

Comments to the Productivity Commission regarding Major Project Development Assessment Processes

by
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Introduction

The government wants the Productivity Commission to benchmark the development assessment processes used in this country against international best practice with a view to reducing the cost of delivering major projects.

For convenience, this submission uses the example of the government assessment processes applied to large mining projects in Queensland. For such projects, the primary assessment process used is the Environmental Impact Study or EIS. Application of the EIS process is prescribed by the Environmental Protection Act and managed by 'relevant state government agencies'. In particular cases the commonwealth has the power to intervene (in the assessment of mining proposals and other large developments) through the Environmental Protection and Biodiversity Conservation Act (EPBC). Assessment processes are applied to project proposals via *terms of reference* prescribed by the government agency with direct responsibility for the process.

History shows that the EIS/EPBC process has resulted in virtually no large mining projects being refused environmental authority to go ahead despite many generating massive unpriced and unaddressed externalities, once they become operational. This submission argues that the prevailing assessment processes leave little scope for rationalisation aimed at reducing the cost of project delivery. I will argue that the assessment processes applied to large mining projects should in fact be more robust, more independent and more sophisticated. In particular, the processes should have an inbuilt ability to reject projects that are likely to prove socially unacceptable in practice.

In my view, the Commission's brief is strangely at odds with the revealed preferences of a growing number of Australians, but especially those who are most affected by mining externalities. People living in rural and regional Australia want more – not less – government intervention to protect their property and basic living standards from mine-related detriment. Specifically they want large scale mining and CSG excluded from districts characterised by prime farming land and relatively high population. Hopefully, the Commission's study will not recommend the adoption of assessment processes that are more expeditious than those already in existence. It might go further and suggest that the project assessment processes used in this country be made demonstratively independent.

It is also strange that the Commission has been asked to examine local project assessment processes relative to those used internationally. If the search for international comparisons was to go where the world's largest mines are now opening up, it would most likely culminate in third world countries found in Africa, Latin America and Central Asia. Since these countries are 'desperate' for the cash flow, and tolerate poor governance in any event, the subsequent cost benchmarking is bound to show Australia in a bad light. Since third world countries use (low) costs and lax regulations etc as a means of attracting offshore

investors, we are left to ask: why would we want to benchmark ourselves against what is effectively ‘world’s worst practice’?

Moreover, the cost of assessing a project is but one of many factors involved in finding a worthy project. As this submission attempts to demonstrate, the costs of assessment should be viewed as an investment in good governance. Above all else, the assessment process must be able to identify and rule against the project that is likely to be socially unacceptable in practice. Surely the cash cost of the assessment process is a secondary consideration.

Finally, benchmarking is a data hungry methodology. International benchmarking is unlikely to throw up useful findings because the data will be too sparse, unreliable and non-comparable. Ample scope exists to improve Australia’s project assessment processes without wasting time and money trying to benchmark them against international processes.

The problem

Any study of ‘project assessment processes’ should start with what we are trying to achieve (as a nation) and what barriers are likely to stand in the way of bringing about optimal outcomes. From a social perspective, the assessment process should result in ‘balance’; it should allow worthy mining projects to go ahead, but reject those that are likely to inflict unacceptable externalities on associated communities and society as a whole. Briefly, the assessment process should be made more nimble; it must be capable of identifying and weeding-out unacceptable projects.

The major barrier to implementation of better assessment processes is the cosy relationship that prevails between big miners and governments. The big miners are relatively few in number and are well organised; they frequently use aggressive lobbying tactics to convince politicians and bureaucrats of their economic and political importance. Not that the latter need much convincing; state governments like to say they are ‘obliged’ under legislation to develop the Crown’s mineral resources – for the good of their constituents.

To date, ruling federal and state politicians have resolutely supported ‘large projects’ because of the rapid-fire economic activity, jobs and royalties they are seen to deliver. This belief system has infected the government agencies associated with project development and the consultancy firms that undertake the actual (EIS) assessment processes. The playing field is further tilted by mining industry propaganda (masquerading as advertising) aimed at convincing the public about the social benefits that flow from mining. Most conspicuous among the self-promoters is the Coal Seam Gas industry¹.

¹ The latter-day emergence of the Coal Seam Gas industry has changed completely the relationship between agriculture and mining. CSG mining has affected a massive geographic area in Queensland and NSW and a vast number of farmers – mostly in prime farming areas. Despite the ‘personal’ nature of the conflict, the CSG miners have elected on garnering the support of the public at large – which bears none of the distress associated with accommodating the CSG externalities. In January 2012, Strategic Cropping Land legislation was introduced in Queensland but still no restrictions apply to where CSG miners can enter and establish. The Strategic Cropping Legislation presumes that CSG mining will not permanently alienate farm land even though the long term impacts of it are not yet known or understood.

The end result is a biased assessment process that overlooks the negative consequences occurring at the interface between mining activities and precedent industries (most particularly intensive agriculture), rural communities and the natural environment.

Solutions

Change for the better will require both political and institutional reform. Political awareness regarding what is wrong with the current assessment processes already exists and is growing rapidly. One suspects, however, that urban Australia has next to no knowledge or understanding of the farmer grievances surrounding encroachment by mining. Responsible ministers have been forced to come up to speed but they remain loath to give too much away, sticking resolutely to the myth that mining and agriculture coexist while all the evidence shows they are mutually exclusive activities at a given time and place. For the purposes of understanding what rural communities see as wrong with the governments' management of the mining boom, the Commissioners are urged to look at the Lock the Gate Alliance website www.calltocountry.org.au and Sharyn Munro's book *Rich Land, Wasteland*.

Before the March 2012 Queensland elections, the LNP government promised to introduce Statutory Regional Planning that would map the state's most productive farming precincts and quarantine these from mining. One year on the lights have dimmed. While the concept of regional-level planning (that would give communities and the farming districts absolute protection from large-scale mining) is exactly what is needed, it has yet to make the critical transition from pre-election promise to black-letter law.

In the absence of more fundamental reforms, there will be ongoing reliance on traditional project assessment processes (such as EIS/EPBC)². The redeeming feature of the EIS is its ability to assess each project proposal on its merits. Accordingly, the EIS can consider the total local and cumulative impacts associated with replacing the *status quo* with an activity we know³ can inflict large negative externalities on people's mental and physical health and the natural environment. In practice, the size of the opportunity and external costs inflicted by mining is proportional to the intensity of the land use that prevailed immediately prior to the commencement of mining.

The next few headings make comments on particular aspects of the EIS methodology that could be improved. Some of these comments were made in the recent past to Queensland's Coordinator General in relation to the EIS terms of reference applying to a particular coal mining project about to be assessed. Reference to the particular project has been removed and 'Commission' or 'Government' substituted for Coordinator General.

The EIS authors

A major concern regarding the EIS methodology is the likelihood of bias when the project proponent gets to employ and direct the consultant undertaking the EIS. There is no easy solution to this problem but I think it should be confronted in the terms of reference

² Another assessment process is the 'social license'. This concept is relatively new and vests de facto decision making authority with the affected community. Further comments on this concept are made later in the submission.

³ Epstein et al 'Full cost accounting for the life cycle of coal' in *Ecological Economics Reviews*, Ann NY Acad. Sci. 1219: 73-98.

document issued to the project proponent. Although the identity of the consultant might not be known at the time, the Commission could still make a request of the following nature:

The Government expects that the project proponent will employ a consultant who is technically competent and demonstratively independent. The Government expects that the EIS will be performed at a high standard. Should the terms of reference not be addressed fully and competently (as requested in this document) the Government will reserve the right to reject the proponent's application to take the project forward, as implied by submission of the EIS.

Project rationale

The terms of reference applying to major projects in Queensland directs the proponent/consultant to "...assess the potential adverse and beneficial environmental, economic and social impacts of the project". Despite the clarity of this direction, EIS reports are routinely submitted that do no such thing. Vague reference to job creation is passed off as comprehensive economic analysis.

To properly assess a project, the consultant should use Cost Benefit Analysis methodology to quantify the net social benefit expected to materialise over the life of the project. In crude terms this would be given by the sale of product (quantity x price per year over the life of the project)⁴ less total costs (given by: mine establishment and operating costs + income foregone by replacing agriculture with mining + externalities inflicted on the local community⁵ and the greater environment + rehabilitation of the mine to return the site to its original condition). The expected annual net cash flows should be discounted (at a rate reflecting social preferences) to arrive at a net present value⁶.

The calculation should be performed over the life of the project, from the time the target area is bought (or ceases production as farmland) to the time the mine site is totally rehabilitated. This might be 100 years, even though the mine would not produce coal beyond 15 years. During the rehabilitation period, the project will incur reclamation costs plus opportunity costs/losses associated with the agriculture and the associated community it would have displaced. The project's costs should also include a 'climate change charge' due to its inadvertent production of greenhouse gases. This 'charge' might be represented as a cash cost if the miner is required to purchase carbon offsets in order to operate.

If the Commission accepts this advice, the terms of reference should require the CBA to take into account the severe and periodic declines in activity that are characteristic of the mining industry. Other issues that should be explored include the following:

⁴ The quantities and prices applied over a given mine-life should reflect production and market realities. Analyses of trends in yields and prices could be used as a basis for coming to grips with likely future fluctuations in these variables.

⁵ The most obvious victims of mine-related externalities are mine neighbours who are neither bought out nor compensated for the negative impacts they suffer while ever mining continues. Farms adjacent to mines can become virtually unsaleable; farm productivity can suffer but worst of all is the effect on human health.

⁶ A curious characteristic of many EISs is the absence of any overall conclusion about the worthiness of the project. By demanding calculation of a Net Present Value (that incorporates all values capable of monetisation) the government would be provided with at least one summary of the project's performance from a social perspective.

- *Resource costs:* The EIS will not do justice to the issue of “...economic and social benefits” unless it considers the full resource cost of all inputs ie, the opportunity cost to the nation of all inputs and implicitly the cost of all externalities.
- *Amenity values and social justice:* Among the mining-related externalities should be the losses that would be associated with landscape, resident’s well-being and liveability. The potential for these losses is greatest in closely settled areas such as the Darling Downs. The fact that mining has been allowed to occur on the Darling Downs reflects poorly on past assessment processes and particularly their inability or unwillingness to place a dollar figure on the values that society wants to see protected.
- *Opportunities lost:* What are the real costs (or opportunity losses) associated with displacing intensive agriculture? These costs are not fully captured by prevailing land prices (or implicitly, the capacity of miners to buy the individual farms sitting on top of the resource). The terms of reference should take into account the economic, resource and environmental unsustainability of mining. In the process of comparing the ‘with and without’ scenarios, the EIS should place a dollar value on the permanent loss of scenic amenity and ecological services once embedded in the farming landscape.

EIS terms of reference often require the consultant to report extensively on expected employment and spin-off business activity. Employment is a secondary benefit and cannot be used to justify or support a project unless the Net Social Benefit, based on direct benefits and costs, is found to be positive in the first place. A side effect of ‘employment creation’ during periods of relatively low unemployment is inflationary pressures that flow throughout the wider economy. This and associated externalities should be explored by the EIS. Implicitly, ‘project justification’ should consider the wisdom of replacing highly productive agriculture, with its low-risk capacity to produce food and green energy in perpetuity, with coal mining which is high-risk, socially and environmentally destructive and finite.

Experience in rehabilitating high quality cropping soils post-mining is limited worldwide. A thorough review of practices should be undertaken and reported and plans for the management of topsoils and subsoils devised based on best practice technology. Topsoil management must take into account the restoration of soil structure as well as fertility and should be cognisant of the value of soil biota and soil seed-banks (particularly in the case of non-cropping soils).

Assessment of the draft EIS

The existing assessment process requires that the draft EIS report be made available to the public for the purpose of hearing feedback. This is good practice of course but a hiatus seems to exist between this step and further assessment of the project leading to its eventual approval. There is a perception in the bush that the assessment processes adhere religiously to prescribed guidelines but takes little notice of objections that could threaten the social and economic viability of the project, if taken seriously.

The rigor of the assessment process could be improved in two ways. First, the responsible government agency should pay an independent third party to critically review the EIS and

make recommendations on the extent to which the terms of reference have been met and the actual results or findings validated. This step would give the public confidence that the assessment process does not suddenly disappear behind closed doors. Secondly, there should be one or more public meetings at which all feedback on the draft is mentioned and an explanation given as to how the feedback has been addressed in arriving at a final EIS report.

Ideally, EIS assessment process should challenge the presumption that every mining proposal is (or will be) in the national interest. To effectively meet this challenge, the EIS terms of reference should include a comprehensive CBA – along the lines suggested above. The terms of reference should also request a detailed assessment of local preferences in relation to the proposed development. Perceptions about the integrity of the EIS process would improve if the work itself was more arms-length, transparent, objective and independent.

The social license concept

The EIS is a formal assessment process invented by government to give the appearance of thoroughness, openness and diligence etc. But as suggested above, the EIS process has been conveniently reinvented by bureaucrats and consultants as something more akin to an operating manual. It is fortunate, therefore, that *de facto* assessment processes have spontaneously emerged that give expression to the deeper needs and preferences of affected communities. The so-called social license is a pseudo authority, ‘issued’ by the local (or affected) community. It is particularly adept at identifying and expressing values that are hard to quantify in dollar terms – such as cultural heritage – but should be integral to any assessment that claims to be comprehensive and holistic. With the concept of the social license now gaining credibility, communities possessing a distinct identity, a modicum of analytical skills and a strong sense of purpose, can grant or refuse a social license associated with a particular project.

It is generally accepted that the LNP Government in Queensland sided with the Felton community in August 2012 when it refused would-be miner (Ambre Energy) authority to establish in the Felton Valley⁷. It did this because an overwhelming collective of the Felton community refused to grant the miner a social licence to operate as planned. The Felton community’s victory took more than four years and lots of hard work to achieve. Giving expression to a community’s preferences and rationale (for rejecting mining) might not lie within the capabilities of all communities opposed to a development project. The point to acknowledge, however, is that all-embracing political processes can be made to work for a community, provided its voice is loud and the underlying democratic processes are timely and competitive.

Clearly the concept of a social license will not apply where the affected community cannot or will not express a constant and consistent attitude in relation to a particular project. However, scope might exist to include the notion of a social license within the EIS terms of reference. If this was done the project proponent would be required to comprehensively

⁷ This happened before the project proposal was subject to an EIS. Felton residents suspect that if Ambre Energy had got the go-ahead (to undertake an EIS of its project) prior to the March 2011 Queensland elections, its battle to stop the miner might still be going to this day. If the Commissioners are interested I can provide them with written materials constituting the Withheld Social License that stopped Ambre Energy.

survey landholders and households potentially affected by the project and report accordingly.

The proper expression and limitations of a social license are not yet fully or widely understood. Some people, for example, harbour the impression that they can overwhelm a community's established position without engaging directly with that community. Given such confusion, it would be useful if the Commission could provide some guidance to communities wanting to test the formulation and use of a social license – whether it be for or against a particular development.

Conclusion

Historically, assessment of the acceptability of mining projects (using the EIS system) has been nothing more than a costly pause on the way to project approval and implementation. Impact mitigation strategies, included within the EIS, are used to mask and remove any possibility that the project might, in fact, be socially unacceptable – with or without mitigation conditions. The apparent inability of the EIS to fail a project proposal is obviously a threat to the assessment process's credibility.

The fail-safe record of the EIS process would not matter much if there were overarching planning mechanisms in place that gave absolute protection to high value land uses such as prime farming land and critical population densities. The corollary is that the cost of assessment processes could be reduced if other planning mechanisms – such as zoning – were introduced to eliminate the relevance of traditional assessment. If high impact mining, for example, was excluded by zoning from areas characterised by intensive agriculture and high population (by rural standards) the issues and complexities confronted by the EIS would be greatly reduced.

Although protection zones have, from time to time, been suggested it seems that those we put in power can't quite bring themselves to deny miners access to almost everything of value on planet earth. Hopefully there will come a day when our politicians understand that the true measure of our civilisation depends more on notions of balance and fair play than on holes in the ground that, incidentally, can only give temporary respite to the politicians' penchant for reckless fiscal management.

In the meantime rural and regional Australia is heavily reliant on case-by-case assessment for protection from the worst excesses of encroachment by mining. Accordingly the Commission has a job to do; it should be making formal project assessment processes more rigorous so that they can fail the marginal project and in the process deliver a measure of real protection and social justice to rural and regional Australia.