

Council Reference: 31157E (D16/366316)

NSW Department of Planning & Environment  
Director – Assessment Practice  
Ms Erica van der HonertBy email only: [EIAProject@planning.nsw.gov.au](mailto:EIAProject@planning.nsw.gov.au)

Dear Ms van der Honert

**Submission – Environmental Impact Assessment Improvements Project  
Discussion Paper**

Council welcomes the opportunity to provide a submission on the review of the Environmental Impact Assessment (EIA) process for State significant projects in NSW. This submission has not been reported to Council for consideration and as such the following comments do not necessarily represent the view of the elected Council.

A critical component within the wider development approval process, consistency within the EIA process is imperative, not only with regard to the application of EIA and associated environmental regulations but with regard to operation of the broader EIA process. Overall the proposed changes to strengthen pre-lodgement community engagement are a welcome step. If done well, this process could decrease the number of public submissions made on a development application, decrease overall assessment timeframes, and in turn reduce project risk.

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

As ‘scoping’ identifies the key environmental issues within the EIA process, it is likely to be the most important step, due to its significant influence on mitigation and design stages. For this reason, a framework would be ideal although potential issues in implementing this relate to data and data integrity as this is usually provided by the proponent or proponents consultants and therefore has the potential to be subject to scrutiny. There is also a level of subjectivity in that various stakeholders hold different environmental values regarding risk and uncertainty and this may also make consensus on, and implementation of, a framework difficult.

Whilst all project-based EIA processes have a legislative basis, which provides a level of consistency, the tendency to apply these environmental requirements based on project size or descriptions rather than environmental harm or risk can be problematic. This could discriminate against specific industries, whilst providing leniency to others. For this reason the promotion of a risk based approach would be preferable.

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

Council strongly supports emphasis being placed on community consultation. The planning system will always involve competing interests and diverse views, often resulting in confrontation. This is particularly true of the EIA process, due to the contradiction that occurs for example between economic expansion imposing costs on the natural environment. For this reason, early, rigorous and transparent community engagement is essential.

Proponent led engagement is mutually beneficial for the following reasons:

- Value for proponents
- Reduced administrative resourcing for Councils
- Better engagement ideas being brought to a project
- Conflicts and delays relating to engagement being minimised
- Relationships established in the local community that can benefit current and future projects for both Council and proponents
- Priorities tested in the market place
- Value for money is optimised by enabling more efficient use of resources
- Reputation in the community is enhanced

Earlier community involvement and improving the quality of engagement between all EIA stakeholders would be welcomed. Often community and stakeholder groups complain that project based EIA occurs too late in the process, leading to the perception that the assessment process is designed to legitimise predetermined outcomes. Early proponent led engagement could assist in overcoming these perceptions.

Whilst there are benefits associated with this form of engagement, this would require more pre-lodgement meetings and would need to be supported by some form of local council engagement strategy or require the submission of a communications plan with applications to ensure proponents undertake an appropriate level of community engagement and that legislative requirements are satisfied.

In addition, proponent led engagement would assist in reducing administrative resourcing for Councils and may increase the chance of better outcomes being reached through more collaborative processes that build the capacity and sustainability of communities, assisting in creating a mutual sense of 'ownership.' As a result, outcomes would hopefully be more reflective of the aspirations of the affected community.

Transparency of documentation throughout the EIA process would also be a positive outcome, further instilling public confidence in the system. Access to this information is important; not only does it need to be in a publicly accessible and web based format, but proponents need to provide information that is both technically sound and able to be provide accurate information to the community on the likely impacts of the relevant development.

Clarification is needed around 'how community members views have been taken into account, or if not why not' – Currently Council responds to submissions via an acknowledgement letter. Community member's views are then addresses within the 79c report or a submissions table and comment on them is provided within these documents. Once a determination is given, Council then writes to anyone who provided a submission to advise of the outcome of the assessment. Requiring Council to provide a greater level of correspondence to objectors than is currently provided, has the potential to impact on Councils resources.

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

Any potential improvements to EIA documentation in relation to form and layout and particularly to promote greater public understanding are welcomed. However, it is important to acknowledge that EIA's are technical documents, required to be prepared by professionals, for consideration by professionals. Whilst it is important that the general public has an understanding of the information and particularly the risks associated with a particular development, the information should not be watered down and technical standards comprised. For this reason, Council would support, in addition to technical documentation, the idea of summaries, specifically for public purposes, being provided either separately or at the beginning of an EIA documentation.

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

Moving away from the reliance on management plan is supported. These types of conditions rely on human behaviour and are typically problematic to pursue from a compliance perspective. Additionally, they can get lost over time, with changes in managers and ownership etc. Although standard conditioning would be a positive outcome, variations for local circumstances or specific development types needs to be allowed for so as not to create similar issues to that which occurs with Standard Instrument LEP's.

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

This profession has inherent conflicts of interest, associated with the fact consultants preparing EIS are contracted and paid by proponents to find and assess environmental impacts, which often impose costly mitigation measures. Whilst most consultants would not risk their reputation by publishing false or misleading information, a Code of Conduct or Practice that is regulated would assist to overcome such issues.

A Code of Practice could ensure that EIS authors follow strict codes of ethics and best practice, engage in continued professional development (in order to maintain their certification) and that they are qualified for the task. Penalties would ensure that members are fulfilling their duties and responsibilities to the client, the government, the public and the environment. Overall a Code of Practice could improve the public's trust and confidence in EIA practitioners and more importantly, their environmental assessment work.

The peer review process for EIA documentation should be mandatory. This would also assist in reducing processing timeframes and the need to go back to proponents in order to ask for additional information etc.

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

It is difficult to provide certainty of timeframes, as they are heavily influenced by other stages of the EIA process, particularly scoping and prediction and mitigation stages, as well as the development type/use and locations. Additionally, it is the proponent's responsibility to provide quality information which enables local authorities to make informed decisions.

Similarly, if during project implementation, management or monitoring, major changes are introduced, or if the project is aborted, the EIA procedures will be re-started to evaluate the effect of such actions.

Given this review aimed at improving community confidence in this process, legislating timeframes for a process that is highly subjective is likely to undermine what this review is trying to achieve.

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

Whilst the importance of post approval monitoring regimes is acknowledged, this is something Council would most likely be unable to resource. For this reason, the Department needs to take an active role and adequately resource this to ensure a positive outcome.

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

The below points are supported, however, it should be noted that the proponent should be required to undertake a greater role

- Development of a process to communicate information to stakeholders about continuing project development following project approvals as well as project changes would be supported.
- Greater guidance on the level of assessment and further consultation required for modifications.
- Development of a process to capture and consolidate project changes, conditions of approval and compliance obligations.

If you need further information about this matter, please contact Peta Brooks, Planning & Development Services Group on (02) 4429 3228. Please quote Council's reference 31157E (D16/366316).

Yours faithfully



**Gordon Clark**  
**Strategic Planning Manager**  
29 November 2016