

## **SUBMISSION – Environmental Impact Assessment Improvement Discussion Paper**

The opinions expressed in this submission are those of an environmental scientist who has:

- A PhD in zoology;
- Over 30 years' experience specialising in environmental impact, conservation significance and compensatory habitat assessments in NSW, Victoria and Queensland;
- Prepared numerous peer and scientific reviews for private industry, government departments and for the EDO;
- Reviewed the adequacy of various EISs and REFs to identify any outstanding environmental issues as a volunteer with the EDO;
- Been a member of the NSW EDO's Expert Register since the 1990s, providing scientific reviews and expert evidence; and
- Is presently a member of the Better Planning Network.

Although the discussion paper's stated aims are to promote earlier and 'better' engagement, build confidence in the integrity of the EIA process, provide clarity and guidance for the community and improve the consistency and 'quality' of the EIA documents, the emphasis seems to be mainly on 'streamlining' and achieving certainty and clarity for the proponents rather than for the community or environmental experts. Wording is overly vague on issues dealing with improving engagement of community and improving quality of EIS.

### **Initiative 1: Develop a consistent framework for scoping within the EIA process**

Key quote: *"This will allow the EIA to focus on the most important issues as identified during scoping by tailoring the level of examination of an issue to its relative importance."*

What does this really mean? Does it assume that there will be a consensus on priority issues flagged by community and proponents? It implies that only prioritised issues will be examined in detail – Does this mean that only 1 or 2 (agreed) environmental impacts will be examined in detail and the rest will be 'tick-the-box'? It talks about balancing technical and community issues but does not address balancing environmental, economic and social issues (ESD); this is a major source of conflict for community and proponents. It appears to advocate a one-size-fits-all approach to scoping. However, major projects have different types of impacts (mining vs high density residential vs transport corridors). How would the impacts of Westconnex be prioritised by proponents and community?

Risk assessment (routinely used by mining companies) is a very subjective process where likelihood may be classed as rare, unlikely, possible, likely and almost certain and consequences may be rated as minor, serious, severe, major

and catastrophic. Overall risk is measured as low, moderate, high or extreme. It is an overly standardised approach where the reasoning behind ratings is often not transparent and no risk is beyond mitigation (e.g. catastrophic spills of toxic chemicals are assumed to be negligible if standard protocols are followed). Residual risks are also manageable as offsets or rehabilitation. This approach suits mining companies very well because they have a standardised approach to all risks and it is simply a matter of rolling out the appropriate prescriptive response. However there are plenty of examples where major accidents have occurred due to human error and failure to follow protocols. The intention of the Discussion Paper seems to be to transfer this formula to all EIA documents.

## **Initiative 2: Earlier and better engagement**

Key quote: *"...represent a move to focus greater effort at the front end of the EIA process so that the most important issues are understood by all EIA participants prior to commencement of detailed assessment."* [This implies that communities will not get a say in determining the most important environmental issues, but will be told about them].

The existing issue with community 'engagement' has been that is not 'engagement', but rather information sessions where the community is told what will happen. The document appears to imply that the community will gain confidence if they are told about the project sooner and can have access to all documentation throughout the process. This will not help unless the community feel that they have a part in the process (i.e. they can influence it) and that the documentation provided is not only accessible, but comprehensive, transparent and of high quality.

This section implies that community consultation will not change much. How specifically will it be 'better'? Community engagement will not necessarily be improved by proponents and decision-makers informing participants how their views have been considered/ignored, if it becomes clear that these are being cherry-picked or are mostly ignored. Community members are very wary of being led down a certain path as determined by proponent and government rhetoric. Even members of the public with no particular expertise or training can differentiate facts from spin:

<https://www.thesaturdaypaper.com.au/news/politics/2016/11/19/sas-citizen-jury-defies-royal-commission/14794740003993>

Although the scope of the EIA Improvement Project includes "building confidence in the integrity of the EIA process", this initiative does not elaborate how this might be done. There is presently an overwhelming sense that the views of community groups are being ignored or sidelined. From a community perspective, the following would help to change that:

- Community consultation should take place before project approval;
- Consultation should be undertaken for the entire project, not section by section;
- Meaningful engagement cannot be undertaken solely through talking buses, leading questionnaires or drop-in sessions;
- Community consultation cannot be rushed through or delayed until it is too late to change anything (consideration needs to be given to the number of projects being exhibited at once and time limitations of the public close to public holidays);
- Any major modifications should require additional consultation (see Initiative 8 below);
- Receipt of submissions should be acknowledged and every effort made to display these comprehensively and accurately on the DPI website; and
- Submission review reports should be prepared by independent consultants (not DPI) and should be analysed objectively and statistically if possible (not cherry-picking responses and ignoring petitions).

An example of rushing through the consultation process is apparent even at this stage of the EIA Improvement Project. Submissions for Stage 1 are due on Sunday 27 November with Stage 2 (Engagement with Stakeholders) scheduled to start the following day Monday 28 November. This says a lot about how submissions are being 'considered'.

### **Initiative 3: Improve consistency and quality of EIA documents**

I agree that EIA reports are very large and complex and cannot be digested easily by members of the community. However, I believe that this initiative is all about dumbing them down and shaping them into 'one-size-fits-all' formula. A standardised format will lead to reports that are mind-numbingly boring to read and will discourage innovative approaches and solutions to environmental impacts and their mitigation. While making documents more readable and accessible is to be encouraged, this does not constitute improving quality. Quality is directly related to the technical aspects of the report (methods, analysis, scientific background, assumptions and conclusions). The public want to know that the work is thorough, that it meets requirements and that it is best practice.

This initiative implies the preparation of formulaic reports will be of the 'cut and paste' variety (e.g. standard consolidated project descriptions, standardised summaries, repetitive).

As an expert in the field of writing and reviewing EIA documentation, I agree that the quality of EIA reports has declined considerably over recent years. In my opinion this is due to the fact that major issues are often ignored (e.g. cumulative impacts) or only superficially considered. This would be further exacerbated by Initiative 1 that implies that only major (agreed) environmental issues be considered fully. This is not likely to build public confidence in the

integrity of the EIA process. However, the following recommendations would help to restore community and expert confidence in the process:

- It is impossible for members of the public to visualise and assess large projects at the Concept Plan stage because the devil is and always will be in the detail. Artist impressions are misleading. For experts, the full range and extent of impacts can only be assessed once detailed plans are available.
- The public is overwhelmingly of the opinion that the EIA process is not independent (i.e. pre-lodgement meetings, secret meetings, unsolicited proposals, Gateway approvals, implicit government support for mining proposals). This does not instil confidence in the process.
- Time after time the public and environmental experts have demanded that projects be assessed according to ESD principles. Instead, economic considerations far outweigh any other factors, leading to loss of confidence in the approval process.
- It is important that the SEARs (Secretary's Environmental Assessment Requirements) be comprehensive and include the full range of potential impacts (and not only those considered to be 'important'). It is essential that they include an assessment of cumulative impacts (see below).
- Environmental groups and experts have demanded that impact assessments aim to maintain or improve biodiversity. We have no confidence in NSW Biodiversity Offsets Policy for Major Projects because it assumes that all biodiversity losses can be offset. There is less emphasis on avoidance and mitigation. The initiatives in this paper aim to further weaken the process by dumbing down content, standardising structure, focussing on risk assessment and abandoning management plans.
- The community cannot have confidence that it has any influence over outcomes when projects are subject to numerous modifications that either erode community and/or environmental gains (e.g. Enfield Intermodal Logistics Centre) or result in the automatic approval of vastly different components of the same project (e.g. Leewood Wastewater Treatment Facility). See also Initiative 8 below.

A very serious problem undermining community confidence is the failure of the current EIA documents to consider cumulative impacts. Each development is assessed in a vacuum. Neither the cumulative impacts within a large project nor those associated with other projects in the local area or region are considered as part of the EIA process. In the case of a large residential development like Redbank Estate at North Richmond, the removal of trees was considered to be 'not significant' on a precinct by precinct basis, although almost all the trees on the 180 ha site would be removed as a result of development. In the case of the Santos CSG project in the Pilliga State Forest, CSG wells were assessed separately to the pipeline and to the wastewater treatment facility. This approach serves to minimise impacts associated with the entire project and makes approval of each stage a foregone conclusion. This does nothing to instil

confidence in the assessment process and is one of the reasons that a community group is challenging Santos in the Land & Environment Court (see Initiative 8).

#### **Initiative 4: Set a standard framework for conditioning projects**

This is another attempt to make EIA reports one-size-fits-all by standardising conditions and doing away with management plans. Standardised conditions are appropriate when it comes to the most common and universal mitigation measures such as erosion and sediment control, tree protection, exclusion fencing, etc. However, conditions associated with mining and residential development are vastly different and will vary from project to project depending on the environmental setting. This approach will stifle innovative approaches to mitigation; report authors will only have to scroll through a list of set prescribed conditions and choose those that they feel are applicable.

The devil is always in the detail and the replacement of management plans with performance-based conditions will act to remove detail and possibly accountability (Who will be responsible if performance-based conditions are not met years down the track? Management Plans (e.g. CEMPs, OEMPs, vegetation management plans, biodiversity management plans) are a step-by-step guide to achieving outcomes and should be reviewed and examined by the community and by experts to assess whether they are achievable, appropriate, thorough and based on sound scientific methodology. Community trust will not be gained by removing detail from reports; similarly, the quality of documents will not be improved by removing technical details.

#### **Initiative 5: Improve the accountability of EIA professionals**

Even though most report authors these days are accredited through some professional organisation or other, the quality of reports has decreased markedly. I believe that this is due to the SEARs and other legislative requirements that shackle the consultants' ability to address critical issues thoroughly or at all (i.e. If there is no requirement to examine cumulative impacts, why would you do it?). Streamlining and dumbing down reports and increasing repetitiveness will not build public confidence in the integrity of the process. Ensuring that the SEARs and other legislative requirements are comprehensive and require the highest standards of assessment would restore confidence. Peer review could be used as a check on quality but again, it would only be useful if legislative requirements are of the highest standard.

#### **Initiative 6: Provide greater certainty on EIA timeframes**

This seems to be more of an issue for proponents than for the community. Informing the public about unreasonable/rushed timeframes earlier in the process will do nothing to reduce their uncertainty. A better initiative would be to allow a reasonable amount of time for each stage of the process so that all

factors can be properly considered. A proponent will inevitably prefer a shorter timeframe than members of the community.

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

Again, this seems more of an issue for proponents than for the community. By the time the post-approval stage is reached, the community has very little ability to influence outcomes. Increasing access to post-approval documentation will not fix this. For example, mining companies are walking away from their post-approval environmental commitments without penalty and can elect to offset impacts through routine rehabilitation measures. Community confidence would be better served by increased policing, penalties and third-party appeal rights. Furthermore, standardised monitoring, auditing and reporting may be difficult or impossible to achieve across different disciplines (e.g. water quality, vegetation, biodiversity) and there is the risk that these will be set at the lowest possible standard (i.e. like offsetting for major projects) for the sake of conformity.

### **Initiative 8: Project change processes following approval**

This issue is a fraught one because it is these very modifications to approved projects that undermine community confidence the most. In the case of the Enfield Intermodal Logistics Centre that was approved under Part 3A, Modification 12 is presently on exhibition. The project no longer bears any resemblance to what was approved. The 8 ha Community and Ecological Area promised to the local community has been whittled down to 2 ha. There is presently a proposal being assessed by Strathfield Council to build a garden centre over part of this area that supports an endangered sub-population of Green & Golden Bell Frogs. This is not some once-off aberration, but a tactic that is used by proponents to get project approval on the basis of a broad Concept Plan before submitting a range of modifications for more unpalatable aspects of construction/operation (e.g. change of use, operating hours, zoning, etc.). How can the public have faith in a process where the final project bears no resemblance to the one that was subject to consultation? A better system of reporting modifications is unlikely to improve public confidence.

Another issue arises when project components that differ markedly from the original project (and therefore generate different impacts) are assessed as part of that project instead of independently. This is the case with the Santos Narrabri Gas Project. The Leewood wastewater treatment facility was approved as part of the company's gas exploration work and not as a resource management facility. The People for the Plains Inc. community group is arguing in the Land & Environment Court that approval should have been sought under the relevant SEPP and not as part of Santos wider exploration activities. This facility would treat over 1 million litres of toxic GSG wastewater per day and would generate different impacts to those expected from routine exploration

activities. This does not instil community confidence because it appears that the proponent is actively attempting to avoid scrutiny that consultation brings.

The only way to restore community confidence when it comes to modifications is to ensure that these are subject to community consultation and that they do not compromise community and ecological gains made earlier in the process. Large complex projects should be assessed in their entirety so that the community can grasp and respond to the full range of potential impacts. Project components that differ markedly from their original intent should be subject to a separate approval process complete with community engagement. The existing process constitutes approvals by stealth.

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