

Submission to the Productivity Commission Inquiry on Major Project Development Assessment Processes

March 2013

Table of contents

1. Introduction	3
2. Issues for Councils in Relation to Major Projects Assessments	3
3. Responses to specific questions in the Issues Paper	4
4. What is the appropriate role for Local Government in major project DA processes?	5
5. Key Planning Principles	6

1. Introduction

Local Government New South Wales (LGNSW) is pleased to provide a submission to the Productivity Commission's Inquiry into Major Project Development Assessment Processes. LGNSW is the peak body for NSW Local Government, and represents all the 152 NSW general-purpose councils, the special-purpose county councils and the NSW Aboriginal Land Council.

We note that the Commission has been asked to undertake a study to benchmark Australia's major project development assessment processes against international best practice, and that the study is to consider the extent to which major project development assessment processes across all levels of government affect the costs incurred by business, deliver good regulatory outcomes for the public and provide transparency and certainty to promote business investment.

The main issues for councils revolve around:

- Pathways for consultation with councils
- Contribution towards impacts on local infrastructure
- Impacts of projects on adjoining local government areas.

The comments in this submission are confined to discussion around the role of and impacts on Local Government in the assessment of major project developments.

2. Issues for Councils in Relation to Major Projects Assessments

The experience of NSW councils in assessment and development processes for major project developments has highlighted that the main issues for councils revolve around:

- *Pathways for consultation with councils and communities*

Councils and their communities should have a significant voice in planning decisions about major projects and sites of state significance. LGNSW expects to see provisions for consultation specifically with the relevant local councils in relation to assessment processes for major developments.

- *Contribution towards impacts on local infrastructure*

In Local Government Areas (LGAs) which are growing as a result of potential major developments such as mining and resource activity, Local Government will need financial resources to improve public infrastructure and to cater for the increased demands of a rapidly expanding industry and significant population increase. For many major developments councils are not the consent authority, therefore they have little control over and cannot rely on the inclusion of developer contributions as a condition of consent for these proposals.

In many cases, councils therefore rely on the goodwill of individual companies and their own capacity to undertake negotiations for contributions towards local infrastructure. In NSW some mining companies have held discussions with councils about possible compensation payments towards their infrastructure and community needs. Mechanisms such as voluntary planning agreements (VPAs) are available to assist in this process. However, VPAs only benefit the LGA within which the development is situated. LGNSW is not aware of any mandatory framework to formalise the requirement for such contributions or to extend such contributions

to benefit neighbouring councils that may be also directly affected as a result of the cumulative impacts of many mines in adjoining LGAs (see below).

- *Impacts of projects on adjoining LGAs*

The *direct* impacts of major developments are not just inside the LGA boundary within which they are situated; direct impacts can occur on neighbouring LGAs and this needs to be taken into account in any assessment. LGNSW advocates mechanisms and processes to ameliorate and compensate for these impacts and additional pressures on neighbouring councils.

3. Responses to specific questions in the Issues Paper

How do ‘call in’ powers for government Ministers operate in practice? In what circumstances do these powers apply? How does this differ across jurisdictions?

Local Government in NSW has always recognised the need for a system of development assessment that caters for large public sector infrastructure projects and major developments that clearly are of state or regional significance. However, past experience has seen many large projects being labelled as “state significant” and being removed from the local assessment process and put into the hands of the NSW Planning Minister.

A key concern of Local Government until 2011 was the reliance on and increasing use of Part 3A of the *NSW Environmental Planning and Assessment (EP&A) Act 1979* (now repealed) to assess and determine developments that should have been more appropriately dealt with at the local level. The result was that many residential, commercial and coastal projects were declared as “state significant” and “called in” for ministerial determination when in reality they were of only a regional or even local scale. The original intent may have been to speed up assessments and/or remove blockages to “major” developments, but the practice became widespread and subject to ministerial discretion, and only served to alienate local communities and diminish trust.

Many of the procedural issues surrounding the exercise of power involving decisions about regionally or state significant developments were considered in a 2010 report by the Independent Commission Against Corruption (ICAC) on Part 3A and the former SEPP Major Development¹. LGNSW endorsed the findings of the ICAC report and supported an assessment regime for decisions about genuine state significant developments based on the key recommendations in the report.

A key focus of the ICAC report was on the transparency and discretionary powers associated with the calling in and determination of major projects. The ICAC report proposed placing limits on the planning minister’s powers for the listing of sites of state significance.

LGNSW understands that under current planning provisions in this state, delegation to the Planning Assessment Commission (PAC) for state significant development (SSD) and state significant infrastructure (SSI) is at the discretion of the Planning Minister. The PAC role depends on a specific delegation or a requirement by the Minister for the PAC to review an

¹ ICAC ‘The Exercise of Discretion under Part 3A of the Environmental Planning and Assessment Act and the State Environmental Planning Policy (Major Development) 2005, December 2010

application. The current NSW Planning Minister has also indicated he will delegate authority for certain 'non-controversial' private developments to senior departmental officers. LGNSW supports this structure, with the Minister delegating responsibility for all private projects that are state significant to the PAC for determination. However, delegation to the PAC remains at the discretion of the Minister, and members of the PAC are still appointed by the Minister. To maintain transparency and minimise the risk for undue influence in the development process, regulations and practice should ensure that checks and balances are put in place to limit such Ministerial discretion.

LGNSW strongly believes that the decision making authority for major projects (i.e. the PAC in NSW) should be a truly independent body, and regulatory mechanisms should be in place to ensure it operates in a transparent and independent manner, and cannot be subject to potential change on a whim of any future minister or government. LGNSW advocates an independent and transparent decision making for projects of genuine state significance, within a framework that embodies the following:

- Minimised opportunity for ministerial discretion – in NSW this is achieved to some extent by the Minister delegating responsibility to the PAC for determination of all private projects that are state significant.
- Powers being given to the determining authority to hold public hearings in certain circumstances.
- A mix of full-time and part-time members on the determining body, and an additional pool of long-term casual members to increase the depth and breadth of experience.
- Procedures for transparency and accountability e.g. all significant determinations to be made in public.

What is the appropriate role for Local Government in major project DA processes?

As stated above, Local Government acknowledges there is a need for a development assessment system that caters for major developments that clearly are of state or regional significance. LGNSW advocates applying the principle of subsidiarity (i.e. a central authority should perform only those tasks that cannot be performed effectively at a more immediate or local level) when considering the most appropriate spheres of government for determining major infrastructure projects and other developments.

Councils must have the opportunity to provide feedback and be involved in the assessment of major projects. On a practical level, some of the areas in which councils could or should have a role are:

- pre-lodgement discussions and formation of key issues and assessment requirements (in NSW these are referred to as the Director general's requirements or DGRs);
- review of a proponent's preliminary environmental assessment and assistance in determining adequacy;
- assistance in notification and public consultation;
- review and comment on proponent's supporting documents (e.g. Environmental Assessment & Preferred Project Report); and
- input to preparation of Conditions of Approval by the departmental staff.

4. Key Planning Principles

In concluding, LGNSW considers it crucial to take into account the following principles in any assessment of a major project:

- *Retaining Sound Planning Principles in Development Decisions*

Local Government has always recognised the need for a system of development assessment that caters for large public sector infrastructure projects and major developments that clearly are of state or regional significance. By their nature, the scale and complexity of major development projects necessitate a more complex assessment procedure, which would involve longer assessment times than other less complex developments. LGNSW supports calls from all sectors for a reduction in the 'red tape' that surrounds current approval processes. However, sound planning principles should not be sacrificed for the sake of expedience. Shortening average development assessment times for example, must not come at the expense of consistent, transparent and appropriate development assessment.

- *Long Term Vision and Sustainability*

It is important not to lose sight of a long term vision for sustainable development over a 30 years+ time horizon when making development decisions, rather than simply responding to the immediate concerns of the day which may be focused on short term economic growth. In designing a more expedient system for assessing major projects, due regard must be given to the legacy of major developments that will emerge. Once built or operational (in the case of a mining or resource project), a major project will remain for the best part of 50 years if not more – the outcome must be one that delivers a good living environment for the occupants or users of the development as well as those around them.

- *Local input*

To date, concerns raised by a community have been only considered at the project approval stage. The inclusion of community concerns at this stage may be far too late; realistically, proponents may have an expectation that they will receive an approval as they have followed the agency requirements.

A potential hold up in the assessment of major projects is community opposition where the project is proposed. Such opposition is commonly associated with mining and other resource proposals, due to the apprehension of the community about the uncertain and unknown social, environmental and other impacts locally. Community anxiety and resistance could be reduced to a certain degree if early and genuine consultation with communities was undertaken and appropriate consultation frameworks (such as consultative committees) were established.