

BHP Olympic Dam EIS Assessment Guidelines – Impacts on Aboriginal People:

Notes prepared by David Noonan, Independent Environment Campaigner, 25 May 2020

The State Government has released [Guidelines](#) (22 May 2020) for an EIS level Assessment of BHP's proposed Olympic Dam mine expansion. The Guidelines place requirements on BHP to report on in a Draft EIS for a 30 day public consultation period and to hold a public meeting - which are likely to occur after mid-2021.

This one EIS Assessment process is meant to satisfy both SA State and Federal Gov legislative requirements in assessment of BHP's proposed Olympic Dam copper-uranium mine expansion. The SA Minister for Mining oversees this Assessment under a 1982 Indenture Act, his [Media Release](#) states:

"...the assessment guidelines detail the potential social, environmental and economic impacts to be assessed by BHP..."

The State Development Act requires BHP to prepare an Environmental Impact Statement (EIS) to the highest legislative standard regarding its proposal to increase copper production at Olympic Dam. ...

BHP's proposal is complex and will require a comprehensive investigation by the Department...

The effect of the proposal on impacted communities, including Aboriginal people and the Roxby Downs community, will be a key consideration of the Government's assessment..."

However, State and Federal Gov's do not recognise Aboriginal Peoples Right to "Free, Prior and Informed Consent" under the "[United Nations Declaration on the Rights of Indigenous Peoples](#)" (Sept 2007).

Further, the Olympic Dam mine and this EIS Assessment process are governed by an outdated 1982 Indenture Act over-riding other SA legislation and granting untenable legal privileges to BHP vested interests. This is seen as a 'conflict of interest' held by the Minister for Mining as "Indenture Minister" in charge of the EIS process.

Joint national & state environment groups have [called for repeal](#) (Briefer, June 2019, p.4) of this Indenture Act and made [Recommendations](#) (Dec 2019) for an EIS process to require relevant investigations, including:

"The Guidelines for the EIS Assessment process on BHP's proposed 2019 Olympic Dam mining expansion project should require investigation of Aboriginal Heritage issues across the entire Olympic Dam operation, with the EIS Assessment to make relevant recommendations.

This should include investigations on the lead set of public matters raised on Indigenous issues and summarised in the SA Assessment Report, Chapter 12: Effects on communities (SAAR, p.369, Sept 2011) during assessment of BHP's previous Olympic Dam mine expansion project:

• "The impact of the Indenture on BHP's statutory obligation to consult with traditional owners, and the level of protection they receive; • Additional detail on measures undertaken and proposed by BHP to protect cultural heritage and to consult with relevant groups; • The cultural significance of the Mound Springs and Great Artesian Basin to Aboriginal people; • Concern that Aboriginal people would inherit radioactive land and waters when the mine closed and that they should be included as stakeholders to be consulted post-closure."

Note: BHP Olympic Dam Indenture legal privileges take precedence over Aboriginal Heritage across an extensive Indenture area which includes the defined "Stuart Shelf Area" – applying to over 12 000 km², equal to over 1% of the total area of SA (see the [Roxby Downs \(Indenture Ratification\) Act 1982](#), Stuart Shelf Area Map B, p.288), including the 17 800 hectare Olympic Dam Special Mining Lease. **This has impact on a number of Aboriginal Peoples, Indigenous Communities and Native Title bodies rights and interests.**

SA Gov EIS Assessment Guidelines on BHP Olympic Dam mine expansion:

The EIS Guidelines include requirements set by the State Gov and a range of requirements set by the Federal Gov under the *Cth Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The Guidelines p.7 state: *“The Commonwealth Gov will also intimately partner the State throughout the assessment process.*

Both State and Federal Gov’s have a right to Approve or to Refuse the BHP proposal and hold separate powers to set their own Conditions on any Approval. **The powers are held in SA by the Indenture Minister for Mining.**

The Guidelines p.21 state: ***“The Indenture Minister can at any time indicate that the proposal will not be granted authorisation. This may occur if the proposal is inappropriate or cannot be properly managed. This is commonly referred to as an early no.”*** (Bolding emphasis added)

For instance: SA & Federal Ministers have a power to refuse BHP’s increase in GAB water extraction, including to protect the GAB Springs ecological & cultural heritage values, and could set Approval Conditions to do so.

The Minister for Mining’s Media Release states: *“The guidelines require BHP to examine the impacts of increased water extraction from the Great Artesian Basin (GAB) including on the water resource, GAB springs ecosystems and existing GAB water users including pastoralists and petroleum producers.”*

The Guidelines p.6 state: *“In setting these Guidelines, the Indenture Minister and the State Planning Commission determined a need for a broader assessment and investigation of the following:*

- *Extraction of additional eight (8) megalitres of water from the Great Artesian Basin.*
- ...
- *The impact on Aboriginal and non-Aboriginal heritage and flora and fauna in the far north region.*

Presumably, the Guidelines do not mean to offend by grouping Aboriginal heritage along with flora & fauna.

Importantly: Guidelines p.13 state ***“A cumulative assessment for the entire proposal will also be necessary.”***

Guidelines state the EIS is to also assess non-monetary benefits & costs – such as cultural heritage values:

“A statement of the objectives and justification for the proposal, including:

- *expected local, regional and state benefits and costs, including those that cannot be adequately described in monetary or physical terms (e.g. effects on aesthetic amenity)”*

The Guidelines set by the SA Gov require a range of “Specialist reports and details” (p.24-37), with a common baseline for studies cited at mid-2021, including:

- ***“A Cultural Heritage Management Assessment*** prepared by an appropriately qualified heritage expert that includes an assessment of the potential impact of the proposal on Aboriginal cultural heritage. The assessment must outline measures to be taken before, during and after the proposed development in order to manage and protect Aboriginal cultural heritage. The assessment should outline how the Traditional Owners will be engaged to help identify sites, objects and remains, and how they will be managed and protected.
- ***A Social Impact Assessment*** including an assessment of the composition of the workforce and the likely positive and negative social impacts as a result of an increase in population at Roxby Downs township. Following this assessment, assess the likely impacts on housing, accommodation, health services, education and other services located within Roxby Downs and the region, the impact on existing pastoral land uses and other affected land holders, the potential for local and statewide communities and business to tender contracts for services and supplies.”

BHP is to identify “failure scenarios” p.24, this must include BHP failures on Aboriginal Heritage issues:

“Where relevant, reports and plans should include an assessment of failure scenarios with contingency measures where failure can lead to a high impact event.”

On **“Sources of information”** the Guidelines p.27 state: *“Where judgements are made, or opinions given, these need to be clearly identified as such, and the basis on which these judgements or opinions are made need to be justified. The expertise of those making the judgements including the qualifications of consultants and authorities should also be provided. • It is RECOMMENDED that the EIS consider issues that may generate concerns based on inaccurate or outdated perceptions.”*

“Impacts on cultural heritage” (Issue/Impact No.5 p.30), citing: *“The proposal has the potential to impact on sites/locations of Aboriginal or non-Aboriginal heritage through disturbance during construction. Additionally, there are Native Title implications associated with Crown land”*; and **“Effect on communities”** (Issue/Impact No.9 p.32), citing: *“...as assessment of all potential impacts ... including effects on public health, proposed community consultation”* are listed as requiring a **“Critical Level of Assessment”** - that is defined at p.28 as:

• **Where information about the issue is lacking and the response is unclear, the issue is classed as ‘CRITICAL’**

The Guidelines state: *“The potential impacts and issues have then been organised according to the level of work and type of attention required by the proponent: either standard, medium or critical.”*

“Water supply effects” (Issue/Impact No.2 p.29) is listed as requiring a **“Critical Level of Assessment”**, citing:

*“Increased groundwater extraction from the Great Artesian Basin (GAB) may result in immediate and long-term impacts on the environment and other GAB uses. Risk: Continuing and increased extraction from the GAB has the potential to impact on pastoral and other users along with the environment including the GAB spring ecosystem. The current plan does not provide a detailed analysis of the impacts of current and increased water extraction on a resource that is in a slow rate of natural decline. **Alternatives should also be investigated.**”* (Bolding emphasis added)

It is of Concern: “Alternatives” (issue/Impact No.19 p.35) is only listed as a “Standard Level of Assessment”. **“Alternatives” include fundamental issues such as a non-GAB water supply for mining in north SA**, citing:

*“**There are potential alternatives to elements of the proposal, including water sources and electricity infrastructure that require exploring.** Risk: The proposed expansion and continuing BAU includes elements where alternatives should be explored. The current plan does not provide a detailed assessment of potential alternatives. More information on alternatives and rationale as to the assessment of these is required. = STANDARD”* (Bold emphasis added)

“Water supply effects” significantly impact culturally important GAB Springs, p.29 cites: *“Further information and analysis of the impact of continued and increased groundwater extraction from the GAB is required. = CRITICAL. Wider impact on water supply to the Roxby Downs council area.... = CRITICAL”.*

It is of Concern the State has sought to place a range of limitations on the scope of this EIS Assessment:

Initially, through the “Olympic Dam Major Development Declaration” (SA Gov Gazette, 14 Feb 2019, p.461-462) and the Variation (19 Sept, p.3306-10) - see the updated [SA Planning Portal](#) for the Olympic Dam Project.

There must be a comprehensive Impact Assessment of the entire BHP water extraction operation, existing & proposed increase, to an average 50 million litres a day for 25 years. Not an arbitrary limit to only assess BHP’s increase in extraction over the max set in 1997 - as stated in Guidelines p.6. **The Critical level of impact of 1990’s era Olympic Dam Water Licenses are not in any way a credible baseline to accept in the 2020’s.**

Federal Gov EIS Assessment Guidelines on BHP Olympic Dam mine expansion:

The EIS Guidelines p.38-52 sets out “**Commonwealth assessment requirements**”:

“Environment Protection and Biodiversity Conservation Act 1999 - Matters of National Environmental Significance A delegate for the Australian Minister for the Environment has determined that the proposed action (EPBC 2019/8570) is likely to, or may have, a significant impact on the following Matters of National Environmental Significance (MNES) that are protected under Part 3 of the EPBC Act:

- **Listed threatened species and communities** (section 18 & section 18A); (Includes GAB Springs)
- **Listed migratory species** (section 20 & section 20A); and
- **The environment because the proposal is a nuclear action** (section 21 & section 22A).

The proposal is to be assessed through an Accredited Assessment Process pursuant to section 87(1) of the EPBC Act. This process will accredit the South Australia Major Development assessment process for the purposes of assessing this proposal. These guidelines have been prepared with Australian Government input and their requirements are reflected through the assessment requirements specified in the section below.

This will provide the Australian Minister for the Environment, or their delegate, with sufficient information to make an informed decision whether or not to approve the proposed action under Part 9 of the EPBC Act, and if so, what conditions to attach.”

Joint national and state environment groups “[PRE-CONDITIONS TO PROTECT MOUND SPRINGS IN OLYMPIC DAM EXPANSION EIS GUIDELINES](#)” (Briefing Paper June 2019) set **Recommendations to protect GAB Springs:**

“Pre-Conditions to protect Mound Springs and explore alternatives to Great Artesian Basin water extraction

The federal Department of Environment assessed Mound Spring protection issues in 2011. At this time the federal Minister set a range of strong EPBC Act Conditions on “Groundwater” and on BHP “Extraction of Water from the Great Artesian Basin”.

These federal conditions must now be applied in the Guidelines to the required EIS Assessment process across the entire Olympic Dam operation, on both the proposed expansion of mining at Olympic Dam as well as across existing BHP operations, including that:

- *The conditions apply to all activities undertaken by the Approval Holder on the Special Mining Lease and to water extraction from Wellfields A and B in the Great Artesian Basin;*
- *The Approval Holder must ensure that the extraction of water from Wellfield A and B in the Great Artesian Basin does not have a significant adverse impact on groundwater dependent Listed Threatened Species or Ecological Communities; and*
- *That groundwater drawdown from mining operations will have no significant adverse impact on groundwater pressure in the Great Artesian Basin.*

The EIS Guidelines must require that BHP present alternatives to any increase in extraction of Great Artesian Basin waters and the associated impact and risks to protected Mound Springs, for EIS Assessment and public scrutiny. The required alternatives must include options to close Wellfield A and to phase out Wellfield B.

Such action is also needed to protect the fundamental, important and ongoing Aboriginal cultural heritage associated with the unique and fragile Mound Springs.” (Bold emphasis added)

The EIS Guidelines list “Impacts on cultural heritage” as Critical Assessment requirement No.5 (p.42): “The proposal has the potential to impact on sites/locations of Aboriginal or non-Aboriginal heritage through disturbance during construction. Additionally, there are Native Title implications associated with Crown land.

5.1 Identify any effects on Aboriginal sites, objects and remains (including but not limited to those listed in the Commonwealth and National Heritage List and the SA Register of Aboriginal Sites and Objects). **Indicate any consultation with local Aboriginal organisations that have an interest in the area, including engagement of Aboriginal people in cultural heritage surveys. ...**

5.3 Identify the potential effects and measures to avoid and/or mitigate the proposal on the local, regional, state or national conservation status of sites, objects and areas of significance to Aboriginal people during construction, operations and closure/rehabilitation.

5.4 Outline measures adopted to avoid impacts on Aboriginal sites, objects and remains, ... that have been identified by the consultation undertaken as per assessment requirement 5.1 and any plans to deal with the discovery of Aboriginal heritage during work activities. If avoidance has not been possible in the proposal design, detail the steps to ensure that any unavoidable damage, disturbance and interference is minimised and done in compliance with the Aboriginal Heritage Act 1988 or the Aboriginal Heritage Act 1979 (as applicable).

5.5 Identify any Native Title issues in respect of the requirements of the Native Title Act 1993.

5.6 Describe the impact on the appropriate Native Title Claimants and the consequent impact on the potential ongoing enjoyment of native title rights (if any) by native titleholders.

5.7 Describe how Aboriginal heritage protection is being dealt with in the context of any measures taken to comply with the Native Title Act 1993.” (Bold emphasis added)

In Addition: see “Economic effects” No.1.8 (p.39): “Describe the impact on existing pastoral leases.”

“Water management effects” No.2 (p.39-40) Critical Assessment requirements on GAB waters and Springs.

“Effects on communities” Critical Assessment requirement No.9.8 (p.45): “Outline potential impacts on any other use of the land by Aboriginal people, or on cultural values held by Aboriginal people that relate to the areas affected by the proposal.”

“Effects on the physical environment and land use” Standard Assessment requirement No.15.4 (p.49):

“Identify the types and extent of land tenure in broad terms, including reference to Crown Land. Outline any implications for Native Title, including infrastructure corridors.” & 15.8: “Describe the implications of securing any easements (if any) in particular, for the GAB water extraction.”

“Alternatives” Standard Assessment requirement No.19 (p.50): “**There are potential alternatives for elements of the proposal, including water sources ... that require exploring.**

19.1 Provide a brief comparative social, environmental and economic analysis of broader alternatives that could meet the proposed objectives at the State level and in the region, including alternative sources of water and power supply.

19.2 Identify alternative design and construction techniques to meet the proposed objectives, with reference to any hazards/risks and the social, environmental and economic advantages and disadvantages of each.

19.3 Assess the ‘do nothing’ option.