# Achieving Effective Public Participation in Public Interest Environmental Conflicts

***By Dr Ted Christie, Environmental Lawyer & Mediator – 06 May 2015***

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**Disclosure Statement:**

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> ***"Byaduk* [Victoria, Australia] *farmer …Aggie Stevenson said landholders from across south-western Victoria had serious concerns about the level of community consultation involved in CSG licensing….***
> *No-one in the community knew that an exploration permit had been granted by the State Government.*
> *If the moratorium is lifted and the State Government gives a green light to the mining companies, that's when we'll go into the next gear and look at what we can do. We just hope the Victorian Government will listen"* ***Bridget Judd, ABC News, 3 May 2015 (1)***

The above statement reflects the concern of the local community and landholders in SW Victoria who are opposed to coal seam gas operations in their region.

The rally in SW Victoria is a good example of the first stage - the ***ignition stage*** – in the development of any public interest environmental conflict.

It relies on the long-standing tactic of people power: A non-violent, direct action environmental protest to ignite public awareness on the *Development v Environment* issues in their region; for the community in SW Victoria for issues arising from CSG operations.

This tactic can act as a trigger a response from Government: to take some form of action to maintain public confidence in Government.

As reported in the ABC News, public conscience was excited at the rally. But, this alone, may not be sufficient to make Government respond?

Instead, Government may stall in the hope that public opinion was a passing scare that would go away if ignored.

Public opinion needs to raise the "temperature" before Government will react to people power. This stage is reached when it becomes clear to Government that people power had become galvanised; as citizens and lobby groups directly affected by the issues unite to increase pressure on Government to assess how real and serious the environmental impacts of a proposed development or activity might be.

In most situations, the general response by Government is to set up some form of public participation process to engage the community – local, agricultural, Indigenous, youth, conservation… - in finding a solution for the conflict.

The community, on the other hand, may decide to litigate.

The key for finding a solution for any public interest environmental conflict through public participation – *as an alternative to litigation* - is to ensure that the process is ***effective***.

There are a number of well accepted principles that need to be put into place to ensure a public participation process is effective.

One significant concept that is considered to be the most important principle for effective public participation is for communities and other interested parties to be given adequate, readily intelligible information on which to make decisions; information should be freely available to all those participating.

Also, from the outset, it is of critical importance that every effort is made to identify all relevant parties in the community that should participate; great care must be taken that all relevant parties holding competing land use interests to the proposed development or activity are included. Excluding parties having a relevant land use interest in the conflict may lead to non-viable solutions.

A long accepted principle for effective public participation requires the community to be "*aware of the level of power being offered*" to them in the public participation process. For example, the level of power available may restrict the community to simply comment on a proposal or an activity by making written submissions; or the community may have power to make recommendations as to the form of the final decision.

This last principle needs to be considered in terms of the global directions for the scope of public participation: a movement towards joint action and shared responsibility in the decision-making process by the community and other parties having interests where these problems occur - and who have to live with the outcome of the public participation process.

There are a number of public participation processes which could be used by Government to engage the community to find a solution for a public interest environmental conflict.

Traditional models of **review panels**, **public surveys** and **public hearings** have limited application. They offer little or no opportunity for the community for joint action and shared responsibility in problem-solving.

A **Commission of Inquiry (or Public Inquiry)** acts as a fact-finding agent for Government, rather than as a court of law. Any conclusions or decisions made are not binding on Government. The most likely area of uncertainty for the community arises in the decision made by Government following the Commission of Inquiry, as the final decision is a political one.

**Community consultation** allows public comment, analysis or opinion to be made on a proposed development or activity– generally as written submissions.

The limitation of *community consultation* is that there is no legal basis for conclusions made following any community consultation to be

accepted, or taken into account to any particular degree by Government - unless there is a statutory requirement for government to be bound by the outcome of a community consultation.

Without such a statutory requirement, the obligation to consult is for Government to be advised or informed of other opinions or positions.

Nor does *community consultation* involve shared responsibility through joint fact-finding and joint problem-solving.

There is one key advantage of **alternative dispute resolution ("ADR")** and **interest-based negotiation** for finding solutions for multi-party public interest environmental conflicts that is not part of litigation, community consultation, panel reviews and Commissions of Inquiry.

*ADR and interest-based negotiation* involves a process of shared responsibility through joint fact-finding, joint problem-solving and decision-making by consensus.

A further advantage of *ADR and interest-based negotiation* - compared with courts and litigation - is that it has more flexibility for balancing the broad public policy considerations that affect competing land use interests when decisions have to be made for managing risks.

**Conclusions:**

There is considerable *overlap between the goals of public participation* processes – such as community consultation - and ADR and interest-based negotiation.

But there is *one significant distinction* between all of these processes: the level of power for decision-making and the role available to the community.

*ADR provides the community with a much greater level of power* in shared responsibility and joint action in decision-making compared to all other public participation processes.

Regardless of the public participation process used, *trust in process is crucial.*

A public participation process perceived as some form of manipulation of public inputs would not be seen as either transparent or responsive to the needs of the community in any public interest environmental conflict.

Susskind *et al.* (2000) give a very clear description of the advantages for Government to use negotiation as part of the decision-making process for resolving environmental conflicts:

*"[The Government agency] would be able to claim a share of the credit for bringing the conflict to a successful conclusion in a way that saved the cost of litigation, ensured that legal standards of environmental protection were exceeded (voluntarily), and restored some measure of confidence in the Government."*

## About Dr Ted Christie:

**Author of the cross-disciplinary (*law/science/negotiation*) book, "Finding Solutions for Environmental Conflicts: Power and Negotiation" (2008) Edward Elgar Publ., Cheltenham, UK.**

***http://www.environment-adr.com/index.php?page=about#About resolving Environmental Conflicts***

## End Notes

(1) 'Victorian and South Australian landholders opposed to CSG seek US legal help in staying gas-free'. http://www.abc.net.au/news/2015-05-03/landholders-seek-us-legal-help-in-fighting-coal-seam-gas/6441318