
LOCAL GOVERNMENT AND ENVIRONMENTAL IMPACT ASSESSMENT*

David Snashall
Manager, Mitchell McCotter & Associates Pty Ltd
Western Australia

1 0 INTRODUCTION

The purpose of this paper is to consider the role of local government in the process of environmental impact assessment (EIA) in WA. It will consider the broad concepts of EIA including both the formal EIA system set out under the Environmental Protection Act of 1986 and EIA that currently occurs outside that system. The paper will focus on the responsibilities and opportunities for local government involvement in EIA and will contrast the system used in Western Australia with the system in place in New South Wales.

1.1 WHAT IS ENVIRONMENTAL IMPACT ASSESSMENT

According to the dictionary environmental impact assessment is "the critical appraisal of the likely effects of a proposed project, activity or policy of the environment" (Gilpin, 1990). EIA is usually carried out as a part of the approval process for a development. Its purpose is:

- to determine the acceptability of the proposal;
- to identify the appropriate management measures for ameliorating impacts; and
- to set conditions of approval.

The process of EIA involves a number of steps. These are:

- the identification of potential impacts;
- the assessment of those impacts; and
- the development of mitigation measures.

1.2 ENVIRONMENTAL IMPACT ASSESSMENT IN WESTERN AUSTRALIA

For the purpose of this paper I have identified two systems of EIA currently in operation in Western Australia. I have not considered the EIA system administered by the Commonwealth Government under the **Environmental Protection (Impact of Proposals) Act 1974**.

The two systems are as follows:

Formal EIA

The formal EIA process is laid down in the Environmental Protection Act 1986 and is administered by the Environmental Protection Authority. This system will be fully described in the following section.

Informal EIA

For projects which fall outside the EPA process there is an informal EIA system. Under this system the responsibility for assessing the impacts of a development generally falls to Local Government which exercises a range of powers under the town planning, local government and health legislation.

While there are a limited range of opportunities for Local Government to be involved in the formal EIA process, these are not currently well utilised. The informal process places a significant burden on Local Government and is causing considerable problems for some Local Authorities. The primary reasons are because they do not recognise the existence of this EIA system and because they are not prepared to exercise their crucial role within it.

2.0 FORMAL EIA IN WESTERN AUSTRALIA

2 1 DESCRIPTION OF THE SYSTEM

The formal EIA process is set down in Part IV of the Environmental Protection Act 1986. It is clearly summarised and set out in a booklet produced by the Environmental Protection Authority (EPA) called *A Guide to Environmental Impact Assessment in Western Australia* (EPA 1993). In general terms the Act provides that the Minister for the Environment becomes the determining authority for any proposal which the EPA considers will have a significant impact on the environment. This process has eight basic steps which are described as follows:

1. **Referral** - Any person can refer a proposal to the EPA for assessment. In addition, government bodies who make decisions about proposals are required to refer any proposal which may have a significant effect on the environment. The Minister also has the power to refer proposals and the EPA can require a proponent to refer a proposal for initial assessment.
2. **Filtering** - Upon referral the EPA determines whether a proposal:
 - requires a formal assessment;
 - requires in-house assessment and the provision of advice;
 - can be dealt with under Part V of the Act relating to Pollution Control; or
 - requires no assessment.
3. **Level of Assessment** - Once a project is determined as requiring formal EIA the EPA will determine a level of assessment. There are three levels of assessment:
 - Consultative Environmental Review (CER);
 - Public Environmental Review (PER); and
 - Environmental Review and Management Plan (ERMP).

Each of these is a form of environmental impact statement that differ on the level of detail and the degree and length of public exhibition. The EPA suggests that CERs are carried out for proposals with relatively easy managed though significant environmental impacts and with public interest restricted to the local community and/or special interest groups. A PER is used for proposals with major public interest or the potential for significant environmental impact. ERMPs are the most comprehensive level of assessment and its generally applied to major projects which have strategic environmental implications and a statewide interest. The public review period for an ERMP is 10 weeks. Once the level of assessment has been set the EPA will issue a series of guidelines to guide the proponent in preparing their EIS and the responsibility then falls on the proponent to prepare that document for submission to the EPA.

-
4. **Public Exhibition** - Once the proponent has lodged their EIS the document is publicly advertised and made available for comment by any interested person or body. During this period the proponents environmental impact statement will be placed on public display in libraries, Council offices and other locations and its availability will be advertised in local and regional newspapers.
 5. **EPA Report and Recommendations** - After the public exhibition process the EPA will summarise public submissions and seek a response to each issue from the proponent. Following this, a report will be prepared which will indicate whether the EPA believes the project is environmentally acceptable and what conditions are required to manage the identified impacts. This report is a public report providing the recommendations of the EPA to the Minister for the Environment.
 6. **The Ministerial Decision** - The Minister for the Environment then has the role of considering the report and recommendations for the EPA and making a decision on the project.
 7. **Appeals** - It is important to note that there are a number of avenues of appeal during the EIA process. These are as follows:
 - Filtering. Anyone may appeal to the Minister over the EPA's decision not to assess a proposal. This appeal can seek to have levels of assessment upgraded.
 - Level of Assessment. Anyone can appeal to the Minister and seek to have the level of assessment upgraded.
 - EPA Report and Recommendations. Following the publication of the report and recommendation from the EPA to the Minister any person may appeal to the Minister against the content of that report within two weeks of its release.
 - Conditions. A proponent only may appeal against conditions which have been set by the Minister for a proposal.
 8. **Condition Setting** - After appeals have been cleared, the Minister will, in consultation with other Ministers, set conditions for the project.

The process provides both legal responsibilities and participation opportunities for Local Government and these are considered in the following sections.

2 2 RESPONSIBILITY OF LOCAL GOVERNMENT

The **Environmental Protection Act 1986** provides no specific role for Local Government in the environmental impact assessment process. It does however identify a role for Division Making Authorities (DMAs) and Local Authorities clearly fall within the definition of DMAs (Independent Advisory Committee 1992 p.56). Section 38 requires that as soon as any proposal which may have a significant effect on the environment comes to the notice of a DMA, the DMA shall refer it in writing to the EPA. If the EPA elects to formally assess a proposal Section 41 requires that a DMA shall not make any decision allowing the proposal to proceed until the Minister has approved the proposal.

Basically, Local Government is required under the Act to refer proposals which may have a significant effect on the environment. If a local government authority is not fulfilling this function it is in breach of Section 38(4) of the Act. Consequently, there is a need for Local Government to formalise this action as a part of their internal processes.

Local Authorities should design and implement procedures to ensure that all developments with even a remote possibility of significant environmental impacts are referred to the EPA as early as possible. Ideally this referral will occur well before the lodgement of any application for a town planning approval. When an application is lodged with the Local Authority they should determine:

- i. whether it has been referred to the EPA;
- ii. if so, what response was received; and
- iii. if not, whether it should be referred to the EPA.

It is also important that Local Government apply a similar rigour to its own proposals. In recent times many proposals being carried out by or on behalf of Local Authorities have been subject to formal assessment by the EPA. Types of projects that may require assessment include construction of new roads, significant road widening or re-building programs, major drainage schemes, planning proposals, and town planning scheme amendments and reviews. A PER on Bold Park and surrounding lands is currently on exhibition for the City of Perth. This is essentially a land use management plan for a significant area of urban bushland and on this basis formal assessment was required by the EPA. It does not assess any single development proposal but canvasses a range of future uses for the land in question (Mitchell McCotter and Ecoscape, 1993).

2.3 OPPORTUNITIES FOR LOCAL GOVERNMENT

The opportunities for Local Government to participate in proposals put forward within their boundaries are submissions and appeals. In this regard Local Government has the same rights as any member of the public. However as an elected representative body with some degree of expertise with local attitudes and issues, the EPA is keen to involve Local Government. Consequently, Local Government should actively exercise its rights under the Act.

2.3 1 Submissions

Discussions with the EPA have indicated that they receive few submissions from the Local Government Authorities when formal assessments are placed on public review. The EPA does however actively encourage submissions from Local Government, and, being the democratically elected body closest to a local community Local Government can provide a valuable input during the public review process.

Local Government should have the greatest awareness of issues of concern to the local community, and it should have views on the broad directions of development in the local area as stated in the Local Government Authority's mission statement, corporate plan, economic development plan, strategic land use plan, rural strategy or town planning scheme. These issues and broad directions should be represented clearly to the EPA so that they can be considered in the process of formulating the report and recommendations. While these issues may have been well articulated in the EIS prepared by the proponent, they may also have been misinterpreted or misrepresented. In either case the local authority can use the opportunity to present its view to the EPA. This need only be a simple one line letter noting that the proponent has correctly identified and articulated issues of concern to the Local Authority in the EIS. Alternatively, the Council may wish to go further and actively support or object to a proposal.

A recent example occurred in Dardanup, a rural shire surrounding Bunbury. During 1992 a proposal to significantly expand a major sawmill was lodged with the EPA and was assessed as requiring a CER. The proposal would bring much needed economic activity to the area however its impacts included potential noise impacts on residents in rural residential areas close to the mill, and the potential sterilisation of land immediately surrounding the mill because of noise. The Council was under strong pressure from both those supporting the development and those opposed. Debate within the Council became acrimonious and emotive and the Council was unable to take a unified stance on the project. The Council decided to seek independent advice from consultants who prepared a submission on the CER on behalf of the Council. The basic tenor of that submission was, firstly that the Council supported appropriate industrial development, secondly that the Council was concerned about noise impact on residents, thirdly it was concerned about impacts on land immediately surrounding the mill, and fourthly it was concerned about the road safety issues. The submission suggested a range of conditions to ensure that development would not have unacceptable impacts on the local community and local area. The submission was adopted by the Council and lodged with the EPA allowing the Council to press ahead with its other business. This highlights an issue relating to skills level within Local

Government and it is likely that local government will make greater use of consultants to assist in the formulation of submissions and the assessment of proposals. In other states it is common practice for Local Government to retain technical experts to assist in the assessment of proposals.

In a second example the South West Groups, a regional organisation of Councils, has recently called for expressions of interest from consultants to prepare a submission on the ERMP being prepared for the major Compact Steel Project proposed for the Kwinana Industrial Area. Consequently, when any formal EIA document is placed on public review the Local Authority should take the opportunity to make a submission to the EPA.

2.3 2 Appeals

The role of Local Government in appeals is a somewhat more vexatious issue. There are three avenues of appeal generally open to the local government.

1. Filtering;
2. Level of Assessment; and
3. Report and Recommendations.

There is however an opportunity for Local Government to take advantage of the appeals system without taking a highly political stance on a proposal. If a proposal is contentious then it is in the interests of the Local Authority to have it assessed in as much detail as possible. Consequently the Council can exercise its appeal rights in regard to the level of assessment to seek to have the level of assessment upgraded.

Local Government can use appeal rights to relation to the Report and Recommendations of the EPA in a similar non partisan way. If a Report and Recommendations does not fully address any issue which the Local Authority sees as being significant to the local area, an appeal can be lodged seeking reconsideration of that specific issue. The appeal need not address the overall merits of the development.

2.4 CONCLUSIONS

The formal EIA system provides no specific role for Local Government. Local Government must, however, fulfil its responsibilities as a DMA, and has the same rights and opportunities to participate as any individual. In general these opportunities are limited to referrals, submissions and appeals. The formal EIA system provides opportunities for Local Government to be involved without being the decision-maker.

3 0 INFORMAL EIA

3 1 DESCRIPTION OF THE SYSTEM

Many of the most vexatious environmental disputes in Perth in recent years have revolved around development proposals which the EPA has declined to assess formally. The violent demonstrations and court action over the destruction of remnant bushland at Hepburn Heights is a key example. These are proposals which the EPA considers will not have a significant effect on the environment and therefore are either not assessed or receive informal advice. In these instances the Local Authority generally becomes the decision-making body which determines a development or rezoning application under the town planning legislation. Recently there have been numerous examples of projects which fall into this category but have still generated significant community concern over environmental issues. Following are three examples of projects with which I am familiar:

Development of Urban Bushland at Shenton Park. Many will be aware of recent debate over the future of a portion of urban bushland at Shenton Park within the City of Nedlands. The land in question is owned by the Government's land development organisation, Landcorp and was proposed for

development for industrial purposes. The EPA had determined that the proposal did not warrant formal assessment and the City of Nedlands had initially resolved to support a rezoning.

Conservationists commenced a campaign to save the bushland because of its local environmental values. This campaign involved significant use of the media and included public workshops and a public performance by members from the WA Symphony Orchestra in the bushland. The campaign was successful when, according to local media reports, the Premier's wife convinced her husband to take a stroll through the area. He then resolved the situation by giving the land to the City of Nedlands for conservation for parks and recreation purposes.

- **Churchlands.** A very similar issue has recently arisen at Churchlands within the City of Stirling. An undeveloped area of land containing remnant bushland and zoned for institutional purposes was purchased by Landcorp who then sought a rezoning to permit residential development. The Council in determining an application for rezoning was subject to lobbying by parties opposed to development as well as by the proponents. While the Council resolved to await the EPA's advice it was clear that the majority of members of the town planning committee identified with community views in relation to preservation of the bushland.

The proposal was referred to the EPA who assessed the proposal as requiring informal review with public advice. There were a number of appeals against the level of assessment however these were dismissed by the Minister for the Environment. The informal advice provided by the EPA concluded that the land did not have state or regional conservation significance but may have local conservation and social values.

The letter of advice included the following:

"it is considered that the planning process provides a decision-making framework which includes the capacity to recognise a community's interest in the preservation of bushland areas such as Churchlands which have limited conservation value and account for other factors. In providing this advice it is not intended to diminish the importance of the issues associated with the area or to discourage community concerns but rather to indicate the role of the planning process in making decisions regarding the use of land".

Churchman's Brook Residential Estate, Bedforddale. The Churchman's Brook Residential Estate is a proposal to develop a special residential area in Bedforddale, some five kilometres east of Armadale. The developers are proposing approximately 250 half hectare residential allotments with on site effluent disposal in an area surrounded by state forests, water catchment areas and rural residential lots generally larger than two hectares in size. Again the EPA determined that the proposal did not warrant formal assessment.

The local residents association is however strongly opposed to the development for a range of environmental, social and lifestyle reasons. They went to considerable expense to oppose the project including retaining expert consultants. The Council was faced with a divided community with strongly held views on both sides. The pressure was such that Council's town planning committee recently held a public hearing to allow both sides to make representations to the committee. The issue is yet to be determined by Council.

3.2 THE ROLE OF LOCAL GOVERNMENT

When a proposal requires a rezoning or development approval and does not involve conservation issues of state or regional significance, Local Government has the role of the determining authority. Consequently, for proposals with environmental or conservation issues of local significance the Local Authority is responsible for environmental assessment and the setting of conditions to ensure that the development is environmentally acceptable. It is this process which I have described as the informal EIA process. The key tools used by local

government in this process are their Town Planning Scheme and the Town Planning and Development Act of 1928.

My experience is that most town planning schemes do not provide their Council with the ability or guidance to properly assess environmentally sensitive proposals. One of the reasons for this is that the Town Planning and Development Act was formulated well before recent trends in conservation and environmental protection. The nearest the Act comes to providing for environmental protection is in the first schedule which lists matters which may be dealt with by general provisions in a town planning scheme. Clause 11 includes "conservation of the natural beauties of the area including lakes and other inland waters, banks or rivers, foreshores of harbours and other parts of the sea, hill slopes and summits and valleys". Also Clause 11A provides for the preservation of trees. In other respects the Act and most town planning schemes are largely concerned with the regulation of the subdivision and the development process. The land use zoning provisions do however provide significant opportunities for local government to take a pro-active stance in EIA.

Local Authorities are also generally reliant on their professional staff to advise on the environmental issues. Few town planners, engineers or environmental health officers would have the skills to adequately assess the conservation significance of an area of urban bushland. There is a trend towards the employment of environmental scientists by Local Authorities and I am sure this will continue. It is common practice in NSW for the larger Local Authorities to have in-house environmental expertise.

3.3 THE DILEMMA FACED BY LOCAL GOVERNMENT

The current position places the responsibility for EIA in relation to significant proposals firmly with the EPA and the Minister for the Environment. Local Government has a limited role to play. For proposals with local environmental significance the decision must be made by the Local Authority. Consequently there are two systems of EIA in WA, the formal system which looks after major proposals, and the informal system which is responsible for minor proposals. Local Government must recognise the existence of this informal system and its pivotal role. It must develop the framework and tools to carry out the role.

4.0 ENVIRONMENTAL PLANNING IN NEW SOUTH WALES

4.1 EIA

At this point I would like to briefly describe the EIA system that currently applies in NSW. Generally speaking, for all developments on zoned land Local Government is the determining authority for environmental and planning purposes. The EPA and Department of Planning are advisory bodies and deal with major developments which are not on zoned land such as roads and forestry operations. Consequently there is a single EIA system and Local Government is the focus.

The **NSW Environmental Planning and Assessment Act of 1979** basically requires EIA for all proposals. Section 111 provides a general duty by requiring that a determining authority shall "take into account to the fullest extent possible all matters affecting or likely to affect the environment" when considering any activity. Applications for approval to develop a "designated development", being one which has the potential for significant environmental impacts, must be accompanied by an Environmental Impact Statement (EIS). With some exceptions these are determined by the Local Authority. Applications for minor developments must be accompanied by a Statement of Environmental Effects, a lesser form of EIA. The Act also requires that when considering any development proposal the Council must take into account a range of specified environmental factors. These are listed in Section 90 and include the impact of that development on the environment, the effect of that development on the landscape or scenic quality, the social and economic effect of the development, whether the development is likely to cause soil erosion and whether the land is unsuitable by reason of flooding, tidal inundation, subsidence, slip, bushfire or any other risk. Consequently, EIA is required for all proposals in NSW and the responsibility for determining environmental issues generally rests with Local Government. Because of this Local Government has had to develop the skills and expertise to fulfil this role.

4 2 THE PLANNING PROCESS

The planning process in NSW also recognises the fundamental role of environmental issues. The document which regulates development in an area, the equivalent of Western Australia's town planning schemes, are called Local Environmental Plans (LEP). Prior to the preparation of an LEP the Local Authority is required to carry out an environmental study under specifications prepared by the Director of the Department of Planning. The determination of the land use zones will take full account of environmental values and these environmental studies routinely include vegetation surveys, archaeological investigations and land capability studies. The development potential of land will be determined by its environmental characteristics. Consequently, environmental issues are considered throughout the planning process.

5 0 LESSONS FOR WA

The NSW system differs vastly from the Western Australian system in that the role of Local Government in determining EIA is significant and is clearly defined. Local Government has had to embrace both environmental impact assessment and environmental planning as part of its everyday processes. Through the establishment of the EPA, a separate government authority who is responsible for EIA in Western Australia, Local Government has been able to avoid taking on major responsibilities in this area. However, now that the EPA is clearly defining its role as being involved only in the assessment of significant, regional, or state issues, Local Government is being forced to accept responsibility for the assessment of local issues.

In accepting this responsibility Local Government will need to undertake a number of activities. Firstly, town planning schemes will need to take account of environmental characteristics and issues and will need to more closely resemble the local environmental plans produced in NSW. Secondly, these town planning schemes will need to clearly define the issues which Council's should take into consideration when determining development applications. In other words, the town planning scheme needs to incorporate guidelines for EIA at the local level. Finally, Council's must gain access to appropriate resources to undertake this role. This may involve the use of consultants or the development of in-house skills.

It is clear that debate over local environmental issues will continue and will probably grow. Local Government will be the focus of this debate and it will have to develop programs and policies to enable it to determine development applications on the basis of the best available information. Inevitably Local Government will need to establish EIA procedures which are appropriate to the local area. Currently, the only mechanism for doing this is under the Town Planning and Development Act and consequently the focus will need to be on the incorporation of environmental guidelines into town planning schemes and policies.

*This paper was presented at the NELA (WA Division) Seminar "Local Government and Environmental Management", in Perth, 27 September 1993

REFERENCES

- Environmental Protection Authority (1993)
A Guide to Environmental Impact Assessment in WA, Perth.
- Environmental Protection Authority (1992)
Annual Report 1991/92, Perth.
- Environmental Protection Authority (1987)
A Guide to the Environmental Protection Act 1986, Perth.
- Gilpin, A (1990)
An Australian Dictionary of Environment and Planning Oxford University Press, Melbourne.

Independent Advisory Committee (1992)

Review of the Environmental Protection Act 1986. Report of the Independent Advisory Committee for the Review of the Environmental Protection Act to the Minister for the Environment, Perth.

Mitchell McCotter and Ecoscape (1993)

Bold Park and Environs Draft Public Environmental Review. Prepared for the City of Perth.