Have Your Say: Williamtown Quarry Project

Tomago
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Presentation overview

- Introduction
- Gathering Information
- Commenting on SSD Applications
- Tips on Being Effective
- If Approval is Granted
Information, not advice

● The information contained in this workshop is a guide only and is no substitute for legal advice relating to your particular issue.

● If you need legal advice about your particular issue, please call our Environmental Law Line on 1800 626 239.
Advantages of public participation

1. Real environmental outcomes can be achieved

2. The decision benefits from local knowledge

3. Community becomes a key stakeholder (not just industry and government)

4. Public has greater buy-in and ownership of the law or policy objectives

5. Improves transparency and accountability
Barriers to public participation

1. Finding out about opportunities to comment

2. Finding the time to engage

3. Having relevant understanding of the issues or processes involved

Image: Play Southend
Have Your Say

A community guide to influencing environmental outcomes

View current opportunities to have your say now

Law and policy has a critical role to play in the sustainable management of the environment. Successful environmental policy depends on good regulation, which in turn requires community engagement. The importance of community engagement and public participation is recognised in many of our environmental laws. This resource aims to facilitate community engagement in environmental decision-making processes, and by doing so, help to achieve the objectives of environmental laws.
There are opportunities for the public to contribute opinions and knowledge to:

1. Shape environmental laws
2. Shape plans and policies
3. Respond to specific applications
4. Monitor and enforce environmental regulations
Public participation requirements

- Can be mandatory
  - E.g. the requirements for consulting on applications for SSD

- Can be discretionary
  - E.g. the requirements for making SEPPs
Common methods of having your say

- Writing submissions
- Appearing before a panel or inquiry
- Attending workshops and information sessions

Image: City of Calgaly
GATHERING
INFORMATION
Importance of gathering information

Information was key in our issue. We needed to talk to the right people and ask the right questions. Policy and legislation had to be understood, or as best we could. Information from Council, correspondence and file notes in regards to the dealings with the sand mining company were obtained under access to information laws. The AustLII library was helpful in reviewing how the Land and Environment Court had determined other matters involving a sand mining operation. The internet was a valuable resource. I found conference notes posted by some of the government employees which gave insight into what was important to them. Information such as survey maps were obtained from the Historical Society. Basically we had enough information to support our position and have informed conversations with the various officers.

- Sue Chivers, Terara resident
Law and legal research

● Legislation and regulations

● Case Law

● Legal research
  – Find Legal Answers
Information from Parliament

- **Hansard**
  - MPs first speech
  - Second reading speeches for legislation

- **Parliamentary Committees and Inquiries**
  - Various topics – Environment, Agriculture and Industry, Rural and Regional Affairs and Transport
  - Great source of information, and opportunity to Have Your Say

- **Questions in Parliament**
  - Questions without notice
  - Questions on notice
Information from Government

- Government websites
- Informal requests - Freedom of Information Officer
- Formal requests (fee)
  - FOI laws (Federal level)
  - GIPA laws (State/local level)
- Assistance
  - Office of the Australian Information Commissioner
  - Information and Privacy Commission
COMMENTING ON SSD APPLICATIONS
What makes this project SSD?

- This project is SSD because it meets the threshold test for extractive industries set out in the State and Regional Development SEPP.

### Extractive industries

1. Development for the purpose of extractive industry that:
   - (a) extracts more than 500,000 tonnes of extractive materials per year, or
   - (b) extracts from a total resource (the subject of the development application) of more than 5 million tonnes, or
   - (c) extracts from an environmentally sensitive area of State significance.

2. Subclause (1) (c) does not apply to extraction:
   - (a) by a public authority in maintenance dredging of a tidal waterway, or
   - (b) in maintenance dredging of oyster lease areas, or adjacent areas, in Wallis Lake.

3. Development for the purpose of extractive industry related works (including processing plants, water management systems, or facilities for storage, loading or transporting any construction material or waste material) that:
   - (a) is ancillary to or an extension of another State significant development project, or
   - (b) has a capital investment value of more than $30 million.

4. This clause does not apply to development for the purpose of extractive industry or extractive industry related works that is part of a single proposed development if any other part of the development is State significant infrastructure.
Approval process

Development Consent

Department of Planning and Environment

SSD approval process
Secretary of Planning issues Environmental Assessment Requirements (also known as EARs)

Proponent consults with local council, government agencies and the community in preparing an EIS

Proponent lodges the Application and EIS

Department exhibits the Application and EIS for minimum of 30 days
Process for granting development consent – SSD cont.

Submissions

Proponent receives submissions (may lodge a response)

Planning Department finalises assessment and consults local council and agencies on draft conditions of consent (if any)

Minister (or PAC) makes the decision
Information about the project

Cabbage Tree Road Sand Quarry
Williamtown Quarry Project

The project will include the extraction and processing of up to approximately 6.6 million tonnes of high quality sand reserves within the project area. Extraction rates to exceed 500,000 tonnes per annum during the life of the operations. Construction of site access roads, office/management buildings, wash plant, weighbridge, staff parking and maintenance shed.

Attachments & Resources
- Request for DGRs (2)
  - 3251_DGR1_20130909a_r-up.pdf (505.7 MB)
  - 3251_R01_Preliminary EA_V2.pdf (2.107 MB)
- Director-General's Requirements (1)
  - Williamtown Quarry_DGRs.pdf (41.37 KB)

Key dates and other information
- Job Status: Director-General's Requirements for the environmental assessment (to be prepared by the proponent) have been issued for the project
- Assessment Type: SSD
- Project Type: Mining, Petroleum & Extraction > Extractive Industries
- Application Number: SSD 13_6125
- DGRs Issued: 16/10/2013

Location details
- Street: 396 Cabbage Tree Road
- City: Williamtown
- State: NSW
- Post Code: 2318
- Country: Australia
- Local Government: Port Stephens Council
The EIS for this project must address:

- The likely impact of the development on the environment, including a description of aspects of the environment that are likely to be *significantly affected*
- Land and water resources
- Biodiversity
- Heritage
- Traffic and transport
- Air quality and greenhouse gases
- Noise and visual impacts
- Waste and hazards
- Social and economic impacts
Environmental Assessment Requirements (EARs)

In addition, the EIS must include:

- a statement of the objectives of the development
- an analysis of any feasible alternatives to the carrying out of the development, including the consequences of not carrying it out,
- a full description of the development,
- the likely impact on the environment of the development,
- a full description of the measures proposed to mitigate any adverse effects of the development,
- a list of any approvals that must be obtained under any other Act or law,
- the reasons justifying the carrying out of the development in the manner proposed, having regard to biophysical, economic and social considerations, including the principles of ecologically sustainable development.
Commenting on development applications

- You have the right to lodge a submission during the exhibition period.
- You can lodge a submission direct from the Department of Planning and Environment major projects website, or post it to the Department’s office.
- You are commenting on the development application and associated documents, including an environmental impact statement (EIS).
- The minimum exhibition period is 30 days, but sometimes a longer period is allowed – you can ask the Department of Planning and Environment to consider extending the exhibition period.
Gathering evidence

- Support your claims with evidence
  - photographs and videos
  - collecting physical evidence such as water samples
  - note-taking
  - collecting documentation relevant to the issue
  - Reports from experts e.g. ecologists, hydrologists
  - legal research

- Don’t trespass!
Building support

- Do other government departments or NGOs have an interest in this development?
  - Pollution – Ministry of Health and EPA
  - Water use – Office of Water
  - Catchment impacts - Local Land Services
  - Local Council
  - LALC
  - Proximity to school – Department of Education & Communities
  - OEH – Threatened species
Seeking funding from the proponent

- Ask the proponent for money to engage independent experts to assist you to respond to the EIS. This has happened a few times in NSW

- Maules Creek Community Council got $10,000 from Boggabri Coal to respond to the EIS for a proposed expansion of mining operations in the Leard Forest

- Bulga Milbrodale Progress Association got $40,000 from Rio Tinto to respond to the EIS for a proposed expansion of mining operations in the Hunter Valley
Matters to be considered by decision-maker

- Any environmental planning instrument (such as a LEP)
- The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality
- The suitability of the site for the development
- Public submissions
- The public interest
TIPS ON BEING EFFECTIVE
Writing an effective submission

● Introduce yourself or your group. What is your background and experience?
● Explain why are you interested in and how you will be affected by the development.
● Personalise the submission – it’s OK to sign pro forma submissions, but ensure you personalise it a bit.
● Talk about how the proposal will affect
  – you;
  – the environment;
  – the local economy;
  – social factors.
Writing an effective submission

Read proposal and supporting documents

Identify key issues/concerns

Clearly set out your concerns and support with facts/evidence

Tell the decision maker what you want them to do

Submit before deadline or request extension
Insider tips

Keep submissions on-topic. Give insights into analysis or experiences from elsewhere that make your case. Point to innovative ideas. Make your submission short and punchy. Get the reader engaged early. Be objective and outcome focussed. Have a civilised and interesting conversation. Include a summary at the top of your submission. Use headings within your submission to structure your argument. Use clear language. One idea per paragraph. Put your idea in the first sentence, then explain it in the rest of the paragraph. Think about your strategy. What will motivate people?

- Tom Grosskopf, Director Metropolitan Branch, Regional Operations, Office of Environment and Heritage
Insider tips

It is helpful to council if you can put forward a realistic alternative. For example, say that you are opposed to a development of this scale, and that you would like to see a smaller alternative. Give councillors a way forward that is workable and acceptable.

- Simon Clough, Deputy Mayor, Lismore City Council
Insider tips

Offer constructive criticism. Keep to the topic and be concise in your arguments. Council officers sometimes have to sift through hundreds of letters giving feedback. Short, relevant, and timely points of view are appreciated and have a better chance of being prioritised.

Earn your right to criticise. This means your arguments need to be validated by good quality research and understanding of the subject area which you seek to influence. Make reference to key documents to support your argument rather than relying on personal opinion or hearsay.

- Dr Jenny Scott, Sustainability Program Leader, Ku-ring-gai Council
Follow up on your submission

Arrange a meeting with the Department

There is no substitute for a face-to-face meeting, even if you have already made a written submission. Try to meet with the Department to discuss your submission. Have they read it? What do they think? Get some feedback about the effectiveness of your submission. This meeting is a second opportunity for you to explain your position, and respond to what the Department thinks about it.

- Warwick Giblin, Environmental & Social Adviser, OzEnvironmental Pty. Ltd
Pro-forma submissions

Writing submissions is not a popularity contest. Decision-makers will take a good idea from one person over a bad idea from many people every day. Pro-forma submissions can be effective at the start of a campaign, for example if you are trying to change the views of politicians so that they understand the depth of feeling across a community that an idea is not supported.

However, you need to follow this up by writing your own submission to engage people and tell them what idea would be better. So, pro-forma then written submission.

- Tom Grosskopf, Director Metropolitan Branch, Regional Operations, Office of Environment and Heritage
Appearing before a panel/inquiry

- Keep in mind the terms of reference
- You may need to register your intention to address the panel beforehand
- Stick to any time limits
- Speak clearly and try not to speak too fast
- Practise beforehand
- Dress formally and be on time

Image: SIAcademy
Insider tips

Planning Assessment Commission Meetings & Hearings

Public meetings
The purpose of a public meeting is to allow the PAC to hear from people interested in the proposed development in the context of the Director-General’s Environmental Assessment Report and Recommendations before a decision is made on the application. Therefore people should look at these before attending a public meeting. Do these documents actually address your concerns? If not, where are the shortfalls and inadequacies? The PAC also wants people to look at the approval conditions proposed by the Department. Have your concerns been adequately covered and reflected in those conditions?
Insider tips

**Public hearings**

Public hearings generally occur as part of a review of a major development proposal. The purpose of a public hearing is to allow interested parties, particularly those who are potentially affected by the development, with an opportunity to present their views to the PAC. The scope of what can be discussed depends on the terms of reference for the review and the public hearing. The review and public hearings are part of the assessment process. The PAC review report and recommendation will be referred back to the Department for it to finalise its assessment of the proposal.

- Paula Poon, Director, Commission Secretariat, Planning Assessment Commission
Attending workshops and information sessions

- There may not be a formal opportunity to give feedback but presenters often get a feel for public opinion at these sessions.

- Take this opportunity to learn as much as you can about the proposal by asking questions and taking notes.

- There is often a formal opportunity to have a say later on.
IF APPROVAL IS GRANTED
If development consent is granted...

- You may be able to challenge the approval
  - Merit appeal
  - Judicial review
- You can monitor the development to ensure compliance with the consent (conditions and any relevant licences)
- Report breaches to the consent authority e.g. the Department of Planning and Environment
- You can take third party enforcement action
Merit appeal: Warkworth coal mine expansion

Image: Warkworth coal mine – John Krey
Merit appeal – Gerroa Sand Mine
Judicial Review: The Gloucester Gas Project

Image: Kate Ausburn
Reporting breaches of development consent, mining lease or pollution licence

- If you are aware of breaches contact the relevant department
  - Development consent: Planning Department
  - Pollution Licence: EPA
  - Water Access Licence: Office of Water
- Provide evidence of breach – but don’t trespass
Civil enforcement: Maules Creek coal mine

Image: Phillip Spark
Civil enforcement: Wallerawang power station
Summary

- Keep on top of opportunities to have a say by signing up to receive the EDO’s weekly e-bulletin
- Use the Have Your Say tool on our website to navigate to opportunities to have your say and find information and tips on how to be effective
Free initial legal advice, website, fact sheets and updates

- Free Environmental Law Line Monday-Friday
  - 1800 626 239
- Fact sheets and other resources
- Free weekly eBulletin – updates on environmental law, policy and decisions
Support our work

● Your support for EDO NSW will help us to:
  – Provide legal advice and representation
  – Promote changes to environmental laws
  – Provide community legal education

● Donations are tax deductible

● http://www.edonsw.org.au/donate