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Greens Member of the NSW Legislative Council



Environmental Impact Assessment Improvement Project
The Department of Planning and Environment NSW
Parliament House
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RE: Environment Impact Assessment Improvement Project Discussion Paper October 2016

Thank you for the opportunity to make a submission to the Environmental Impact Assessment (EIA) Improvement project. I am writing in my capacity as the Greens NSW Spokesperson for the Environment.

The Greens NSW believe that EIAs are an important environmental management tool that can help predict and prevent the environmental impact of a range of policies, projects and developments. Unfortunately, the EIA process and resulting documentation such as Environmental Impact Statements (EIS) have lost community trust with many questions regarding the integrity of the process, the independence of those conducting the EIA and writing EISs, and poor levels of public engagement and dissemination of information.

Having reviewed the proposed improvements and initiatives highlighted in the Discussion Paper, I believe they would make a good start to regaining the community's trust and improving EIAs, although more work is needed to be done.

More broadly, we would like to see greater underpinning and recognition of the principles of Ecologically Sustainable Development (ESD) throughout the EIA process. Especially important here is the Precautionary Principle, as the EIA must take into account and communicate all uncertainties throughout the process. In addition to site-specific impacts, EIA scope and boundary must take account of both indirect (e.g. the potential of greenhouse gas emissions) and cumulative effects. Incorporating Strategic Environmental Assessment (SEA), in particular, can be used to assess the impacts of programs at various levels of governance and is a tiered approach to decision-making.

In particular, I would like to make recommendations for consideration under Initiatives 2, 5 and 7 of the Discussion Paper, which should be more specifically addressed.

Initiative 2: Earlier and better engagement

I endorse the proposals laid out in this initiative and believe earlier and better engagement is a vital step. This must include genuine, transparent and effective public participation that starts at the beginning of the EIA process and continues throughout the whole process. There must be faith that public participation and consultation has the potential to have a major influence on the outcome, not just a 'tick a box' exercise. Where public concerns are not addressed, explicit explanations must be provided.

In addition, a public inquiry must be considered mandatory for any project which may have significant impacts or about which a high level of public concern has been expressed (for example, through a prescribed number of signatures on a petition).

EIA's are often only prepared comparatively late in the project development cycle. In many cases, a project has been well-established by the time an EIA is prepared, which can limit consideration of viable alternatives

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in the planning process. Alternatives should be more explicitly considered earlier in the process and discussed and debated with the community before a final choice is made.

The community has particular concerns that once a project is approved, even very significant changes with large impacts upon the environment are often approved with relatively little community consultation.

Consideration must also be given to the effectiveness and suitability of public participation methods which should be designed to maximise engagement and meet the public's needs. Moreover, EIA documentation, which can often stretch to thousands of pages, must be presented in a way which is clear, readable and accessible to the community.

Initiative 5: Improve the accountability of EIA professionals

There is no doubt that EIA is an important tool for assessing impacts of development on the environment and a key mechanism in decision making by public authorities, but it has often been criticised for falling short of its full potential. Wright et al (2013) point to the fact that many EIAs are prepared outside government agencies, often contracted out to the lowest bidder with a focus on achieving mandated deadlines rather than quality. In some cases, EIAs become little more than exercises in "cutting and pasting" as there is insufficient time, funding, expertise and attention to detail.

Accountability and objectivity for lead authors on EIA's needs to be strengthened. The fact that EIAs are conducted or commissioned by the proponents of the activity creates a potential conflict of interest or a bias which can lead to EIA reports being favourable to the proposal. Public trust is further undermined as this is seen as leading to a predetermined outcome.

This is contentious as it means that consultants working on the EIA report are 'either directly or indirectly, employed by a party whose interests may differ in significant ways from the public interest' (Beder 1990, p 45 in Harding et al 2009). The lack of independence or perceived lack of independence of EIA report authors significantly undermines community trust in the process.

In particular, whilst the costs of preparation of EIAs must be borne by the proponents, it is essential that the consultants be chosen independently of the proponents and work under the supervision of a neutral third-party (eg public body, an overseeing agency) at arms-length from the proponent. Other ways of improving accountability and addressing the issues highlighted above can be done through the inclusion of a formalised process of external review or audit.

High standards of EIA process and reporting will increase credibility and the well-being of our environment.

Initiative 7: Strengthen the monitoring, auditing and reporting of compliance

Post-decision monitoring and auditing systems are one of the weakest areas of EIA systems worldwide, especially in Australia where provisions for follow-up are discretionary, and not mandatory.

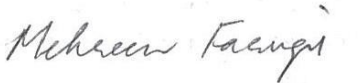
Proponents should not be allowed to evade responsibility for environmental care through transferring issues from the EIS to an 'Environmental Management Plan' or similar instrument. Similarly, monitoring must be based on adequate baseline studies with post-decision monitoring and auditing regimes being mandatory and ongoing (i.e. not a once-off activity) and include penalties for non-compliance.

If a project that has been approved has worse environmental, social or economic impacts than predicted in the EIS, the proponent is to be held accountable for ongoing remediation/restoration of those impacts. A degraded environment should be seen as a constraint against further detrimental impact, not as an opportunity to downplay a new impact's significance. The system should allow consultants to be called to justify their forecasts and be subject to penalties at law if their forecasts are found to have been made

falsely or misleadingly. This important principle of accountability should be built into the preparation of an EIS.

I recognise the identification of the need to better understand cumulative impacts of developments across multiple projects, as listed in the Discussion Paper.

I welcome this process to improve the Environmental Impact Assessment process and look forward to a positive outcome that strengthens the process and rebuilds community trust.



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References and bibliography

Harding, Hendriks and Faruqi (2009) 'Environmental Decision Making – Exploring Complexity and Context,' The Federation Press.

Wright, Dolman, Jasny, Parsons, Scheidek and Young (2013) 'Myth and Momentum: A Critique of Environmental Impact Assessments' Journal of Environmental protection, 2013, 4, 72-77.