

COMMUNITY JUSTICE COALITION

Analysis of Wellington & Cessnock Dormitory Prison Environmental Impact Reports dated July/October 2016

From an examination of the Environmental Planning documents submitted by the Department of Justice, there are some surprising and inconsistent statements made regarding the government's intention to demolish the Rapid-Build Projects in 5-7 years, having spent enormous money on the facilities. Almost half a million dollars a prisoner in a dormitory! Whilst the Wellington report makes consistent reference to the temporary nature of the facility, we can only find one reference within the Cessnock report on this point. Both cost the same per occupant.

Also this information about it being only temporary, was not provided in any meeting or emails with members of the CSNSW, yet it could have been used to allay concerns. It may be a basis for a legal challenge should there be any findings that the original proposal was misleading. For example, according to the reports, community consultations were made regarding the RBP, however the findings of such consultations are unclear and in Wellington were based upon the temporary nature of the prison.

Breaches of the Act giving misleading information have fines of \$1million dollars under s.148b of the Act, and presumably would mean permission granted would be invalid.

This information was hard to come by and probably has been seen by few. Early in this examination we sourced a phone number from the Corrective Services NSW (CSNSW) website on the Wellington and Cessnock Prisons under the heading "Community Consultation".

We called this number on the 20th October 2017 and a representative advised us to contact an email address for any questions or concerns. It was also expressed that no information regarding community consultations could be given as this information was confidential. We sent an email requesting further information regarding the facility on the 20th October 2017.

On the 10th of November we received an email response from Jade Heng; the Principal Engagement Officer at CSNSW containing two Reviews of Environmental Factors required under the Environmental Planning and Assessment Regulation 2000. Assessments on Cessnock ([Link to Cessnock report here](#) – summarised at end of document) and Wellington ([Link to Wellington report here](#)) were prepared by GHD Pty Ltd.

<https://www.dropbox.com/s/uv4ep3paj5vjy5e/Wellington%20REF.pdf?dl=0>

<https://www.dropbox.com/s/tof0mht8vo7eoes/Cessnock%20Correction%20Centre%20Expansion%20REF%20Approved%20Final.pdf?dl=0>

Wellington Review Analysis

The Wellington Review that we are now looking at suggests some suspicious behaviour possibly to get around permissions. It may be that they have breached their obligations under the Act.

The most surprising is that they say it is to be demolished in 5-7 years. At p.73. 'given the temporary nature of the facility, it is anticipated that the structures will be removed in 5-7 years once the facility is no longer required.' It is said throughout the document that it will be demolished. According to the Estimates Committee hearing mentioned underneath Elliott said it is costing \$188 million – almost half a million dollars a prisoner. For Cessnock \$199 million.

Also important is a lack of evidence of community consultation and a general sense of secrecy. At pages 76-77 there is a vague reference to consulting with community members of Wellington, however there is no evidence of this to have actually occurred. Below is a more detailed summary of these observations.

Statutory Considerations:

The proposal for the Wellington Correctional Centre is one of temporary accommodation, with an intention to demolish the facility sometime in the future, estimated to occur in 2023. As it is a temporary facility, it is anticipated that structures will be removed 5-7 years once the facility is no longer required. Under the State environmental planning policies (SEPP's); Clause 26 allows for the demolition of the temporary buildings without consent. The demolition would be undertaken in accordance with a demolition environment management plan to be prepared by a contractor and approved prior to commencement. Furthermore

Minister David Elliott in the Estimates Committee on the 5th September 2017 stated "we are spending \$188 million on the one in Wellington and \$199million on the one in Cessnock." This raises multiple concerns, including:

- Extensive costs for a temporary project
- The need to consider that maximum-security sentences are often longer than 5-7 years. There is a need to assess how this accommodation is relevant as a temporary fix
- Concerns of families moving into the location for a 5-7 year time period. The issue of temporarily displacing numerous families of prisoners needs to be addressed, as well as the affect movement out of the town at the end of the period would have.

Environmental Assessment:

The construction and demolishment of the temporary facility will have impacts on the surrounding environment. The proposal would not result in any impacts to land use during construction, however there will be impacts associated with noise and vibration, traffic and air quality. The construction and demolition works should be short term.

Refer to the Index of Environmental Impact Report, 'Demolition' as per Demolition of Buildings Without Comment (Clause 26);

- Pg 20 – Demolition would be undertaken in accordance with a demolitions environment management plan prepared by contractor.
- Pg 41 – Demolitions estimated to occur in 2023
- Pg 73 – Temporary facility - anticipated that structures will be removed in 5-7 years when facility is no longer required.
- Appendix C – Construction of 400 Bed Temporary Correctional Accommodation.

Social-economic Impacts:

The local government; Western Plains Regional Council (formerly known as Wellington Council) has released the Wellington Strategic Plan (2012) outlining the vision for the surrounding area. The GHD has not undertaken any formal consultation with the Council, the reason for this may be the social economic impacts that arise from the construction of this facility. The Wellington Strategic Plan states there is a negative perception about Wellington, and this needs to be changed by

building an identity and reputation as a place to live. However GHD has outlined several potential risks that will have social impacts on the Wellington area. These include the stigma and impact to the towns reputation, there is the potential that the community will be concerned that the proposal will have an adverse effect on the character and reputation of the town; this stigma could impact on investment in the town through tourism and new business opportunities.

The other effect is the fear about impact on local crime, the Strategic Plan already indicates that crime within the community is already a concern, and there is the potential that the community may perceive that the proposal may result in an increase in crime due to prison escapees, visitors of inmates or inmates choosing to stay within the local community after their prison term.

Refer to 'Impact' at pgs 73-76 and 'Mitigation' at pgs 76-77 of Wellington Correctional Centre REF Report 2016.

Community Consultation:

On page 76- 7 it refers to a proposed means of mitigating the risks involved in the above issues by means of community engagement and continued communication. We are concerned that this engagement has not occurred and the intention to do so is only included as a means of reducing accountability.

Observations:

<https://www.dropbox.com/s/uv4ep3paj5vjy5e/Wellington%20REF.pdf?dl=0>

- Upon reading the Environmental Impact report of Wellington Correction Centre there appears to be false and misleading information regarding the planned demolition of the facility.
- Under clause 26 of the report – a contractor would undertake demolition in accordance with a demolition environment management plan.
- It was estimated in page 41 of the report that the demolition would occur in 2023 or 5-7 years from now
- Appendix C outlined the construction of 400 bed temporary correctional accommodation
- This information is false and misleading based on the interactions that Justice Action has had with the facility.
- The penalty for false and misleading information under the [Environmental Planning and Assessment Act 1979 \(NSW\)](#) s148B can carry a maximum penalty of \$1 million.

The Environmental Planning and Assessment Act 1979

- An Act to institute a system of environmental planning and assessment for NSW
- Provides the framework for environmental planning and development approvals and includes provisions to ensure that the potential environmental impacts of a development are assessed and considered in the decision making process

Section 111: Duty to consider environmental impact

- For the purposes of attaining the objectives of the Act, a determining authority in its consideration of an activity shall examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity
- A **determining authority** means a public authority and, in relation to any activity, means the public authority by or on whose behalf the activity is to be carried out

Section 123: Breaches of this Act

1. Any person may bring proceedings in the Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach
2. Proceedings under this section may be brought by a person on his or her own behalf or on behalf of himself or herself and on behalf of other persons, a body corporate or unincorporated, having like or common interests in those proceedings
3. Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings

The Environmental Planning and Assessment Regulation 2000

Made under the *Environmental Planning and Assessment Act 1979*

Clause 228(2): What factors must be taken into account concerning the impact of an activity on the environment?

- The factors are as follows:
 - a) Any environmental impact on the community,
 - b) Any transformation of a locality,
 - c) Any environmental impact on the ecosystems of the locality,
 - d) Any reduction of the aesthetic, recreational, scientific or other environmental quality or value of a locality,
 - e) Any effect on a locality, place or building having aesthetic, anthropological, archaeological, architectural, cultural, historical, scientific or social significance or other special value for present or future generations,
 - f) Any impact on the habitat of protected animals,
 - g) Any endangering of any species of animal, plant or other form of life, whether living on land, in water or in the air,
 - h) Any long-term effects on the environment,
 - i) Any degradation on the quality of the environment,
 - j) Any risk to the safety of the environment,
 - k) Any reduction in the range of beneficial uses of the environment,
 - l) Any pollution of the environment,
 - m) Any environmental problems associated with the disposal of waste,
 - n) Any increased demands on resources (natural or otherwise) that are, or are likely to become short in reply,
 - o) Any cumulative environmental effect with other existing or likely future activities,
 - p) Any impact of coastal processes and coastal hazards, including those under projected climate change conditions

Potential Environmental Impacts

- Impacts to land during construction (6.1.2) Clause 228 (2)(o)
- Changes to overall land use of the site (6.1.3) Clause 228(2)(b)
- Facility is being built in a rural area with low background noise levels BUT would still affect residential area to the south (6.2.1) Clause 228 (2)(e)
- Any complaints from locals regarding noise? Clause 228 (2) (e)
- Stormwater and waste management? Clause 228(2)(m)

Penalties for Breach:

Section 125D – This section applies to offences against regulations under s125(2)

- A person who is guilty of an offence this section is liable to a penalty not exceeding \$110000
- Subject to a provision of regulations that prescribes a different max penalty

S125A – penalty for tier 1 offences – causing harm to the environment or causing death or serious harm to a person – criminal standard of proof. Corporation - \$5million max penalty and \$50000 for each day the offence continues

For the individual there is a max penalty of \$1 million and \$10 000 or continuing offence for each day’

S125B – tier 2 max penalties – applies to 125(1) other than an offence to which s 125A applies for which a tier 3 max penalty applies. CORPORATIONS - \$2 million and \$20000 for each day of continuing offence and \$500000 and \$5000 for individuals.

S125C – Tier 3 Max penalties – applies to certificate related offences and any other offence against the act under s125(1) for which the tier 3 penalty by this act to apply. \$1million for corporations and a further \$10000 per day for counting offence and \$250000 and \$2500 for individuals respectively.

S148B – False or misleading information – tier 3 max penalty – this is where a person must not provide information in connection with a planning matter that the person knows, or ought to reasonably know is false or misleading in a material particular. A person provides information in connection with a planning matter if:

- Person is an applicant for a consent or approval for certificate
- The person is engaged by such applicant and the information is provided by that person for the purposes of the application or,
- The person is a proponent of a proposed development and the information provided in or in connection with a formal request to an authority
- Person provides info in connection with any other matter or thing under this act that the regulations declare to be the provision of information in connection with a planning matter for the purposes of this section

Cessnock:

The construction cost for the expansion of the Cessnock Prison is currently \$199 million as per Estimates Committee evidence (050917 p. 619). The conclusions in the Cessnock report are largely similar to that contained in the Wellington Report as detailed above. We wish to draw your attention to page 12 of the report, under clause 3.5 ‘Rapid Build Prison’, which states that the RBP “is intended to address an immediate short-fall in bed capacity and is only expected to operate between 5-7 years”

<https://www.dropbox.com/sh/05phjr5zfq87pnf/AAD0AIWv6PJDwWCAA66dHA0a?dl=0&preview=Cessnock+Correction+Centre+Expansion+REF+Approved+Final.pdf>