

30 November 2016

The Director
EIA Improvement Project
GPO Box 39
SYDNEY NSW 2001

Dear Sir/Madam

Re: Environmental Impact Assessment Improvement Project

I refer to the email dated 20 October 2016 inviting Liverpool City Council (LCC) to review the discussion paper on the Environmental Impact Assessment Improvement Project, and we thank you for the opportunity to provide comment.

Scope of the Project

LCC considers the scope of the project, as outlined in the discussion paper, to be commendable. Benchmarking best practice approaches for the development and evaluation of Environmental Impact Assessments (EIA) needs to be a priority, and should be based on the fair consideration of all issues raised by all stakeholders as the result of this consultation process. These issues need to be appropriately addressed as part of the process, and continued dialogue and consultation with the stakeholders is recommended.

LCC considers that the principles of engagement, certainty, integrity, clarity and consistency should form the basis of both the preparation of EIA's, and their assessment and resolution.

Issues identified to Date

The issues outlined in this section resonate strongly with those identified in the Discussion Paper, however specific issues in relation to the current EIA process are detailed below:

Lack of independence

There is a concern that the EIA process currently lacks independence. This is primarily due to the fact that the proponent directly engages the assessor(s) for the project. There needs to be a greater emphasis on proper due diligence within the regulatory framework for planning major projects, and this needs to be reflected within EIA guidelines to ensure independence and transparency.

Underestimation of impacts

LCC has observed that the assumed 'worst case' scenarios assessed by EIAs are frequently under-estimated, are not reflective of the true impacts, and do not adequately consider indirect and cumulative impacts. This results in a large degree of uncertainty regarding the likely impacts of the modelled and/or assessed scenario, and also introduces a piecemeal approach to the assessment of individual and cumulative impacts which causes complexities when reviewing relevant EIA documents.

Inadequate timeframe to review technical documentation

The capacity of community stakeholders and local authorities to scrutinise technical documents is unfairly hampered by the imposition of short exhibition periods and referral deadlines as well as exhibition periods that span the Christmas period. These short timeframes impede the ability of the local authority and the community to provide the Department with comprehensive feedback. A current example is the exhibition of three studies for the Moorebank Intermodal Terminal over the Christmas period, to which LCC has had to seek Departmental intervention to defer the exhibition until the end of January 2017.

The complexity of State Significant Developments (SSD) and their associated EIAs requires a comprehensive review and evaluation by stakeholders which cannot be undertaken within the limited timeframes often provided.

Limited timeframes to evaluate EIA documentation lead to inaccuracies in the review process and ultimately result in inadequate levels of protection for community health and the environment.

In the current system, the only timeframes that apply are those for local authority and community responses, whether to the Request for SEARs, the public exhibition of the EIA, response to the RTS document or comment on the draft conditions of consent. By contrast, there do not appear to be any time constraints placed on the proponent.

Fragmented environmental assessment process

Impacts associated with the construction and operation of SSDs are difficult to quantify as the current planning framework allows projects to be staged. This enables the applicant to lodge separate applications for the various stages of the project, and allows for multiple modification applications to the initial application.

Consequently, the subsequent EIAs are often not linked to and out of context with the proposal and original justifications. As a result, the EIA process becomes highly fragmented and this obscures the nature and extent of the environmental impacts associated with proposed development overall.

Roles and responsibilities for regulatory authorities

Without appropriate regulatory controls, SSDs may adversely impact upon the environment and human health. Therefore, careful consideration must be given to the long-term regulation of major projects.

Despite the complexity of such projects, an Environment Protection Licence may not be required unless triggered by the Protection of the Environment Operations (POEO) Act 1997. If treated as a non-scheduled activity, local authorities may be appointed and burdened as the 'Appropriate Regulatory Authority' for the SSD. This is a major concern as local authorities often do not have sufficient resources to monitor SSD to ensure they are compliant with the conditions. It is more appropriate for the NSW EPA, and, or, other State agency designates, who are properly resourced, to be appointed as the Appropriate Regulatory Authority for SSD Projects. Unless identified as a scheduled activity, the NSW EPA tends to sit back and not get involved in the environmental regulation of major projects.

According to Section 6 of the POEO Act 1997, a local authority is the appropriate regulatory authority for non-scheduled activities within its area except for a matter for which a public authority (other than the local authority) is declared under subsection (3) to be the appropriate regulatory authority. SSD projects often comprise large-scale operations of high economic value that present complex environmental challenges. It is considered that local authorities are not sufficiently resourced to regulate the SSD projects.

LCC's firm position on this matter is that the NSW EPA should be declared the Appropriate Regulatory Authority for all non-scheduled activities associated with State Significant Projects under section 6 (3) of the POEO Act 1997. Failure to appoint the NSW EPA as the Appropriate Regulatory Authority for SSDs would sacrifice regulation of site activities and result in a poor outcome for environmental and human health protection.

EDO White Paper

Other relevant matters that LCC generally concurs with are further detailed in a previous EDO submission available from http://www.edonsw.org.au/planning_reforms. In particular, it is considered that recommendations 53 and 54 are generally pertinent. It is also acknowledged that some matters raised by the EDO may not reflect LCC's overall opinion of the EIA process.

Recommendations

LCC supports the initiatives outlined in the Discussion Paper. Specific comments in relation to these initiatives are as follows:

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

LCC recommends that a greater emphasis is placed on the importance of the SEARs process in the scoping phase of major projects or SSDs. Ideally, this process would be expanded to provide greater details regarding the project, and supporting information regarding project justification provided to the community and stakeholders. The declared interests of the proponents and all parties concerned should be clarified also.

These requirements are needed at the SEARs stage of the process, with upfront community and stakeholder consultation to more carefully frame the terms of the EIA and reflect community and stakeholder objectives and interests.

Initiative 2: Earlier and better engagement

The proposed pre-lodgement meeting to discuss community engagement that is to occur during scoping should involve local and relevant state and regional authorities, in addition to the Department of Planning and Environment. The affected public authorities (most importantly, the local council) have a better and more nuanced understanding of the local context and environment as well as a more intimate knowledge of local communities of interest and local stakeholders.

The proponent's engagement strategy during scoping should be subject to an agreement with the Department, and the local authority and other public agencies. It is important that this engagement presents consistent, clear and detailed information to community stakeholders (including any expected impacts of the proposal during construction or operation). The strategy should not solely consist of a business prospectus for the project.

Ideally, community consultation should be conducted during facilitated meetings, which are clearly advertised to the affected community. It would be useful to invite Departmental and Council officers to these meetings.

Prolonged exhibition periods are required to assess the predicted environmental impacts associated with SSDs. Extended notification periods will also provide sufficient time for authorities and the community to formulate a considered response to future proposals.

LCC strongly agrees with initiatives to make project documentation publicly available at all stages of the process, however notes specifically that supporting documentation comprising detailed assessments and environmental management plans should be available for review prior to determination.

Initiative 3: Improve the consistency and quality of EIA documents

LCC strongly supports the idea of a consolidated project description chapter, which may be linked to conditions of approval. This chapter should be written in 'plain English' and should outline the impacts and proposed mitigation methods associated with a project, not just the perceived benefits.

Improved readability of EIA documents is also a supported initiative. A greater reference to and/or use of appendices may be specified for detailed technical information.

LCC agrees with the provision of clear guidance regarding the form, content and quality of all documentation.

Initiative 4: Set a standard framework for conditioning projects

The proposal to establish standard conditions which relate to outcomes and performance rather than relying on the endorsement of management plans is supported.

Initiative 5: Improve the accountability of EIA professionals

It is agreed that there is a need for a verifiable code of practice for EIS lead authors, and an extension of the use of peer reviews of EIA documents.

It is considered that compulsory peer-reviews, by suitably qualified and independent experts, would greatly strengthen the EIA process.

Initiative 6: Provide greater certainty on EIA timeframes

In the current system, the only timeframes that apply are those for local authority and community responses, whether to the Request for SEARs, the public exhibition of the EIA, response to the RTS document or comment on the draft conditions of consent. By contrast, there do not appear to be any time constraints placed on the proponent.

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

There is a need to clarify roles of PCA, Council and the Department, acknowledging that the Department is the consent authority and must accept the burden of its compliance role for major projects.

The NSW EPA could be appointed as the Appropriate Regulatory Authority for specific SSDs in its area.

Thank you for the opportunity to comment. Council looks forward to your feedback on these comments.

Should you require any further information on this matter, please contact Amy van den Nieuwenhof (Strategic Planner) on 9821 3511.

Yours sincerely



Toni Averay
Director Planning and Growth