



Ms Carolyn M^cNally
The Secretary
Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2001

28th February 2017
PO Box 871,
TAMWORTH
NSW 2340

Dear Ms M^cNally,

Re: Feedback on Social Impact Assessment Draft Guidelines

The Association of Mining Related Councils of NSW ('AMRC') welcomes the opportunity to provide feedback to the Department of Planning & Environment ('DPE') regarding the exhibited Social Impact Assessment ('SIA') Draft Guidelines for state significant mining, petroleum and extractive industry development, dated December 2016.

1. About the AMRC

The AMRC originated in 1978 when several Councils recognised that Local Government Areas associated with coal developments would benefit from a co-ordinated approach when liaising with proponents and the NSW State Government. In 1993 the scope broadened to include metalliferous mines.

In 1999 AMRC expanded further to represent Local Government on all extractive industries, including unconventional gas. Currently there are 20 member Councils of the AMRC, most of who are located in rural and regional areas of the State.

2. General Comments: AMRC Members and Social Impact Assessment

As the sphere of government directly responsible for the daily governance of its Local Government Area, Councils provide the leadership necessary to deliver equitable services and facilities to their various communities, often across large distances and sparse populations as are found in rural areas.

Thus Councils are sensitive to the direct and indirect impacts of major projects - both positive and negative - on the land in their LGA, their economic base and their communities. There are always ramifications for hard and soft infrastructure and the wellbeing and social fabric of residents and ratepayers.

In addition to Local Government Act requirements, the EP&A Act also imposes obligations on Councils to be a key player in the decision-making on major projects. AMRC members are there for keen to deliver in accordance with these statutory responsibilities, including on SIA matters.



The AMRC congratulates you on introducing the SIA reform package. Historically, SIA has been inadequately addressed in major project assessment and local communities have been disadvantaged as a result.

Some key messages that the AMRC would like to see embraced in the Guidelines are as follows:

1. Councils and local communities wish to be consulted in a more meaningful, collaborative way;
2. We thus welcome moves flagged in the proposed changes to the EP&A Act that proponents will be required to engage earlier with councils and local communities including before the scope and intent of a project is finalised, including before a PEA is tabled;
3. Considerable attention needs to be paid to quantifying the challenging but crucial topic of culture and customs. This includes, but is not limited to the following:
 - intangibles such as loss of sense of place (ie changes in the natural and built landscapes that affect resident's sense of identity and place, and the level of satisfaction with their surrounds);
 - loss of social/community cohesion, shared norms of behavior and values; and
 - cultural heritage matters.

Whilst it is acknowledged that the distinguishing social characteristics of various community groupings can be difficult to identify and quantify, it is imperative that the proponents of major projects (with oversight by the DPE) are required to do so and to also identify the scope and magnitude of positive and negative impacts, with adverse impacts adequately compensated.

4. We wish to see the PEA improved from a SIA perspective so that the SEARS can be more prescriptive in requiring proponents to address specific SIA matters, leading to the detailed conditioning of various social impacts in the consents;
5. We welcome the proposed changes to the EP&A Act whereby an EIS for State Significant Development will be required to demonstrate how community consultation has been undertaken;
6. To gain social legitimacy, it is prudent for proponents of major projects to provide demonstrable social benefits that permeate all spheres of the community so wellbeing is enhanced both during the life of the project and after it has closed. This contribution is to be in addition to the usual economic benefits of jobs (ie income and local expenditure) and hopefully payment of royalties and taxes. In return, companies are more likely to be seen as socially responsible, which brings reputational benefits; and



7. The DPE should lead the engagement/dialogue with the community on substantive, high profile issues to provide extra transparency and independence, rather than relying on the proponent to interpret and respond to the messaging.

AMRC supports the use of Voluntary Planning Agreements as a mechanism for proponents to make financial contributions to councils to provide a range of Council and broader community social benefits. AMRC wishes to see planning agreements applying to direct and indirect, tangible and intangible impacts, including impacts on community social fabric.

3. Specific Comments on the draft document

Introduction

AMRC notes the commentary.

It would like to add however given that many major projects are located in rural and regional areas, it should be acknowledged that there is an inexorable link and connectedness between the condition of various natural resources, especially surface water and groundwater, with the social fabric and wellbeing of the human communities. If the resources of the physical environment are compromised then there is usually a corresponding swift diminution in social wellbeing.

Objectives in the Guidelines

AMRC would also recommend that the objectives in the Guidelines (page 4) be revised to accommodate the following points:

- a) build trust and goodwill, be a good neighbour (ie listen, understand, help and deliver on promises);
- b) work directly with project-affected communities to address priority issues;
- c) respect and protect local societal norms and deeply held values, sense of place and identity, the things that give meaning to life in that district;
- d) improve the wellbeing of the community as a whole and especially of the vulnerable, disadvantaged or marginalised across services, housing, safety and security;
- e) reduce social exclusion and fragmentation; and
- f) build capacity and governance in institutions.

AMRC is also of the view that the Guidelines warrant inclusion of the risks and consequences if action is not taken by a proponent to improve social wellbeing, such as the following:

- a) creates, reinforces or deepens inequity and/or social conflict;
- b) generates attitudes and actions of stakeholders that may subvert the achievement of the development objective; and
- c) generates outcomes leading to extra costs to the company such as unforeseen costs of mitigation, future litigation and/or compensation payouts, retaliatory acts of sabotage and reputational harm.



Part 1: Introduction to SIA

1.1 What are social impacts?

The contents are supported by AMRC.

It is pleasing to see ‘personal and property rights’ are listed in Table 1 (page 6) as a violation of civil liberties and denial of natural justice is often a concern among rural communities feeling that their views are not being sought, listened to with respect, nor acted upon with commitment. In essence, that the principles of respect and genuineness can be missing in any agreement.

1.2 What is SIA?

Phase 1 of Figure 1, namely ‘understanding the issues – profile and scope’ is a key matter.

AMRC is of the view that more effort and transparency needs to be demonstrated by proponents to show that they not only are well informed but do truly *understand and appreciate* the scope and substance of social matters.

Part 2: General requirements and overarching principles

2.1 Professional qualifications and skills

AMRC agrees that the individuals undertaking the SIA must be appropriately qualified and skilled.

2.2 Integrated approach for assessing social, environmental and economic impacts

AMRC would like to highlight that in rural areas the pathway for social impacts often travels from how well environmental phenomena are protected and managed. Water resources, in particular are a key element that need’s to be safeguarded, if there is to be no adverse social impacts flowing to rural and regional communities.

2.3 Engagement with potentially affected people and groups and other interested parties

Engagement with key stakeholders must be undertaken with much more diligence, respect and sensitivity than in the past. Many communities which have been through the assessment process - often several times - feel the process was often tokenistic and is not done seriously or with commitment.

AMRC seeks engagement that is sensitive, respectful, genuine and empathetic, where the consultant ‘walks a mile in the shoes of the community’ and is less concerned at ‘towing the corporate line’. Openness and transparency are also vitally important. All conclusions need to be justified and assumptions declared.

The commentary on engagement objectives (2.3.1) and identifying affected parties (2.3.2) is supported.

Appendix C of the Guidelines includes questions for proponents to consider when reviewing their social impact assessment. Many of these questions focus on how the proponent has identified and engaged with potentially affected people and groups. The Guidelines should indicate to proponents that councils already have extensive knowledge of many of the stakeholders and social groups within their areas and councils should be a key first point of contact for proponents.



2.4 Guiding principles

Table 2 (guiding principles for SIA) is supported. AMRC recommends the 'Precautionary Principle' be the foundation upon which SIA is founded because there are many assumptions and 'best guesses' made in the EIA predictive process.

Part 3: Requirements for pre-lodgment and application stages

3.1 Pre-lodgment

AMRC commends the five performance objectives that a PEA should meet.

In addition AMRC recommends that there needs to be an emphasis on greater transparency as to what stakeholders 'think' and 'feel'. Given the PEA is a proponent – driven document, there is a risk that the real views of stakeholders may be 'toned down' or 'glossed over' to protect the image of the proponent's project.

PEA performance objective 3: When assessing the significance of social impacts, social justice should be included as an impact characteristic; that is, the principles of access, equity, rights and participation are demonstrated. The significance of an impact may be determined not only by the characteristics of duration, extent, sensitivity and severity, but by whom may be impacted (see Table 3 on page 15 of the Guidelines).

AMRC suggests an 'on-line portal' or equivalent be provided where stakeholders can state their positions in an unfettered and transparent way for all to see. An alternative could be for the PEA to include an attachment which lists stakeholder's actual comments forwarded to a nominated email account.

3.2 Application

The five performance objectives listed are supported, with the following caveats:-

- a) EIS performance objective 1: it is recommended the EIS document unaltered statements from stakeholders regarding the relevant issues and commentary on how well the SIA has been performed;
- b) EIS performance objective 2, Box 2: Many in rural communities depend on productive, sustainable natural resources and landscape, particularly water (both surface and ground) for their social and economic wellbeing. It is vital that planners acknowledge this intimate interconnection. Damage to water, vegetation and soil resources can have profound adverse and catastrophic consequences for rural communities, including socially.
- c) EIS performance objective 5: Adaptive management strategies can be code for 'if any problems occur during operations we'll change the management plans and all will be OK'. It is recommended the DPE ensure wherever possible that consent conditions are explicit, transparent measurable and performance - based with no 'wiggle room'.

Part 4: Assessment, determination and post-approval stages

4.1 Assessment

Comments Noted.



4.2 Determination

The definition of ‘public interest’ has to date generally been seen through the narrow prism of jobs and royalties. Thus the focus has been on short term economics, with environmental and social considerations listed as very much secondary elements. To exacerbate matters, often the estimates of the number of jobs and royalty quantum are overly optimistic and fail to eventuate. The AMRC recommends ‘public interest’ be redefined to closely align with Ecologically Sustainable Development principles.

4.2.1 Conditions of Consent: AMRC recommends consent conditions should be specific, transparent, measurable and performance based. The scope allowed for adaptive management strategies should be viewed with caution as often such practices are skewed in favour of proponents, with little accountability in the event of non-compliance. Rather, the management plan is simply changed to hopefully avoid further instances of mis-management. Meanwhile, either the environment or the community (or both) may well have suffered adverse consequences.

4.3 Post approval

Comments noted.

The AMRC thanks you very much for the opportunity to provide feedback on these important matters.

If you have any queries regarding the above please don’t hesitate to contact the Executive Officer of the AMRC, Mr Greg Lamont on phone 0407 937 636 or email greg@yourexecutiveservice.com.au or info@miningrelatedcouncils.asn.au

The AMRC would welcome the opportunity to meet and discuss the matters herein. We look forward to your response in this regard.

Yours sincerely,
Peter Shinton
Chairman
Association of Mining Related Councils