and management. It has no decision-making function itself. This difference is important when responding to reviews of 'environmental approvals processes' and for proposing solutions to improve EIA. In recent times the three major themes emerging from reviews of EIA have been uncertainty, delay and environmental effectiveness of the outcome. Upon closer examination it has not been easy to apportion these themes between the advisory EIA process and decision-making functions.

It was not intended that the scrutiny of the Working Group would apply to the entirety of the development approvals process or to the specific procedural details in each government jurisdiction. Rather, efforts have been concentrated on defining aspects of the EIA process that would be amenable to a co-operative approach and, equally important, elements that would generate a more productive process with the benefit of national support and commitment. This means that the scope for contemplating the likely future directions and capabilities of the process was also part of the review. Thus, it has been an opportunity for taking a forward looking perspective while being mindful of present day needs.

The timing of this review has been set to enable a substantial contribution to the forthcoming Intergovernmental Agreement on the Environment, due for consideration at the Special Premiers' Conferences scheduled for November 1991 and early 1992.

Clearly, there are many benefits to be gained from such a review. A particularly timely advantage is the opportunity to recognise the connections between EIA and the concept of ecologically sustainable development. In providing a philosophical foundation for public policy, the goals of ecologically sustainable development become a framework for the EIA process. Ecologically sustainable development is presently the subject of intense scrutiny among all governments, with the overriding intention of identifying the practicalities of application across public and private sectors.

Formulating public policy with due consideration for environmental factors, including views of the community, has major implications for the subsequent evaluation of individual development proposals. If the policy context already exists and is environmentally sound, it follows that environmental assessment of a related proposal will be more readily accomplished and with fewer surprises for all concerned. Similarly, EIA is not a substitute for the planning process — the assessment of proposals is enhanced if there is a planning context which has taken environmental factors into account.

Consistent with current international approaches to reviewing environmental protection mechanisms within federal systems and modifying them to be more responsive to evolving community needs, ANZECC has concentrated on the important principles rather than attempting uniformity in process. Accordingly, the purposes of this national approach are:

- to reach a common understanding and agreement on principles and, where appropriate, the practice of EIA in Australia
- to improve the EIA process, including increasing the efficiency of the contribution made by the process to environmental decision-making
- to the fullest extent possible, reducing uncertainty about the application, procedures and function of the process
- to promote public understanding and to provide and facilitate consistent opportunities for public involvement
- to improve consistency of approach between jurisdictions in Australia responsible for EIA
- to ensure that where proposals may have environmental impacts across more than one jurisdiction, consistent environmental protection measures can be applied
- to avoid duplication where multiple jurisdictions are involved
- to identify and apportion responsibilities for participants in the EIA process.

2. TERMINOLOGY

In developing this national approach to EIA in Australia ANZECC has elected to interpret the meaning of environment in a broad way, noting that many diverse factors are linked through ecological and social systems. Environmental factors will, however, vary in significance between proposals.

Environment

For the purposes of EIA, the meaning of environment incorporates physical, biological, cultural, economic and social factors.

Environmental Impact Assessment

This is a process for the orderly and systematic evaluation of a proposal including its alternatives and objectives and its effect on the environment including the mitigation and management of those effects. The process extends from the initial concept of the proposal through implementation to completion and, where appropriate, decommissioning.

Environmental Impact Statement (EIS or similar name)

This is a document prepared by the proponent to present the case for the assessment of their proposal as part of the environmental impact assessment process.

Assessment Report

This is a document prepared by the assessing authority to review the contents of an EIS (or similar name) to provide environmental advice on the proposal to decision-makers.

Environmental Significance

The EIA process is normally initiated if a proposal appears likely to have a significant effect on the environment. The concept of environmental significance is applied at a number of points in the process including referral of proposals, level of assessment applied and evaluation of potential impacts.

In the EIA context, the concept of environmental significance is a judgement on the degree of importance and consequence of anticipated change imposed on the environment by a proposal.

This judgement is based upon the following factors:

- character of the receiving environment and the use and value which society has assigned to it
- magnitude, spatial extent and duration of anticipated change
- resilience of the environment to cope with change
- confidence of the prediction of change
- existence of policies, programmes, plans and procedures against which the need for applying the EIA process to a proposal can be determined
- existence of environmental standards against which a proposal can be assessed
- degree of controversy on environmental issues likely to be associated with a proposal.

Monitoring and Audit

Monitoring is a term used in EIA to describe both the checking of the predicted impacts of a proposal in order to improve environmental management practices; and to check the efficiency and effectiveness of the EIA process, and the reporting of the results.

Audit is a term used in EIA principally to describe the check for compliance with conditions of environmental approval, but also as an internal review of environmental management practices by proponents. Additionally, it is a form of site evaluation for environmental liability before purchase or development by proponents. The reporting of results applies to all of these uses of audit.

Public

The public includes any individual or group.

3. OBJECTIVES OF EIA IN AUSTRALIA

Environmental impact assessment in Australia is now a mature process within the overall machinery of government decision-making. This national approach is aimed at consolidating the benefits of EIA and providing a springboard for the next major step in the evolution of the assessment process. This will doubtless be needed to assist implementation of ecologically sustainable development in a practical way.

In addition, EIA is fundamentally a process to achieve protection and management of the environment and the maintenance and enhancement of environmental quality.

Therefore, within these contexts the objectives of EIA for the national approach are:

- to ensure that decisions are taken following timely and sound environmental advice
- to encourage and provide opportunities for public participation in environmental aspects of proposals before decisions are taken
- to ensure that proponents of proposals take primary responsibility for protection of the environment relating to their proposals
- to facilitate environmentally sound proposals by minimising adverse impacts and maximising benefits to the environment

- to provide a basis for ongoing environmental management including through the results of monitoring
- to promote awareness and education in environmental values.

The most important way that EIA can be improved is to monitor performance of the process in a systematic manner. Through monitoring it is possible to know whether the objectives of EIA are being met. Furthermore, the results of such monitoring provide the basis for additional improvements to the EIA process.

4. CONNECTIONS BETWEEN EIA AND ECOLOGICALLY SUSTAINABLE DEVELOPMENT

Ecologically sustainable development has been recognised by governments in Australia as a statement of objectives, aimed at influencing all decision-making. EIA is seen as one way amongst many for achieving the objectives of ecologically sustainable development.

Some of the major connecting points where EIA can assist in achieving ecologically sustainable development are:

- the use of resources by present generations is achieved while protecting the interests of future generations through, for example:
 - maintaining and enhancing natural capital (for example clean water, clean air, uncontaminated soil)
 - avoiding over-exploitation of renewable resources
 - minimising waste
- protection of biodiversity and ecosystem integrity
- provision of net community benefits from proposals that are implemented
- social equity, for example through public participation in the decision-making process
- reflection of full environmental costs of proposals in decisions on resource use
- caution in dealing with environmental risk and irreversibility.

5. NATIONAL PRINCIPLES OF EIA IN AUSTRALIA

The key outcome of a national approach should be a better process, leading to better protection and management of the environment. All participants have both opportunities and responsibilities for achieving a better process through the adoption of these national principles. This is consistent with the general theme that protection and management of the environment, for which EIA is a tool, is the responsibility of everyone.

The EIA process is designed to be open and accountable to the public. Accordingly, specific points for public involvement and accountability have been included in the roles of the participants in the process. In addition, information arising from the EIA process should (unless commercially confidential or related to matters of defence or national security) be accessible to the public to improve both the process and the protection and management of the environment.

Accordingly, major educational benefits for all participants in the EIA process, regarding important environmental values, should be realised.

5.1 PRINCIPLES FOR ASSESSING AUTHORITIES

PRINCIPLES FOR ASSESSING AUTHORITIES

- (a) Provide clear guidance on types of proposals likely to attract environmental impact assessment and on levels of assessment .
- (b) Provide proposal-specific guidelines (or a procedure for their generation) focussed on key issues and incorporating public concerns; and a clear outline of the EIA process. Amendments to guidelines should only be based on significant issues that arise after guidelines have been adopted.
- (c) Provide guidance to all participants in the EIA process on criteria for environmental acceptability of potential impacts including such things as the principles of ecologically sustainable development, maintenance of environmental health, relevant local and national standards and guidelines, codes of practice and regulations.
- (d) Negotiate with key participants to set an assessment timetable on a proposal-specific basis and commit to using best endeavours to meet it.
- (e) Seek and promote public participation throughout the process, with techniques and mechanisms tailored appropriately to specific proposals and specific publics.
- (f) Ensure that the total and cumulative effects of using or altering community environmental assets (for example air, water, amenity) receive explicit consideration.
- (g) Report publicly on the assessment of proposals.
- (h) Ensure predicted environmental impacts are monitored, the results assessed by a nominated responsible authority and feedback provided to improve continuing environmental management of proposals.
- (i) Monitor properly the efficiency and effectiveness of the environmental impact assessment process to learn from the past, streamline requirements and help maintain consistency.
- (j) Review, adapt and implement techniques and mechanisms which can improve the process and minimise uncertainty and delays.
- (k) Ensure that educational opportunities inherent in the EIA process are actively pursued.

COMMENT

Environmental advice from assessing authorities should be given on:

- *draft(s) of the documentation being prepared for the proposal by the proponent*
- *findings on the environmental benefits and disbenefits of the proposal, which may include a recommendation on whether the proposal could proceed; these findings should be based upon:*
 - *whether and why environmental impacts are manageable within tolerable limits*

- whether and why the degree of uncertainty of impacts (ie the risk to the environment) is sufficiently low to be confident about not encountering unforeseen problems
- whether there are ways to eliminate avoidable impacts, minimise adverse impacts and maximise benefits to the environment
- whether the impacts are likely to be cumulative
- what the implications are of using community assets
- whether and why the programme for minimising, ameliorating, managing and monitoring all impacts is sound and is likely to protect the environment
- environmental issues raised by the public, local government and State and Commonwealth agencies
- the proponent's response to issues raised during public consultation
- whether or not the proponent is likely to be able to fulfil environmental commitments and responsibilities
- conditions for environmental protection which should be applied.

Assessing authorities should seek expert advice on any relevant aspects of significant environmental issues.

5.2 PRINCIPLES FOR PROPONENTS

PRINCIPLES FOR PROPONENTS

- (a) Take responsibility for preparing the case required for assessment of a proposal.
- (b) Consult the assessing authority and the community as early as possible.
- (c) Incorporate environmental factors fully into proposal planning, including a proper examination of reasonable alternatives.
- (d) Agree on a proposal-specific evaluation timetable and commit to using best endeavours to meet it.
- (e) Take the opportunity offered by the EIA process to improve the proposal environmentally.
- (f) Make commitments to avoid where possible and otherwise minimise, ameliorate, monitor and manage environmental impacts; and implement these commitments.
- (g) Amend environmental management practices responsibly, following provision and dissemination of environmental monitoring results.
- (h) Identify and implement responsible corporate environmental policies, strategies and management practices, with periodic review.

COMMENT

Proponents have the responsibility to prepare and present the case for the assessment of their proposal. The case should include:

- *a description of the proposal and its objectives; its broad benefits and disbenefits and where they are borne within the community; and justification for the proposal*
- *a description of the existing environment*
- *alternatives and associated potential environmental impacts including the no-change option*
- *predictions of environmental impacts and their consequences (including those identified in guidelines, direct and indirect, short and long term, cumulative, and with an estimation of the amount of uncertainty involved)*
- *a programme for minimising, ameliorating, managing and monitoring impacts; and a commitment to implement the programme*
- *responses to issues raised during public and agency review.*

The case prepared by the proponent should respond to the issues raised in guidelines, be presented in a form and style that is readily understandable, and present conclusions fairly - based upon sound principles.

5.3 PRINCIPLES FOR THE PUBLIC

PRINCIPLES FOR THE PUBLIC

- (a) Participate in the evaluation of proposals through offering advice, expressing opinions, providing local knowledge, proposing alternatives and commenting on how a proposal might be changed to better protect the environment.
- (b) Become involved in the early stage of the process as that is the most effective and efficient time to raise concerns. Participate in associated and earlier policy, planning and programme activities as appropriate, since these influence the development and evaluation of proposals.
- (c) Become informed and involved in the administration and outcomes of the environmental impact assessment process, including:
 - assessment reports of the assessing authority
 - policies determined, approvals given and conditions set
 - monitoring and compliance audit activities
 - environmental advice and reasons for acceptance or rejection by decision-makers.
- (d) Take a responsible approach to opportunities for public participation in the EIA process, including the seeking out of objective information about issues of concern.

COMMENT

The public should have timely access to information about proposals (subject to commercial confidentiality or matters related to defence or national security) in a form suitable to enable informed involvement in the EIA process, including the scope of the assessment.

Public participation in the EIA process should aim to achieve the following objectives:

- *to ensure that the public is informed in an adequate and timely manner*
- *to ensure that environmental issues of public concern are raised and addressed*

- *to ensure that the process is open*
- *to take opportunities to resolve problems where possible*
- *to ensure that the community has input to the apportionment of environmental benefits and disbenefits*
- *to assist in better environmental advice going to decision-makers*
- *to enable the public to both advise on and learn more about environmental values.*

5.4 PRINCIPLES FOR GOVERNMENT

PRINCIPLES FOR GOVERNMENT

- (a) Provide policy and planning frameworks which set contexts for the environmental assessment of proposals.
- (b) Base decisions on proposals having potentially significant environmental impact on advice resulting from the EIA process and include provisions for effective protection and management of the environment.
- (c) Apply the EIA process equally to proposals from both the public and private sectors.
- (d) Within each jurisdiction (Commonwealth, State/Territory) provide for a coordinated government decision-making process to which the outcomes of EIA can be directed; and develop mechanisms to synchronise processes for decision-making such that, where possible, the opportunity exists for decisions to be made in parallel rather than sequentially for proposals requiring multiple approvals.
- (e) Ensure assessment reports are available to the public before or at the time of decision-making.
- (f) Establish one national agreement to ensure a single orderly process is in place where the EIA responsibilities of several governments are involved.
- (g) Provide support, if and when appropriate, to participants in the process to enable better and informed involvement.
- (h) Provide opportunities for reasonable public and proponent objections, on decisions made other than at Ministerial level, regarding the requirement for and level of assessment, adherence to due process, and environmental advice given to decision-makers.
 - (i) Implement this national approach including, where appropriate, progressive amendment of statutory provisions, to increase consistency in the process.
 - (j) Maintain the integrity of the EIA process.

COMMENT

The principles of EIA are also applicable to proposals not normally subjected to an assessment process administered by a central agency. Consequently, there are opportunities for state and local government agencies to assume a greater role in environmental protection by adoption of these principles.

The quality and efficiency of the EIA process can be enhanced when the framework is supported by useful data bases on the environment. This in turn leads to better environmental protection. Broad government cooperation is required to facilitate comprehensive data gathering, storage and retrieval systems.

6. NATIONAL PRACTICE FOR EIA IN AUSTRALIA

6.1 APPLICATION OF THE PRINCIPLES OF EIA TO PROJECTS, PROGRAMMES, PLANS AND POLICIES

Environmental impact assessment of proposals has had most application to, and success with, the evaluation of projects.

The evaluation of projects is generally simplified, expedited and the outcome more certain if associated policies, plans and programmes have taken environmental factors into account. In turn, the outcome of project evaluation should influence relevant policies, plans and programmes.

There is little doubt that EIA works best in a policy context which is already environmentally sound. Many of the principles and objectives specifically recommended in this national approach for the assessment of project proposals would be as effectively, and often more efficiently, applied to policies and major programmes. Ensuring that environmental considerations are taken into account at this level of decision-making could take a variety of forms. These include, for example:

- development of industry guidelines which incorporate good environmental practice
- the inclusion of environmental protection criteria in legislation
- the integration of principles of ecologically sustainable development concepts into government development policies
- the specific inclusion of environmental assessment in legislation
- the integration of environmental considerations into government programmes.

The application of the principles of EIA to policies, plans and programmes is becoming increasingly important to set a framework for project evaluation; to expedite the process and make outcomes more predictable; and to increase the degree of planning certainty for proponents and the community — regardless of whether or not the EIA process itself is applied. It should be appreciated that other mechanisms such as planning processes, resource assessment and a variety of community involvement processes could provide effective means of implementing the objectives of EIA.

6.2 REQUIREMENTS FOR INITIATION OF THE EIA PROCESS

Clear criteria should be developed for proposals likely to lead to initiation of the EIA process by assessing authorities.

There should be opportunities for proponents, the public and decision-making authorities to refer proposals for consideration regarding the initiation and application of EIA.

Initiation of the environmental impact assessment process should be as early as practicable in the planning of the proposal.

The Minister or agency responsible for administering the EIA process should have the power to initiate the process.

6.3. LEVELS OF ASSESSMENT

There should be different levels of assessment in the EIA process (more than one of which should involve public participation) to take account of the type and scale of the proposal under consideration, the significance of the environmental context in which it is proposed to occur and the associated degree of public interest.

6.4 TIME SCHEDULE

A time schedule for all stages of the environmental impact assessment process should be set out early, in consultations between the assessing authority, the proponent and other involved bodies on a proposal-specific basis.

Any proposed change to the time schedule by any party should be indicated early and a new schedule set by the same process.

All parties should commit to using their best endeavours to meet the time schedule.

6.5 OUTCOMES

- All outcomes of the EIA process should be public.
- The Minister or assessing authority responsible for the EIA process should have the power to recommend environmental conditions.
- Ministers or authorities responsible for decision-making should take environmental advice into account.
- Enforceable auditable conditions to protect the environment should be set by decision-makers and made public.
- Ministers or authorities responsible for decision-making following EIA should give reasons for decisions publicly.
- Where there is a disagreement on environmental acceptability and/or conditions, then resolution should occur between Ministers or the Cabinet, as appropriate.
- Decision-making by Government following the EIA process should be the time of trade-off for any unavoidable differences (benefits and disbenefits) which may emerge from the process.
- Environmental conditions set on approved proposals should ensure that environmental management can change as a consequence of monitoring information to result in continued effective environmental protection.
- Should a proposal not proceed within a reasonable timeframe then there may be a requirement for re-assessment of the proposal.

6.6 PROPOSAL FACILITATION

Proposals should be facilitated through the EIA process by assessing authorities in an interactive way to assist appropriate proposal modification to better protect the environment.

In addition, the facilitation of proposals through various Government decision-making processes generally assists in reducing delays and uncertainties. However, it is difficult to avoid potential conflicts of interest if the assessing authority plays a role in facilitating proposals other than as related to the EIA process. The conflict comes from being seen both to act for the proposal and to offer judgement upon it.

Accordingly the benefits of project facilitation should be realised by an agency of Government other than the assessing authority — for proposals attracting the EIA process.

6.7 ARRANGEMENTS BETWEEN JURISDICTIONS

A National Agreement Between States/Territories/Commonwealth

A single agreement between Ministers or agencies responsible for EIA in all States and Territories and the Commonwealth on the administration of the process should be negotiated, with Schedules to accommodate individual legislative arrangements. This National Agreement would supersede existing arrangements.

The national agreement should include:

- prompt early consultation regarding proposals likely to fall within the responsibilities of the respective jurisdictions — or likely to affect, deleteriously, adjoining jurisdictions
- one process to avoid duplication and to satisfy all requirements including scope, documentation, timetable and public involvement
- coordinated environmental advice to involved Governments
- coordinated (in time) decision-making including consultation on the environmental acceptability of proposals
- processes for the evaluation of proposals beyond the three nautical mile limit of State/Territory jurisdiction but which have the potential to have environmental impacts on the environment within State/Territory jurisdiction.
- arrangements for meeting International Treaties and Protocols with environmental components to which Australia is a signatory.

State/State - State/Territory

Schedules to the National Agreement should accommodate arrangements between States/Territories, as appropriate.

Multiple Jurisdictions

Proposals involving more than two jurisdictions should be considered on a case by case basis under the National Agreement, unless the States involved and the Commonwealth agree that the proposal should be assessed under Commonwealth EIA legislation. To date, these instances have been rare (for example the Very Fast Train proposal or some within the Murray-Darling Basin).

7. REVIEW OF THE NATIONAL APPROACH TO EIA IN AUSTRALIA

This national approach to environmental impact assessment in Australia should be reviewed by the Australian and New Zealand Environment and Conservation Council within five years from adoption.

ADOPTED BY
THE AUSTRALIAN AND NEW ZEALAND ENVIRONMENT AND
CONSERVATION COUNCIL
OCTOBER 1991

ATTACHMENT

The National Approach was prepared for the Australian and New Zealand Environment and Conservation Council by a Working Group with the following terms of reference:

1. To review the purpose of environmental impact assessment in Australia having regard to the preliminary work carried out under ANZECC Project 90/14 'The Functions and Purposes of Environmental Assessments' and the conclusions of EIA officials reached in Adelaide in 1990.
2. To review the processes of environmental impact assessment with particular intent to:
 - (a) identify any areas of inconsistency or of overlapping or dual responsibility between agencies, and how any problems deriving from those matters could be minimised; and
 - (b) identify those elements of environmental impact assessment in Australia for which a national approach would be beneficial and achievable.

The work carried out under ANZECC Project 90/14 "The Functions and Purposes of Environmental Assessments" may form an appropriate basis to commence the review.

3. To formulate a proposal for ANZECC consideration, through Standing Committee, for a national approach to principles and, where appropriate, the practice of environmental impact assessment and greater streamlining of EIA and other approvals processes. The proposal to be presented in a format and style such that it can be used as a key input to the forthcoming Special Premiers' Conference scheduled for November 1991 when it considers the proposed Intergovernmental Agreement on the Environment. The proposal should take account of the State Premier's Conference support for the rationalisation of regulatory activities undertaken at different levels of government, particularly in relation to the development of improved national standards. Areas where common or revised mechanisms may be appropriate to achieve desirable objectives should be identified.
4. To consult, as appropriate, representatives of proponent groups, community groups and relevant government agencies during the formulation of the Working Group's proposal.
5. Subject to ANZECC's agreement, to employ a consultant to assist in the preparation of the proposed. (*Note: ANZECC approved the employment of an Executive Officer*)
6. To ensure that the proposal is submitted to Standing Committee prior to 30 August 1991 so that it can be considered in final form by ANZECC by 30 September 1991.
7. ANZECC at its meeting on 22 March 1991 added the following task:

To prepare an indicative list of industries for which national guidelines should be developed before site specific proposals are received. (*Note: This has been addressed in a background paper, prepared by the Working Group for ANZECC on the national approach.*)

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