

INFORMAL PARTNERSHIPS TO FACILITATE IMPACT ASSESSMENT FOR MAJOR PROJECTS IN VICTORIA, AUSTRALIA¹

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INTRODUCTION

This paper examines the opportunities for cooperation and even partnerships between regulators, proponents and other stakeholders to address their interests through formal impact assessment (IA) processes. It is grounded in recent experience with IA of major infrastructure projects and strategic planning initiatives in the State of Victoria, Australia

Cooperation is the process of working or acting together. This is intrinsic to formal IA processes inasmuch as information exchange and the coordination of activities by regulators and proponents is necessary if IA is to proceed effectively.

A partnership formalises cooperation inasmuch as it is a relationship between stakeholders who agree to share information and responsibility for achieving a common goal. In the present context, the goal is the completion of a stage of IA. Yet underlying this goal are a range of stakeholder interests and priorities, which may not spontaneously align. Rather, focussed effort is needed to achieve effective cooperation within the IA process, subject to the constraints of both tension between priorities and formal obligations to ensure independence.

STAKEHOLDER INTERESTS IN IMPACT ASSESSMENT

Table 1 below characterises the key interests or priorities of key stakeholders with respect to IA processes for major projects. This is based on a distillation of perspectives expressed through both the political science and IA literature as well as the author's experience of stakeholder discourse on numerous projects.

The interests of community stakeholders resolve around fairness, transparency and their ability to influence outcomes. Relevant aspects including certainty of process, information access, and the rights to object to proposals and to be heard by an independent party, are commonly expressed in legislation – to the extent that they are formally provided for.

Proponents' interests focus on achieving project approval with minimum costs, in terms of the IA process itself, associated delays and requirements for project implementation including environmental mitigation. Proponents therefore have a strong interest in both the certainty and practicability of the IA process, since these directly influence risks and costs.

Decision-makers' immediate interests focus on the relevance of IA documentation and consultation to their decision-making responsibility. Hence they seek succinct documentation and effective consultation to inform decision-making. Decision-makers' interests partly overlap with those of community stakeholders and proponents, in terms of ensuring due process, as well as facilitating development, community well-being and sustainability.

The remainder of this paper focuses on the last eight priorities in Table 1, for the reason that their achievement substantially relies on cooperative mechanisms including dialogue and

¹ The views expressed in this paper are those of the author and not the Victorian Government. The author wishes to thank two anonymous peer reviewers and David Hyett of AECOM for their helpful comments on a draft of this paper.

negotiated agreements to address stakeholder interests – especially of proponents and regulators - in a practical, efficient way.²

Table 1: Stakeholders' key priorities for IA process

(in part derived from Fuller (1999) and Sippe (1996))

Stakeholder priority	Proponents	Decision-makers	Community
Certainty of process	✓✓	✓✓	✓✓
Right to be informed		✓	✓✓✓
Right to object		✓	✓✓✓
Right to be heard	✓		✓✓
Transparency	✓✓	✓✓	✓✓✓
Responsive to community concerns	✓✓	✓✓	✓✓✓
Guide environmental mitigation	✓✓✓	✓✓	✓✓
Practicability	✓✓✓	✓	
Cost-effectiveness of effort	✓✓	✓✓	
Avoidance of delays	✓✓✓	✓✓	
Clarity of required outcomes	✓✓✓	✓✓✓	✓✓
Relevance to decision-making	✓✓	✓✓✓	
Succinct, accurate documentation	✓	✓✓✓	✓✓
Accountability for implementation	✓✓	✓✓	✓✓✓

✓ moderate interest ✓✓ strong interest ✓✓✓ very strong interest
Community priority Proponent priority Government priority

OPPORTUNITIES FOR STAKEHOLDER COOPERATION

The scope for cooperation or partnerships between stakeholders will reflect the degree of alignment or compatibility of their primary interests, as well as the extent of mutual understanding and trust (Laurian, 2009). Conversely, cooperative engagement will assist understanding, productive exchange, and hence enhanced trust and alignment of behaviours.

Recognising these reciprocal relationships, there are two areas of project development related to IA where an explicit partnership approach has begun to be adopted in recent years. First, the use of alliances or similar approaches for project procurement is increasingly involving a partnership between the primary proponent, construction suppliers and IA and engineering consultancies. Secondly, resource and other corporations are not uncommonly forming partnerships with community associations or local, regional or national governments in developing regions to establish an agreed agenda for economic and social development linked to IA processes (Esteves and Vanclay, 2009; Sullivan and Warner, 2004).

In terms of incentives and opportunities for cooperation or partnerships between proponents and regulators, five key areas will now be outlined.

Guide environmental mitigation

The development of project options and specific measures to avoid, minimise or offset potential impacts is an essential aspect of IA. Ultimately, the nature and extent of required mitigation will be determined by formal decision-making. However, proponents will want to establish as early as possible what issues are particularly significant and what responses are

² In terms of the multiple perspectives that Lawrence (2003) identified as potentially relevant to improvement of IA practice, the emphasis here is upon practicality, while giving due regard to the importance of substantive outcomes and the need for rigorous and adaptive strategies. While cooperation between proponents and regulators is needed, this must fall short of Lawrence's concept of collaborative IA in order to protect the integrity of statutory processes.

likely to suffice, while government will want to be confident that effective mitigation measures are being identified. Dialogue between the proponent and relevant agencies is therefore vital to avoid surprises (Federico, 2005). Moreover, cooperative engagement or negotiation can assist their resolution, including to formulate suitable mitigation measures.

In Victoria proponents are encouraged to engage with and relevant agencies from an early stage to identify potential issues. For example, information exchange and dialogue with the environmental agency on the significance of native vegetation that may be lost, and suitable strategies to avoid, minimise and offset vegetation losses, is often a critical aspect of IA for major projects. Proponents are also required to prepare and implement a community engagement program to identify issues of concern and consult on mitigation responses.

Practicability and relevance to decision-making

Proponents have a strong interest in the practicability of IA and approval decisions, especially their ability to accommodate flexibility of design, in order to enable innovation in the final design, reduce design cost risks and facilitate project delivery. However, decision-makers need adequate information on project design, likely impacts and their proposed management to address statutory decision criteria and thus ensure legal robustness.

While some jurisdictions provide for concept or outline approvals to give substantial certainty to investors prior to the preparation and endorsement of final designs, this may be only a partial solution to the need for flexibility.

To facilitate public and private investment within the framework of contemporary project financing and contracting, flexibility at the preliminary and even final design stages may be sought. To reconcile this demand with the protection of public interests, it may be necessary for agencies to negotiate with the proponent on a transparent framework - consistent with statutes - to enable effective IA *and* provide design flexibility as well as accountability with respect to performance. For example, in the case of the Victorian Desalination Project, being delivered through a public-private partnership, the IA process evaluated both the likely impacts of a concept design and the suitability of proposed performance requirements to establish confidence that any project variations would yield acceptable outcomes.

For major projects in Victoria, advice to proponents on preparation of IA reports is facilitated on a whole-of-government basis through an inter-agency group. To strengthen this approach, new partnership agreements are being established to elicit timely advice from individual agencies and integrate these inputs, in order to reduce uncertainty in the IA process.

Cost-effective effort and succinct documentation

Proponents naturally wish to focus their IA efforts in a cost-effective way to achieve required approvals. Decision-makers also favour focus in as much as succinct IA documentation will assist the discharge of their obligations. However, there are other factors at play. Agencies, consultants and legal advisers may favour comprehensiveness over focus in order to minimise risks to the IA process that might result from giving inadequate attention to relevant matters.

The tension between the desire for succinct versus comprehensive IA documentation can be ameliorated through various strategies. For example, Morrison-Saunders and Bailey (2009) outline a Partnering Agreement between the State assessment agency and consultants in Western Australia directed towards a shared understanding of information needs, practical constraints and opportunities to improve IA practice.

Methodological approaches are also pertinent in achieving succinct, accurate documentation to meet the needs of decision-makers while also enabling cost-effective effort by proponents and IA consultants. Risk assessment methods provide an important opportunity in this regard. In Western Australia and Victoria, a shift towards a risk assessment approach to guide priority setting in IA studies and mitigation effort is being pursued (EPA, 2009). This approach relies

on consultants and assessors communicating to agree on a requisite level of inclusiveness, focus and detail, having regard to issues of objectivity and practicability.

Minimising avoidable delays

One key to minimising delays in statutory processes is for proponents and regulators to reach a shared understanding of their respective time pressures and constraints, as well as their information needs, in terms of decision points.

A critical factor contributing to delays in major project approvals, i.e. relative to proponents' expectations, is the misalignment of, first, the normal stages of project design and business approval, and second, decision points for statutory IA and approval processes. Brown and Hill (1995) recommendation for cooperative "decision scoping" by the proponent's design and environmental teams is pertinent here. The problem is more severe in a statutory context, as there can be a freeze in the design process from completing the IA report (or earlier) to the last statutory decision. One solution is that adopted for the Victorian Desalination Project (as described above), to reduce the design information needed at the IA stage while relying on a performance framework to guide both the final design and project implementation.

As part of a new approach to integrated management of major projects being implemented in Victoria, agreed project schedules are to be negotiated by proponents and pertinent agencies, including for the submission of draft reports by proponents and their review by agencies. Further, the partnership agreements between key agencies in Victoria will ensure close coordination of advice giving and statutory processes for priority projects.

Clarity of required outcomes

Proponents, decision-makers and community stakeholders share a strong interest in clarifying required environmental outcomes from statutory approvals. Proponents seek clarity about required outcomes in order to optimise their efforts, in terms of investigating issues, refining project design and developing cost-effective mitigation measures. Government has an incentive to clarify key outcomes that reflect applicable legislation and policy, to provide benchmarks for project assessment and evaluation, and thus guide focussed documentation and drive desired outcomes (Keysar, 2005). Further, a clear outcome framework to guide responses to community concerns will encourage confidence in the IA process.

In Victoria, the evaluation of potential impacts of major projects is assisted by developing project-specific sets of outcome objectives, first to link projects' functional objectives to higher-order strategic objectives, and secondly, to encapsulate environmental, social and economic implications in the context of applicable legislation and policy. The proponent may frame both draft outcome objectives and more detailed assessment criteria in the context of their understanding of the project's purpose, feasibility constraints and potential implications. However, though this input will assist the IA process, decision-makers' autonomy in applying legislation and policy needs to be protected. Consequently, though dialogue on policy and outcomes between proponents and agencies advising decision-makers is needed, a formal agreement is normally not appropriate.

As part of the new inter-agency partnership approach to major projects in Victoria, greater priority is being given to timely clarification of policy and strategic plans impinging on projects, and thus required outcomes (Victorian Govt., 2010). Strategic assessments are also expected to become more important for establishing outcome frameworks for projects. The most ambitious initiative to date has been an ecological assessment of expanding metropolitan Melbourne to guide urban growth and major infrastructure projects, which has involved close cooperation between the Victorian and Australian Governments (Victorian Govt., 2009). To achieve required ecological outcomes, strategic offset plans for key ecological communities together with species management strategies have been developed.

Accountability for implementation

Both the need for flexibility in project design and uncertainties in IA predictions can mean that a prescriptive approach to environmental management is not suitable and that a performance-based approach may be needed. In such circumstances, accountability will require monitoring and management of performance against relevant standards or performance criteria – which may be established through the IA process. Constructive dialogue between agencies and the proponent will be necessary to develop a performance management framework that is simultaneously practicable, cost-effective and accountable.

In practical terms, a partnership – with an explicit definition of responsibilities, strong transparency and independent oversight – may be needed to manage performance. Such partnerships can be formalised through agreements. For example, accountability for the environmental performance of the Victorian Desalination Project is established within the framework of the contractual agreement between the project company and the government, which provides for an independent reviewer and environmental auditor to confirm compliance of the final design, construction and operation with performance requirements.

CONCLUSION

Partnerships can make a valuable contribution to an efficient and purposeful IA process – if an effective alignment of interests can be achieved. Examples are partnerships between: mining firms and local or regional communities to pursue compatible economic and social development objectives; lead proponents, design and construction contractors and IA consultants to design, assess and implement a project; and between different government agencies with responsibilities impinging on individual projects.

However, the diverse interests that different stakeholders have in the IA process can entail varying levels of tension that can reinforce wholly formal, distant, untrusting and even adversarial relationships. In contrast, a willingness to exchange information and engage in dialogue can reveal complementary interests and thus encourage trust, negotiation and cooperative effort - this is as true in IA as any other arena.

The State of Victoria is pursuing a strengthened focus on cooperative approaches to aspects of the formal IA process in order to enable timely decisions that reduce business costs as well as outcomes that effectively address legislative and policy priorities. Key priorities are:

- Development of partnership agreements between the lead assessment agency and other government agencies with approval, industry facilitation and infrastructure responsibilities;
- Dialogue between agencies and proponents before initiation of the statutory IA process to:
 - identify key project issues, and any related strategic issues, warranting early attention
 - resolve a suitable project definition to satisfy applicable statutory processes
 - consider the relationship between the project procurement strategy and the IA process
 - address opportunities for aligning statutory processes to minimise overall time;
- Negotiation of an agreement between the proponent and agencies of a time schedule for completing respective responsibilities through the IA process;
- Convening of inter-agency groups to enable dialogue between the proponent and agencies during the development of the IA report and the refinement of the project proposal
- Seeking agreement on a draft set of outcome objectives and associated criteria that encompass both project objectives and relevant aspects of legislation and policy, in order to focus effort within IA investigations while providing both flexibility and accountability;
- Encouraging the proponent to engage closely with community and other stakeholders both before and during the preparation of their IA report.

In summary, there are various opportunities for developing cooperative relationships between key stakeholders in the formal IA process, including between regulators and proponents, subject to the constraints of independent decision-making. While formal partnerships will

only be viable and appropriate in limited circumstances, there are broader opportunities for informal partnerships built on dialogue, trust and the alignment of purpose and effort.

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