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NEW SOUTH WALES ENVIRONMENTAL IMPACT ASSESSMENT IMPROVEMENT PROJECT

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Institute of Public Affairs Report:

New South Wales Environmental Impact Assessment Improvement Project

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The central objective of government policy is to ensure resources are being put to the highest value use for society. This often means government intervention should be limited to providing rule of law, enforcing contracts, protecting private property and addressing bona-fide market failures.

It is often assumed that Environmental Impact Assessments are a necessary tool for providing information to decision makers in helping them decide on project approvals. Rather than accepting this premise, it is important to examine if it is true. To this end, the central question we should consider is: are EIAs the most cost-effective way of achieving a balance between environmental conservation and economic development that provides a net benefit to NSW?

There are good reasons to believe EIAs do not provide a net benefit to the people of NSW. In particular, EIAs:

1. Are a costly process which delay the implementation of high-value projects.
2. Are used by green groups to slow development.
3. Have created an industry of their own, which is taking resources from more productive activities.
4. Results in cost-shifting from government to the private sector.

The IPA believes alternatives to Environmental Impact Assessments, which can meet the objectives of environmental protection and economic development, should be considered. One approach is to replace EIAs with direct third party or government acquisition of environmental goods. This will end cost-shifting, reduce delays and improve the provision of environmental amenity.

The rest of this report provides an overview, analyses problems with EIAs, and outlines an alternative approach.

Overview

Premier Baird's website notes 'project assessment times for state significant proposals have been increasing from 598 days in 2008 to 1,089 days in 2014'.¹ Reducing approval timeframes is necessary to facilitate investment and ensure delays to high value projects are minimised. The government's objective to 'halve the time taken to assess the most complex applications while ensuring the integrity and robustness of the assessment system'² is encouraging.

But reform of the EIA process should be based on the over-arching objective of public policy, which is ensuring resources go to the use which is of highest value to society. This in turn involves recognising the relationship between economic development and environmental conservation.

At times a false dichotomy is set up between environmental conservation and economic development. This is captured with the common refrain 'Reef not Coal'.³ But this ignores the reality that environmental amenity generally improves with economic development. Indeed, good economic policy which supports competition, growth and property rights is also good environmental policy.

Competitive markets, for instance, not only result in higher living standards, but also provide powerful incentives for producers to economise on the use of scarce resources. Hence, over the last century agricultural output has increased while land used for agricultural production has decreased.

Similarly, economic growth means people become wealthier, which in turn allows them to spend more time and money on securing environmental amenities. As Jonathan Alder, Professor of Law at Case Western Reserve University notes:

'A significant body of literature has found a correlation between economic improvements and several measures of environmental quality. Not only are wealthy communities healthier than poor communities, but they also tend on average to be more concerned about upholding environmental values as well.

Wealthier societies have both the means and the desire to address a wider array of environmental concerns. Economic growth fuels technological advance and generates the resources necessary to deploy new methods of meeting human needs efficiently and effectively. Thus, wealthier societies tend to provide for human needs in a more environmentally sound manner.'⁴

And property rights are not only indispensable for encouraging investment and trade, but also provide property owners with incentive to take care of the environment. As Jonathan Alder writes:

'The creation of property interests empowers owners to act as stewards of environmental resources and facilitates conservation efforts in the private sector...'

1 NSW Government, <https://www.nsw.gov.au/premiers-priorities>

2 NSW Government, <https://www.nsw.gov.au/premiers-priorities>

3 See, for example, <http://reefnotcoal.org/>

4 Jonathan Alder Free and Green: A New Approach to Environmental Protection Harvard Journal of Law and Public Policy, Volume 24, Number 2, Spring 2001; pg. 683

‘The creation of private property rights advanced conservation where regulation failed. Iceland and New Zealand experienced similar success with the implementation of a property-regime known as individual transferable quotas.’⁵

The point that pro-economic development policies often coincide with better environmental outcomes can be seen in the Soviet Union and Mao’s China. In both places property rights and free-markets were virtually non-existent. They also experienced some of the greatest environmental catastrophes in human history.

As Jonathan Alder notes:

‘In 1988 a single Ukrainian city, Zaporozhe, released toxic emissions equivalent to approximately one-third of all American emissions at the time. Potable drinking water was scarce and Soviet forests were decimated. In just under thirty years, the Aral Sea was drained by 66 percent to subsidize irrigation, and fish populations were decimated. The lack of private ownership left no one with any incentive to care about preserving ecological values.’⁶

⁵ Ibid; pg. 685, 686

⁶ Ibid; pg. 673, 674

Problems with EIAs

There are several reasons why Environment Impact Assessments are not the most cost-effective way of delivering or protecting environmental amenity.

Environmental Impact Assessments are an Unnecessarily Long Process Which Undermines Economic Development

Environmental Impact Assessments can be costly and delay the implementation of projects that have high social value. As the Baird government notes 'project assessment times for state significant proposals have been increasing from 598 days in 2008 to 1,089 days in 2014.'⁷

The Productivity Commission noted delay costs for a given project are between \$26 million to \$59 million each year.⁸ There are flow-on consequences in terms of reduced government revenue and royalties and forgone investment and job creation. As the Institute of Public Affairs outlined in a recent report:

'Price Waterhouse Coopers (PWC) estimated that a delay of 12 months is the tipping point at which up to a third of planned mining projects would be cancelled, leading to significant reduction in creation of jobs, investment, revenue and royalties...

...[i]n a scenario where projects were delayed by 12 months or more the potential losses to New South Wales alone over a 20-year period were estimated as: 6,445 direct jobs in mining and 22,400 indirect jobs would not be created; \$10.3 billion in investment in 2013 dollars would be forgone; and the NSW government would miss out on \$600 million per year in direct revenue from mining royalties...

...The Minerals Council of Australia has argued that some delays have been so extensive and expensive as to require companies to set aside contracts which has an immediate economic effect on these contractors and the regional and broader economy...

...Even small delays can have a disproportionate impact on the cost of the project, particularly if it limits the window for investment decision-making, which is often already short...

...[i]n a globalised world where capital is mobile legal challenges aimed at stalling or delaying projects increases sovereign risk, making Australia less attractive for investment. This diverts investment offshore, impacting the broader economy through reduced national output. Capital costs for projects in Australia are rising faster than elsewhere. A 2012 report, for example, estimated that capital costs for iron ore projects were already 30% more expensive than the global average.'⁹

7 New South Wales Government, <https://www.nsw.gov.au/premiers-priorities>

8 Productivity Commission Major Project Development Assessment Processes November 2013, pg. 201

9 Daniel Wild Section 487: How Activists Use Red Tape to Stop Development and Jobs Institute of Public Affairs Research Paper, October 2016

EIAs have created an inefficient industry of their own

Environmental Impact Assessments have created an industry of their own where consulting firms, bureaucrats, green groups and green legal firms generate income and employment at the expense of private sector activity. Even the NSW Government's Discussion Paper on improving EIAs refers to 'EIA professionals'¹⁰ in seeming recognition that environmental approvals have created – and are sustained by – an industry of its own.

The University of NSW even has a course dedicated to Environmental Impact Assessment, as do many other Universities around the country.¹¹ This is a highly questionable use of student's time, money and tax-payer funds.

Many of groups involved in developing EIAs will argue that we need more 'rigorous' assessment processes, more 'detail', more 'scientific studies' to make sure Ministers are 'well informed' about potential environmental impacts of policy. But these are ultimately self-serving arguments from groups who receive the benefits of the EIA process but who incur none of the costs.

Many of the resources used in the development of EIAs would be more productively employed elsewhere in the economy.

EIAs are often used by green groups to disrupt development

Environmental Impact Assessments – particularly through consultation, legal challenges and ultimately political pressure – are a mechanism exploited by small, vocal groups to exert disproportionate influence on project approvals.

The intention to use government assessment processes to disrupt major project development has been clearly outlined by green groups in the Stopping the Coal Export Boom strategy document.¹² This document included the targeting of seven major projects in New South Wales.

The document notes that:

'the first priority is to get in front of the critical projects to slow them down in the approval process.'

'Our strategy is essentially to 'disrupt and delay' key projects and infrastructure while gradually eroding public and political support for the industry and continually building the power of the movement to win more.'¹³

It is inconsistent with good public policy for ideologically motivated groups to be inserted into an approvals process, particularly with the right to challenge Ministerial approvals of projects in court.

To give an indication of the costs of legal challenges, the IPA estimated that legal challenges by green groups made under federal environmental law has resulting in projects spending some 7,500 days – or 20 years in court, at a cost of \$1.2 billion since the year 2000.¹⁴

10 New South Wales Government Environmental Impact Assessment Improvement Project Discussion paper October 2016, pg. 5

11 See for example <http://www.handbook.mq.edu.au/2016/Units/PGUnit/GEOP845>; <http://www.utas.edu.au/courses/set/units/kg381-environmental-impact-assessment>; <https://www.adelaide.edu.au/course-outlines/106315/1/sem-2/2014/>; <https://www.adelaide.edu.au/course-outlines/106327/1/sem-2/2014/>

12 Greenpeace Australia Stopping the Australian Coal Export Boom, November 2011

13 Ibid

14 Daniel Wild Section 487: How Activists Use Red Tape to Stop Development and Jobs Institute of Public Affairs Research Paper, October 2016

The central reason why this is bad public policy is that groups who use the approvals process to hold up projects do not face the full costs of their actions – the costs of project delays are incurred by project proponents and the wider community through forgone employment and investment. There is currently no effective mechanism to constrain this overreach.

Additionally, we should shouldn't mistakenly believe that environmental groups provide an accurate reflection of the desire for environmental protection others in the community have. Indeed, one of the inherent problems with centralised environmental approvals processes is that they are unable to reflect the diverse preferences that individuals in the community have for environmental conservation.

EIAs Result in Cost-shifting from Government to the Private Sector

The conditioning part of Environmental Impact Assessment process has resulted in significant cost-shifting from government to the private sector. Through the imposition of conditions governments are able to force the private sector to implement social, economic and environmental policy but without incurring the attendant Budgetary costs.

Conditions imposed by Minister's can be extensive. For example, the Productivity Commission notes a project that came with 1,500 conditions which had a further 8,000 sub-conditions.¹⁵

The imposition of conditions is problematic for two key reasons. Firstly, it pushes the costs of government policy off Budget which removes an important discipline on decision-making: unconstrained by financial considerations there is little to stop Ministers imposes an array of draconian conditions. And secondly, imposing conditions on project proponents acts a de-facto business tax which reduces the return on, and so discourages, investment. And this is occurring in an environment where Australia already has a relatively high corporate tax rate. Indeed, America is looking to cut its rate from 30 per cent to 15 per cent, and the UK is committed to cutting the company tax rate from 20 per cent to 17 per cent by 2020. By contrast, Australia's tax rate is set to drop just 5 percentage points to 25 per cent from 30 per cent over a 10-year period.

In a globally competitive market, anything which adds costs to business will jeopardise the ability for NSW to attract international investment. In turn this will jeopardise the Baird government's ability to deliver on its commitment of 150,000 new jobs by 2019.¹⁶

¹⁵ Productivity Commission Major Project Development Assessment Processes November 2013, pg 302

¹⁶ NSW Government, <https://www.nsw.gov.au/premiers-priorities-list/creating-jobs>

A Better Way to Promote Growth and Protect the Environment

An alternative approach to environmental conservation is needed to get a better balance between protecting the environment and encouraging economic development.

This approach must be based on the recognition that not all people in society benefit the same way from the provision, protection, or preservation of an environmental good. Some may be enthusiastic about a particular bird species or plant variety. Others, less so. It is moral and economic that those who are most enthusiastic – and who derive the greatest pleasure from environmental amenity – are the ones who incur the cost from the provision or protection of that amenity.

There are two ways in which this can be achieved. The first best-approach is for groups who have a specific interest in a certain environmental outcome are required to pay for the attainment of that outcome. This would involve, for example, green groups or other community groups buying property with the objective of securing environmental outcomes and/or negotiating with project proponents to undertake environmental activities in lieu of economic activities.

Under this approach environmental groups would have the opportunity to use their funds for direct environmental conservation efforts.

An alternative approach is for the government, rather than green groups, to directly acquire environmental goods. This would occur by the government paying project proponents to preserve the environment, rather than through the imposition of conditions, which is the de-facto uncompensated deprivation of private property.

As Scott Sumner, Professor Emeritus at Bentley University, has argued ‘requiring the government to actually compensate property holders explicitly, rather than simply taking away their property rights through regulation, would force policymakers to think much more clearly about the costs and benefits of environmental policies.’¹⁷

In terms of process any project which formerly required the provision of an environment impact statement would be replaced by the following: the government would announce the details a project (i.e., a proposed mine); the public has 8-weeks to respond, including the provision of information relating to concerns about the impact the project could have on environmental amenity (i.e., project x would result in x% reduction in a certain tree which serves as a habitat for an endangered species); this information is then made publically available; an eight-week period would follow where government and/or other community groups negotiate with project proponents relating to the acquisition of environmental amenities.

This approach would provide certain timeframes, reduce delays and ensure those who receive the benefits of environmental conservation are unable to push the costs of its provision onto others.

Indeed, good environmental policy should recognise that information is decentralised, dispersed and scattered across society. This information is not available to any central government

¹⁷ Scott Sumner The Infrastructure Illusion, June 2016, available at http://econlog.econlib.org/archives/2016/06/the_infrastruct.html

organisation. And no process will be able to accurately capture this information, just as a one-size-fits-all policy will never be able to accurately reflect this information and people's preferences.

Instead, the key to enhancing social well-being is to allow people to express their preferences in the market place. The best way to achieve this is through a system which strengthens and protects private property, allows interested parties to make contractual arrangements in terms of economic development and environmental conservation, and a rule of law which ensures the terms of these contracts will be adhered to. To achieve this NSW should move beyond the Environmental Impact Assessments.

