Better Planning Network Inc.

27 November, 2016

Department of Planning
Erica van den Honert
Director, EIA Improvement Project
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Sydney NSW 2001

By email: **EIAproject@planning.nsw.gov.au**

Dear Erica

Environmental Impact Assessment Improvement Project - Discussion Project (Stage 1)

Better Planning Network is a state wide, volunteer-based not for profit organisation. Established in 2012 in response to then proposed planning reforms, today there are more than 400 groups within the BPN network. In addition, thousands of individuals are BPN supporters.

Our aim is for a robust and visionary planning system for NSW - one that fosters best practice environmental, heritage, social sustainability, livability and design outcomes.

A key component is the EIA process. To this end, thank you for the opportunity to comment on the Discussion Paper on improving Environmental Impact Assessments.

In response, we enclose our detailed submission (per the Annexure) and look forward to working with the Department to redefine and achieve a best practice EIA process.

Yours sincerely

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Better Planning Network Inc

Annexure
Environmental Impact Assessment Improvement Project
Discussion Project (Stage 1)

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

    This includes: developing a 'robust methodology' to 'prioritise' environmental issues; 'balancing' technical and community issues; responding to a 'hierarchy of issues'; prioritising; and strengthening the role of risk assessment.

    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.*"

    This statement does not provide sufficient information, i.e. what does it mean? Does it assume that there will be a consensus on priority issues flagged by community and proponents? Or does it imply that the proponent's prioritised issues will be examined in detail; e.g. does this mean that only 1 or 2 (agreed) environmental impacts will be examined in detail and the rest will be 'tick-the-box'?

    Further the initiative talks about balancing technical and community issues but does not address balancing environmental, economic and social issues (ESD) which is typically the major source of conflict for community and proponents.

    Will this mean that the process will advocate a one-size-fits-all approach to scoping? If so the process must provide sufficient scope to addressing different types of impacts (mining vs high density residential vs transport corridors). E.g. how would the impacts of WestConnex be prioritised by proponents and community?

    In particular, 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; with the overall risk measured as low, moderate, high or extreme. This is a standardised approach where the reasoning behind ratings is often not transparent and no risk beyond mitigation is assumed (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. While this approach may suit mining companies because they have a standardised approach to all risks and it is simply a matter of rolling out the appropriate prescriptive response, transferring this approach to major infrastructure projects and state significant projects is considered problematic.

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

    This initiative includes: discussing community engagement during pre-lodgement meetings; proponent-led engagement during scoping; requirements to inform community members how their views have been taken into account (or not); Department-led engagement on key issues; and making EIA documentation publicly available at all stages of the process.

    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 suggests that communities will not get a say in determining the most important environmental issues, but will be told about them].

Achieving proper and meaningful engagement is a key issue, as the current system is dominated by information sharing approach vs achieving meaningful 'engagement' at the front end of the process.

The Discussion Paper implies the community will gain confidence if they are told about the project sooner and can have access to all documentation throughout the process. However unless the community is part in the process (i.e. it can influence it) little will change. To this end, the process needs to ensure that it is accessible, comprehensive with documents of high quality being provided at the front end and during the process in response to modifications.

However the wording in the Discussion Paper suggests that community consultation process will not substantially change; e.g. what does *'better'* mean? Here, we suggest careful consideration needs to be given to ensure that the process is fundamentally changed to elicit feedback and respond to feedback, rather than inform the community earlier – then not address the feedback or alternately cherry-pick a response to meet a proponent's agenda. We also raise concerns that some projects now are being effectively assessed by the proponent vs the department.

Further a detailed cost-benefit analysis should be undertaken before a project's announcement rather than modelling later occurring on the run.

In particular, community members are wary of being led down a certain path as determined by proponent and/or government rhetoric, with a more educated public able to decipher the facts from spin. To this end, any improvements need to enable the public and ensure it has a fair and equitable voice:

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

While the scope of the EIA Improvement Project includes *"building confidence in the integrity of the EIA process"*, this initiative should elaborate how this will be done to ensure buy-in the project given the public perception that community views are often ignored and communities sidelined.

To address these concerns, the following is recommended:

- Meaningful community consultation should take place before any project approval to enable communities and address concerns

- Consultation should be undertaken for the entire project, not section by section

- Meaningful engagement should focus on workshops and interactive round tables vs 'talking buses' and drop-in sessions and the like.

- Sufficient time should be allocated for communities to respond – vs rushed through or delayed until it is too late to change anything. This includes due consideration to ensure communities are not overwhelmed by the number of projects exhibited at the same time or following each other, which is limiting the capacity and ability for communities to respond.

- Any major modifications should require additional consultation (see Initiative 8 also);

- Receipt of submissions should be acknowledged and every effort made to display these comprehensively and accurately on the DPI website; and

- A more robust process is needed to review submissions with the review reports prepared by independent consultants, with an emphasis of data veracity and due diligence.

Notably, an example of rushing through the consultation process is even apparent in this project, where submissions for Stage 1 close today, i.e. Sunday 27 November; and Stage 2 (*Engagement with Stakeholders)* starts tomorrow, Monday 28 November. This raises key concerns about the process to consider submissions.

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

"EIA documents are getting larger and more complex without necessarily improving understanding or decision making."

This initiative includes: requiring a consolidated project description that can be linked to condition and modifications; introduction of clear summaries; writing documents in plain English (without compromising technical standards); better defining purpose and intended audience of documentation; and greater guidance on form, content and quality of documentation.

EIA reports are very large and complex. However, this initiative appears to 'dumb down' the process and making it a 'one-size-fits-all' formula. Here the danger is that a standardised format will lead to reports that are likely to discourage innovative approaches and solutions to environmental impacts.

While making documents more readable and accessible is to be encouraged, this does not constitute improving quality. Rather the quality of reporting is directly related to the technical aspects of the report (methods, analysis, scientific background, assumptions and conclusions). To this end, the public want to know that the work is thorough, that it meets requirements and that is best practice.

This initiative may lead to the preparation of formulaic reports that will be 'cut and paste' model (e.g. standard consolidated project descriptions, standardised summaries, analysis of priority impacts only).

In particular we note that the quality of EIA reports has declined considerably over recent years. Hence, there is the need to improve the quality of reports from the point of view of community & experts. In turn this would build confidence in the integrity of the EIA process and dispel fears that the consultation process is a 'tick-the-box' exercise.

Further changes should also be considered to address:

- Currently it is very difficult for 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 can often be misleading and typically now read subject to change. In particular the extent of the plans and what it will mean for communities can only be assessed once detailed plans are available.

- The current EIA process is not independent (i.e. pre-lodgment meetings, secret meetings, unsolicited proposals, Gateway approvals, implicit government support for mining proposals). This does not instill confidence in the process.

- Time after time the public and environmental experts have demanded that projects be assessed according to ESD principles. In short, the reality check is that economic considerations outweigh any other factors, leading to loss of confidence in the approval process.

- The SEARs (Secretary's Environmental Assessment Requirements) must cover the full range of potential impacts (and not only those considered to be 'important'). To this end it is essential that cumulative impact is considered (see below).

- Environmental groups have demanded that impact assessments aim to maintain or improve biodiversity. Yet the recent introduction of the NSW Biodiversity Offsets Policy for Major Projects assumes all biodiversity losses can be offset. This has major implications as the emphasis should be on avoidance and mitigation to enable the best ESD outcomes. The initiatives in this paper suggest that the process will be further weakened by standardising structure, focusing on risk assessment and abandoning management plans.

- Community confidence has also been eroded as a result of numerous modifications to a project, (e.g. Enfield Intermodal Logistics Centre) or as a result of result of the automatic approval of vastly different components of the same project (e.g. Leewood Wastewater Treatment Facility).

- The failure to consider cumulative impacts in the current process; i.e. each development (and stage) is assessed in a vacuum; e.g. 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 nearly 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 instill 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).

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

This includes: introduction of standardised condition types.

Key quote: *"…giving priority to outcome or performance-based conditions rather than relying on management plans to guide the project through construction and operation phases."*

This initiative suggests another attempt to make EIA reports a 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 urban development are vastly different and vary from project to project depending on the environmental setting. We believe this approach will stifle innovative approaches to mitigation with the danger of report authors only having to scroll through a list of set prescribed conditions and choose those that they feel are applicable.

Key to a robust EIA process is the devil in the detail. The proposed replacement of management plans with performance-based conditions we believe will effectively remove the necessary detail

and in particular accountability, e.g. who will be responsible if performance-based conditions are not met?

From experience we know there are key challenges when mining companies fail to fulfil their rehabilitation commitments). The inclusion of Management Plans (e.g. CEMPs, OEMPs, vegetation management plans, biodiversity management plans) provide a step-by-step guide to achieving outcomes and their review by community and experts is critical to understand whether they are achieved (i.e. are appropriate, thorough and based on sound scientific methodology). By removing the detail from reports, community trust would further be eroded, and the quality of documents would not be served well.

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

This initiative includes: ensuring that report authors adhere to a code of practice; and extending the use of peer review.

Key quote: *"Potential ways to build public confidence in the integrity of the project assessment process..."*

While most report authors today are accredited through professional organisations, our observation is that the quality of reports has decreased markedly. We believe this is in part is due to SEARs which constrain a consultants' ability to address critical issues - e.g. if there is no requirement to examine cumulative impacts.

By streamlining reporting it carries the risk of repetitiveness in reports thereby further eroding public confidence in the process. To this end SEARs and other legislative requirements need to be comprehensive and require the highest standards of assessment to restore confidence. Peer review could be used as a check on quality which standards could be reinforced by legislative requirements.

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

This initiative includes: setting timeframes for each stage of the EIA process; and better coordination and communication between Government, proponents and community.

Key quote: *"...aims to reduce the uncertainty of assessment timeframes for all EIA participants."*

This initiative appears designed for the benefit of the proponent rather than community; and seems intended to respond to the government's state priority – i.e. to reduce the assessment time for major projects by 50%.

As such we have concerns that rushed timeframes early in the process will do little to address a number of the aforementioned concerns. While the proponent will inevitably prefer a shorter timeframe than members of the public, 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, with a longer term and important benefit to the public.

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

This initiative includes: development of an overall framework for the post-approval stage of the project; development of a common system for monitoring, auditing and reporting compliance;

greater accountability by improving public access to post-approval documents; and clarification of roles, obligations and rights of everyone involved in compliance.

Key quote: *"...aims to develop a clear process for monitoring, auditing and reporting of compliance against conditions of approval."*

This initiative appears designed for proponents benefit vs community as by the time the post-approval stage is reached, the community has little ability to influence outcomes. While increasing access to post-approval documentation will address some issues it 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.

Here it's suggested; community confidence is better served by increased monitoring, penalties and allow third-party appeal rights. In particular, standardised monitoring, auditing and reporting may be difficult 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.

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

    This initiative includes: development of a process to communicate information to stakeholders about continuing project development and project changes, following project approval; greater guidance on the level of assessment and further consultation required for modifications; and development of a process and capture and consolidate project changes, conditions of approval and compliance obligations.

    Key quote: *"...aims to define the process for addressing and communicating changes to approved projects to make these changes evident to all stakeholders to increase public confidence that projects are consistent with their approvals."*

    This issue is a fraught one because it is the very modifications to approved projects that often undermine community confidence the most; e.g. In the case of the Enfield Intermodal Logistics Centre that was approved under Part 3A, Modification 12 is presently on exhibition. Likewise Barangaroo, where projects no longer bear little resemblance to what was initially approved.

    In the case of the Enfeld Intermodal, the 8 ha Community and Ecological Area promised to the local community has been whittled down to 2 ha with a proposal also currently being considered by Strathfield Council to build a garden centre over this part of the area which supports Green & Golden Bell Frogs. Likewise in the case of the SE light rail project went through a major modification which completely redefined the project, which project approval was confirmed by the department of planning on the day that submissions closed.

    These situations are not uncommon but rather are a tactic that is appears to be purposefully aimed at getting project approval for a broad Concept Plan before submitting a range of modifications for more unpalatable aspects of a project.

    To this end there is an urgent need for the process to address concerns by introducing a better system of the process for modifications to restore public confidence.

Another key issue is when project components differ markedly from the original project (and therefore generate different impacts) but is assessed as part of that project instead of an independent assessment, e.g. the Santos Narrabri Gas Project. Here, the Leewood wastewater treatment facility was approved as part of the company's gas exploration work and not as a resource management facility. In this case, 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. As such, community confidence has been lost because it appears that the proponent is actively attempting to avoid scrutiny that consultation brings.

In conclusion the following should also be considered:

- The need for a robust framework where all the relevant issues can be identified and the process is transparent; not only during the upfront stage, but also when major modifications occur.

- The need for meaningful community engagement during the scoping stage of a project, being mindful that the issues are often better recognised at a local level rather than by proponent and their consultants; and when more detailed plans are available. To this end, the department should also consider providing an independent mechanism or funding to assist communities capacity build, as EIA material is often complex, and the volume of applications that communities may need to consider at any time, may be multiple applications. DOPE should consider what options there are to provide support to communities to better engage in the process and interrogate the information (e.g. resourcing for own experts).

- The need for longer not shorter consultation periods to ensure that the key issues are identified and addressed and given the complexity of information.

- The need for a robust governance structure to ensure that the assessment process is independent from the proponent, and ensures the public interest is served with the department and or agencies. To this end we recommend the consultants are chosen from a nominated pool of independent consultants.

- The need to improve the department and agencies ability and responsibility to test data and assess submissions.

- The need for a detailed cost-benefit analysis before the project is approved, which must include the environmental and social impact assessment.

We look forward to working with the Department to redefining and achieving a best practice EIA process.

Better Planning Network
27 November, 2016

Note: Report prepared with assistance of Dr Renata Bali