

Draft Submission on social impact assessment draft guidelines for State significant mining, petroleum production and extractive industry development

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Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general-purpose councils and associate members including special-purpose county councils and the NSW Aboriginal Land Council. LGNSW facilitates the development of an effective community based system of local government in the State.

Purpose

LGNSW welcomes the opportunity to comment on the Department of Planning and Environment's (DPE) Social Impact Assessment - Draft guidelines for State Significant mining, petroleum production and extractive industry development (the guidelines). A strengthened approach to social impact assessment (SIA) is supported and seen 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.

At the development assessment stage, communities have been subjected to pressure from proponents to support proposed developments. In addition, community consultation on State significant resource projects often has been poorly managed with the community disenfranchised in the process. There is little consistency between how social impacts are considered for different proposals, engendering distrust in the process. Lack of clarity has meant that councils do not have the information required to adequately advise the community about the details and progress of a particular development.

Poor SI processes have ultimately contributed to significant impacts on communities, including: loss of community cohesion due to the presence of non-resident workers; stress on local housing supply, social infrastructure and services; cultural heritage conflicts; marginalisation of vulnerable and minority groups; and worsening community safety and security. Councils can face enormous pressures to ensure that such impacts are properly considered in a development approval system that often seems skewed to granting approval.

Communities have had to be very proactive to gain the regulator's attention to address non-compliance. Conditions of consent are often vague and ill-defined and there have been inadequate mechanisms to enforce them. The views of the community have not always received an adequate hearing resulting in a perception that their views are not valued or respected.

An enhanced and more robust framework for SIA should ensure that there will be demonstrable social benefits to community wellbeing both during the life of the project and after it is completed. The social benefits (or costs) of any proposal should be given equal consideration to any economic and environmental considerations.

LGNSW position

LGNSW supports the development of clearer guidelines for SIA and the proposed requirement to address social impacts as part of the preliminary assessment process. Councils, as both representatives of their communities and regulators of the local planning environment, support rigorous pre-development assessment for State significant developments that have been delegated to the Planning Assessment Commission or the DPE for decision. Councils need to be confident that the significant local impacts of these developments on community wellbeing and amenity are fully recognised and addressed.

Comprehensive SIA guidelines for State significant mining, petroleum production and extractive industry development provide a baseline model for future SIA processes for other development types, including those assessed by councils, and should be developed with this in mind. A formal framework to identify, assess and respond to social impacts for all new development and modification applications is likely to be welcomed by our members as it will create clarity, consistency and transparency in how subjective issues are addressed.

However, LGNSW is concerned that SIAs must do more than justify a project. The SIA process is also an opportunity to identify strategies to avoid potential negative impacts (including refusal where necessary) and develop approaches within the development proposal to avoid them.

The comments in this submission follow on from the feedback which LGNSW provided in late 2016 on the consultation process for the overall Environmental Impact Assessment review process for State significant projects.

LGNSW provides the following comments aligned with the structure of the draft guidelines.

Part 1 – Introduction to social impact assessment

Defining social impacts

Local government considers that social justice principles should underpin the “Matter Categories” listed in Table 1 of the guidelines. The principles of access, equity, rights, participation are fundamental to community wellbeing. Table 1 of the guidelines should list these principles explicitly.

Recommendation 1: That Social Justice principles be included in the table of “Matter Categories” to consider when identifying social impacts.

Social impact assessment

The guidelines state that the analysis resulting from the SIA will be regarded as an input into the overall environmental impact assessment (EIA) process for the proposed development. There is no indication, however, as to what weight the SIA will carry within the EIA process and LGNSW recommends that SIA should be weighted equally with other elements within an EIA.

Recommendation 2: That the SIA is weighted equally with other assessments in the EIA process.

Part 2 – General requirements and overarching principles

Professional qualifications and skills

The guidelines emphasise that the person who prepares the social impact assessment should have qualifications and/or demonstrated experience in social impact assessment (page 8). Similarly, LGNSW suggests that the DPE, in its role supporting the Planning Assessment Commission as the consent authority, will need to have adequate staff with the appropriate qualifications to review the social impact assessments which will be produced under these new guidelines.

Recommendation 3: That that DPE employs staff with appropriate qualifications to assess the SIA.

Engagement of potentially affected people and groups

The guidelines suggest that the types and level of engagement required for SIA will depend upon the size of the proposed development and the locality “likely to be affected in social terms”. The breadth of this statement is unlikely to provide effective guidance as it suggests that proponents can predetermine the extent of the social impact of the proposed development. LGNSW recommends that proponents consult with the local council(s) and the local Aboriginal land council(s) at the outset of the SIA process to assist in identifying key stakeholders and those likely to be affected. The engagement methods outlined in Appendix B of the guidelines fail to acknowledge the existing community engagement processes of councils and the wealth of council knowledge and local contacts that could be sourced for engagement.

LGNSW supports the importance of engagement with Aboriginal people outlined in Appendix B and recommends that local Aboriginal land councils are engaged at the earliest point possible in the SIA process.

Recommendation 4: That proponents must consult with councils and local Aboriginal land councils from the earliest stages of the SIA process.

Identifying potentially affected people and groups

The list of potentially affected people and groups outlined on page 10 of the guidelines should not be presented as exhaustive. For example, it is important to include not only those people living in the affected areas, but also those who may work or study in the affected location.

Part 3 – Requirements for pre-lodgement and application stages

Preliminary Environmental Assessment (PEA) performance objectives

The guidelines include SIA performance objectives for the pre-lodgement phases (page 13). In addition to outlining steps taken to help people understand the information, the proponent should also outline ways that people could first access that information. Therefore, Performance objective 1 – ‘*Potentially affected people and groups are assisted to understand the proposed development*’ should include access requirements for diverse communities including culturally and linguistically diverse (CALD) communities, isolated/remote communities and people with a disability to ensure the greatest number of potentially affected people have a chance to have their say.

Consultation processes are not always effective as members of the public may find the technical nature of the application difficult to understand and they may not be well enough informed to address forums with large mining and resource operators. This may result in a situation with the DPE being required to explain technical issues. The DPE should consider facilitating the communication between the proponent and the community on State significant mining and resource proposals to provide extra transparency and independence.

Recommendation 5: That the DPE facilitate communications which are accessible to all community members.

In the case of applications for modifications, there needs to be clarity on what proponents will need to submit in a SIA and how they will be informed that they need to prepare one. The draft guidelines state that the guidelines will apply where the proposed modification is likely to result in “social impacts” that are new or different from those previously assessed but it is not clear who will determine this. Clear guidance for modifications should be included.

Recommendation 6: That the guidelines include clear advice for SIA processes in the case of modifications.

The second performance objective for Preliminary Environmental Assessments (PEAs) - *'Potentially affected people and groups, and the locality likely to be affected in social terms, are clearly identified and understood'* again raises the question about how to make a determination about the "locality likely to be affected in social terms" before consultation has taken place. As stated in Recommendation 4 above, LGNSW recommends that proponents consult councils and local Aboriginal land councils in the first instance to identify potentially affected people and groups. In addition this performance objective must identify any features of cultural and heritage significance for Aboriginal people in the area and any trends in health and wellbeing of the local community, such as prevalence of chronic disease.

The third performance objective of the PEA covers scoping of social impacts. Again the scoping process should include any information held by councils in the affected area. Social impacts need to be identified to a sufficient level of detail to enable the DPE to frame robust Secretary's Environmental Assessment Requirements (SEARs) which can deliver consent conditions that effectively address those social impacts or refuse development if those impacts will have an adverse impact on the community.

The PEA needs to flag social aspects that are: both direct and indirect, cumulative and which may have different impacts on different community members or at local, regional or state levels. Once these impacts are identified there needs to be a clearly defined procedure which alerts the relevant state or federal agency to actions that may be required to address these impacts.

Recommendation 7: That the DPE advises state agencies of service or infrastructure requirements identified from the SIA.

Preliminary significance assessment

When assessing the significance of social impacts, social justice should be included as an impact characteristic i.e. the principles of access, equity, rights, participation. The principles of social justice are a policy of LGNSW and our member councils. Furthermore, councils' Community Strategic Plans must also be based on the social justice principles. As stated in Recommendation 1, we encourage the SIA guidelines to align with these principles (refer to <https://www.olg.nsw.gov.au/councils/integrated-planning-and-reporting/framework/community-strategic-plan>).

SIAs should be made to address the Community Strategic Plans of the LGAs in which the resource project is proposed. There should be a clear link to the SIA from the community's aspirations identified in the relevant community strategic plan.

The significance of an impact may be determined not only by the characteristics of duration, extent, sensitivity and severity (page 15), but by who is impacted. This is partly touched upon by the characteristics of sensitivity and the resilience of potentially affected groups, but these characteristics do not adequately recognise that people in a community have a right to participate in decisions that affect them by identifying areas of concern to them. Again these characteristics create an opportunity for the proponent to make a judgement on the "significance" of the impact before the voice of people potentially affected by the development has been heard. The guidelines allow for the preliminary assessment to only consider issues where there is a "high" level of concern. LGNSW recommends that early engagement

considers the concerns of all members of the community comprehensively before dismissing them as ‘insignificant’.

Recommendation 8: That the PEA considers all community concerns in the initial assessment of significance.

PEA performance objective 4 – ‘*Mitigation options for potential significant negative social impacts are identified and discussed*’ requires more detail on who is responsible for mitigation and accountability if mitigation actions are not undertaken. Adaptive management plans, which have been common in consent conditions to date, have not been robust in ensuring proponents meet their EIA commitments.

LGNSW recommends that all applications for State significant mining, petroleum production or extractive industry development should submit a plan of management. The plan of management should have specific, measurable outcomes that can be known to all, monitored and publicly reported on. Compliance with the plan of management could be a condition of consent. Annual reviews of the plan of management could also form part of the approval. As social impacts may change over time, an annual review of the plan of management provides the opportunity to require SIAs to be updated.

Recommendation 9: That proponents are required to provide an annually reviewed plan of management and that annual reviews form part of any approval.

Reviewing SIA against guidelines

The guidelines (Appendix C) include 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. As stated in Recommendation 4, the guidelines should indicate to proponents that councils already have extensive knowledge of the stakeholders and social groups in the local community and this knowledge should form the basis of any community engagement by proponents. Councils should therefore be the first point of contact for proponents. This is in line with the guiding principles of social impact assessment which are identified on pages 11 and 12 of the guidelines, in particular the principle that social impact assessments should be ‘integrated’ to avoid duplication.

‘No Development’ option

The EIS Performance objective 1 – ‘*Appropriate qualitative and quantitative social baseline data is established that is relevant to the identified social impacts*’ in the guidelines refers to the proponent establishing baseline data of social conditions that exist in the locality ‘without’ the proposed development (page 17). LGNSW agrees that when proponents are determining the significance of impacts, they should be required to compare these impacts to a ‘no development option’ as there are likely to be social impacts (both positive and negative) both if the development does not proceed, and if it does. Consequently, there should also be requirements for proponents to consider the social impacts of the post-mining transition process including the remediation after the decommissioning of the mine, petroleum production or extractive industry development.

Recommendation 10: That proponents be required to include a ‘no development’ option in the SIA and address post-mining social impacts.

Scale of impacts

It is important that the EIS recognises that there can be positive and/or negative impacts of mining developments across surrounding areas. For example, mining equipment may need to

be transported through a number of LGAs. The guidelines should require the proponent to consider the extent of the scale of the potential social impacts, as well as mitigation measures. LGNSW appreciates that there is no 'one size fits all' model for determining an area to which an SIA needs to apply but there needs to be some further examination of how the area will be determined and who will determine it.

The proponent needs to take into account the scale of impacts when negotiating Voluntary Planning Agreements (VPAs) across and within LGAs, particularly any disparities between which areas receive the greatest social impacts from the development and those which receive the greatest financial benefits.

Recommendation 11: That the guidelines clearly outline how to determine scale of the area to which the SIA will apply and who determines it.

Voluntary Planning Agreements

In the guidelines, the Department of Planning and Environment states that:

Commitments in relation to local government services and local roads and infrastructure will typically be formalised through a voluntary planning agreement negotiated between the relevant local council(s) and the proponent. Other commitments could potentially form the basis of a consent condition. Sufficient detail should be provided to support the development of such conditions” (page 19).

LGNSW supports the use of Voluntary Planning Agreements (VPAs) and is pleased to see them recognised as a legitimate and valuable planning tool for mitigation in the SIA guidelines. Councils in rural and regional NSW subject to major developments such as mining and renewable energy projects have been negotiating VPAs for some years.

It is important to ensure that State significant developments contribute their share to meeting demands on local infrastructure. However, often councils, particularly in the rural/regional sector, find themselves negotiating VPAs with well-resourced mining or renewable energy companies, having had little experience in such negotiations previously. A further cause of frustration to councils and communities in the past, particularly in rural and regional areas, has been the lack of certainty surrounding the use of VPAs as a mechanism to obtain contributions towards local infrastructure from State significant developments.

LGNSW has observed that the arrangements for planning agreements that apply to State significant development need further clarification so that proponents' expectations are clear and councils are able to implement VPAs which effectively benefit local and regional communities that are affected by such developments.

Councils are often forgotten in the process of considering State significant mining proposals and development applications and it is difficult therefore for councils to predict or prepare for the impacts of these developments. Councils and Aboriginal land councils should be consulted in the early stages of development assessment to allow them to factor in time to negotiate a VPA.

LGNSW has made comments on the DPE's updated draft policy framework for Voluntary Planning Agreements in our January 2017 submission (refer to <http://www.lgnsw.org.au/files/imce-uploads/127/lgnsw-submission-to-nsw-dpe-on-improving-voluntary-planning-agreements-jan-2017.pdf>).

Part 4 – Assessment, determination and post-approval stages

Determination

The guidelines state that the consent authority will weigh up the overall “acceptability” of the potential economic, social and environmental impacts (page 24) and any cumulative effects. It is unclear how the cumulative effects of having a number of State significant developments in one area will be addressed. The method for allocating proportional responsibility to multiple proponents should be articulated in the guidelines so that proponents can understand how the SIAs will influence the determination process.

Recommendation 12: That the guidelines include a clear method of allocating responsibility to multiple proponents.

Conditions of consent and enforcement

LGNSW supports the proposal in the draft guidelines that the consent authority will consider whether clear and enforceable conditions can be imposed that mitigate impacts to an acceptable level. The information collected during the social impact assessment needs to be of sufficient detail that it can be incorporated into a consent condition to address the impact. Similarly, if the SIA identifies unacceptable impacts, then the proposal should be refused. The operator should also be required to demonstrate that they have processes in place to respond to unforeseen additional impacts, should they arise. LGNSW recommends that consent conditions be performance based. Proponents need to be legally liable for planning consent condition breaches and consent authorities need rigorous enforcement programs.

Recommendation 13: That the guidelines require proponents to demonstrate the process for addressing unforeseen impacts.

Councils are often the first point of call for the community in reporting non-compliance and therefore councils also need clear communication lines with the DPE to report on non-compliance with the 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. While the DPE is responsible for enforcing the conditions, the council and communities are often not aware of what action is being taken as this is not publicly disclosed. Annual reviews prepared by the operators, including the review of performance related to social impacts, should be fully available in the public domain.

LGNSW recognises that some mining developments can be well managed and have minimum negative impacts on the community, particularly if the ongoing conditions post-development are enforced and it is clear who is responsible for monitoring compliance.

Recommendation 14: That the guidelines require public reporting on compliance with the conditions of consent.

Conclusion

LGNSW welcomes the opportunity to comment on the DPE's Social Impact Assessment - Draft guidelines for State Significant mining, petroleum production and extractive industry development (the guidelines). The proposed approach to social impact assessment (SIA) is supported and seen as an opportunity for local communities to be consulted in a more meaningful, collaborative way on State significant development.

Early engagement with councils, Aboriginal land councils and local communities, including before a PEA is tabled, is encouraged. Investment in developing and refining PEAs at the outset will mean that proponents address social impacts comprehensively and respectfully.

LGNSW supports the approach in the guidelines which requires proponents to demonstrate how the community is engaged in the assessment process.

LGNSW recommends:

- **Recommendation 1:** That Social Justice principles be included in the table of "Matter Categories" to consider when identifying social impacts.
- **Recommendation 2:** That the SIA is weighted equally with other assessments in the EIA process.
- **Recommendation 3:** That that DPE employs staff with appropriate qualifications to assess the SIA.
- **Recommendation 4:** That proponents must consult with councils and local Aboriginal land councils from the earliest stages of the SIA process.
- **Recommendation 5:** That the DPE facilitate communications which are accessible to all community members.
- **Recommendation 6:** That the guidelines include clear advice for SIA processes in the case of modifications.
- **Recommendation 7:** That the DPE advises state agencies of service or infrastructure requirements identified from the SIA
- **Recommendation 8:** That the PEA considers all community concerns in the initial assessment of significance.
- **Recommendation 9:** That proponents are required to provide an annually reviewed plan of management and that annual reviews form part of any approval.
- **Recommendation 10:** That proponents be required to include a 'no development' option in the SIA and address post-mining social impacts.
- **Recommendation 11:** That the guidelines clearly outline how to determine scale of the area to which the SIA will apply and who determines it.
- **Recommendation 12:** That the guidelines include a clear method of allocating responsibility to multiple proponents

- **Recommendation 13:** That the guidelines require proponents to demonstrate the process for addressing unforeseen impacts.
- **Recommendation 14:** That the guidelines require public reporting on compliance with the conditions of consent.

The guidelines should provide for greater transparency and improved engagement on State significant developments. The DPE has an important role in ensuring that the community has access to information on how a proponent is managing social impacts and actioning mitigation measures in a timely and effective manner.

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