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The Potential Use of Strategic Environmental Assessment to Protect the Core Elements of Indigenous Culture: Exploring Subtractive and Additive Processes and the Implications of Resource Development

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Abstract: This study will compare Canadian and Australian case studies to glean insights and compile lessons learned to better understand how resource development should occur in a way that fosters Indigenous peoples' cultural wellbeing in the present and the future. Both Indigenous populations experienced the institutional effects of European settler state policies, which subsequently engendered forms of social and political colonialism, and both Indigenous populations have had similar experiences with transnational mining companies encroaching on traditional lands as part of a broader process of globalization. We contend that we need a fundamentally different approach to resource development that affects Indigenous traditional lands in both Ontario, Canada, and NSW, Australia; one that takes into consideration the core values needed to sustain Indigenous cultural wellbeing in the present and the future.

Keywords: strategic environmental assessment, sustainability, Indigenous cultural wellbeing, resource development, decolonizing methods, Canada, Australia

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1. Introduction

Increasingly, resource development and related environmental assessments are affecting Aboriginal's homelands in Canada, especially in northern parts of the country [1-3]. With the recognized development opportunities in northern Ontario and associated environmental assessment (EA) processes underway (e.g., the recent Victor Diamond Mine expansion proposal; Hydro-electric development in the Albany River watershed; and multiple resource extraction projects in the so called "Ring of Fire"), addressing the implications of development decisions affecting Indigenous peoples' lands, resources and cultural wellbeing is both timely and of great importance for current and future practice of land use planning and resource development. This study will compare Canadian and Australian case studies to glean insights and compile lessons learned to better understand how resource development should occur in a way that fosters Indigenous peoples' cultural wellbeing in the present and the future. The first case study is located in northern Ontario, in the western James Bay region, which is populated by approximately 10,000 Cree who inhabit four coastal First Nations. The second case study is located in New South Wales (NSW), Australia, where the booming mining industry [4] and associated infrastructure development (e.g., highways) provide good examples for comparative analysis, as it relates to the impacts and implications of such developments on the cultural wellbeing of Indigenous peoples.

Both Indigenous populations experienced the institutional effects of European settler state policies, which subsequently engendered forms of social and political colonialism [5], and both Indigenous populations have had similar experiences with transnational mining companies encroaching on traditional lands as part of a broader process of globalization [6]. There are, however, noteworthy differences between the two case studies that will need to be taken into consideration, especially as it relates to Indigenous land rights. In Canada, there are treaties that set out Indigenous land rights. The interpretation of these treaty rights is evolving quickly with recent Supreme Court of Canada decisions providing new direction for federal and provincial governments in the areas of consultation, accommodation and consent. However, in Australia due to the erroneous assumption of *terra nullius* (i.e., land owned by no one), "no treaties were made between colonists and prior occupants" that were recognized by the Crown [7].

In January of 2014, the Chair of the Indigenous Advisory Council, Warren Mundine, and the Australian Prime Minister, Tony Abbott, expressed interest in creating a treaty between the government and individual nations or language groups rather than having one treaty for all Indigenous people [8]. Moreover, unlike Canada, Australia has yet to recognise Indigenous peoples as 'peoples' or 'nations' [9]. Therefore, while in Canada, treaties were signed in the past recognizing Indigenous land rights – and these rights are entrenched in the repatriated Canadian Constitution (1982) – some of these rights have been impacted by development (i.e., a subtractive approach). By contrast, in Australia Indigenous people never signed treaties and their land titles were never recognized. But recently some Indigenous groups have been granted fee simple land rights by the Commonwealth Government of Australia, with the current government more inclined to the idea of signing treaties (with the caveat, not of the same type as in Canada) with Indigenous peoples (i.e., an additive approach) [8, 10].

We contend that a fundamentally different approach to resource development that affects Indigenous traditional lands in both Ontario, Canada, and NSW, Australia is needed; one that takes

into consideration the core values needed to sustain Indigenous cultural wellbeing in the present and the future.

2. Literature Review

Our conceptual framework is based on a number of well developed theories including rational/synoptic planning [11] and collaborative planning [12], as these can help explain the strengths and weaknesses of resource development processes on Aboriginal lands in both Canada and Australia. Conceptual grounding will also include critical and Aboriginal/Indigenous/decolonizing planning to ensure that our work recognises the (un)fairness of planning and examines power relations, resource inequalities, and the proper application of consultation and accommodation [13-18].

2.1. Land Use Planning and Environmental Assessment

Planning has been defined as "future-oriented, public decision making directed toward attaining specific goals" [19]. Arguably, planning is a means to an end and its ultimate rationale is to be somehow better off afterwards than before [20]. Berzok [21] argues that EA and planning serve different but complementary functions. SEA has emerged as a tool to be used above the project level and, therefore, is seen as a potential contributor to the way planning and decision making occurs. As has been previously argued, by the time the term emerged, SEA was portrayed as an extension of project EA principles applied to the levels of policies, plans and programs (PPP).

Currently, SEA is best conceived as an integral part of policy, plan, and program development rather than as an add-on process [22]. Land use planning is "the development of regulatory, developmental and conservation strategies for land, taking into account the interactions between land; or, more broadly, the built and physical, social and cultural characteristics, and their institutions, norms and values" [23]. The purpose of land use planning has been described as to secure consistency and continuity in the framing and execution of policies with respect to the use and development of land [24]. It could be argued that, although EA/SEA and land use planning traditions emerged from fairly different origins (i.e., EA from environmental protection law and land use planning from a concern about urban efficiencies), planning and SEA have been gradually merging towards the same position, i.e., a position in which assessment and decision making embraces a more comprehensive set of sustainability considerations and acknowledges all the different tiers or levels of decision making necessary in a coherent and integrated approach to decision making. After all, SEA is all about good planning.

Synoptic (or rational comprehensive) is conventionally the dominant tradition in planning practice and the point of departure for most other planning theories. Hudson [11] asserts that the synoptic planning approach has four basic elements: 1-goal setting; 2-identification of policy alternatives; 3-evaluation of means against ends, and 4-implementation of decisions. The process is not always undertaken in this sequence, and each stage permits multiple iterations, feedback loops, and elaboration of sub-processes [11]. The main criticism of this planning tradition is that planning is confined to a 'technical, value-free, apolitical activity' with little or no consideration of the local social-economic and political climate [25]. Collaborative planning is a key component of many land

use, resource management, and to a lesser degree environmental assessment processes. These rational planning processes sometimes utilize collaboration, especially during policy development and strategic planning cycles. Collaborative planning theory has its roots in the social learning tradition. Two main theoretical foundations are used to explain collaborative planning. The first is from the work of Habermas' theory of communicative action [26]. The role of language is central to Habermas' theory, in particular, the search for undistorted communication that will allow for consensus and action. Once this undistorted communication is achieved, power and self interest may be neutralized [26]. The second is based on the work of Healey [27-29]. She indicates that the foundation for her thinking is the structuration theory of Anthony Giddens [30] specifically "the continual interaction between, and mutual constitution of 'structure and agency' …" [31]. Planning is seen as involving "some interactive relation and some kind of governance process" [31]. The view is that planning is shaped by wider economic, social and environmental forces that provide structure. However, these forces do not determine relations or necessarily the qualities of place [29]. The benefits of collaborative planning relevant to the proposed research include:

i. Providing a mechanism to bring a variety of stakeholders with differing perspectives together to work on issues of common interest [26];
ii. Creating arenas where stakeholders can meet and potentially influence decisions [27, 32];
iii. Creating opportunities for new collective ways of thinking and acting based on innovation and creativity [33];
iv. Providing mechanisms for dispute resolution;
v. Developing solutions that are easier to implement and less likely to generate opposition [33]; and
vi. Formation of long term networks able to be tapped in the future [33].

Critical planning theorists, however, claim that collaborative planning theorists focus on the 'bright side' rather than looking at how land use planning processes can be used to maintain current power structures [15-17]. The critical perspective focuses on the problems with policies that create, maintain and reproduce social control, oppression, inequalities and injustices, along with the need to understand planning as being both potentially regressive or progressive. The critical perspective stresses the importance to recognize the evident link between local and regional planning and "the dark side of minority, gender, and peripheral group oppression" [34]. Decolonizing is yet another important aspect for this research. It refers to the "growing recognition of the rights of Indigenous peoples vis-á-vis the colonial state" [35], as well as the need to restructure Indigenous governance by redistributing power and restoring greater legitimacy in Indigenous governments that were affected by the colonial process [14].

2.2. Strategic Environmental Assessment

Despite advances in the field of EA in Canada and worldwide, there is still a need for further improvements to make EA more effective, efficient and fair [36]. Since its emergence in the early 1970s, EA has played an important role as an instrument to identify and assess potential impacts of new proposed undertakings; and the overall trend has been one of gradually expanded application, scope, openness, understanding and ambition [36]. While the benefits associated with EA application can be found documented in the literature, project-level EA is limited in its nature since the focus of

attention is on project-by-project decision making, while cumulative effects and broader regional and non-point sources of stress are usually not properly considered [22]. As such, EA has been expanding globally to the strategic level and increasingly being integrated with planning, particularly regional planning. Some of the best work is informed by sustainability and complex systems understandings [37-45].

SEA's essential purpose is to more effectively integrate environmental and sustainability issues in decision making [46]. In its most recent and advanced conception, SEA is intended to: "ensure positive contributions to sustainability, as well as mitigation of adverse environmental effects; enhance the openness and credibility of strategic level decision-making; provide earlier, clearer and more reliable guidance for the planning and approval of particular projects and other subsequent undertakings; and to improve the overall efficiency and fairness as well as the effective quality of decision making" [47]. One of the contributions of our previous work was related to how SEA can help to contribute to sustainability, particularly by examining the concept of tiering [48, 49], which is seen as a potential benefit of SEA. Tiering helps to set a strategic context for project EA, consequently making project EAs more efficient [50], in particular when embedded within an existing governance process [22], open to such knowledge and administered by a municipality or resource development agency. Therefore, a vital role of tiering in SEA is for upper-level structures to provide procedural guidance to lower tier assessments [50, 51], which can establish procedures for subsequent assessments, such as, the scope and nature of required analysis, documentation, consultation and reviews [50].

As such, SEA can be seen as an essential instrument that can streamline the EA process as a whole (i.e., EA focused at the project-level and SEA focused at plans and programs that set the context for future projects). As a result, decisions taken at one planning level may not need to be revisited at subsequent stages of decision making [52], making project-level assessment more efficient. Therefore, the adoption of SEA, as part of the EA regime, has potential to increase efficiency in decision making, better address cumulative effects, and to reduce the subsequent burden of work for project-level EA; essentially reducing costs, time and confusion commonly associated with the EA process.

Based on the literature, the inclusion of SEA as part of the overall EA regime has the potential to serve at least three main purposes in resource development:

i. Better addressing cumulative effects of multiple development proposals in a region [50, 53, 54];
ii. Ensuring reasonable alternatives are not foreclosed before getting to the project-level decision-making process [48, 49, 52]; and,
iii. Ensuring early participation by interested publics (at the SEA stage), which can avoid the frustration of project-level-only participation later in the process, when key options have already been foreclosed and are not considered further [55-57].

These benefits point to SEA as an instrument that can serve as a venue through which resource development review processes can be conducted in a timely, effective, efficient and fair way, in which Aboriginal peoples can meaningfully participate in decisions affecting their traditional lands and culture. Based on SEA research carried for the Canadian Environmental Assessment Agency (CEAA) that we completed in 2010 [58] that looked at both formal and informal SEA application, we believe there may be some translation of concepts and ideas from Ontario's southern regions and learning associated with EA and land use planning to the northern context (e.g., integrated and tiered decision

making, SEA as a communication tool and sustainability-centred decision making [49, 58]. SEA may have the potential to play a major role in improving planning and decision making in the region, by better addressing cumulative effects of these multiple projects taking a regional approach that is participative in nature with potential to improve Aboriginal peoples' ability to address potentially negative socio-ecological and cultural impacts, as well as to maximize their economic development opportunities.

3. Methodology

A Participatory Action Research (PAR) approach using multiple methods will be used to investigate innovative sustainability-focused approaches to environmental management in an empirical context. Whyte [59] notes that in PAR, "some of the people in the organization under study participate actively with the researcher throughout the research process from the initial design to the final presentation of results and discussion of their implications" [59]. The research approach will mainly be qualitative, and data collection and verification will be obtained utilizing multiple methods and sources, including semi-directed interviews with and storytelling by Elders, focus groups with Aboriginal leaders, and interactive workshops. In addition, a critical comparative assessment of historical challenges in Canada and Australia, highlighting similarities and differences between the two cases will be done, ultimately leading to a better practices framework.

The proposed research will develop and mobilize existing and emerging research on SEA applied in non-urban, remote areas. More specifically, the proposed research is intended to explore the potential contribution of SEA to planning and decision making in resource development review processes that can have significant implications for Aboriginal communities. Our research team incorporates both a formal and informal collaborative approach. Formal collaborative processes involve meetings with Chief and Council, and community members, and employing semi-structured interviews, focus groups. Informal processes include discussions at the kitchen table and/or community-based social gatherings.

3.1. Study Area

The proposed research will compare case studies in Canada and in Australia to glean insights and compile lessons learned in order to achieve the objectives of this research. Both case studies provide for recent examples/projects that reflect current resource development environments. The Canadian case study is located in northern Ontario, more specifically in the western James Bay region. The western James Bay region is populated by approximately 10,000 Cree who inhabit four coastal FNs, including Fort Albany [60]. Fort Albany is located on the Albany River being a remote fly-in community with a population of approximately 900 people. Year-round access to Fort Albany is by airplane only, with ice-road access in the winter. This area is covered by existing EA processes that have recently been modified as well as the controversial Far North Act that enables First Nation community based land use planning [61-63). Members of Fort Albany FN, as key stakeholders involved in resource development in northern Ontario, will play a key role in providing the Aboriginal

perspective essential to the success of this research. Fort Albany has been impacted by recent diamond mining [3, 58], current expansion plans [64], and new proposed development including the contentious Ring of Fire [65].

The second case study is located in New South Wales (NSW), Australia, where a booming mining industry [66] provides good examples for comparative analysis as it relates to the impacts and implications of such developments on the cultural wellbeing of Aboriginal peoples. New legislation to protect Aboriginal Cultural Heritage (ACH) values is currently being drafted in New South Wales that will include increased Aboriginal input in strategic initiatives related to resource development, as well as a focus on monitoring cumulative impacts to ACH values at local, state and national levels [66]. Both Aboriginal populations experienced the institutional effects of European settler state policies, which subsequently engendered forms of social and political colonialism [5], and both Aboriginal populations have had similar experiences with transnational mining companies encroaching on traditional lands as part of a broader process of globalization [6].

4. Discussion and Preliminary Conclusions

Addressing the implications of development decisions affecting Aboriginal peoples' lands, resources and cultural wellbeing is both timely and of great importance for current and future practice of land use planning and resource development, especially with all the interest created by the recognized development opportunities in northern Ontario (e.g., multiple resource extraction projects in the so called Ring of Fire). To date, there has been no concrete attempt to address the challenges posed by resource development in northern Ontario following a regional approach that addresses potential cumulative effects. Instead, assessments of new development have started on a project-by-project basis, as opposed to taking a more strategic, regional approach (e.g., SEA). Some potential to achieve a strategic approach may exist through the new Federal EA legislation (e.g., regional EA under the Canadian Environmental Assessment Act, 2012 [68]. Furthermore, there may also be potential through the application of the Far North Land Use planning process [61]. However, no links between this process and streamlined EA have been made by governments and research in this area is lack.

We argue that while in Canada, treaties were signed in the past recognizing some Aboriginal land rights and now some of that has been taken away for development purposes (i.e., following a subtractive approach), in Australia, Aboriginals never signed treaties and were never recognized as being the owners of their traditional lands, and more recently have been granted some land rights (e.g., creation of reserves) and the current government is more inclined to the idea of signing treaties with Aboriginal peoples (i.e., following an additive approach).

Given the current and past resource development context, we contend that we need a fundamentally different approach to developing resources in traditional lands used by Indigenous peoples in both Ontario, Canada, and NSW, Australia than what has been used to date. The new proposed approach must take into consideration the core values needed to sustain Indigenous cultural wellbeing in the present and the future. As such, one key question that will need to be examined is: What are the core values/elements that are essential to "maintain" cultural wellbeing in subarctic Ontario, and "buildup" cultural wellbeing in the subtropics of NSW – not on a community-by-community basis, but as a tribal nation – and not on a project-by-project basis by which Environmental

Assessment is now based, but on a regional basis, through Strategic Environmental Assessment. However, prior to answering this question, an appropriate approach also needs to be identified. Decolonizing methods are suggested as the appropriate vehicle.

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