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NSW Planning system and the impacts of climate change

Submission to NSW Planning and Environment Committee

The NSW planning system approves coal mines and other projects with damaging climate impacts almost by default. Part of the reason for this is the economic assessments of major projects that are commissioned by project proponents. These assessments invariably overstate project benefits and understate costs to the community. Improved public service capacity and governance of consultants could improve these outcomes.

Rod Campbell

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Summary

The NSW planning system assesses coal mines and other emissions-intensive projects partly on the basis of economic assessments. These assessments are commissioned by project proponents from commercial consultants and have often received minimal scrutiny from the NSW Department of Planning and Environment and other decision makers despite:

- Conflicts between the commercial interests of consultants and the public interest.
- Reliance on consultants working to undermine public service capacity.
- Examples of 'consultant shopping' to get desired advice.

The NSW Department of Planning and Environment appears to have no capacity to assess the economic merits of major projects, particularly mining projects. An obvious example was the approval of the Cobbora Coal Project, wherein the Planning Department and the Planning Assessment Commission preferred favourable advice from a private consultant over a realistic assessment by NSW Treasury. As forecast by Treasury, the project was not financially viable and has been abandoned at considerable cost to the state and local community.

In both the Dendrobium coal mine extension and Narrabri Gas projects, the Department of Planning and Environment engaged a controversial, industry-aligned economist in the place of their usual consultants. It is difficult not to conclude that the Department shopped for a pro-industry opinion.

In response to controversy around the economic and climate assessments of coal mines, the NSW Government developed guidelines for economic assessment. While these guidelines have standardised assessment, as long as mining industry consultants present analysis that technically complies with the *Guidelines*, the Department makes little "consideration" of the "actual data". In our view Department officials, consultants and proponents may have committed offences under the *NSW Environmental Planning and Assessment Act 1979* by providing misleading or false information to the planning system.

Economic assessment guidelines are routinely misinterpreted by coal proponents and consultants in order to minimise the costs of climate impacts of their proposals.

Recommendations:

- A moratorium on new coal mines and gas projects, and significant expansions.
- Consider whether Department officials, proponents and consultants have provided false or misleading information to project assessment processes, in breach of the *NSW Environmental Planning and Assessment Act 1979.*

- Build capacity for genuinely independent assessment of major projects within the public service. This will require the support of governments to put the public interest before the interests of major project proponents.
- If commissioned economic assessments are to be accepted in the future, consultants should be allocated by a random or independent process to reduce the incentive for consultants to produce analysis that is convenient for project proponents.
- Revise economic assessment guidelines to properly incorporate estimates of the social cost of carbon emissions and eliminate the misrepresentation of project climate impacts.

Introduction

The Australia Institute welcomes the opportunity to make a submission to the inquiry into the *NSW Planning system and the impacts of climate change on the environment and communities*. We have considerable experience in relation to the economic assessment and climate assessment of fossil fuel projects by the NSW Department of Planning and Environment (the Department), the Independent Planning Commission (IPC) and the Land and Environment Court. This submission summarises some of this experience in relation to the inquiry's terms of reference, in particular:

> (b) the adequacy of planning powers and planning bodies, particularly for local councils, to review, amend or revoke development approvals, and consider the costs, that are identified as placing people or the environment at risk as a consequence of:
>
> > (ii) climate change and natural disasters
> >
> > (iv) rapidly changing social, economic and environmental circumstances.

The NSW planning system makes extensive use of commercial consultants, and much of our research has focused on critiquing or examining analyses commissioned from economics consulting companies. As a result, this submission draws on material already presented to the Legislative Council's Public Accountability and Works Committee's *Inquiry into NSW Government's use and management of consulting services* and the federal senate inquiries into the use of consultants by federal government agencies.[1]

While our experience relates mainly to economics consultants, similar patterns and problems are likely to exist in relation to the use of consultants from other disciplines such as ecology, hydrology, geology, etc. Problems associated with the planning system's over-reliance on consultants include:

- Conflicts between the commercial interests of consultants and the public interest. Several consultants provide services to both the NSW planning system and major project proponents. Consultants that work closely with one industry have an incentive not to be critical of that industry.
- Undermining of public service capacity. Reliance on consultancies to do core government work has stopped the public service from developing skills and

[1] Shields et al (2023a) Corrosive and conflicted - submission to NSW inquiry into the Government's use of consultants, https://australiainstitute.org.au/report/submission-consultants-corrosive-and-conflicted/; Shields et al (2023b) *Neither frank nor fearless: Submission to the senate inquiry into consultancies*, https://australiainstitute.org.au/report/neither-frank-nor-fearless/; Shields and Browne (2023) *Consultants: structurally unsound*, https://australiainstitute.org.au/report/consultants-structurally-unsound/

knowledge in-house. The NSW Planning Department's inability to scrutinise economic claims of proponents is either a demonstration of this problem or evidence of industry capture.

- Consultants are used to get desired advice, which results in consultant shopping. We have seen examples of consultant shopping by both project proponents and planning agencies.

These problems have resulted in approvals of coal and gas projects that have not been in the public interest from either an economic, climate or environmental perspective. The state planning system almost invariably approves fossil fuel projects, exacerbating the impacts of climate change through both the considerable volumes of greenhouse gasses emitted locally and the far larger volumes that result from coal exports. Other environmental impacts that affect the NSW community include those on water, biodiversity, noise and air quality.

NSW Planning and economic assessment

Most major projects in the planning system require an economic assessment, which typically comprises a cost benefit analysis and a local impact analysis. Economics, like all social science, is subjective. Cost benefit analysis and other kinds of economic impact analysis all involve choices and assumptions that can significantly affect the outcome of the analysis. Consultants, sometimes directed by their clients, often make particular choices in their economic assessments that serve to overstate the benefits and understate the costs of the proponent's project. These assessments often understate the costs of projects to the NSW or wider community in order to facilitate project approval.

One clear example was the Cobbora Coal Project. In 2015 the Planning Assessment Commission approved the state-owned mining proposal, located near Dunedoo. The commission was presented with conflicting advice between the consultant commissioned by the state-owned project that was supported by the Department of Planning and an assessment by NSW Treasury. Planning's consultant claimed that the project would have net benefit of between $1.9 and $2.1 billion, while the 2013-14 NSW Budget Papers stated:

> The final feasibility study for the Cobbora coal mine has confirmed that around $1.5 billion of capital expenditure is required to develop the Cobbora coal mine until it produces first coal. Forecast cash flows are insufficient to cover subsequent capital and operating expenditure over the life of the mine. The total loss to the Government, if arrangements are unchanged, would be in excess of $1.5 billion.[2]

Despite NSW Treasury finding the project was not financially viable, it was recommended for approval by the Department and subsequently approved by the Planning Assessment Commission. As forecast by Treasury, the project has never proceeded as it is not financially viable. It has imposed considerable costs on the community of Dunedoo, as many families left the area assuming the mine would proceed. It also imposed costs on NSW taxpayers through the Cobbora Transition Fund, which attempted to undo some of the damage inflicted on the community.[3]

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[2] For full references and further detail see Campbell (2014) 'Cobbora coal project: Submission to Planning and Assessment Commission', *The Australia Institute,* https://australiainstitute.org.au/report/submission-cobbora-coal-project/

[3] See for example Dunkley (2013) 'Cobbora Transition Fund announced', *ABC News,* https://www.abc.net.au/local/stories/2013/09/03/3839873.htm

As this example demonstrates, the NSW Department of Planning and Environment lacks either the capacity or the willingness to assess the economic merits of major projects, particularly fossil fuel projects. In our experience, the Department has never made its own assessment of a project's financial or economic risks and strengths, likely job numbers, royalty payments, rehabilitation costs or other relevant economic impact. Like other aspects of the environmental impact statement (EIS) process, such as water impacts, biodiversity impacts, etc, the economic aspects of mining projects are assessed by consultants that are commissioned by proponents and submitted to the Department as part of the project assessment process.

Making such economic assessments requires some training and experience but such skills should, in our view, be widely held within most public agencies. These skills should certainly be developed within planning, economic and environment departments. Unfortunately, they seem to be almost entirely absent from planning departments in most states, including New South Wales.

Ideally, a public servant or small team would obtain the relevant data from project proponents, critically assess the data's veracity, and make basic estimates of employment, royalties, and other key data to inform approval decisions. Instead, this work is invariably carried out by consultants commissioned by the mining companies and then submitted to state authorities.

Fossil fuel economic assessment guidelines & commissioned reviews

From 2008 to 2013, every cost benefit analysis of a coal mine in NSW that we are aware of was carried out by a single consultant, Gillespie Economics. With tens of coal projects commissioning work, Gillespie Economics had a strong incentive to provide favourable economic assessments for coal company clients. Some of these assessments were clearly based on incorrect assumptions and data, such as the Cobbora assessment mentioned above which was conducted by Gillespie Economics.

Despite clearly biased assessments such as Cobbora, Gillespie Economics' assessments were accepted by NSW Planning with minimal critique until local community groups began requesting reviews by The Australia Institute and others.[4,5] The Australia Institute critiqued many Gillespie Economics assessments during that period and found that, without exception, the benefits of coal mines were overstated and their costs were understated.

A turning point came when decisions by the NSW Land and Environment Court in relation to the Warkworth and Ashton SE Open Cut mines and the Planning Assessment Commission (PAC, now Independent Planning Commission, IPC) in relation to the Wallarah 2 mine, made it clear that the economic assessments commissioned by project proponents needed critical review. Then-minister Pru Goward responded in two ways – first by commissioning external consultants to review the economic assessments submitted by proponents and their consultants, and second by developing economic assessment guidelines for coal and coal seam gas assessments.[6]

PLANNING AND IPC-COMMISSIONED REVIEWS

Rather than developing economic assessment capacity within the Department, the process instigated in 2014 saw the Department commission external consultants to review the assessments of consultants commissioned by mining companies. These reviews were

[4] See for example Campbell (2014) *Report on proposed Watermark Coal Project*, https://australiainstitute.org.au/report/report-on-proposed-watermark-coal-project/; Campbell and Denniss (2014) *SUBMISSION: Terminal 4 Project*, https://australiainstitute.org.au/report/submission-terminal-4-project/

[5] See for example Campbell (2012) *Coborra Coal Project – review of economic assessment and trip to Dunedoo,* http://www.ecolarge.com/coborra-coal-project-review-of-economic-assessment-and-trip-to-dunedoo/

[6] Mckenny and Witbourn (2014) *Mining assessments to be beefed up after scathing review*, https://www.smh.com.au/national/nsw/mining-assessments-to-be-beefed-up-after-scathing-review-20140616-zs9sd.html

usually, but not always, carried out. In some cases, mining companies would commission a third consultant to critique the Department's consultant's review of the mining company's first consultant. This process reached farcical levels with the Hume Coal Project, proposed for near Berrima in the NSW Southern Highlands, which saw:

- A February 2017 Economic impact assessment for the initial environmental impact statement (EIS) commissioned by Hume Coal from BAEconomics, led by Dr Brian Fisher.
- An October 2017 updated economic impact assessment, conducted by BAEconomics for Hume Coal.
- A December 2017 Review of the initial economic assessment, commissioned by the Department of Planning from BIS Oxford Economics.
- A January 2018 response from BAEconomics to the BIS Oxford Review.
- An October 2018 updated economic impact assessment, conducted by BAEconomics for Hume Coal.
- A December 2018 further comment on economic impact assessment by BIS Oxford Economics.
- A March 2020 further updated Economic impact assessment, conducted by BAEconomics for Hume Coal
- A March 2020 peer review, conducted by the Stoeckel Group of the latest assessment by BAEconomics, both commissioned by Hume Coal.

All these reports, even those commissioned by the Department of Planning, suggested that the project would result in a net benefit to the NSW community. But these findings were contradicted by both the Department's recommendation and the ultimate determination by the IPC that "the stated benefits of the Project do not outweigh the adverse environmental, social and economic impacts."[7] This result would have been plain from the outset to any frank and fearless public servant who had received proper training and support.

Usually, the consultants employed by the Department or PAC/IPC did not regularly consult to mining companies operating in NSW and had no obvious conflicts of interest. The most regularly used consultant has been the Centre for International Economics, which provided usually robust reviews. Other consultants used include BDA Group, Marsden Jacobs and BIS Oxford Economics.[8] While The Australia Institute does not always agree with the conclusions of these consultants, in our view, their work as reviewers for NSW Planning has always been critical, constructive and without obvious conflicts of interest. While this work should have

[7] IPCN (2021) Hume Coal Project and Berrima Rail Project: Statement of reasons, https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2021/06/hume-coal-project/determination/210831-hume-coal-and-berrima-rail-statement-of-reasons.pdf

[8] For detailed discussion on the work done by these consultants and the Narrabri Gas Project review by BAEconomics/Brian Fisher, see Ogge et al (2020) 'Fast and loose: Analysis of Santos's eleventh-hour Narrabri Gas Project documents', *The Australia Institute,* https://australiainstitute.org.au/report/fast-and-loose/

been conducted internally by the Department, in most cases that we are aware of, the consultants engaged by Department provided reasonable advice and review.

Two projects stand out as exceptions to this acceptable standard of review by consultants for the Department. On these two occasions, politically sensitive projects were reviewed not by reasonably disinterested consultants, but by one of Australia's most controversial pro-industry economists, Brian Fisher and his consulting company BAEconomics.

Consultant shopping – Santos Narrabri Gas Project[9]

The first of these projects was the Narrabri Gas Project, a proposal by Santos to frack for gas in and around the Pilliga Forest in central-northern NSW. The project is highly contested by farming groups, traditional owners and environmental groups due to the potential impacts on groundwater, sensitive sites, native forest and climate change.

The economic and financial viability of the Narrabri Gas Project has long been questioned, particularly as Santos corporate reports have valued the project at nil since 2016. Despite approvals from state and federal governments, no final investment decision has been made. By contrast, the economic assessments commissioned by Santos and performed by consultants GHD and ACIL Allen suggest that the project has a net present value of between $1.5 billion and $2.1 billion.

This contradiction between the value of the project Santos reports to its investors and the values that consultants report to the NSW Government was highlighted in detailed submissions by The Australia Institute, the Institute for Energy Economics and Financial Analysis and others.

Other consultants commissioned by the Department to review economic assessment of resource projects have typically produced reviews that are detailed and tens of pages long. The BAEconomics' "Final report" is barely one A4 page, endorsing the ACIL Allen report. It includes just one paragraph discussing the difference between the GHD and ACIL Allen assessments and the Santos book value of the project.

In its Assessment report, the Department relied heavily on the review by Brian Fisher to endorse the claimed economic benefits and avoid scrutinising these claims.

Consultant shopping – Dendrobium coal mine

The Dendrobium Mine Extension was a controversial proposal to extend a metallurgical coal mine under some of Sydney and the Illawarra's drinking water catchments. Cadence Economics (discussed above in relation to the Mangoola and Rocky Hill coal projects) were

[9] For full references and detailed discussion on this section see Ogge et al (2020) 'Fast and loose: Analysis of Santos's eleventh-hour Narrabri Gas Project documents'

commissioned to conduct economic assessment for proponents South32. Cadence Economics estimated the value of the project at over $1 billion.[10]

The Department of Planning, Industry and Environment again commissioned Brian Fisher of BAEconomics to review the work of Cadence Economics, which was approvingly done in just four A4 pages.[11] The Department also commissioned Brian Fisher to write a more detailed *Review of the key economic interactions between the Dendrobium Mine and related entities in the Wollongong Region*.[12] This review suggested that the Dendrobium mine extension was important for a range of mining and industrial entities.

Despite these reports and the recommendation of the Department, the IPC refused the project as being not in the community interest, largely due to potential drinking water impacts.[13]

In both the Dendrobium and Narrabri Gas examples, the Department was under pressure to recommend approval of controversial projects. Instead of engaging its usual consultants with minimal links to the mining and gas industries, it engaged a controversial, industry-aligned economist. Given the prominence of Dr Fisher over decades, it is difficult not to conclude that the Department engaged him in the expectation of a pro-industry opinion. Dr Fisher obliged with simplistic reports supporting approval rather than the critical, detailed reviews of other consultants, that the community interest required.

DEVELOPMENT AND MISUSE OF ECONOMIC ASSESSMENT GUIDELINES

Amid the controversy around economics consultants and mining planning decisions, Minister Goward also initiated an update of the relevant guidelines. This process saw the NSW Government commission at least five consulting groups to work on the update – Deloitte, ACIL Allen, Centre for International Economics, Vivid Economics and the Sustainable Development Group. The resulting 2015 NSW *Guidelines for economic assessment of mining and coal seam gas proposals* have not ended controversy around

[10] Cadence Economics (2019) 'Economic impact assessment of the Dendrobium Mine – plan for the future: coal for steelmaking', https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSD-8194%2120190724T060901.866%20GMT

[11] BAEconomics (2020) 'Review of the Economic Impact Assessment of the Dendrobium Mine Extension', https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSD-8194%2120201120T025048.706%20GMT

[12] BAEconomics (2020) 'Review of the key economic interactions between the Dendrobium Mine and related entities in the Wollongong Region'

[13] McLaren et al (2022) 'Australian company South32 scraps Dendrobium coal mine extension plans in NSW', *ABC News,* https://www.abc.net.au/news/2022-08-23/south32-scraps-dendrobium-coal-mine-extension-plans-nsw/101360104

proponent-commissioned assessment, but have ensured assessments are at least broadly comparable. These *NSW Guidelines* are more developed than those elsewhere and are often referred to in planning processes in other states.

Unfortunately, this modest success of the Guidelines has been used by the Department to further evade responsibility for the quality of the advice that it provides. In 2021, the Department told the IPC that as long as economic assessment by mining company consultants was broadly consistent with the Guidelines, the Department paid little attention to the accuracy and integrity of the assessment. As long as guidelines have been arguably met, officials are content to take commissioned economic assessment "on its face". The IPC's Commissioner Cochrane pushed officials on this point during a public hearing:

> [IPC] MR COCHRANE: But your analysis of that really – hearing [Department official Mike Young's] comments, your assessment of that is really whether or not that approach was consistent with the relevant guidelines, not on the actual data that was used. Is that correct?
>
> [Department] MR SPROTT: Yes, whether the – sorry, Mike, you go.
>
> [Department] MR YOUNG: Go, Matt. You go. You go. That's fine.
>
> [Department] MR SPROTT: No. I was just going to clarify that, yes, our consideration has been whether the approach undertaken has been appropriately consistent with guidelines.[14]

This quote shows that as long as mining industry consultants present analysis that technically complies with the *Guidelines*, the Department makes little "consideration" of the "actual data".

The exchange above is a quote from the IPC public hearing regarding the Mangoola Coal Continuation Project, a mine owned by tax haven-based multinational Glencore. The Department did not commission a review of Glencore's consultant's assessment, noting that Glencore had commissioned a second consultant to "peer review" the work of its first consultant. Both consultants are closely linked to the NSW coal industry.[15]

The IPC approved the Mangoola project, but rejected much of the economic assessment, concurring with The Australia Institute's criticisms of the methods and the Department's

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[14] IPCN (2021) 'Transcript of Mangoola Coal Continued Operations project Public Hearing Day 2', https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/transcripts-and-material/2021/mangoola/210304-public-hearing-transcript-day-2.pdf

[15] DPIE (2021) 'Assessment report – Mangoola Coal COP', https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSD-8642%2120210201T045402.510%20GMT

"statement that the applicant's EIS was prepared in accordance with the economic guidelines."[16]

The Department's decision not to commission its own review of the Mangoola economic assessment was surprising because Mangoola's consultant, Stephen Brown of Cadence Economics, had appeared against the Department in the NSW Land and Environment Court case on the Rocky Hill Coal Mine. This case was won by the Department with the court famously upholding the Government's refusal of the mine. Mr Brown used exactly the same methods assessing Mangoola that the Rocky Hill judgement described as "inflated", "not able to be tested and verified" and "plainly wrong".[17]

In The Australia Institute's view, the Department used the argument that Cadence Economics had complied with the Guidelines to ignore clear flaws in the economic assessment. The Department did know, or should have known, about these flaws because it had previously highlighted them in court.

The *NSW Environmental Planning and Assessment Act 1979* s 10.6 states that it is an offence to provide false or misleading information in connection with a planning matter:

> A person must not provide information in connection with a planning matter that the person knows, or ought reasonably to know, is false or misleading in a material particular.[18]

In our view, the Department's officials and the consultant Cadence Economics are all in breach of this section of the Act.

Despite this, Mr Brown's career as an economic consultant has flourished. He is now a partner at major firm EY,[19] which continues to use the same discredited methodologies in coal mine assessments.[20]

[16] IPCN (2021) 'Mangoola Coal Continued Operations Project: Statement of reasons for decision', paragraph 239, https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2020/12/mangoola-coal-continued-operations-project-ssd-8642/determination/210426-mangoola-coal-continued-operations-project-ssd-8642--statement-of-reasons.pdf

[17] For full references and more detail see Campbell (2021) 'The banality of Anvil: Submission on the Mangoola Coal Project', *The Australia Institute,* https://australiainstitute.org.au/report/the-banality-of-anvil/

[18] *Environmental Planning and Assessment Act 1979* (NSW), http://classic.austlii.edu.au/au/legis/nsw/consol_act/epaaa1979389/s10.6.html

[19] EY (n.d.) 'Steve Brown', https://www.ey.com/en_au/people/steve-brown

[20] See for example Fernandez (2021) 'Ernst and Young rejects allegations it overvalued Tahmoor coal mine project by hundreds of millions', *ABC News,* https://www.abc.net.au/news/2021-03-03/mine-value-overstated-by-hundreds-of-millions-of-dollars/13201228

ECONOMIC ASSESSMENT GUIDELINES AND EMISSIONS

Greenhouse gas emissions and climate impacts are being misrepresented in the NSW planning system by proponents and their economic consultants through three key mechanisms:

- Low and inappropriate per-tonne costs of emissions – use of EU and other market prices with limited relevance to NSW, rather than social cost of carbon estimates.
- Multiplying climate damage costs by the NSW share of world population – this effectively nullifies any climate costs from the cost benefit analysis. The justification for this is a line in the *Technical notes supporting the Guidelines for the Economic Assessment of Mining and Coal Seam Gas Proposals in NSW*, which states that the relevant cost of any externality is the cost to the NSW community. Coal industry consultants respond to this not by considering the full costs of NSW-based emissions, but by multiplying an already low estimate of this cost by the ratio of NSW population to world population, and of course by…
- Ignoring scope 3 emissions.

For an example of where this has occurred and more detailed arguments, see our submission on the Moolarben OC3 Extension project proposal.[21]

[21] Campbell (2022) *Submission – Moolarben OC3 Extension Project*, https://australiainstitute.org.au/report/submission-on-moolarben-oc3-coal-extension-project/

Conclusion and recommendations

The NSW planning system approves coal mines and other damaging projects almost by default. The state is one of the largest exporters of coal in the world making it one of the most significant sources of fossil carbon globally. What NSW does on climate change and fossil fuel policy will be felt around the world far into the future.

Recommendations:

- A moratorium on new coal mines and gas projects, and significant expansions.
- Consider whether Department officials, proponents and consultants have provided false or misleading information to project assessment processes, in breach of the *NSW Environmental Planning and Assessment Act 1979.*
- Build capacity for genuinely independent assessment of major projects within the public service. This will require the support of governments to put the public interest before the interests of major project proponents.
- If commissioned economic assessments are to be accepted in the future, consultants should be allocated by a random or independent process to reduce the incentive for consultants to produce analysis that is convenient for project proponents.
- Revise economic assessment guidelines to properly incorporate estimates of the social cost of carbon emissions and eliminate the misrepresentation of project climate impacts.