

Submission:

Environmental impact assessment improvement project

1. Background

I am a retired consulting water resources engineer who has worked throughout Australia and overseas, mainly as the principal of my own firm. As such, I have prepared numerous Environmental Impact Statements and Reviews of Environmental Factors. Consequently, I am reasonably familiar with the process.

2. Submission Fatigue

People in northern New South Wales, where I live, have been requested to prepare submissions on numerous projects and studies over the years. These include the Murray Darling Basin Plan (and amendments), the NSW Government State Plan, Local Environmental Plans, coal mining projects, coal seam gas projects, mining accommodation village proposals, native vegetation issues, etc – the list goes on. Government ministers at meetings have urged us to put in submissions, to which one of the audience will typically reply “we are sick of putting in submissions – you take no notice of them”.

Part of the problem is that proponents of projects of State Significance usually have considerable more resources with which to advance their project compared to the resources of those opposed. The opponents are simply worn down. They are also aware that proponents use their resources to lobby ministers and contribute to political parties, swaying decisions their way.

Because of this, people give up on making submissions. They feel that they put in all of the work, on a voluntary basis, but nobody takes any notice of them. So the Department of Planning should not be overly surprised if it receives fewer submissions on *Improving the Environmental Impact Assessment process* than it would have anticipated. A relatively low number of submissions would not reflect a lack of interest on the part of the community. On the contrary. However, most people with an interest have been bound up with harvesting during the submission period, their busiest and most critical time of year. Apart from that, people are just “submitted-out”.

3. EIA Process

3.1 To proceed or not to proceed?

According to the Department’s covering email, “We assess the environmental impacts of a proposal for a State significant project before making a decision on whether or not it may proceed”. This is news to many who have opposed various State significant projects over the years. How often does a project get rejected on the basis of its EIS? Only a small handful come to mind, such as the Bickham coal mine, where powerful thoroughbred horse industry interests were arraigned against it.

Opponents of the current EIA process feel, perhaps cynically but certainly justifiably, that the purpose of an EIS is not to decide whether or not the project should proceed, but to determine how any environmental constraints can be overcome. Environmental issues may be mitigated or compensated, but it seems too rarely a project is abandoned because of them. The advice of other government departments is often ignored in the interests of advancing the project (eg NGP).

With the EIA process seen as a formality on the way to approval, those whose well-grounded arguments are ignored in the process are left with only one way of opposing the project – protest. Surely there must be a better way of heeding these arguments before reaching this stage?

3.2 Independent consultants

The process of using consultants to prepare the EIS is fatally flawed – they are hired by the proponent. Surprisingly, this flaw was not mentioned in the Discussion Paper, as it is one of the most discussed aspects in the community.

Many consultants are aware that their ability to attract future work is dependent on a good outcome for their client. The consultants in effect become “hired guns” to prepare an EIS that meets the needs of their client, not necessarily those of the environment.

Some consultants are blatant advocates for their client, taking on public relations roles as well as preparing the EIS. They move from one resource project to another. Others are more circumspect, endeavouring to provide as much balance as possible in the preparation of an EIS. However, from experience I know that this is difficult, as the consultant invariably has considerable emotional capital invested in the project. Having spent a considerable time working on the project, they are loathe to see it fail, which sometimes clouds their judgment regarding the environmental impacts.

“A requirement for those leading EIA processes, such as Lead Authors and Specialist Report Lead Authors, to adhere to a code of practice” is a waste of time. Professional bodies, such as the Australian Institution of Engineers, etc, all have codes of practice which theoretically would overcome the conflict of interest outlined above, but they obviously don’t.

This inbuilt bias must be overcome if the EIA process is to have any credibility in the community. The simple way to overcome it would be for consultants to bid for the work in the usual way, whatever that may be for the clients and consultants. The consultants should then be selected by the Department of Planning (or a committee made up of members of several relevant departments, or the Planning Assessment Commission, all with community input). The proponent would then make the funds available to the body responsible for selecting the consultants, to administer the payments. The consultants should report only to that body and be completely independent of the proponent. The proponent would have the opportunity to review the EIS and provide input, on the same basis as government departments and the public.

Projects of State significance involve public resources, so all stakeholders should have equal influence.

3.3 Peer Review

“Extending the use of peer review of EIA documents” is to be commended and should result in a fairer, less biased outcome.

3.4 Planning Assessment Commission

The quality of PACs varies and PACs will always be viewed with suspicion within the community while ever they are stacked with political appointments. More independence of the PACs is required.

The PAC needs to be more than a rubber stamp for government sanctioned projects. In the case of the PAC's review of the MAC Village at Narrabri, for example, submissions to the PAC warned of the dangers of building the village on the floodplain. Council had always denied developers that option over the preceding decades. The PAC delayed consent by a month so that the proponent could comply with the requirements of the Narrabri Flood Plain Management Study, which had been referred to the PAC in submissions. After the month had passed, the PAC approved the application. Obviously it had not read the Flood Plain Study, which specifically stated that NO further development take place on the flood plain.

3.5 Government over-rule

In the case of the Maules Creek mine, the PAC approved the mine subject to conditions, one of which was to fill the terminal void, which would be over 300 metres deep. If not filled, it would gradually fill with water from coal seams and intercepted aquifers, but the process might take 300 years before the water level stabilized. The poor quality of the contained water would preclude most uses.

The proponent appealed to the government, on the grounds that filling the terminal void would make the mine uneconomic. The government overturned the PAC's condition. Hence the true cost of coal production is not reflected in the development cost of the mine, with the community absorbing the externality of an unusable and wasteful hole in the ground.

Government over-rule of imposed conditions must cease if the EIA process is to have any credibility.

4. Monitoring and Compliance

Monitoring is totally inadequate. The government gives every appearance of trying to avoid baseline monitoring, for example in establishing an air quality network in time to assess baseline conditions in both the Hunter and Namoi valleys. A first requirement of the EIA process should be to establish an adequate monitoring network, be it for air or water quality, including groundwater. Health impacts of resource projects are of major concern to local communities.

Non-compliance with conditions is perceived as only resulting in a "slap on the wrist". Accidents can happen in resource development and operation and some leeway is necessary. However, continued violation of conditions should lead to automatic closedown of the operation, permanently if necessary.

Individuals go to gaol for not meeting society's expectations. Resource projects should not be allowed to operate outside of society's norms.

5. Conclusion

The Department of Planning is to be commended for undertaking this long-overdue review of the EIA process. The process to date has been seen in the community as totally favouring the developer, who can utilise the resources of their enterprise to wear down opposition. The process is seen simply as an expensive formality on the way to approval.

The question “**should** this project be approved” appears never to be asked in the approval process. It should be the first question asked.