Urban Taskforce
AUSTRALIA

Improving major project development assessment and approvals through the integration of State and Commonwealth processes

Submission to the Productivity Commission study to benchmark Australia's major project development assessment and approvals (DAA) processes

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Contents

The Urban Taskforce represents Australia's most prominent property developers and equity financiers. We provide a forum for people involved in the development and planning of the urban environments to engage in constructive dialogue with government and the community.

Executive Summary

The Urban Taskforce is pleased to make this submission to the Productivity Commission as part of its benchmarking study into major development assessment and approval processes.

Australia has a number of pieces of State and Commonwealth legislation that control development while aiming to protect the environment. The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is the Australian Government's primary piece of "environmental" legislation. The states also have legislation that seek to protect the environment and/or promote ecologically sustainable development. In New South Wales, the primary legislation addressing land use, management and the promotion of ecologically sustainable development is the *Environmental Planning and Assessment Act 1979*. The problem with having State and Commonwealth legislation concerned with the same issues is that there are instances where development proposals become subject to assessment and approval pursuant to both State and Commonwealth legislation.

The Urban Taskforce has grave concerns with government processes that duplicate and overly complicate an already complex environmental assessment and approval process. We strongly advocate for reforms to the assessment and approval process that will deliver an improved, more efficient and transparent environmental assessment and approval system.

Agreements have been reached were state driven environmental assessment process are recognised as meeting Commonwealth requirements and are sufficient to deal with matters of national environmental significance. This is permitted by way of bilateral agreement between the Commonwealth and States.

Though not perfect, the bilateral assessments agreement prevents the duplication of assessment. ***However, there is still a need for <u>two</u> approvals, one from the State Planning Minister and the other from the Commonwealth Minister for the Environment***.

The Environment Protection and Biodiversity Conservation Act allows for <u>approval</u> bilaterals, under which the Commonwealth would agree to be bound by decisions made by the state. Similar to the assessments agreements, the Commonwealth Minister for Sustainability, Environment, Water, Population and Communities agrees to recognise the state approval process as meeting the requirements of the EPBC Act under certain conditions.

The Urban Taskforce requests that this study properly investigates the potential to develop and implement a bilateral approvals agreement to complement existing bilateral assessments agreements. It is recommended that a generic bilateral approvals agreement be developed so as to encourage a more holistic and integrated planning approval process.

Furthermore, it is recommended that this study also investigate the operation of the existing bilateral assessments agreements to ensure that their operation continues without the introduction of unnecessary Commonwealth interference in state approval processes.

Recommendations

The Commonwealth implement improvements to the administrative processes associated with approvals pursuant to the EPBC Act particularly the ***development and implementation of a generic approval bilateral agreement*** relating to national and world heritage listed sites.

1. Introduction

The Urban Taskforce has made a number of submissions to the Commonwealth seeking amendments to the way that major projects are assessed and approved. While the Urban Taskforce supports efforts to properly manage environmental resources we are also passionate about cutting red tape and the elimination of bureaucratic duplication. We argue that a streamlining of the approvals and assessment processes must occur if development is to be relied upon to kick start the economy and meet housing demand.

There are many instances where proposals become subject to assessment and approval pursuant to state and Commonwealth legislation. For example, 25 per cent of referrals made under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) relate to urban development and all of these urban development projects are subject to both state and federal approval requirements.[1] This duplication in assessment and approval is an inefficient use of resources and adds unnecessary time delay to the approval process.

Australia has a number of pieces of State and Commonwealth legislation that control development while aiming to protect the environment. The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is the Australian Government's "environmental" legislation. The states also have legislation that seek to protect the environment and/or promote ecologically sustainable development. In New South Wales, the primary legislation addressing land use, management and the promotion of ecologically sustainable development is the *Environmental Planning and Assessment Act 1979*. Any proposal that requires development approval must demonstrate that it can proceed without giving rise to an unacceptable impact on the natural, built, social or economic environments. The Act also requires that ESD be considered as part of the decision making process. ***The State legislation is considered to be appropriate and robust, able to ensure environmental protection in the decision making process***.

Unfortunately there are instances where proposals become subject to assessment and approval pursuant to state and Commonwealth legislation. That is, for certain activities (controlled activities) the EPBC Act may require an environmental assessment and approval from the Commonwealth Minister. These activities are often also subject to state planning legislation and similar assessment and approval requirements apply. That is, a development proposal may require environmental assessment pursuant to Commonwealth Legislation and approval from the Minister for the Environment, as well as environmental assessment pursuant to state legislation and an approval from the State Minister for Planning. ***This duplication in assessment and approval is an inefficient use of resources and adds unnecessary time delay to the approval process for no real benefit***.

Urgent legislative reforms are required for a more efficient and transparent environmental assessment and approval system.

It is noted that the Commonwealth and State Governments have a system in place that does, *at least in principle*, reduce some of the duplication. Agreements have been reached were state driven environmental assessment process are recognised as meeting Commonwealth environmental requirements and are sufficient to deal with matters of national environmental significance. Therefore the opportunity exists for the completion of one environmental assessment, meeting the State and Commonwealth legislative requirements. This is permitted by way of bilateral agreement between the Commonwealth and States. ***However, unless an approvals bilateral has been reached, there is still a need for two approvals, one from the State Planning Minister and the other from the Commonwealth Minister for the Environment***.

This is an unfortunate, costly, time wasting and pointless requirement. If the Commonwealth has agreed to accept that state environmental assessment processes are sufficiently

[1] *Independent Review of the Environmental Protection and Biodiversity Conservation Act 1999: Discussion Paper*, Australian Government Department of the Environment, Water, Heritage and the Arts 17.

comprehensive and able to ensure robust environmental assessment, then surely the Commonwealth must acknowledge that the same system is capable of "following through" to provide a transparent and justifiable approval.

The EPBC Act allows for such a system. Section 46 of the Act provides for approval bilaterals, under which the Commonwealth would agree to be bound by decisions made by the State. In other words, similar to the assessments agreements, the Commonwealth Minister for the Environment agrees to recognise the state approval process as meeting the requirements of the EPBC Act under certain conditions. Unfortunately while there are a number of assessments bilaterals in place, there is just one approvals bilateral applying specifically to the Sydney Opera House.

The Urban Taskforce hopes that this study will properly investigate the broader application of s.46 and the potential to develop and implement a bilateral approvals agreement to complement the existing bilateral assessments agreements.

It should be highlighted that COAG agreed to progress six priority areas for major reform to lower costs for business and improve competition and productivity. The reform priorities included:

- addressing duplicative and cumbersome environment regulation;
- streamlining the process for approvals of major projects;
- improving assessment processes for low risk, low impact developments; and

To achieve these commitments, COAG confirmed that governments will work together to:

- fast-track the development of bilateral arrangements for accreditation of state assessment and approval processes, with the frameworks to be agreed by December 2012 and agreements finalised by March 2013;
- develop environmental risk- and outcomes-based standards with States and Territories by December 2012; and
- examine and facilitate removal of unnecessary duplication and reduce business costs for significant projects.

These are significant and beneficial reforms strongly supported by the Urban Taskforce and this study should be focused specifically on providing Government with advice on how to most urgently implement change to achieve the outcomes sought by COAG.

2. The integration of assessment and approval with a Bilateral Approvals Agreement

Administrative and process improvements to improve bilateral assessments are important. However, monumental gains can be made with the integration of the assessment and approval process by way of a bilateral approvals agreement. This has become more apparent in recent times as the potential for more development proposals to be captured under state and Commonwealth environmental assessment and approvals processes increase.

The most appropriate means of ensuring that development assessments are able to proceed efficiently, while managing the tension that exists between environmental protection and the need for development is the implementation of an approval bilateral as permitted under section 46 of the EPBC Act.

The Commonwealth Minister could still be part of the process by engaging in the preparation of a management plan for national and world heritage listed sites. That is, the EPBC Act requires that the Commonwealth use its best endeavours to have a Management Plan prepared for national and world heritage listed sites. These plans could provide the base for Commonwealth and state coordination of significant sites including assessments and

approvals. It should be noted that in NSW the National Parks and Wildlife Act also provides for plans to be prepared for national parks and other conservation zones.

Once a plan of management has been approved and the Commonwealth and State Ministers sign an Approvals Bilateral Agreement, no duplicate approval is required from the Commonwealth under the EPBC Act.

The advantage of following this process is that it engages the Commonwealth in the development of appropriate environmental protection systems to then be used by the appropriate state minister when making a development determination. The preparation of such a plan binds the state so that approvals of development inconsistent with the plan cannot be granted.

It must be noted that entering into a bilateral approvals agreement does not exclude the Commonwealth. States must notify the Commonwealth of all proposed actions that will have or are likely to have significant impacts on the significant site.

3. Conclusion

Commonwealth and state environmental management systems must be streamlined and integrated. Duplicative administrative processes and listing regimes must be removed. Most importantly, **the opportunity for a single assessment and approval process must be vigorously pursued**.

Notwithstanding the above, complex development proposals should be led by state planning authorities, not the Commonwealth environmental protection agencies. Commonwealth agencies are remote from state and local development pressures and are not able to properly engage in a holistic assessment processes. State Planning Authorities are the appropriate lead agency for complicated development assessment processes. State Planning Authorities and their respective Ministers are more accessible to the community and readily held accountable for their decisions.

Bilateral approval agreements between the Commonwealth and States must be reached to ensure that assessment and approval of significant proposals are subject to efficient, robust and holistic processes that integrate the economic and social need with environmental conservation.

4. Further information

The Urban Taskforce is available to further discuss the issues outlined in this submission.

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