



environmental defender's office new south wales

MCMPR Draft Principles for Engagement with Communities and Stakeholders

16th March 2005

The EDO Mission Statement

To empower the community to protect the environment through law, recognising:

- ◆ *the importance of public participation in environmental decision making in achieving environmental protection*
- ◆ *the importance of fostering close links with the community*
- ◆ *that the EDO has an obligation to provide representation in important matters in response to community needs as well as areas the EDO considers to be important for law reform*
- ◆ *the importance of indigenous involvement in protection of the environment.*

Contact Us

Environmental Defender's Office Ltd

Level 9, 89 York St
SYDNEY NSW 2000

freecall 1800 626 239

tel (02) 9262 6989

fax (02) 9262 6998

email: edonsw@edo.org.au

website: www.edo.org.au

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ABN 72 002 880 864

For inquiries on this matter contact rachel.walmsley@nsw.edo.org.au

Mr Bruce Reddan
Senior Environmental Officer
Environmental Sustainability Branch
Department of Primary Industries – Mineral Resources
PO Box 344
Hunter Region Mail Centre NSW 2310

16th March 2005

Dear Mr Reddan,

Re: Draft Principles for Engagement with Communities and Stakeholders

The Environmental Defender's Office of NSW (EDO) welcomes the move towards developing principles for engagement with communities and stakeholders. Genuine engagement with stakeholders is a fundamental basis for promoting and achieving sustainable development. We support the inclusion of "Valuing Community and Contributing to Sustainable Development" as a key priorities of the Ministerial Council for Mineral and Petroleum Resources (MCMPR) Vision for 2025, and the recognition of the current lack of effective engagement between government, the mining and petroleum industry, stakeholders, and the community.

From a NSW perspective, the EDO has attempted to assist in bridging the gap in this area in a number of ways. Recently we held a successfully workshop for mine affected communities in the Hunter Valley. Over 60 attendees attested to the fact that there is a thirst for knowledge and a great interest amongst members of the community regarding mining developments. The EDO has also attended a forum in Maitland with DPI to discuss engagement with environmental groups and communities, and attended a stakeholder workshop on the "Operational Framework for Sustainable Development" in March 2004. This also revealed a knowledge gap regarding awareness of community concerns within the department and a recognition that current community engagement levels are deficient. Finally the EDO works closely with the Environmental Law Centre (ELC) in Port Moresby, Papua New Guinea. ELC works with mine affected communities who face enormous obstacles in terms of resources and capacity to engage in consultation processes about mining projects which seriously affect their communities.

In NSW, many environmental statutes contain comprehensive public participation provisions. Increasingly, however, consideration needs to be given to using such public participation effectively, given limited community capacity. As the Department of Environment and Conservation (DEC) has recently recognised in the context of licence reviews, there is a need to actively ensure proper public participation in environmental decision-making beyond simply meeting the formal requirements of the legislation. Such an approach recognises the complexities of public participation in an increasingly technical, difficult and time-consuming operating environment. Recent practice has demonstrated that mechanisms for public participation need to be better managed to ensure the best possible environmental outcomes. Similar challenges exist for Departments dealing with primary industries and minerals. The EDO welcomes the recognition of these challenges by Government departments, such

as DEC at a state level, and MCMPR at a federal level, and supports move towards improvement.

From an international perspective, much work has been done on developing public participation principles. For example, the European *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental matters* (Aarhus Convention) 1998 provides a model for developing principles. The preamble to the Convention states:

“Considering that, to be able to assert this right and observe this duty, citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters, and acknowledging in this regard that citizens may need assistance in order to exercise their rights.”

As noted by Kofi Annan, Secretary General of the United Nations,

“although regional in scope, the significance of the Aarhus Convention is global. It is by far the most impressive elaboration of principle 10 of the Rio Declaration, which stresses the need for citizen's participation in environmental issues and for access to information on the environment held by public authorities. As such it is the most ambitious venture in the area of environmental democracy so far undertaken under the auspices of the United Nations.”

With respect to the proposed “Draft Principles for Engagement with Communities and Stakeholders” (“Draft Principles”), it is difficult to make specific comment due to the lack of detail provided. The five principles (communication, transparency, collaboration, inclusiveness and integrity) are excellent motherhood concepts, however there is a lack of detail regarding how the aspirations are to be effectively achieved on the ground. Without robust requirements there is a risk that consultation processes will be perceived simply as public relations exercises.

The EDO provides the following comments to questions posed in the circulated document.

What do you consider to be the main issues for community and stakeholder engagement?

First, one of the key issues for effective engagement is establishing a process for **early** engagement. Communities often feel excluded and impotent when they only have access to information when a proposal is a long way down the track towards approval.

Second, a fundamental aspect of genuine public participation is the timely provision of comprehensive information. Participation can be seriously undermined when the community and stakeholders are prevented from accessing all reports, for example reports on health and environmental impacts.

Third, timeframes for consultation can be critical. Often environment and community groups have scarce resources and may not be able to respond to a public exhibition deadline in time, and may not be able to afford to have their own assessments or reports done where they disagree with proponent's reports. The EDO frequently receives complaints about short timeframes within which the community has to

respond to proposals, exhibition periods conducted over Christmas holidays, and inadequate notification of relevant communities and stakeholders.

How effectively are these issues addressed in the draft principles? How comprehensive are the draft principles? What if any, do you consider the major gaps or omissions to be?

As noted, there is a lack of detail provided in the circulated Draft Principles. There is no mention of **early engagement** mechanisms or processes.

The “**Communication**” principle does not differentiate between what different stakeholders ‘want to know’. For example, a local community group may be most interested in learning about and discussing environmental impacts to a particular area, whereas a shareholder may be most interested in the financial implications of a proposal, and a company employee may be concerned about employment opportunities and occupational health and safety issues. The principle also needs to outline appropriate methods of communication, for instance what information can go on a website (both technical and in plain language), where face to face meetings are required, where translators may be required (for example, for indigenous communities), and that written information must be comprehensible to the community. The principle should acknowledge the need for culturally appropriate communication methods, for example with indigenous communities.

The “**Transparency**” principle should explore the use of website technology to provide information. Where access to the internet is limited, it is essential that face-to-face meetings with the local community take place. With regard to reporting requirements, proponents should be required to regularly publish reports according to triple-bottom-line reporting principles (that is reporting that includes assessment of social and environmental outcomes as well as financial). We understand that the Mining Sector has been involved in developing a sector supplement under the Global Reporting Initiative (GRI), a Collaborating Centre of the United Nations Environment Programme. The pilot supplement is aimed at “identifying and targeting economic, environmental, and social performance issues and indicators specific to the mining, minerals, and metals industry, the Supplement can help companies to address these issues in a common fashion, producing more relevant, meaningful, and comparable reports.” (see <http://globalreporting.org/guidelines/sectors/mining.asp>) Not only should there be transparency of broad reporting processes, but there should also be detailed steps to each consultation process for individual developments. For example, stakeholders need to be informed of stages of consultation, when and where meetings will be held, be provided with minutes from meetings (this is particularly important where an interested stakeholder may be unable to attend a meeting), results of negotiations and decisions, and any changes to proposed developments or licences.

The “**Collaboration**” principle must recognise that different stakeholders have differing capacities and resources available to them. As noted, it is often the smaller community and indigenous groups who may struggle to engage effectively. Development proponents should allocate resources so that these groups can be effectively engaged.

The “**Inclusiveness**” principle covers similar issues to the above principle in terms of capacity to engage. Cultural issues will also be of great significance, particularly where indigenous communities are involved. For example, time frames for negotiations may need to be extended to allow appropriate discussion between groups or within a group. Translators and legal, scientific or technical advisors may be required where it is identified that a stakeholder does not have the “ability, experience and/or access to support to deal with the process.”

The “**Integrity**” principle must be underpinned by requirements for early engagement and transparency. Community confidence in the process may be undermined if access to information is limited due to commercial in confidence clauses, and consultation periods are inadequate. Confidence in the integrity of the engagement process can only be developed over time, and will be aided with examples of developments that achieved mutually beneficial outcomes through community and stakeholder engagement.

How well do the five principle groupings reflect priorities for ongoing engagement?

While the Draft Principles themselves may be sound, effective engagement may still be hampered by the capacity of groups to engage on an ongoing basis.

The document does not clearly distinguish or recognise practical differences between stakeholders such as shareholders in a company, employees, and stakeholders such as remote small community members. There could be a vast disparity in resources, access to information, and capacity for continued engagement. Resources would need to be provided for certain groups at an early engagement stage right through to a post-approval monitoring and reporting stage. This may occur over a significant period of time for larger projects, and therefore smaller stakeholders will need a commitment to continued support.

What do you consider to be the main obstacles or difficulties in establishing and maintaining effective ongoing engagement?

The key obstacles to establishing and maintaining effective ongoing engagement include the following:

- **Commercial in confidence clauses.** These clauses are often used to prevent the community from gaining access to information. While the EDO appreciates that there is a need for certain commercial information to remain confidential, where there are overriding issues of public interest involved (such as the impact on the local health of the community and environment) it is essential that a transparent process be established to ensure the community have all the necessary information.
- **Capacity to engage.** The principles for engagement must recognise the difference in capacity to engage between stakeholders. For example, shareholders and employees may have better resources and access to information than remote indigenous communities. Where there is a clear resource deficit and inability to engage (for example, limited access to information, technology, travel costs to attend meetings, translation of information, obtaining legal advice), the proponent of the development must ensure resources are directed to relevant stakeholders. It

is also necessary to broaden the public's access to scientific and technical assistance to complement legal assistance.

- **Time frames for consultation.** The principles must ensure that appropriate time frames are created for consultation. These should take into account remoteness, holiday periods, coordination of stakeholder groups involved (for instance indigenous stakeholders). For example, currently under Schedule 1 of the *Mining Act 1992* (NSW), which provides for “Public consultation with respect to the granting of assessment leases and mining leases,” if a person does not object to proposed mining on their land within 28 days, they lose their rights.
- **Notification.** There must be an onus on the proponent and relevant department to go through a thorough process of identifying all stakeholders and notifying them at an early stage of the development proposal. On-site notices can be missed (especially in remote areas) and newspaper advertisements may need to be repeated.
- **Early engagement.** Community consultation will be tokenistic if it occurs too late in the process to be taken into account. Community consultation at a late stage must not be simply used to ‘rubber stamp’ a consultation process. Early engagement has the benefit of identifying key issues important to stakeholders at an early stage so that they may be addressed early. This can prevent confrontation at later stages of a development. Early engagement is recognised in Article 6(4) Aarhus Convention.
- **Who is engaged.** It is important that public consultation can include any person with an interest in the issue. This is best done by ensuring information is widely available, for example on a website. The definitions of who is a stakeholder must not be geographically limited. For example, a Sydney-based environment group may be able to provide support and resources to assist a remote local, host or affected community engage in a consultation process.
- **International best practice.** Australia, due to its richness in natural resources and its fragile ecological assets, should strive towards implementing community and stakeholder engagement principles according to international best practice. Provisions of the Aarhus Convention provide such a model. The EDO recommends that the MCMPR considers implementing Aarhus Convention principles. For further information on the Aarhus Convention, see <http://www.unece.org/env/pp/>.

The EDO would be interested in reviewing the next version of proposed principles and in receiving updates on the progress of the working group.

If you require further information, please contact Rachel Walmsley on 02 9262 6989 or rachel.walmsley@edo.org.au.

Yours sincerely,
Environmental Defender's Office

Jeff Smith
Director