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Comparison of Strategic Environmental Assessment in New South Wales and Scotland

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The Effectiveness of Impact Assessment in Addressing Big Picture Environmental Issues
“Comparison of strategic environmental assessment
in New South Wales and Scotland”

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Abstract

The limited current application of strategic environmental assessment (SEA) in New South Wales (NSW) is contrasted with its use in Scottish public sector policy formulation, following recent legislation which has extended the EU SEA Directive to all new government, agency and local authority policies, plans and programmes likely to have significant environmental effects. Drawing on Scottish practice, a case is made for statutory application of SEA to land use planning and natural resource management in NSW.

1. Introduction

When the European Union (EU) first agreed upon a Directive on environmental impact assessment (EIA) in 1985, it accepted that this form of project-based environmental assessment could only be effective if the policies, plans and programmes (PPPs) which set the framework for the development process were made subject to the same process. Strategic environmental assessment (SEA) was subsequently made a legal requirement within its Member States in 2004, and is now compulsory for statutory public sector plans and programmes that determine the criteria on which approval is sought for specific projects.

Although SEA does not exist as a discrete policy device or statutory requirement in Australia or New Zealand, elements of SEA nevertheless operate within their planning jurisdictions. New South Wales (NSW), for example, Australia's most highly populated State, has recently adopted a number of non-statutory but compulsory regional strategies designed to complement statutory regional and local environmental studies. It is also involved in a range of other strategic documents prepared by State agencies and municipal authorities.

The situation in Australasia in terms of strategic elements of environmental assessment remains fragmented, uncertain and volatile. This leaves the open economies of the area unnecessarily exposed to the unprecedented demands made on their resource bases by, for example, a booming Chinese economy. Our paper compares two statutory planning jurisdictions, namely NSW and Scotland, to identify some of the lessons that can be drawn from the application of environmental assessment to policy-making. The emphasis is on pre-plan evaluation rather than assessment of individual projects.

Scotland has been chosen as a suitable comparator because its *Environmental Assessment (Scotland) Act 2005* is at present the most radical piece of SEA legislation within the EU, extending the SEA Directive to all public sector PPPs that are likely to have significant environmental effects. After outlining the basic approaches to the application of SEA to PPPs in NSW and Scotland, our critique evaluates the applicability of the Scottish approach to SEA to Australasia, and in particular examines the implications for NSW in adopting such a radical solution to environmental policy-making.

2. SEA in New South Wales

In May 1992, the Australian Commonwealth and all States and Territories, in addition to the Australian Local Government Association, signed the Intergovernmental Agreement on the Environment (IGAE). This attempts to spell out the environmental policy and management

responsibilities of each sphere of government (Farrier and Moore, 2006; Kelly and Farrier, 2006; Brown, 1997). In item 3, 'Principles of Environmental Policy', the signatories agreed that environmental considerations would be integrated into Government decision making processes at all levels by "ensuring that environmental issues associated with a proposed project, program or policy will be taken into consideration in the decision making process" (IGAE, 1992). The IGAE has been aptly described as a non-statutory 'political compact' (Bates, 2006: 80).

Consideration of the environmental implications of PPPs in Australia has developed under the broad umbrella of EIA. Rather than progressing along more holistic lines, its version of EIA is characterised by a heavy emphasis on assessment of specific projects (Harvey, 1998). In contrast, many overseas jurisdictions embrace the wider realm of PPPs, which has evolved into a formal approach defined as SEA. Although rarely articulated as such, SEA in Australia is utilised as a decision-making tool that is clearly discrete from EIA. This is "either in an *ad hoc* manner or subsumed under a different name such as strategic planning" (Harvey, 1998: 211).

There is no *formal* SEA system in Australia. In NSW, its potential exists within the scope of environmental assessment as part of strategic planning processes. A hybrid and imprecise form of SEA serves either as (i) part of a mandatory or discretionary requirement or discretionary provision under planning and natural resource legislation or (ii) a policy tool to facilitate strategic planning. In a statutory context, the most significant opportunity for SEA exists, arguably, within the context of the core planning legislation: in NSW, the *Environmental Planning and Assessment Act 1979* ('EP&A Act') (Stone, 1998).

Part 3 EP&A Act enables production of three types of statutory plans known collectively as environmental planning instruments (EPIs): state environmental planning policies (SEPPs), regional environmental plans (REPs) and local environmental plans (LEPs). While these EPIs are the product of strategic planning, they nonetheless take the form, character and function of statutory instruments operating at the core of development control (Williams, 2007). Part 3 also makes provision for preparation of environmental studies prior to the making of REPs or LEPs. The EP&A Act does not provide any details as to their form and contents, but such documents usually include:

- an analysis of the existing natural, social and economic environment;
- a review of prevailing land uses;
- consideration of relevant policies;
- an outline of different planning scenarios; and
- exploration of preferred options.

The local environmental study requirement, however, may be waived at the discretion of the Director-General of the NSW Department of Planning (DoP). A common example is when a draft LEP aims to amend the principal plan by 'spot-rezoning'. The result is that over many years, the production of local environmental studies has waned.

But this ethos is now changing. First, the emergence of a mandatory 'Standard LEP' in 2006 designed by the DoP requires every council across the State to prepare a new principal LEP in conformity with the established template with the benefit of sufficient pre-strategic appraisal. At the same time, arrival of fresh policy from the State Government is pushing

towards a more deliberate approach to *regional* planning for issues that transcend council boundaries without relying on statutory REPs (Department of Planning, 2006).

Reliance on what is in effect SEA is evident through current metropolitan and regional planning initiatives, although the term is raised rarely. This is exemplified by the emergence of detailed strategic mechanisms designed to inform and guide various non-statutory spatial plans. The current metropolitan strategy for Sydney - i.e. *City of Cities: A Plan for Sydney's Future* - is being implemented through ten detailed sub-regional strategies, which in turn will provide the framework for LEPs prepared in accordance with the standard template (Department of Planning, 2005).

Additionally, planning for two new Growth Centres identified for Western Sydney by the metropolitan strategy is being facilitated through an exhaustive process overseen generally by the Department of Planning and, more particularly, the new Growth Centres Commission. This strategic planning process ostensibly includes environmental assessment of all aspects of the Growth Centres programme. Biodiversity values and impacts, for example, are to be evaluated through a draft *Conservation Plan* that examines various options for biodiversity conservation, not just in the Growth Centres but within the wider Sydney Basin (Growth Centres Commission, 2007).

More detailed strategic planning is also occurring in other parts of NSW by means of regional strategies. Designed to identify strategic priorities that will direct land use planning over the next 25 years in selected regions, the strategies will also guide and direct both local strategic planning and the preparation of LEPs. Implementation of the regional strategies is mandated by a specific ministerial direction under the EP&A Act, which "directs councils when preparing a draft LEP to ensure they are consistent with the relevant regional strategy" (Department of Planning, 2007: 1). Whilst this represents yet another example of a shift towards strategic-based planning, it will still be difficult to move away from the entrenched focus of dealing with individual proposals as they arise.

Mention should also be made of other regional mechanisms, such as the design and implementation of non-statutory Catchment Action Plans across thirteen catchment areas under the *Catchment Management Authorities Act 2003* (NSW). Another example is Recovery Plans devised for threatened species, populations and ecological communities listed under the *Threatened Species Conservation Act 1995* (NSW), which are utilised to promote such recovery. The weakness of the regime is that it fails to restrain statutory discretion, meaning that when a relevant decision is made under the TSCA the recovery plan is not binding (Kelly and Prest, 2000). These examples demonstrate the disjointed 'systems' of natural resource management, which may or may not be sufficiently integrated into EPIs or regional planning strategies if at all. The situation is further complicated by the number of agencies involved. Disentanglement of such a patchwork of mismatching mechanisms is difficult, if not impossible, without major change. This raises the idea of a broad SEA approach extending beyond traditional instruments made under the EP&A Act.

3. SEA in Scotland

In contrast to NSW, the *Environmental Assessment (Scotland) Act 2005* is explicitly designed to mainstream sustainable development in public sector policy formulation. The preamble sets out the following objectives for the legislation:

- contributing to the Executive's aim of improving the Scottish environment and making Scotland more sustainable;
- improving policy-making by ensuring that the environmental effects are fully considered at an early stage in policy formulation and that the environmental effects of different options are assessed;
- promoting more open government by allowing the public and interested organisations to comment on environmental reports, and obliging public bodies to explain how they have taken such comments into account (Jackson & Illsley, 2006: 369).

Comparing NSW with Scotland, two fundamental differences in approach to SEA can be identified. One is that Scottish public sector bodies are now obliged to factor in to their policy formulation an assumption that *any* new PPP, whether required by statute or simply a voluntary initiative, *must* be proofed for its environmental implications through a formal process that requires a high level of public engagement and consultation. The public body or Minister concerned has been granted no discretion in this matter.

The other is that the Scottish Government has established a co-ordinating body to oversee the implementation of SEA. The SEA Gateway not only supervises and monitors the 2005 Act but liaises between the public bodies undertaking SEA and the statutory environmental consultees (Scottish Natural Heritage, the Scottish Environment Protection Agency and Historic Scotland). These official consultees are obliged to comment on the individual PPPs subjected to the process, both at the stage of initially scoping the likely main effects and subsequently on the consultative version of the environmental report outlining the provisional outcomes.

These innovations are intended to inculcate best practice in SEA across the Scottish jurisdiction. The Gateway has produced standard templates and pro formas, an electronic guidance manual, and is sponsoring a Pathfinder project on good practice in SEA. The intention is to establish transparent standards amongst public bodies for assessing the quality of policy formulation with regard to the environment. The Gateway also supervises statutory requirements for public consultation on this. Before any PPP subject to SEA can be legally put into effect in Scotland, the public body concerned must produce a finalised environmental report that demonstrates how public concerns with the consultative SEA have been taken on board.

The new Act has shifted the focus of SEA in Scotland. The technique has been transformed from a process that was previously self-administered, and often amounted to little more than an in-house retrospective 'stamp of approval' that had no external proofing. SEA has become a hard-edged instrument for holding Scottish public bodies to account in delivering environmentally-sustainable outcomes, obliging policy formulation to become much more open to public scrutiny and challenge.

4. Conclusions

Enhanced consideration of the 'state of the environment' needs to be incorporated into the design of activities of policy formulation and strategic planning in NSW and other Australian jurisdictions. The environmental, land use and development benefits of policy and plan integration may, however, cause political and executive controversy. In particular, this may meet with opposition from within government bureaucracy, as has happened in the recent past. From the viewpoints, firstly, of improved and more holistic environmental and natural

resource management; and, secondly, of informed public policy formulation and plan making, deliberation of utilising the Scottish SEA experience is strongly recommended. As is the case there, explicit statutory provision must be seriously considered to facilitate and enforce SEA in Australian planning systems.

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