

Major Development Assessment in the Hunter – 1990 to 2010

HEI Seminar

23 June 2010



Introduction

- Major development assessment in NSW is largely governed by Environmental Planning and Assessment Act 1979
- 30 year old legislation -
 - Has withstood the test of time
 - Fundamental principles still appropriate
 - Has been modified and adapted to meet emerging issues
- EIA practice has evolved considerably over that time – many improvements, some stagnation
- Hunter Region has a wealth of major development opportunities – a ‘hot spot’ for testing EIA practice and legislation at State and Federal levels

Presentation Overview

- Streamlining the Process?
- Current Part 3A Process
- Up Front Feasibility Studies
- Robust Base-line Studies
- Stakeholder consultation
- Translating Approval to Performance

Streamlining the Process??

- Last two decades have seen many legislation changes by State government to improve and 'streamline the process' and to seek to bring industry into line with modern expectations
- Pre 1990 – Major developments defined under Section 101 of the EP&A Act – Ministerial Consent
 - Development consent conditions – concise, addressed duration of consent, development contributions, site controls, road conditions, and the later consents of this era referred to noise, blast limits, and perhaps landscaping

Streamlining the Process?? (cont)

- 1993 – SEPP 34 – Major Employment Generating Industrial Development – employment of more than 100 people or >\$20 million – greater diversity and number of major projects dealt with by Ministerial Consent
- 1993 - SEPP 37 – targeted extractive industries, provided a moratorium to encourage new applications from extractive industries that were operating without development consent or with out-dated consent

Streamlining the Process?? (cont)

- By mid 1995 – Major development consents had:
 - increasing number of conditions
 - more clarity around interaction with affected properties (criteria, identification of off-site impacts, monitoring, acquisition and dispute resolution processes)
 - more detail on site controls, requirement for CCC, complaints management
 - maybe 3 to 4 management plans to deal with key issues
 - introduction of independent auditing every 5 years

Streamlining the Process?? (cont)

- Integrated Development EP&A (Amendment) Act 1997 – aimed to reduce the magnitude of overlap and potential conflict with post development requirements.
- The requirement for the consent authority to incorporate GTAs from agencies significantly increased the complexity of consents
 - Further evolution of performance monitoring and management and more amenity based conditions
 - Focus on broader environmental outcomes in line with reform of other environmental legislation at that time, e.g. Protection of the Environment Operations Act 1997
 - Director-General's ability to require activities to cease if serious environmental concerns, independent audit every 3 years

Part 3A Overview

- Part 3A (Major Projects) – August 2005 – covers major projects under Part 4 and Part 5 –
 - Intended to be a more streamlined risk based / outcomes focussed assessment process
 - EA adequacy review prior to exhibition
 - Statement of Commitments
 - Intended to provide for greater public participation – most proponent documents placed on the DoP website
 - Further streamlined post approval requirements

Part 3A Overview (cont)

Less reliance on management plans / opportunity to streamline old consents

E.g. Xstrata's Liddell Colliery – EA for Continued Operations – 75W Modification process.

Full EA / Statement of Commitments – ongoing management plans reduced from 17 to 5.



Part 3A – Success in Streamlining?

- Statement of Commitments process
 - more certain outcomes – consultants/proponents need to continue to drive to this certainty – ‘xxx **WILL...**’, not ‘xxx may consider xyz after thinking about abc and consulting with all the stakeholders they can lay their hands on, so we can continue to talk about committing rather than do anything for another few years!!’
 - provides proponents with opportunity to steer performance management processes / reduces agency effort.

Part 3A – Success in Streamlining? (cont)

- Reduced timeframes post exhibition due to focus on up front adequacy review
- Early in process adequacy review possible in 21 days or less. Current agency workload is such that can be extended by weeks
- Current DoP target 85% determined within 3 months of public exhibition – reality is 3-9 months based on last 12 months performance
- Total time from start to finish of Major Project EA – still much the same, but more focussed outcomes

Ongoing State Process Refinements

- E.g. State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007
 - Industry specific
 - Clarifies permissibility
 - Provides clarity on exemptions for minor activities and lower level of assessment for minor developments / modifications
 - Provides for prohibition

Prohibited Development

- Specified in Schedule 1
 - **Open cut mining in Lake Macquarie LGA** was the first prohibited mining development under the SEPP
 - Prohibition occurred during period of intense community/political lobbying re proposed Awaba open cut mine
 - Highlights:
 - Influence of community lobby groups, local government pressure and the political cycle
 - This and the recent Bickham decision demonstrate State government willingness to ‘retrofit’ on a single application basis, what may be considered regional planning outcomes




Commonwealth Legislation

- Environmental legislation relevant to major development includes Commonwealth Environment Protection and Biodiversity Conservation Act 1999
 - currently applies to limited circumstances - identified Matters of National Significance
 - Listed threatened species and ecological communities
 - Migratory species protected under international agreements
 - Ramsar wetlands of international importance
 - The Commonwealth marine environment
 - World Heritage properties
 - National Heritage places
 - Great Barrier Reef Marine Park, and
 - Nuclear actions

Commonwealth Legislation (cont)

- Increasing target by lobby groups/legal action to raise profile of opposition to National level
- Increasing recent trend of DEWHA to more often declare 'controlled action', with less tangible trigger on potential significant impact on Matters of National Significance
 - e.g. intensive focus on the Regent Honeyeater and Swift Parrot despite a real lack of records or important habitat in the central Hunter Valley
- Disconnect between State and Federal outcomes, e.g. ecology offsets



EA and Management Improvements and Challenges

Up Front Effort / Long Term Gain

- Much better appreciation by all stakeholders of need for early and robust feasibility analyses
- Gone are the days that major projects are presented to EA consultant as a 'given' –
 - Robust base-line studies, integrated constraints and opportunities analyses with project planning - essential to meet government and community expectations
- Increasing use of approval and community/environment due diligence prior to acquisitions and in site selection

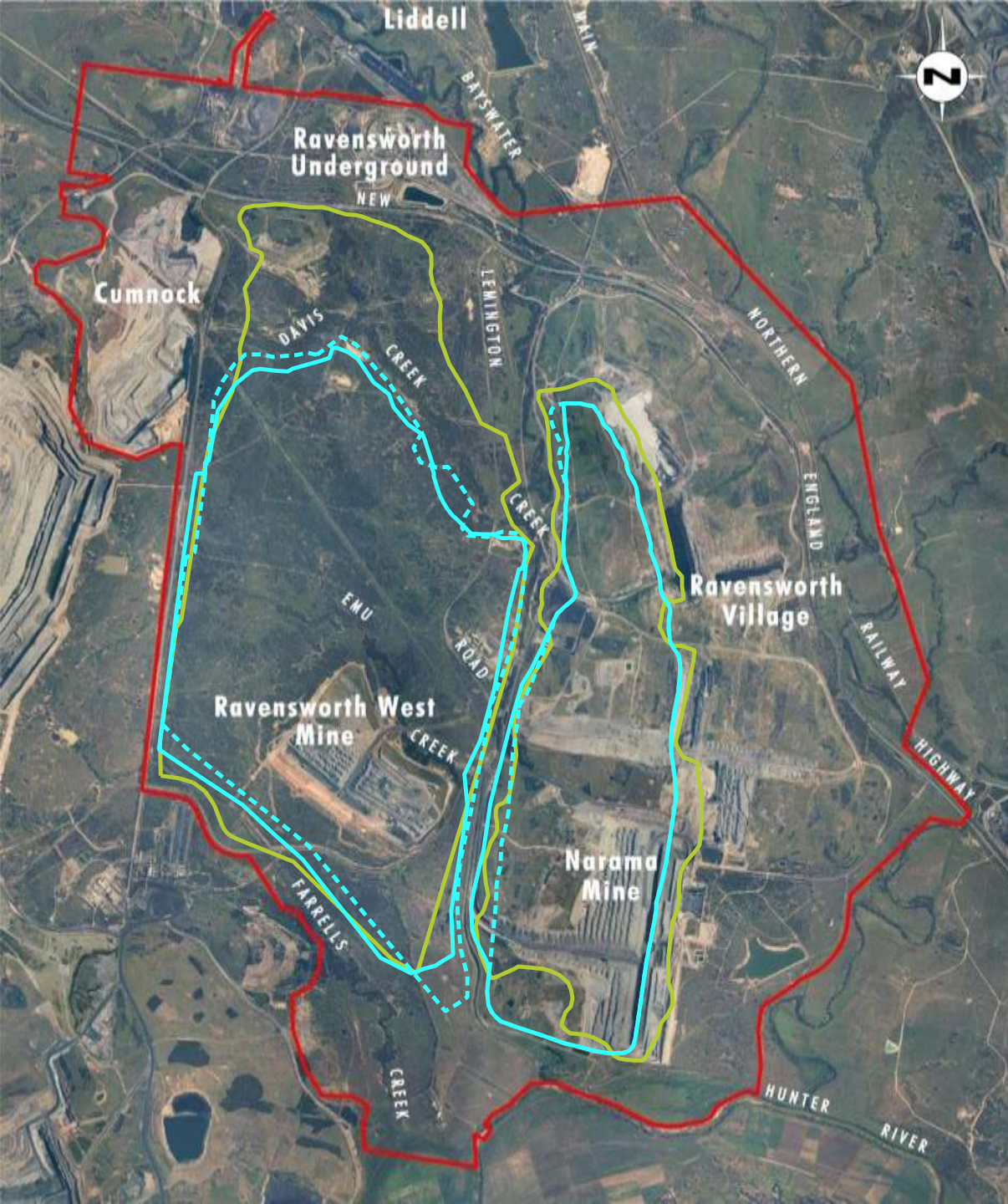
Up Front Effort / Long Term Gain (cont)

- Up front studies in project planning can often change the shape, scale and in some cases the viability of the project
- Follow Avoid-Minimise-Mitigate-Offset path
- Many examples on the record





Up Front Effort / Long Term Gain (cont)

- A recent experience includes the Ravensworth Project:
 - significant modification to overburden dump area
 - reduced disturbance area by 490 hectares
 - Significant additional haulage distance and overburden dumping cost
 - protected State and Commonwealth listed EECs and important habitat
 - further modification to avoid culturally significant site and impact on riparian vegetation

Mine Plan Revisions



Legend

-  Project Area
-  Proposed Mining and Overburden Emplacement Area Option 1 (Preferred)
-  Proposed Mining and Overburden Emplacement Area Option 2 (Old)
-  Proposed Mining and Overburden Emplacement Area Option 2 (New)

Up Front Effort / Long Term Gain (cont)

- Why do most Major Project applications get approved??
Should not be lodged if not viable!!
- Part 3A process / adequacy review provides additional checkpoint before public exhibition

Robust Base-line Studies

- Much better identification and understanding of relevant issues by all stakeholders
- Stakeholder expectations driving increased rigour and detail of studies
- Baseline programs need to provide sufficient duration and rigour (within practicable limits) to minimise uncertainty.

Robust Base-line Studies (cont)

- Not uncommon, for example, for ecology base-line surveys for major projects to be conducted over multiple survey periods and seasons for 1 to 3 years – as opposed to a few days or weeks survey in peak season in the 1990s



Robust Base-line Studies (cont)

- Greater technology and expectations for 'real-time' data for noise and air quality – constant drive to greater detail
- Need to be cautious that data can be interpreted in a meaningful way
- Continue to manage expectations - how can the data be used to drive and manage outcomes?



Stakeholder Consultation - Government

- Early 1990s evolution of the Planning Focus Meeting concept for Major Projects –
 - Progressed from a great opportunity for a ‘day out’ to a meaningful dialogue on key issues
- Late 1990s / early 2000 – agencies generally very willing to meet to work through issues



Stakeholder Consultation – Government (cont)

- Last few years – we're all more time/resource constrained
 - Greater transparency and rigour of public/media enquiry
 - Less availability for meetings and more caution on providing directed guidance or feedback early in the process
 - We all need to challenge ourselves to present information and encourage feedback in a way that provides for constructive dialogue as early as possible in the process

Community Consultation

- Early 1990s – ‘What community? We’re kilometres away from the nearest resident!!’
- Late 1990s / early 2000 – greater move to transparent community involvement, integration of SIA. In some areas, e.g. Muswellbrook, this led to community consultation ‘exhaustion’ after extensive consultation for multiple major projects
- Last few years – strategic, thorough and as necessary targeted involvement.

Community Consultation (cont)

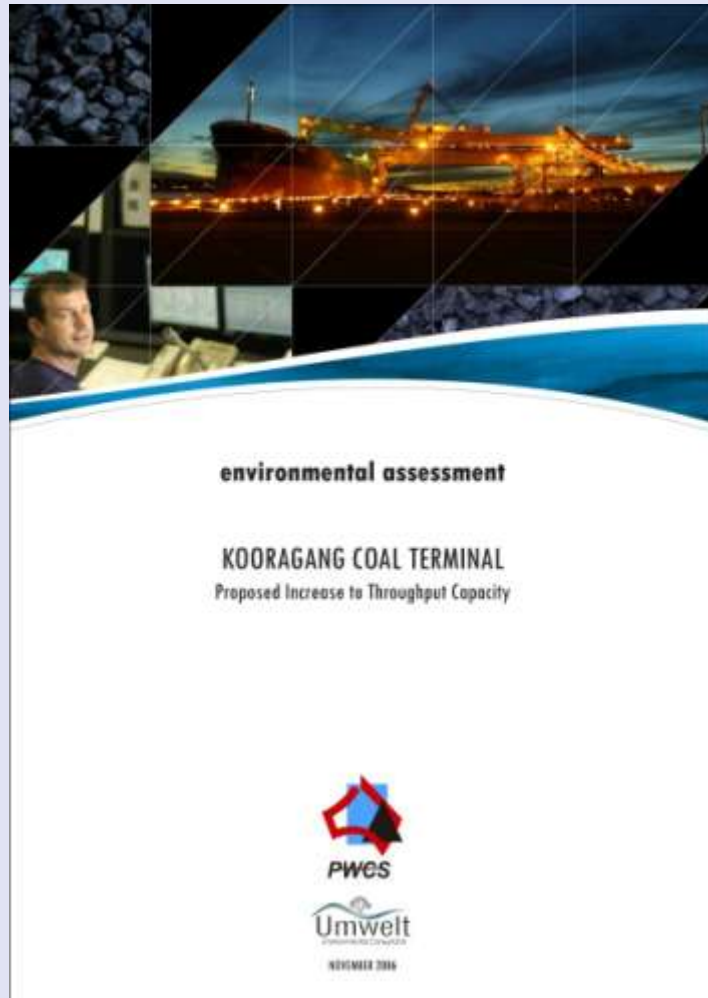
- Opportunities for efficiency through multiple media and considering stakeholders' elevated understanding of issues / access to information
- On the flip side, very difficult to turn community 'perception' to 'reality' when the perception is fuelled by 'facts' in emails, blogs, internet searches and twitter.



Strong Stakeholder Relationships

- Regularly review and revise consultation strategies to respond to issues/feedback during EA process
- Most effective stakeholder involvement programs are those that work from the foundation of a strong existing corporate and/or site relationship
- Need consistent, experienced, 'Project face' – also important to manage interface between EA process and project design team – internal driver of outcomes

Strong Stakeholder Relationships (cont)



Example – PWCS EA

- Increased Capacity – 77 Mtpa to 120 Mtpa
- PWCS EA Project Manager – Trevor Simmons, Environmental Specialist
- Strong relationship with stakeholders from over 25 years at PWCS
- Provided consistent and trusted project face
- Extensive consultation conducted efficiently and effectively

Translating Approval to Performance

- Continual skepticism of community in relation to ability to deliver on major project commitments
- Agency enforcement powers increased and greater auditing being undertaken
- DoP – 38 compliance inspections and audits in 08/09, 83 enforcement actions
- Onus on proponents to deliver!!

Translating Approval to Performance (cont)

- Community and environment roles are faced with increasing challenges
 - much greater range of issues
 - much more community interaction and
 - continual drive for sustainable development improvements

Translating Approval to Performance (cont)

- E.g. annual reporting alone includes:
 - Annual Environmental Reporting
 - NPI
 - NGERS
 - EPL returns
 - Hunter Salinity Trading Scheme
 - DoP Compliance Audit (usually 3 yearly)
 - Internal compliance auditing
 - Regular (monthly) internal monitoring reporting
 - Auditing and reporting implementation of internal sustainability standards
 - GRI / Corporate sustainability
 - Community newsletters and reports

Translating Approval to Performance (cont)

- Industry needs to:
 - Ensure sufficient focus on maintaining compliance – meeting our commitments
 - Consider resourcing – mix of skills and experience
 - Translate knowledge into practice
 - Balance and prioritise sustainability initiatives – lets not forget the simple things!

