Strategic environmental assessment: What is it and what makes it effective?

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Presentation overview

• The concept of SEA
• International SEA practice
• Debates within the SEA discourse
• Effectiveness of SEA
• Case study: the proposed Browse LNG Precinct at James Price Point, Western Australia
The concept of strategic environmental assessment (SEA)
Status of international SEA Practice

• Some form of SEA currently in place in 60 countries (formal & informal)
• Most successfully applied in land-use planning
• Key drivers:
  – EU SEA Directive
  – World Bank, OECD requirements
  – SEA Protocol to the UNECE Espoo Convention on Environmental Impact Assessment in a Transboundary Context
EU SEA Directive

- In force since 2001
- Member states required to have appropriate legal frameworks by 2004
- Applies to public plans and programmes (not policies)
- Mandatory for agriculture, forestry, fisheries, energy, industry, transport, waste/water management, telecommunications, tourism, town & country planning or land use
- In England, combined with sustainability appraisal of local government development plans
Evolving definitions of SEA

• “the formalized, systematic and comprehensive process of evaluating the environmental impacts of a policy, plan or programme and its alternatives, including the preparation of a written report of the findings of that evaluation”
  – Therivel et al. 1992, 919-20

• “is a process that aims to integrate environmental and sustainability considerations in strategic decision-making”
  – Therivel 2010, p3
SEA’s identity crisis

• Do we need SEA as a separate tool from EIA at all?
• If so, how is it different?
• What does strategic mean?
Points of agreement (on a good day)

• SEA refers to impact assessment applied to policies, plans and programmes (PPPs)
  – i.e. decision-making at a higher level than projects
• SEA is an overarching concept or family of approaches rather than a defined technique

The process debate

EIA writ large?

- Reactive
- Distinct from planning
- Baseline-driven (bottom up)
- Technical-rational
- Requires detailed data
- Emphasis on report

Something else?

- Strategic
- Integrated with planning
- Objectives-led (top down)
- Communicative
- Requires high level information
- Emphasis on process

Sheate, W. R. et al. (2001)
The goal debate

Environmental protection?

Sustainable development?

Marsden (2002); Morrison-Saunders & Fischer (2006)
Relationship with project-level EIA

Trickle-down

Evaporate up

Arts et al. (2011)
Closer to reality?

“Tiering: bridging the islands of EA”

Isolated islands of assessment in a sea of decisions

Arts et al. (2011)
The effectiveness of SEA

• Is it doing what it's supposed to do?
• Begs the question of what exactly it is supposed to do:
  – Substantive effectiveness
• Long term assumption that good process leads to good outcomes (however defined):
  – Procedural effectiveness

Sadler (1996)
Mostly procedural: Have appropriate processes been followed that reflect institutional and professional standards and procedures?

Bond et al. (2015)
**Substantive effectiveness: outcomes**

- *In what ways, and to what extent does [SEA] lead to changes in process, actions, or outcomes?*

- **Direct outcomes** (information processing model):
  - Changes in decision-makers’ awareness of environmental/sustainability issues
  - Consideration of these issues in decision-making
  - Mitigation strategies

- **Indirect/incremental outcomes**:
  - Learning and culture change over time (organisational politics model, pluralistic politics model)

Bond et al. (2015); Bina et al. (2011), Retief (2007); Bartlett & Kurian (1999)
Other dimensions of effectiveness

• Transactive
  – *To what extent, and by whom, is the outcome of conducting [SEA] considered to be worth the time and cost involved?*

• Normative
  – *Does the [SEA] meet the expectations of stakeholders irrespective of the sustainability discourse they align with?*
  – *[Assumes that the purpose of SEA should be to promote sustainable development]*
The importance of context

- Aspects of the context affect the conduct of impact assessment and hence its effectiveness:
  - Institutional, legal and policy context
  - Social, cultural and political values

Fischer (2002); Bina (2008)
Case Study: Proposed Browse LNG Precinct at James Price Point (JPP)
“It's a long story, full of broken promises, weasel words and excuses for work simply not done”.

Background and context

• Browse Basin gas reserves significant
• Concern about cumulative impacts of multiple *ad hoc* developments
• Joint State and Federal Government initiative to identify multi-user LNG hub site
• Strongly supported (initially) by eNGOs and the Kimberley Land Council (KLC)
Environmental Protection Act 1986 (WA)

3 SEA mechanisms:

• **Mandatory for land-use planning schemes likely to have significant effect on env.** [s48A]
  - Minister’s conditions of approval incorporated into planning scheme text (i.e. binding)

• **Voluntary for any activity (any proponent)** [s16]
  - Informal advice of the Environmental Protection Authority (no conditions)

• **Voluntary for ‘strategic proposals’ (any proponent)** [s38(3)]
  - Minister’s conditions of approval to be applied to ‘derived proposals’ (i.e. binding if proposal proceeds)
Environment Protection and Biodiversity Conservation (EPBC) Act 1999 (Cth)

2 SEA mechanisms:

• Mandatory for fisheries (Cth waters, or state fisheries with exports) [s147-154]

• Voluntary for policy, program or plan [s146]
  
  – Potential for ‘approved actions’ to be declared (exempt from project-level EIA)
  
  – Uptake improved by 2006 Amendments to the EPBC Act
  
  – 22 in progress or complete

Informal SEA – NDT site selection

Formal SEA – WA and Cth statutory strategic assessment

Process overview

Northern Development Taskforce (NDT) process (informal SEA)

- **2007**: NDT appointed by WA Government to identify suitable site for gas processing
- **2008**: Informal SEA conducted by NDT:
  - Numerous working groups formed
  - Industry-identified sites in Kimberley reviewed by NDT
  - 43 sites reduced to 11 (including 2 Indigenous-proposed sites) and then to 4
  - Minimal consideration of sites in Pilbara and NT
  - Shortlisted sites assessed by EPA under s16e of *EPAct*
  - Least environmentally-constrained site: Gourdon Bay
  - James Price Point selected as new Liberal Government’s preferred site (replacing North Head)
Statutory strategic assessment (formal SEA)

- **February 2008:** Strategic Assessment Agreement signed by WA and Commonwealth Environment Ministers
  - Collaborative process under both pieces of legislation
  - Dedicated Aboriginal Social Impact Assessment (ASIA)
  - Proponent: WA Department of State Development
- **August 2009:** Scope of the Strategic Assessment also included broad range of social impacts
- **December 2010:** Strategic Assessment Report released
- **Throughout 2011-2012:** Specialist study reports continued to be released
- **July 2012:** WA Government approves strategic proposal
- **December 2012:** Woodside’s proposal declared a ‘derived proposal’
Other happenings

- **August 2009**: Woodside declared ‘foundation proponent’ of Precinct
- **Early 2011**: Woodside commences Front End Engineering Design, as well as project-level SIA
- **June 2011**: Indigenous benefits package negotiated ($1.5 bn over 30 years)
- **August 2011**: National Heritage Assessment leads to listing of West Kimberley
- **From mid-2011**: Increased protests and legal challenges
- **July 2012**: WA EPA recommends approval of strategic proposal, Browse (Land) Agreement Bill introduced to Parliament
Denouement

- **April 2013:** Woodside announces it will not proceed with an onshore gas plant at JPP
- **August 2013:** Supreme Court ruling in favour of Wilderness Society wrt conflict of interest of EPA members
- **February 2014:** New 3-member EPA Board commissioned to re-assess Browse proposal
- **Mid-2015:** Strategic proposal to develop the Browse LNG Precinct at JPP approved by WA Government
- **The legacy:** Indigenous and non-Indigenous communities still split over the issue
Procedural effectiveness

Have appropriate processes been followed that reflect institutional and professional standards and procedures?

NDT site selection

• Some criticism of technical/environmental focus
• Some criticism of failure to meaningfully consider sites outside Kimberley
• Generally good engagement, particularly with environmental experts
• Generally transparent (3 NDT reports)

Statutory strategic assessment

• Limited guidance available on statutory strategic assessment at time
• Process essentially ‘EIA writ large’, i.e:
  – Reactive
  – Distinct from planning
  – Baseline-driven (bottom up)
  – Technical-rational
  – Requires detailed data
  – Emphasis on report
• Some criticism for weak community engagement
• Lack of integration of social, Indigenous and environmental components
Substantive effectiveness

In what ways, and to what extent does [SEA] lead to changes in process, actions, or outcomes?

NDT site selection process

• Achieved immediate aim of identifying preferred site
• Environmental input to decision (via EPA) evident
• Did not deliver on other goals:
  – Sustainable development strategy
  – Model for Indigenous engagement and benefits

Statutory strategic assessment

• Strategic Assessment Report not adequately informed by appropriate knowledge:
  – Many specialist studies not completed in time
  – Argument that known impacts downplayed (Wilderness Society)
  – Argument that strategic assessment should have applied to all 4 short-listed sites
• Difficult to demonstrate that proposed mitigations would be adequate (lack of detailed info)
Transactive effectiveness

To what extent, and by whom, is the outcome of conducting [SEA] considered to be worth the time and cost involved?

**NDT site selection process**
- Very efficient, completed in approximately 1 year

**Statutory strategic assessment**
- Streamlining of future project proposals is rationale for strategic assessment in Australia
- For future proponents of derived proposals, potentially highly transactively effective, but for community?
- Sense of undue haste
- Irony that process significantly slowed due to legal challenges
Normative effectiveness

Does the [SEA] meet the expectations of stakeholders irrespective of the sustainability discourse they align with?

NDT site selection process

• Objectives with respect to sustainable development not entirely clear

Statutory strategic assessment

• Objectives with respect to sustainable development not entirely clear:
  – In WA EP Act
  – In Cth EPBC Act
  – In strategic assessment documentation

• Perception that implicit goals changed during process

• Clearly some stakeholders found assessment to be normatively ineffective
The importance of context

• Indigenous context:
  – Role of Kimberley Land Council
  – Tension between Native Title claimants
  – Lack of trust in Government over compulsory acquisition of land

• Political context:
  – Change of Government in WA September 2008
  – Pro-development stance of WA Government (Inpex decision)
  – Perception of political interference in process

• Characteristics of Kimberley:
  – “Last great wilderness”
  – Unique history and culture of Broome
Other points of reflection

• How strategic was the decision-making?
• Were there too many things going on concurrently?
• Could this assessment ever have been undertaken in a way that was acceptable to most stakeholders?
• Does Australia prioritise transactive effectiveness over all other dimensions of effectiveness?
• Does our legislation with respect to derived proposals and approved actions limit our ability to be strategic?
• Or is it an issue of application and implementation?
• Are there any lessons learnt for SEA in New Zealand?
References

References