

Submission to the draft Social Impact Assessment Guideline for State significant projects in NSW

November 2020

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Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to make a submission on the Draft Social Impact Assessment Guideline. As councils are neither the assessor, nor the author of social impact assessments (SIAs), this submission will only comment on the Guideline itself – not on the Technical Supplement.

This is a draft submission awaiting review by LGNSW's Board. Any amendments will be forwarded in due course.

Background to the Social Impact Assessment Guideline

The Department of Planning, Industry and Environment (DPIE) is currently exhibiting a new draft guideline for SIA that will apply to all State significant projects.

This new guideline will replace the existing SIA guideline released in 2017, which is only for State significant mining, petroleum production and extractive industry development. LGNSW made a submission in March 2017 to the original Guideline.

Planning legislation requires social impacts to be assessed and considered as part of the overall environmental impact assessment for all State significant projects. The proposed DPIE guideline will standardise the SIA approach across all State significant development, including State significant infrastructure and Critical State significant infrastructure projects.

LGNSW position on social impact assessment

LGNSW has two planning related Fundamental Principles. Our Fundamental Principles are the overarching principles on matters of importance to local government endorsed at our annual conference, most recently in November 2020. These two principles are of direct relevance to this submission and are as follows:

- That local government is best placed to lead and influence local and regional planning processes according to the needs and expectations of local communities.
- That our communities' quality of life is a priority of local government planning.

In cases of State significant development (SSD), approval authority is removed from councils, which does not align with these Fundamental Principles. Where this occurs, councils need to be confident that the significant local impacts of these developments on community quality of life and amenity are fully recognised and addressed. Therefore, a strengthened approach to SIA is supported by LGNSW and the local government sector as an opportunity for proponents of major projects to make a positive and lasting contribution to the social wellbeing of the communities in which they operate.

Councils, as both representatives of their communities and regulators of the local planning environment, support rigorous pre-development SIA for SSDs that have been delegated to the Independent Planning Commission, the Minister for Planning and Public Spaces or the DPIE for decision. The Social Impact Assessment Guideline should have greater strength and status than a *guideline* and should instead *require* proponents to follow its processes and principles and be re-named to *Social Impact Assessment Requirements*. At present, the Guideline notes that it is expected it will be used by proponents and departmental assessment officers, but that in limited circumstances a different methodology may be used. In the interests of transparency and consistency, it would be preferable for the Guideline to be mandatory unless an exemption has been applied for and granted by DPIE, with clear reasons for the different approach made publicly available.

Recommendation 1: That the status and title of the document be revised so that it has greater authority than a *guideline* and the robust approach to social impact assessment, as outlined in the document, is *required* of proponents.

LGNSW response to the draft Guideline

Section 1: Principles of social impact assessment

a) Whether the Principles of the SIA process (Table 2) are adequate.

Feedback from councils is supportive of the principles listed to guide the SIA process.

In addition, Social and Community Fundamental Principles of LGNSW, set out that local government is committed to the social justice principles of:

- Equity – fair distribution of resources
- Rights – equality for all people
- Access – to services essential to quality of life
- Participation – of all people in their community
- Recognition – of the unique place of Aboriginal people in NSW and the right of Aboriginal people to be involved in all decisions affecting Aboriginal communities.
- Health and safety – for all in the community.

These social justice principles should be included in the Guideline.

Councils identified further additions they would like to see listed including:

- *Culturally-sensitive* should be its own principle (it is currently listed under the inclusive principle). It is important that Aboriginal people are invited to comment on all impacts, not just cultural impacts.
- *Accessibility* should be its own principle (it is currently listed under the inclusive principle)
- The life-cycle principle should clarify that life-cycle needs to consider the impacts with the proposed change and without the proposed change.

Councils also suggest that there be a separate table which lists the principles of the aims/outcomes of an SIA, which are different to the principles of the process. Some of these potential outcomes have been identified in section 1.1 of the Guideline and should be renamed as aims/outcomes rather than presumed benefits. Other outcome principles could include:

- A *social licence* principle: An SIA is to lead to social licence to operate which is broad and ongoing social acceptance of the project
- An *effective management* principle: An SIA is to lay the foundation to achieve effective social management measures that enhance potential benefits and mitigate potential negative impacts.
- An *enhanced community wellbeing* principle.
- An *embedding sense of place and identity* principle.

Some of the terms above may need to be added into Table 3 which lists the terms used in the guideline and their meanings. Table 3 should also include a clear definition and identification of *locality* (proximity related) and include the term *social catchment* (use related) as these two terms are interrelated but often confused.

Recommendation 2: That the Guideline be amended to include social justice principles to guide the SIA process, as well as listing *culturally-sensitive* and *accessibility* as separate principles. An additional table of principles should be created to reflect the desired outcomes of an SIA, and the term *locality* should be defined as well as including the term *social catchment*.

Section 2: Process phases

b) Whether the DPIE has correctly identified the linear process and timeline of an SIA (Figure 2 & 3), particularly according to the role of councils?

It is favourable that the Guideline seeks to avoid duplication of the SIA process by requiring a Phase 1 SIA (with initial analysis of social impacts), a Phase 2 SIA (with evaluation of the impacts and responses) and a Phase 3 Social Impact Management Plan at different periods along the timeline of approvals. The phased approach helps to ensure social impacts are considered during the planning phases, and not only during the modification phases.

Councils would like to see engagement with local government listed in the process. Clearer signposting of when community engagement is to occur is also needed as the document mentions community engagement strategy development in Phase 1, but not the community engagement itself. It would be beneficial for the guidelines to explicitly state that engagement with local council(s) is needed during the social baseline study phase of the SIA development.

The process of engagement could also be listed as a phased approach which includes a notification phase, a consultation phase, and post-project information gathering phase to assist with management of impacts. A similar process of notification and consultation exists in the current system of liquor licence approval, as outlined in Example A below.

Example A: The current system of liquor licence approval by Independent Liquor & Gaming Authority (ILGA) NSW requires two stages of community and stakeholder consultation. At the beginning, when the applicant intends to apply for a liquor licence, the applicant issues a 'notice of intention' to stakeholders including council and neighbours with a 30 day notification period. The purpose of this notification is to collect specific inputs from stakeholders for the issues to be covered in the Community Impact Statement (CIS) which is a prerequisite of a formal application to Liquor & Gaming (L&G) NSW (*In this case, notification would be a prerequisite of submitting the formal application for a SSD including an SIA*).

After 30 days of such notification, the applicant submits the main application to L&G with the CIS containing requested information by stakeholders and community members. Then L&G sends the application link to stakeholders to comment on the application. This arrangement allows council feedback at two times: earlier, during notification period directly from the applicant and later, at the application determination stage by L&G.

To establish clear expectations, it may be beneficial to annotate the process diagrams in the document to identify when notification and consultation is required to occur by the proponent to achieve best practice, and also by DPIE under the legislation (e.g. DPIE's public exhibition of the SSD application and the phase where DPIE publishes the Scoping Report online and seeks advice from the local council and other Government agencies about what should be included in the Secretary's Environmental Assessment Requirements (SEARs).

Recommendation 3: That the Guideline process figures be amended to clearly identify and clarify the phases when community engagement and local government notification and/or engagement is required by the proponent to achieve best practice. For clarity, it would be beneficial to clearly identify consultation required of the DPIE under the legislation.

Section 3: Preparing an SIA Report

c) What role, if any, do councils currently play in the SIA, and what role should they play?

Currently councils can provide feedback to the SIA on behalf of the community, are consulted by DPIE during the development of SEARS or can seek to speak at a hearing of the Independent Planning Commission.

Although the Guideline is for SSDs, LGNSW asserts that councils should be involved as early as possible, during the primary research stage. This is largely due to the understanding and relationship of councils with the local area and community that the State Significant site may be located in.

Councils often have insights, evidence and research that may be useful for identifying the project scope and an initial analysis of social baseline (i.e. existing conditions without the development). Councils also often have the strongest ties and connections with the local communities in which the development may be located. Councils may also have a role in providing services to the development in the long term such as waste removal, footpaths and community services. In some cases, although a development is considered State significant, the project is eventually handed back to the local council to manage its amenity, and therefore this justifies a greater opportunity for councils to be engaged in the SSD process. This can occur for example when the SSD is a new suburb or housing development being established.

In other cases, the SSD might be an approval for a masterplan, but the individual developments under the plan occur through the Council's Development Application Process. Occasionally, councils may even become the proponent in cases where the development is considered State Significant (e.g. a waste facility).

Currently, the experience of the local government sector in providing input or reviewing SIAs for SSDs is that there is limited opportunity for local government advice and intelligence to be considered and incorporated early – therefore limiting the ability to assist with the potential analysis of social impacts or recommendations for implementation.

In NSW, councils are not afforded a direct engagement role with the proponent in the SIA process. In the draft document, councils are described as a community stakeholder and it is at the discretion of the author of the SIA as to whether the feedback from councils is taken into account, or whether councils are consulted at all. As the level of government closest to the community, the Guideline should require the proponent to notify council during Phase 1. Frequently councils are notified by the DPIE when other stakeholders are notified, but not by the proponent directly. Other times, councils may only have a chance to provide feedback when the DPIE is seeking advice on the SEARs.

Recommendation 4: That the Guideline be amended to include further details and guidance on the role of councils in SSDs, i.e. that they are more than a community stakeholder and are a level of government, and a requirement that the council (or councils in the case of border projects) are involved early in the SIA process. In particular, an additional term could be included in Table 3 (page 11) and the meaning of the term *community* could also be amended accordingly.

d) Whether council plans, policy and knowledge can be incorporated into the SIA process.

Councils should be consulted on appropriate social impact boundaries for developments and afforded the opportunity to contribute data, connections and insights about local communities.

If councils are engaged early during the SIA process, the proponent may be able to achieve greater insight into:

- *Proposed social locality and catchment of a project*
- *Cumulative impacts of the projects* – councils will be aware of what other developments are occurring or are in the pipeline
- *Individuals or groups* in the community that the proponent should engage with - councils have connections to service providers and outlying groups in the community to help ensure diverse representation
- *Likely social impacts that may matter most to the community* – based on what council has observed and heard from the community from previous developments
- *Social data and demographics* – often councils subscribe to research and data collection forums which may be more up-to-date than ABS data
- *Proposed mitigation measures* – councils have experience in assessing, managing, and measuring compliance for other local developments.

Recommendation 5: The Guideline be amended to recognise the wealth of knowledge that councils can provide to the SIA process, including insights into:

- Social locality and catchment
- Cumulative impacts
- Individuals or groups to engage with to ensure diverse representation
- Likely social impacts
- Social data and demographics
- Mitigation measures.

As mentioned earlier in this submission, it is sensible that the Guideline is aiming to reduce duplication. The Guideline, possibly in an appendix, should make reference to council plans and documents where community engagement and community sentiment has already been captured. Often these documents include the vision and desired direction of the community. These documents, which the NSW Government requires of all councils, should be a first port of call for the proponent:

- Community Strategic Plans
- Local Strategic Planning Statements
- Local Environmental Plans
- Disability Inclusion Action Plans

Under the Community Strategic Plan, each council may have other relevant plans such as Tourism, Heritage, Economic Development and Cultural Plans. Each council's website would be the starting point for accessing relevant endorsed council studies, plans, strategies and policies. Many councils also have SIA policies and guidelines that are in place to inform best planning outcomes for the local community. Those councils in greater Sydney will also be covered by one of the five Greater Sydney Commission District Plans. The Commission's District Plans were finalised in March 2018 after extensive stakeholder and community consultation.

Recommendation 6: That the Guideline be amended to require the SIA to take into account already established NSW Government-mandated plans for an area including:

- Community Strategic Plans
- Local Strategic Planning Statements
- Local Environmental Plans
- Disability Inclusion Action Plans.

e) Scope

LGNSW recognises that the requirement to engage with relevant groups in the community, and to consult relevant plans, while at the same time adhering to the principles of the SIA process may take some time and effort. However, given that the project has been deemed to have State significance, a level of rigour in assessing the social impacts is appropriate, at least to the level of detail required of environmental impact assessments. In all cases, regardless of the scale of a project or its assumed impacts, a social scientist should be required to prepare the SIA to determine the locality of impact and the level of predicted social impact.

The efforts in the Guideline to define the scale of the SIA in comparison to the scale of the project are helpful and perhaps could include further examples. SSD can be a catch-all phrase: from small state-owned projects to large private projects. The process, timelines and scrutiny should perhaps be different for each based on whether certain thresholds are reached.

LGNSW recommends a chart or table be included in the Guideline that indicates the extent of community engagement processes depending on the type of development. As mentioned earlier in this submission, councils can assist in identifying social impacts that may matter *most* to the community, as they are often aware of community needs and wants. Figure 7 which shows the relationship between the final SIA Report and the other Environmental Impact Statement Specialist Studies is helpful and should also include an example of the social impacts of climate change.

Recommendation 7: That the Guideline retains directions on managing the scope of an SIA, with the following additions:

- Regardless of project size or assumed impacts, the SIA should be prepared by a social scientist
- That thresholds for triggering the scale of an SIA be better defined
- A table is included indicating the extent of community engagement processes depending on the scale/type of development
- That proponents are directed to focus on impacts that matter most to each community, and councils can often assist in identifying these
- That the social impacts of climate change are added to Figure 7.

Section 4: Social impact management

f) Monitoring, mitigation and management

The management and ongoing monitoring of social impacts over the life of the project is of serious concern to councils. LGNSW recognises that some SSDs can be well managed and have minimum negative impacts on the community, particularly if ongoing conditions post-development are enforced and it is clear who is responsible for monitoring and compliance. However, this is not always the case.

Public communication loops: The Social Impact Management Plan should be made public to ensure consultation comments have been considered in mitigation strategies. While the DPIE is responsible for enforcing conditions, councils and communities are often not aware of what action is being taken. Annual reviews prepared by the operators, including the review of performance related to social impacts, should be fully available in the public domain. Councils are often the first point of contact for the community in reporting non-compliance and therefore councils also need clear communication lines with the DPIE to report on non-compliance with conditions of consent. The public must be provided with clear advice on who is responsible for monitoring and enforcing the conditions of consent. The local community can often struggle to find the right avenue to be heard when raising issues of non-compliant performance.

Monitoring: Proponents should be more transparent about how a project is tracking after it is developed. Data monitoring is standard for environmental issues and so too should be social data monitoring such as workforce numbers, diversity of the workforce, how many employees are local etc. The DPIE could consider implementing audit processes similar to that in the Environmental Impact Assessment process. As a reference – the DPIE released in May 2020 *Independent Audit Post Approval Requirements* for the environmental assessment process.

Unforeseen and cumulative impacts: The proponent should also be required to demonstrate that it has processes in place to respond to unforeseen additional impacts, should they arise. There should also be a method for allocating proportional responsibility to multiple proponents in an area where there are cumulative or overlapping impacts.

Recommendation 8: Councils would like the opportunity to provide greater direction to the mitigation strategies, and to have greater transparency on how issues are monitored and managed by including the following additions in the Guideline:

- More clarity on public communication loops about impacts and impact management
- Ensuring the SIMP is made public and there is a process for reports by the public
- Social data monitoring should be required post-development
- Consider implementing audit processes similar to that in the Environmental Impact Assessment process
- The operator should be required to demonstrate processes in place to respond to unforeseen or additional impacts
- There should be a method for allocating proportional responsibility to multiple proponents in cases of cumulative impacts.

g) Voluntary Planning Agreements

It is important to ensure that SSDs contribute their share to meeting demands on local infrastructure. Infrastructure contributions are a critical revenue source for councils to deliver the local infrastructure their communities need. LGNSW has observed that arrangements for planning agreements that apply to SSD need further clarification so that proponents'

expectations are clear and councils are able to negotiate and implement Voluntary Planning Agreements (VPAs) which effectively benefit local and regional communities that are affected by such developments. Councils should be consulted in the early stages of SIA to allow them to factor in time to negotiate a VPA. The proponent needs to take into account the scale of impacts when negotiating VPAs across and within LGAs, particularly any disparities between areas expected to experience the greatest *social* impacts (positive and negative) from the development and those expected to experience the greatest *financial* benefits (positive and negative).

There is also the option for the consent authority to include conditions of consent requiring infrastructure contributions to be paid to the relevant council/s. Councils are concerned that their communities are being overlooked for important supporting infrastructure because payment of contributions for local infrastructure is not always required as a condition of approval for SSD. Contributions to neighbouring councils may also be appropriate if they are directly affected due to the cumulative impacts of development. Councils must have the opportunity to provide feedback and be involved in the assessment of SSD projects, not simply as another stakeholder through the usual public participation channel, but as an integral player throughout the review process. During the assessment of SSD applications, consultation should be undertaken with the relevant councils to ensure that appropriate conditions are included on development approvals to ensure that the local council and any neighbouring councils, if applicable, receive sufficient funding to provide community infrastructure required as a result of increased demand generated by the development.

Recommendation 9: Due to the significance of local government's role in the provision of local infrastructure to support State significant development, that the Guideline be amended to make it clear that councils should be consulted by the proponent in the early stages of social impact assessment and by the consent authority during the assessment of the application to ensure relevant conditions are included in the approval or alternatively to allow councils sufficient time to negotiate a Voluntary Planning Agreement to ensure SSDs contribute to local infrastructure demands. Consideration be given to amending the legislation to require DPIE to consult local government more comprehensively during the different phases of the assessment process for SSD.

Appendix A: Engagement process

h) Council as a stakeholder – What is the best way for the proponent to engage with councils?

As mentioned earlier in this submission, councils are listed in the Guideline as a community stakeholder. Based on the unique role of councils as a level of government, it is more appropriate for councils to have their own stakeholder classification.

In terms of the best method to engage with councils, this will vary depending on the size of the council. At a minimum each council should be notified and given the opportunity to provide input to the SIA with an adequate timeframe and then Council can determine what resources they have to provide input.

Often, when councils are notified of an SSD, communication is usually sent to the planning team. In the same way that the Guideline promotes SIAs being drafted by social specialists, ideally they would also be reviewed by social specialists in councils. Some councils have a social/community planner, and most others have a community development team or officer that the SIA communications should go to. LGNSW recognises that it might sometimes be difficult for a proponent to identify the most suitable person in council to speak with, and that proponents would prefer a consistent approach. To help solve this issue, the General Manager in each council should be notified and they can then direct the notification to the elected members of a council, as well as the appropriate council staff. DPIE or the Office of Local Government might be able to issue some training or guidance to councils about the best way to be involved in the SIA process. A standard form, template or check-list could perhaps be used to notify each council that an SIA is being drafted for an SSD.

Recommendation 10: That the Guideline defines councils as a level of government, separate to other community stakeholders. Engagement with councils could also be improved by developing a standard form that is submitted to councils with each SIA to ensure it reaches the relevant officers, and this is accompanied by training or guidance for councils about the SIA process.

Any other related matters

i) Department resourcing to review a submitted SIA

Councils have raised questions and concerns about the process of assessing an SIA once it has been prepared by the proponent. Resources in DPIE are severely limited to review the information contained in each SIA, and analyse the predicted outcomes. At the discretion of the DPIE, only some SIAs are peer reviewed by another social scientist outside of the Department, and peer reviews are not made public. It is recommended that certain factors could trigger a peer-review of a proponent's SIA, these being if the proponent is the State Government (given potential perceived conflicts of interest with the government assessing its own proposals), and if the council opposes the proposal and submits an objection to the proposal.

If a public meeting of the Independent Planning Commission is held, the relevant council may have the opportunity to raise concerns at the meeting, however it is better to address issues at an earlier phase.

Recommendation 11: That the DPIE is adequately resourced to properly analyse each SIA.

Recommendation 12: That criteria be developed to trigger the independent peer review of SIAs in certain circumstances (e.g. if council opposes the proposal and/or the proponent is the State Government) and that the independent report be made publicly available.

Recommendations

In summary, LGNSW makes the following recommendations:

Recommendation 1: That the status and title of the Guideline document be revised so that it has greater authority than a *guideline* and the robust approach to social impact assessment, as outlined in the document, is *required* of proponents.

Recommendation 2: That the Guideline be amended to include social justice principles to guide the SIA process, as well as listing *culturally-sensitive* and *accessibility* as separate principles. An additional table of principles should be created to reflect the desired outcomes of an SIA, and the term *locality* should be defined as well as including the term *social catchment*.

Recommendation 3: That the Guideline process figures be amended to clearly identify and clarify the phases when community engagement and local government notification and/or engagement is required by the proponent to achieve best practice. For clarity, it would be beneficial to clearly identify consultation required of the DPIE under the legislation.

Recommendation 4: That the Guideline be amended to include further details and guidance on the role of councils in SSDs, i.e. that they are more than a community stakeholder and are a level of government, and a requirement that the council (or councils in the case of border projects) are involved early in the SIA process. In particular, an additional term could be included in Table 3 (page 11) and the meaning of the term *community* could also be amended accordingly.

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- Regardless of project size or assumed impacts, the SIA should be prepared by a social specialist
- That thresholds for triggering the scale of an SIA be better defined
- A table is included indicating the extent of community engagement processes depending on the scale/type of development
- That proponents are directed to focus on impacts that matter most to each community, and councils can often assist in identifying these
- That the social impacts of climate change are added to Figure 7.

Recommendation 8: Councils would like the opportunity to provide greater direction to the mitigation strategies, and to have greater transparency on how issues are monitored and managed by including the following additions in the Guideline:

- More clarity on public communication loops about impacts and impact management
- Ensuring the SIMP is made public and there is a process for reports by the public
- Social data monitoring should be required post-development
- Consider implementing audit processes similar to that in the Environmental Impact Assessment process
- The operator should be required to demonstrate processes in place to respond to unforeseen or additional impacts
- There should be a method for allocating proportional responsibility to multiple proponents in cases of cumulative impacts.

Recommendation 9: Due to the significance of local government's role in the provision of local infrastructure to support State significant development, that the Guideline be amended to make it clear that councils should be consulted by the proponent in the early stages of social impact assessment and by the consent authority during the assessment of the application to ensure relevant conditions are included in the approval or alternatively to allow councils sufficient time to negotiate a Voluntary Planning Agreement to ensure SSDs contribute to local infrastructure demands. Consideration be given to amending the legislation to require DPIE to consult local government more comprehensively during the different phases of the assessment process for SSD.

Recommendation 10: That the Guideline defines councils as a level of government, separate to other community stakeholders. Engagement with councils could also be improved by developing a standard form that is submitted to councils with each SIA to ensure it reaches the relevant officers, and this is accompanied by training or guidance for councils about the SIA process.

Recommendation 11: That the DPIE is adequately resourced to properly analyse each SIA.

Recommendation 12: That criteria be developed to trigger the independent peer review of SIAs in certain circumstances (e.g. if council opposes the proposal and/or the proponent is the State Government) and that the independent report be made publicly available.

* * *

LGNSW would welcome the opportunity to assist with further information during this review to ensure the views of local government are considered.

To discuss this submission further, please contact Elizabeth Robertson, LGNSW Senior Policy Officer at elizabeth.robertson@lgnsw.org.au or on 02 9242 4028.