



Our Ref: Umwelt Submission

2 December 2016

Karen Rae
Assessment Practice – Department of Planning Environment
Level 30 320 Pitt Street
Sydney NSW 2001

Dear Karen

**Re: Umwelt Comments on Department of Planning and Environment's
Environmental Impact Assessment Improvement Project**

Umwelt (Australia) Pty Limited (Umwelt) is one of Australia's leading multidisciplinary environmental consulting companies with approximately 90 environmental assessment and project management specialists providing a wide range of integrated services to public and private sector clients throughout Australia and internationally for over 20 years.

We have prepared more than 1300 environmental assessments supporting development approvals across diverse industry sectors, with particular experience in infrastructure projects such as highway construction, rail, sewage treatment, power generation and transmission, road and material handling facilities, mining and resource sector projects such as coal, metalliferous, mineral sand and associated transport and processing facilities, renewable energy and sustainable waste management projects such as ethanol plants, biodiesel production and distribution and development of compost for beneficial reuse.

Umwelt has provided expert evidence for court hearings and appeals, as well as Planning Assessment Commission assessments. We have also successfully guided major projects through numerous controlled action assessment and approval processes at the Commonwealth level for a range of sectors.

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

Umwelt supports this initiative. Identification of the key issues specific to each individual project and refining the scope of environmental assessment to that which is commensurate to the relevance and relative potential impact related to the issue will lead to targeted environmental assessment and assist in achieving the overall stated goal of streamlining the EIA process. Umwelt is of the opinion that there are many existing and previous systems such as parts of the former part 3A process in NSW and the Western Australian jurisdiction where an environmental scoping document is required. As stated in the Western Australian Environmental Protection Authority environmental assessment guideline for scoping a proposal, clear and concise environmental scoping documents that focus on the most important

Inspired People.
Dedicated Team.
Quality Outcomes.

Newcastle

75 York Street
Teralba NSW 2284
Ph. 02 4950 5322

Perth

PO Box 783
West Perth WA 6872
First Floor
9 Havelock Street
West Perth WA 6005
Ph. 08 6260 0700

Canberra

PO Box 6135
56 Bluebell Street
O'Connor ACT 2602
Ph. 02 6262 9484

Sydney

Level 3
50 York Street
Sydney, NSW, 2000
Ph. 1300 793 267

Brisbane

Level 11
500 Queen Street,
Brisbane QLD 4000
Ph. 1300 793 267

www.umwelt.com.au

environmental factors for a proposal will support an effective and efficient environmental impact assessment process.

Additionally, the International Association for Impact Assessment identifies a number of principals for impact assessment and the development of a consistent framework for scoping an EIA could achieve a number the stated goals including:

- **Relevant** – the process should provide sufficient, reliable, and usable information for development planning and decision making
- **Cost effective** – the process should achieve the objectives of EIA within the limits of available information, time, resources and methodology
- **Efficient** – the process should impose the minimum cost burdens in terms of finance on proponents and participants consistent with meeting accepted requirements and objectives of EIA
- **Focused** – the process should concentrate on significant environmental effects and key issues, i.e., the matters that need to be taken into account in making decisions.

Umwelt would recommend that DP&E consider national and international benchmarks in order to fully understand how this type of process is being implemented in other jurisdictions and identify the key positives and failings of systems for application in the NSW context.

The Department should consider establishing a formal risk ranking process/criteria that is required to be used by proponents in the PEA process to assess potential project impacts against. This would ensure a consistent approach to assessing impacts at the PEA stage and assist the Department and other agencies to make a decision about the priority/importance of issues when issuing the SEARs. It is important that the risk ranking process consider both technical risk and community risk. For example, an issue may have a low technical risk but a high community risk or vice versa and the risk assessment process needs to identify how this will be addressed in a specific EIA.

The Department should take a leading role in coordinating the review of the PEA with all relevant government agencies and seek to clarify any queries they have at this stage prior to receiving their submissions. Ensuring that the other agencies have properly reviewed and understood the PEA will assist in ensuring that the input that they provide in the SEARs process is tailored to the Project and that they too are framing their input around the priority/importance of issues that require assessment in the EIS.

Agencies should be required to provide 'Proposed SEARs' to the Secretary in defined areas for their relevant fields of responsibility and not pages of correspondence that is often difficult to articulate into the SEARs and EIS assessment process. A template could be developed for agencies to return in this regard. There also needs to be clear separation between the agency letters and the SEARs, with only the SEARs required to be addressed and not the agency letters. DP&E should bring in relevant requirements into the SEARs.

These SEARs should include the outcomes of the scoping process and clearly articulate to agencies and the community on the issues that are considered a high priority for a specific project.

Initiative 2 – Earlier and Better Engagement

Umwelt has long been a strong advocate for early and targeted engagement with all stakeholders in the EIA process including all levels of government, individual community members and community interest groups. We have successfully designed stakeholder communication strategies for numerous major projects in NSW, and assisted proponents to deliver these strategies. From our more than 20 years' experience, we have learnt the high value and the superior outcomes that can be achieved

for all stakeholders, including the proponent from commencement of engagement early in the process, and continuing thorough (fit for purpose) engagement throughout the process. Some of the benefits of comprehensive engagement includes:

- clear expectations from all involved in the EIA process including how when feedback can be provided on a specific project
- provision of an opportunity for all relevant stakeholders to have a say in identifying key issues, providing relevant context and information to inform the EIA, and to provide feedback on assessment outcomes, and proposed mitigation measures prior to lodgement of the EIA
- minimise the 'surprise' element for stakeholders and limits the potential for any material changes in the EIA process as a result of late stakeholder feedback, and provides a feedback loop as the project progresses through optimisation of design and controls, as far as feasible, during the assessment journey
- fostering more public trust and acceptance of the EIA process

We would caution DP&E in adopting a 'one size fits all approach' for identifying consultation requirements for proponents and ensure that the proposed consultation is based on project and stakeholder specific requirements. In our experience, the process to deliver effective engagement can vary considerably considering the scale and complexity of the project, regional location, nature of surrounding land uses, and the nature and interest of relevant community stakeholders.

We note that DP&E have identified that they may lead engagement on key issues. We strongly disagree with this approach, as we believe that the proponent and the lead EIA consultant (and the often many technical experts that form the EIA team) are best placed to brief relevant stakeholders on the project, and progressive studies and assessment outcomes. During the preparation of the EIA documentation, DP&E do not have access to the relevant studies that are prepared iteratively during the project feasibility and approval process, and in many cases, to execute effective engagement, the proponent would have commenced early stakeholder engagement, prior to formally commencing the government approval process. We suggest that DP&E would be well placed to lead consultation around the government assessment process and reviews or reports directly commission by and for DP&E, during its assessment process. If DP&E were leading consultation there may be an opportunity for 'mixed messages' to reach the community on key project and assessment facts, which can result in increased angst and consequent delays to the EIA process.

Initiative 3 – Improve the consistency and quality of EIA documents

The objective to improve the consistency and quality of EIA documents is supported.

Umwelt does not support a prescriptive approach to EIS formats as 'template' that includes specific requirements for content and structure. That said, guidance material on key matters that need to be included in the project description section and minimum expectations for assessment of key issues, is appropriate. It should be noted however that it is not necessarily practical to include details of all mitigation and management measures incorporated in the project design as part of the Project Description section of the EIS and additional measures are often committed to by proponents in response to submissions that are not contained in the EIS. Accordingly, the suggestion that the development consent could refer to a single section of the EIS as defining the approved project is unlikely to work in practice, unless the intent is that document is updated on the journey and kept as a 'live document'.

One of the more troubling issues with the assessment process is some agencies identifying deficiencies in the assessment documentation following exhibition of the EIS; in some cases, these

comments are sometimes at odds with engagement with these agencies prior to submissions when they may have previously indicated that they were comfortable with the assessment approach applied and the level of assessment. Comments from agencies indicating shortfalls in an assessment can cast doubt over the quality of the report and are often used by opponents to projects as justification for refusal. To this end, Umwelt strongly support the re-introduction of an adequacy review for EIA documents as a gateway to exhibition. An adequacy review would provide DP&E an opportunity to identify any deficient documentation (in terms of assessment approach and method, not merit considerations) and request that these are addressed prior to public exhibition. Should an adequacy assessment be re-introduced, we recommend that the terms of the adequacy assessment be clearly defined. Umwelt's view is that the adequacy review should be limited to whether the EIA documentation addresses the assessment requirements specified in the SEARs; unless agreed with relevant agencies prior to submission of the EIS for adequacy, the adequacy process should not be used as an opportunity to add in additional assessment requirements or revise assessment processes. If DP&E were to seek agency feedback, the adequacy assessment process would have to be well understood by the respective agencies and carefully managed by DP&E. In our opinion, this process was successfully delivered for many projects during previous assessment processes.

All peer reviewers should be approved by DP&E prior to the commencement of the peer review process to avoid further peer reviews of the same issue. There are numerous examples in recent times where the PAC have seemingly ignored peer reviews completed by other agencies (including DPE) and commissioned further reviews (adding to delays in the process).

Initiative 4 – Set a standard framework for conditioning projects

Consistency in approach to how projects are conditioned is welcomed; this will provide proponents with greater confidence in the assessment process as they will understand contemporary requirements at the start of the project design and assessment processing the project accordingly. While standardised conditioning is encouraged, flexibility should be retained to have regard to the relevance of issues, and novel and innovative approaches to addressing existing and emerging issues. For example, a requirement for noise attenuation on all mobile equipment (apart from light vehicles) when not all equipment contributes to noise levels at sensitive receivers.

The move to a more performance based approach to managing projects through construction and operational phases is encouraged however it is recommended that the use of management plans be retained as a means of ongoing regulation of operations. This could be achieved by requiring plans addressing specific matter to be provided to regulators and be implemented by proponents but not having a formal approval requirement for the management plan. These plans would be enforceable and DP&E would retain the ability to issue directions to rectify management plans in the event that there are considered to offer inadequate environmental management to meet the performance measures. This approach would be similar to that used by DRE in the regulation of safety matters under the Work Health and Safety (Mines and Petroleum Sites) Act and is consistent with the risk based approach to regulation. This approach would reduce the administrative burden on DP&E and other agencies whilst ensuring developments are carried out in an appropriate manner. Compliance audits (random and planned) can be used to assess the implementation of management plans and the effectiveness of the plans in managing risks.

If management plans are to be reduced or removed, DP&E will have to communicate this strongly with relevant stakeholders as there may be a perception that the environmental management process post approval has been reduced in favour of industry.

Initiative 5 – Improve the accountability of EIA professionals

At Umwelt, we are very focused on the quality of our EIA work and we are not adverse to the concept of improving the accountability of EIA professionals to seek to ensure a minimum benchmark is consistently maintained. However, substantial thought and consideration must be undertaken in identifying exactly how this may be rolled out. In our view as it currently stands there is no one industry association that has a code of practice and/or accreditation process (and associated professional responsibility/enforcement processes/structures) that provides assurance as to the level of competency that will ensure a high level EIA is undertaken; this is not to say that such bodies or Codes of Practice can't be amended to achieve this in the future. Key considerations for DP&E include:

- Any code of practice adopted needs to be directly applicable to NSW.
- Any changes in the code of practice need to be managed in close consultation with DP&E.
- DP&E could consider establishing a process where by the Secretary must approve the person preparing the EIA, irrespective of membership to a professional association.
- As alternative, DP&E could consider a system similar to that used by OEH for biodiversity assessment or EPA's site auditor accreditation scheme. It is noted however that both of these certification involve discrete assessment issues and a certification process is unlikely to be broad or comprehensive enough to provide confidence that a person completing a course can prepare an assessment of larger more complex major projects.
- We suggest that DP&E employees assessing EIA documentation must meet the same standards as those required to prepare the assessment documentation.

The process of DP&E having to approve a person before they can undertake the environmental assessment is considered to have some merit in terms of ensuring the levels of assessment undertaken and the quality of documentation is appropriate. This process is similar to that already applied to the selection of independent auditors by DP&E. Membership of a body with an appropriate code of practice may be a relevant consideration in whether or not to approve the person however other considerations such as previous work would also be relevant. As with the independent audit process, the Proponent would advise DP&E of their preferred person to prepare the assessment. The nomination would need to be accompanied by relevant information on competency to complete the assessment. DP&E would then approve the person if they were considered competent to undertake/manage the assessment, having regard to the nature of the project and assessment. This process would ideally occur before the PEA is prepared as DP&E would need to have confidence the scoping process undertaken for the PEA is of an appropriate standard. Relevant criteria for the approval of EIA professionals could be developed by the Department to guide this process.

With regard to the comment about the volume of environmental impact assessments, it is noted that this increase has been largely driven by increased assessment requirements in SEARs and other supporting documentation. It is Umwelt's view an appropriate scoping process at the outset of the development could reduce the assessment requirements (and therefore volume of material) for low risk issues. It is noted however that this was the original intent of the EAR process under Part 3A however the risk of legal challenges to approvals meant that proponents ensured all matters of the project were fully assessed to minimise the approval risks. There is clearly some areas where assessment requirements can be streamlined with an appropriate level of environmental assessment being retained (e.g. BSAL and Agricultural Impact Assessment requirements in low value agricultural areas).

Initiative 6 – Provide greater certainty on EIA timeframes

Umwelt strongly supports this initiative. Greater certainty will increase business confidence and certainty for capital investment in the NSW market. We agree that setting timeframes for different aspects is an option worth considering however the process needs to retain flexibility to ensure that key assessment issues are closed out prior to progressing to the next assessment phase. Based on Umwelt's experience it is unlikely that proponents will require timeframes as they will be driven by a desire to keep the process moving and effectively close out issues to avoid subsequent delays.

Setting timeframes for Government is welcomed and would need to be supported by appropriate resourcing within Government, however it is important that assessment reports prepared by DP&E do not leave issues unresolved. Also, if stop the clock provisions are included there needs to be criteria around what the clock can be stopped for. Stopping the clock for information requests that are outside the original SEARs is unwarranted, moreover within the last five days of the assessment process the clock should not be able to be stopped as all information should have been requested by then and anything less than one week is typically not enough time to review the further information requested.

Initiative 7 – Strengthen monitoring, auditing and reporting of compliance

This initiative is supported. This will lead to improved environmental outcomes across NSW. Environmental auditing is a well-established practice in NSW and throughout the world and we would caution that DP&E does not re-invent the wheel to achieve this initiative. This would have to be clearly linked with initiative four and there is a lot of cross over between those two initiatives to achieve the stated outcome.

Yours sincerely



Tim Browne

Principal Environmental Planner – Leader Infrastructure Regional NSW/ Associate