

Submission prepared by:

***The Black Hill Environment Protection Group and
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Environmental Impact Assessment Improvement Project

Community Groups' Updated Submission

Note: This submission was co-ordinated by the Executive members of the Community Groups: Janet Murray, Colin East and Cathy Talley. Exhibition period: October to November 27th 2016.

(Submission date: November 27th 2016)

This submission by our Community Groups is based on personal experiences with the Planning System in NSW over the past 25 years. We see many positives in the process adopted and the Discussion Paper released in October 2016:

- we appreciate being given the opportunity to have input on “*key issues*” and “*preliminary initiatives*” at this early stage of the Improvement Project
- the list of “*Some of the issues identified to date*” does a reasonably good job of capturing our issues as a community group
- the “*Proposed Improvements*” are generally moving in the right direction
- the online survey format is more helpful than most as it allows for an explanation of **why** the ranking chosen has been selected

We feel strongly, however, that the potential benefits of a development *vs* its potential impact and contribution to cumulative impact, should be evaluated at a strategic level, prior to a more detailed EIA being carried out.

In this brief submission, we will discuss the “Initiatives” proposed, prioritised into our considered order of importance, Deficiencies in the Discussion Paper and provide an Appendix that contains a brief introduction to our community Groups.

Initiative 2: Earlier and better engagement

We welcome that the need for earlier community engagement has been recognised as a key issue and agree that better engagement will result in better planning outcomes and, if done well, will build confidence in the assessment process.

The community needs to be engaged at the earliest possible stage of the process – they are the ones who will be most affected by any development and have the most local knowledge to identify the most important community issues. For these reasons, it is necessary to have community representatives present at the earliest stage (scoping stage?) when Government departments and agencies eg OEH are involved.

We are not in favour of proponent-led community engagement, due to the gross manipulation of this process that we have observed in the past. If it is a “State significant development” then we believe the Department of Planning should be leading the community engagement. The Proponent can still describe the project, but the Dept of Planning needs to facilitate the meetings and inform the community correctly of the process and their rights. **If the community engagement is done badly, it actually further undermines the community’s confidence in the assessment process.**

We agree that community members need to be told “*how their views have been taken into account, or if not, why not*”. This needs to be supported by facts and data, not simply dismissed out of hand. Community members spend their own time and effort to make a genuine improvement to proposed developments and being dismissed undermines confidence in the process and people feel like they have wasted their time. This makes it less likely that they will input their ideas to future proposals.

There needs to be a consistent framework for assessing and adopting community input. This should not be just at the discretion of the planner/s associated with the project. There should be both a qualitative and a quantitative analysis of the input gathered, along with appropriate responses. Additionally, it is often difficult for community members to write letters. There needs to be a proactive process associated with seeking input that is easy for community members to understand and complete. This should also allow the outputs to be both qualitative and quantitative. The questionnaire associated with this consultation process is an example of how quantitative and qualitative information can be gathered. Community members are tired of seeing their input reduced to a tally sheet of issues.

There needs to be equal ease of access to government officials for community members as for proponents. There are multiple points in a planning process where a proponent is entitled to put forward their views, yet the community has really only one or two opportunities and little to no right of appeal. The scales need to be rebalanced, so that all parties can put their case to the consent authority.

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

We are in favour of “*tailoring the level of examination of an issue to its relative importance*” but suggest that there will be problems ensuring that community issues, such as “loss of rural amenity”, are important enough to a proponent to consider seriously.

We aren’t clear what “*Strengthening the role of risk assessment during the scoping stage*” means. If it means seriously assessing the risk that an environmental or other factor could stop the development and therefore stopping it before huge amounts of money have been spent on consultants’ reports, then we are definitely in favour of it.

In our experience, it only becomes harder and harder to stop developments later in the process. Fundamental questions need to be asked early on as to whether the development is really justified and whether there is a net community benefit, rather than just a proponent financial benefit. It is pointless asking the proponent to do this, as they have often already made the speculative investment. It needs to be done independently by the Consent Authority. This analysis should look at a strategic level at the cumulative impact of any future development in an area and be able to provide a “red” or “amber” light to further analysis proceeding. Lobbying of government officials by proponents and their agents must be publicly declared.

Initiative 5: Improve the accountability of EIA professionals

The suggested actions do not go far enough! It is difficult to think of a single case where simply implementing a code of practice has solved problems with integrity across an entire professional group. The suggestion for peer review has some merit but sounds too expensive and time consuming to be done routinely.

Neither of these suggestions addresses the real issue with the engagement of planning and environmental consultants. The real issue is that if they wish to receive ongoing work, they essentially need to deliver the answer their employer, the proponent, wants to hear. Until this nexus is broken, there will never be community trust in the Planning system. For any development but particularly for a State significant development, the consent authority needs an unbiased view of the pros and cons of the development in order to make the correct decision.

One suggestion is that the Dept of Planning could appoint the consultants from a panel of suitably qualified and peer reviewed experts.

Alternatively, an accreditation system could be introduced whereby professionals need to complete and document proficiencies that earn them an accredited status. Part of this process would involve their demonstrating ongoing competence and a periodic peer review process to prove their non-bias in assessing a potential development.

Initiative 3: Improve the consistency and quality of EIA documents

Improving the accountability of EIA professionals will be a critical first step in improving the consistency and quality of EIA documents.

All of the potential improvements listed could be helpful but it is not necessarily clear how they are to be achieved eg *“Documents being easier to read and understand without compromising technical standards”*.

Perhaps it is time to move with the times and have each consultant prepare a 3-5min YouTube clip on the salient details of their work and the implications for the project? This would force them to be very clear and concise about the impact they have studied but it should be easier for them to do this, rather than the community having to read their weighty tomes and come to the right conclusion. If people require more information, they could then go back to the written reports.

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

We support all of the potential improvements listed.

Compliance must be monitored by an independent body appointed by the consent authority, not one with a vested interest in a particular outcome. The cost of compliance auditing needs to be borne by the proponent.

A "report card" system could be implemented where an annual report is made on compliance with conditions of consent. Failing to meet consent conditions would incur punitive actions from authorities and compliance would be required within a certain timeframe. These report cards would be made publicly available, either on the Dept of Planning or Proponent's website.

Initiative 4: Set a standard framework for conditioning projects

Overall, we support outcome or performance-based conditions over management plans. At Council level, we have seen developments operate for 20 years without ever having their Environmental Management Plan approved! It is much easier to audit an operation if there are clear outcome or performance-based conditions.

It is all very well to include *“drafting of mitigation measures in the EIS in a way that can be incorporated into the conditioning framework”*, as long as it doesn't lead to an unquestioning assumption that everything can be mitigated. The conditions still need to be set by the consent authority, not merely lifted from the proponent's EIA.

Initiative 8: Project change processes following approval

We support all of the potential improvements listed. We believe that all people who made submissions on developments should be updated with information on project development and project changes eg directly via email. This information should also be available on the proponent's website or made more easily accessible on the Dept of Planning website.

Initiative 6: Provide Greater certainty on EIA timeframes

We believe it should be acknowledged that some developments are complex and take time to get right and this should not be rushed for the sake of meeting arbitrary timeframes. Particularly with community consultation, if this is done well up front, it may actually save time later in the process. Imagine if it was done so well that the surrounding community supported the development rather than opposing it!

The timeframes need to ensure that the community has timely access to reports from Government agencies to inform their own views on the development.

It is important not to become a “slave” to the timeline. While proponents need certainty, it is also possible that difficult issues may arise and the timeline should be flexible enough to accommodate changes. Proponents currently use the timeframes to threaten Consent Authorities when it suits them, but inevitably, are granted an extension of time when they haven’t met their requirements! Again, there needs to be more balance in setting and enforcing timeframes.

Deficiencies in the Discussion Paper

Assessment of cumulative impact

It must be noted that the list of “*Some of the issues identified to date*” includes “*Better consideration of cumulative impacts*”. Unfortunately, there appears to be nothing in the Proposed Improvements that addresses this issue! It is of fundamental concern to communities, as the cumulative impact is exactly what they are exposed to. Perhaps it is the role of the Dept of Planning to identify the surrounding developments that should be considered in assessment of cumulative impacts?

Evaluation of the overall EIA process

The Department of Planning should undertake a comprehensive feedback and evaluation process after each project. This should assess the perceived strengths and weaknesses of the process from both the proponent’s and the community’s perspectives. It is suggested that this occur before the final approval of a development, as this could help identify latent issues that haven’t been adequately addressed by the process and may allow for final adjustments to be made, or a step in the process to be re-evaluated. Feedback could be then be used to improve the processes for future projects or to inform future legislative changes.

Appendix: The Community Groups

The Black Hill Environment Protection Group (formed in 1982) and the Buttai Community Development Group (formed in 1990) are unconstituted Community Groups which seek to protect the local environment and the rural/residential lifestyles of our local communities (E-mail contact: BlackHillEPG@bigpond.com). The Groups' primary focus is on the environmentally sensitive Buttai/Black Hill end of the Sugarloaf Range and associated catchments, water courses and wetlands. The Community Groups meet on an 'as needs' basis to discuss community concerns and to co-ordinate submissions to Councils and other agencies about development proposals, environmental or other plans, and related regional/state issues.

Over the past three decades, submissions have been prepared about a variety of issues, including gravel quarries and coal mine proposals, transport and waste management proposals, Landcare and catchment issues, Local Environment Plans, and associated government policies. We have been involved in cases before the Land and Environment Court and contributed to associated mediation agreements in collaboration with Cessnock City Council. We were the lead group co-ordinating the successful "Hunter Residents Against Sydney Garbage Dumps" campaign – to stop Sydney's waste being dumped at Bloomfield.

Members of our Community Groups currently contribute to Community Consultative Committees (CCC's) for the Abel underground coal mine, Daracon's Buttai Quarry, and Bloomfield's open cut coal mine, together with associated welfare and conservation trusts, such as the Donaldson Conservation Trust. In addition, the Group has been represented on Cessnock Council's Economic Strategy Development Committee.