

11 September, 2013

The Commissioners
Major Project Development Assessment Processes
Productivity Commission
Locked Bag 2, Collins St East
Melbourne Vic 8003

Major Project Development Assessment Processes

Dear Sirs,

I have read your report on “Major Project Development Assessment Processes” and wish to comment on it as follows.

The report is a thorough examination of the issues and I agree with many of your conclusions and recommendations. However I feel that the document as a whole requires re-balancing. At present it focuses predominantly on the commercial impacts on project proponents and largely ignores the over-riding stated objective to “compare the efficiency and effectiveness of Australian approvals processes *to achieve protection of social, economic, heritage, cultural and environmental assets* compared with comparable international systems.” In your comparison of Australian practice with comparable overseas countries, for example, you have only compared the efficiency of the various systems not their effectiveness. There is no point in merely being efficient if one fails to achieve the objectives of the exercise. In the benchmarking area Alberta Canada is mentioned in very positive terms at one point. The tar sands developments in Alberta are regarded in conservation circles as one of the most inappropriate developments in the world and should disqualify any reference to it as a model. It may be that the Commission does not have people qualified to make this comparison in which case it should say so, or obtain input from those who are so qualified.

Again you have a special Box (Box 3) which gives “The indicative cost of a major project approval delay”. You have no similar box highlighting the cost of an over hasty decision which results in unwarranted habitat destruction, the loss of ecological services or economic loss to parties other than the project proponents even though this is the reason for having an assessment in the first place. It should also be highlighted that, while there may be

an economic loss to proponents in the case of a delay, it is a temporary set back while ecological, cultural and heritage losses are often permanent.

I approve of a number of your recommendations that we believe will strengthen the assessment process without adding any extra costs to project proponents and indeed will reduce it. These are:

- establishing a ‘one project, one assessment, one decision’ framework for environmental approvals,
- institutionally separating environmental policy from regulatory and enforcement functions in all jurisdictions,
- using Strategic Assessments where they can be an effective tool to reduce project assessment costs and account for cumulative impacts, and
- requiring that approval authorities publish reasons for their approval decisions and conditions for all major projects, and that regulatory agencies develop risk-based strategies for monitoring and enforcing compliance with approval conditions. There is nothing so destructive of confidence in the system as occurs when a Minister “calls in” a project and overrides the assessment process put in place by Parliament.

Although your report records the problems that result from the multiple different requirements and standards you do not include in your recommendations that standards be harmonised across Australia. This should be a major aim of any change to the assessment process.

I also differ from your conclusion that the best approach is for a lead agency to take responsibility for coordinating regulatory requirements and giving guidance. You have advanced two main reasons for rejecting the ‘one-stop shop’ approach:

1. **A vast amount of legislation would need modification to give authority to the one-stop shop.** Examination of the problems experienced by project proponents however indicates that existing legislation is vast, complex, overlapping and confusing. In other words it is ripe for a complete overhaul. Converting to a ‘one-stop shop’ would enable this complexity to be removed whereas the lead agency approach would leave it in place. Not only that but the need for memorandums of understanding

agreements between multiple agencies within one jurisdiction and bilateral agreements between the States and the Commonwealth would, in fact, create an even more complex system.

2. Establishing a single agency with the requisite skills and expertise to assess and approve a diverse range of project types and impacts would be very challenging. It would be equally difficult for a lead agency to co-ordinate assessment among multiple agencies and to ensure that all aspects of the assessment are fairly covered. People in the lead agency may not have much experience in the development of an EIS (it is a field in its own right) and would have only have expertise in certain aspects of the project and may not realise the importance of other issues. Of course they could use experts in other agencies and external contractors to provide the expertise they lack, but would they know who was best to contact and what weighting to give to each opinion in areas outside their sphere of expertise? On the other hand people whose regular job was assessment would build up a network of appropriate experts and would be better placed to evaluate their opinions.

3. Overlap could be created with agencies that regulate regular-sized developments and ‘regulatory capture’ is a risk. This problem is only created because of the artificial distinction between ‘major’ projects and all other projects. We can learn here from the USA. They have a carefully defined set of ‘Categorical Exclusions’ which do not require environmental assessment. All other projects require a simplified “Ecological assessment” which basically screens projects to see whether they have a significant impact. If they do not a “FONSI” (Finding of no significant impact) is issued explaining why an action not categorically excluded should not have a significant impact. Such actions can be handled by a normal agency. If a “FONSI” is not issued an EIS (Environmental Impact Statement) is required which I believe can best be delivered by a dedicated agency. There is no risk of overlapping requirements between agencies or regulatory capture.

I support the creation of a single assessment authority at either the Commonwealth Government level or in an independent Commission along the lines of the Murray-Darling Basin Authority. This body would prepare Environmental Impact Assessments where these are required. Physically officers of the authority would be stationed

across the country. Approvals would be done by elected Governments at either State or Federal level depending upon whether the impacts triggered the EPBC Act or not. They would still be required to publish reasons for their approval decisions and conditions. The advantages of such an arrangement are many:

1. Creation of a “One-stop Shop” as supported by the incoming Coalition Government and by the Business Council. Project proponents would have a single authority with which to deal and could expect a single set of requirements. There would be no finger pointing between agencies or the various levels of Government in the case of cost blow outs or delays.
2. The independence of the EIS authority would enable a transparent process to be established which would gain greater public support. One of the chief issues in this whole debate is that State Governments are often also proponents of the project being assessed and there is no confidence that assessments conducted under their auspices will not be biased in its favour and against environmental and other concerns. This is why conservationists have been wanting the Commonwealth to retain its powers. Even better would be to have the process performed by an independent body.
3. Expertise would build up within the authority enabling high levels of efficiency and proficiency to be achieved.
4. Harmonisation of standards across Australia would be easier to achieve and maintain than trying to do so among Governments and multiple agencies within a Government.
5. The EIS authority would be well placed to develop risk-based strategies for monitoring and would report on compliance with conditions. Enforcement would be done by the Government authorising the relevant project.

Yours sincerely,

John Spiers