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SUBMISSION TO

Major Project Development Assessment Processes
Productivity Commission Draft Report (August 2013)

12 September 2013

Major Project Development Assessment Processes
Productivity Commission
MELBOURNE

Dear Commissioners,

Thank you for your Draft Report into Major Project Development Processes, and for the opportunity to respond to your findings. We wish to raise the following issues;

Adversely affected stakeholders are reliant on the integrity of science and the effectiveness of assessment and regulatory processes to properly protect their welfare and the environment.

After careful consideration of the Commission's Draft Report and Recommendations EEMAG members do not consider the Commission has adequately investigated and/or identified the extent of existing problems, or provided recommendations that can effectively remedy current shortcomings / inequities for stakeholders suffering from regulatory failure.

- The Commission did not acknowledge the unscrutinised arrangements that occur when a proponent negotiates 'project certainty' in a confidential deal with State (Queensland) Minister(s) as incentive for the project to proceed. Such a political agreement has Cabinet and 'commercial in confidence' confidentiality. Our initial Submission (38) documents that these agreements legally bind the regulating agencies, without disclosure of terms of the agreement to affected stakeholders who initially participate in due process in good faith; only to find regulatory processes fail them. There is no transparency, accountability or ultimately access to justice for affected stakeholders under this system.

We are disturbed by Queensland's recent axing of Social Impacts from EIS requirements (despite fly-in fly-out controversies) followed by the NSW's proposals for planning assessments to be more heavily weighed to economic development, coupled with the new Federal Government's declaration of support for a state controlled one shop approval process.

From our interpretation there is a coordinated political policy to facilitate 'public interest' of major projects to override the private right of affected stakeholders and the environment.

SERIOUS INADEQUACIES IN THE PRODUCTIVITY COMMISSION'S PROCESS AND INFORMATION BASE

We acknowledge the Commission's comments on Page 5 on the practical challenges in benchmarking complex DAA regulations and processes. We interpret the Commission's Recommendations are framed from the position that current technical assessment processes and regulatory outcomes for affected stakeholders and for protection of the environment and water resources are reasonable, but with scope for improvement.

For transparency, accountability and adequacy of the Commission's Report and Recommendations it is necessary for the Commission to have fully, frankly and fearlessly informed itself on the extent of adverse environmental and socioeconomic impacts of projects, and whether these impacts (including those of a legacy nature) are being effectively assessed and remedied under current regulatory regimes.

The Productivity Commission's process and Draft Report contain serious inadequacies; for example

- (1) The Commission has omitted to visit, interview and report on people suffering from regulatory failure from mining and gas extraction, and see for themselves what is occurring on the ground.
 - From our experiences, we consider the Productivity Commission could be accused of being selective in researching their information base with a lack of intent to fairly and justly report on the true situation for many affected stakeholders. (It has been widely reported over a number of years that the mining and gas extraction boom has caused a crisis for landholders (and health concerns for others such as at Tara, Queensland, the most densely settled area in Australia with intensive CSG development).
 - In our view this omission is comparable to a study that includes the incidence of child abuse and adequacy of protection systems but omits to interview victims of that abuse.
 - Interviews with environmental, community groups, councils and / [or farming organisations] are not a valid alternative to interviewing victims of regulatory failure and potentially affected stakeholders; and fully taking these case studies into account.

- (2) There has been no independent audit of adverse environmental impacts of mines in Australia e.g.
 - what areas are mined?
 - what areas are rehabilitated?
 - what areas are not rehabilitated?
 - what is the incidence of abandoned legacy mines?
 - will these be funded to be rehabilitated?
 - and if so, how?
 - we consider it imperative and respectfully request the Productivity Commission to charter a plane and fly over the NSW Hunter Valley, Moura Mine in Queensland, West to the Bowen Basin and fly North to Collinsville to view for yourselves the cumulative effects of failure to rehabilitate mines.

The results of the above investigations should be reported and canvassed within the recommendations so that the effectiveness of regulatory processes have been fully, frankly and fearlessly investigated.

- Page 4 of this Submission has a Map of Australia showing Distribution of coal and gas Titles and Applications. The map was prepared by Lock the Gate Alliance in February 2013, using official data provided by the resource department of each State of Australia.

EEMAG wishes to thank Lock the Gate Alliance for use of the Map. Lock the Gate Alliance is an Australia wide alliance of more than 160 Groups, including landholder based action groups, affected / concerned by mining and gas impacts.

- We respectfully request the Commission include all the areas where mines are not rehabilitated and where there are problematic and /or abandoned mine sites (including those listed in ex mines' compliance officer Jim Leggate's Submission 61) in the map on Page 4 (or a map constructed from the same information base) so that the cumulative effects of failure / inability to rehabilitate or repair under regulatory regimes are clearly illustrated together with proposed mining/ gas extraction sites, including on iconic farming land such as the Liverpool Plains, Darling Downs, Gippsland etc.

As evidence of the seriousness of a situation that may arise for stakeholders/ratepayers confronted with cleaning up once mining is finished, quoted below are extracts from a recent radio news item transcript sourced from the ABC's The World Today website titled "Mining is on the nose at Bendigo in central goldfields" dated 23 August 2013, Quote:

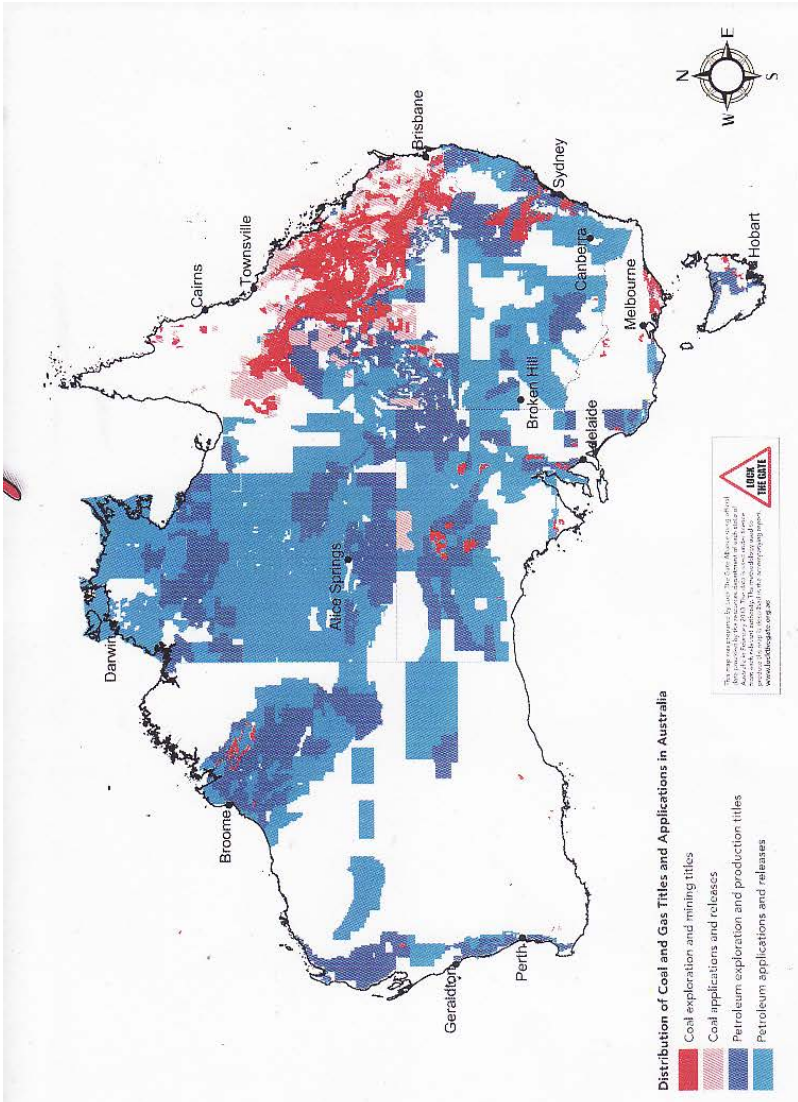
"With underground mining now finished, the city of 100,000 people is facing the difficult task of cleaning up."

"One of the headaches is just how to deal with rising groundwater that smells of rotten eggs."

"Currently it is pumped underground, where it will eventually flow to evaporation ponds at Woodvale, a rural community on Bendigo's northern fringe."

"We estimate that there's approximately 40 to 50 tonnes of raw arsenic here that's been pumped over the years, and possibly up to 50,000 tonnes of dissolved salts, so it's actually a toxic environment."

EEMAG members wish to thank the ABC for permission to use the quotes.



PLEASE DON'T DUMP THE WATER TRIGGER

- The Water Triggers' very existence amounts to recognition of the need for science to be determined at arms' length from the enormous bargaining power/influence of big business and Government. Integrity of the science is absolutely essential to the adequacy and accountability of assessments of negative impacts, good regulatory outcomes for affected persons / communities and safeguarding of water resource systems and the environment. Requiring integrity of the science is necessary to preserve overall confidence in the process.

EEMAG's initial submission documented expert and FOI / RTI evidence that Technical Reports within an IAS / EIS Assessment and subsequent regulatory assessments of mine dewatering impacts were shaped to fit 'minimum compliance' commitments reached between Queensland Government and the East End mine, including that the project's environmental approvals would remain fixed on the basis of no off-lease impacts

The Commission's Draft report's Box 1 acknowledged the issue of environmental and community groups' concern with perceived consultant bias, including Quote: "Key problems with domestic environmental impact statements (EIS) processes are: Lack of independent assessment, or comprehensive baseline data, poor cumulative impact assessment, no links to catchment limits, inadequate consideration of climate change; limited government oversight and quality assurance...."

In our view the merit of the Commission's acknowledgement of these concerns is largely negated by Draft Recommendation 7.2 which advocates the Australian Government undertake and publish a regulatory impact assessment of the 'water trigger', including the exclusion of water trigger-related actions from bilateral approval arrangements.

- EEMAG members as persons affected by limestone mine dewatering (which is not covered by the Water Trigger) consider it is absolutely essential to retain, protect and utilise the Water Trigger in bilateral approval arrangements to ensure transparency and accountability in assessment of dewatering impacts and thus potentially in DAA and regulatory processes.

We respectfully request the Productivity Commission adopt a precautionary approach in recognition of the sane and essential nature of the Water Trigger and review their Draft Recommendation 7.2 while taking into account extracts from a news item from The Land website on 14 August 2013 headed "Coal's cumulative damage" by Matthew Currell of RMIT University; Quote:

"Mine operators have proposed nine major new coal mines for the Galilee Basin in central Queensland. Those proposals currently being assessed by the Queensland government could significantly impact water resources on a regional scale. But they are not being assessed as a whole."

"Already some projects have received approval, though there has been no co-ordinated assessment of their combined effects on groundwater and surface water. This is a major oversight that has gone unchecked because of flaws in the way mining projects have been assessed to date in Australia."

“The Independent Expert Scientific Committee appointed by the Federal Government to look at new major coal and coal seam gas projects found there has been inadequate examination of cumulative impacts of multiple mining operations – as are proposed in the Galilee – on water resources.”

“This includes both groundwater and surface water. These are the lifeblood of agriculture and the environment, and are part of an interconnected system. Impacts on one area cannot be isolated from others.”

“The proposed Galilee projects include the Alpha mine and at least eight others under assessment or approved. They cover a stretch of land hundreds of kilometres long parallel to the Queensland Great divide. Both open cut and underground longwall mining are proposed.”

“Both inevitably require high levels of interference with water – particularly, groundwater. In open cut mining, groundwater levels must be reduced by pumping to allow mining. If the Galilee mines go ahead, groundwater levels would need to be depressed in places by tens of meters at each site. In combination, this would likely create drawdown cones (regions where groundwater heights decline due to pumping), covering thousands of square kilometres.”

“Proponents of some mines acknowledge that after the mines are closed, recovery of water levels will be slow – in the order of centuries – and may never occur completely.”

“Longwall coal mining also fundamentally changes geological structure by inducing fracturing, which increases permeability and increases water leakage between layers. It can potentially cause serious land subsidence, and irreversible impacts on surface water and shallow groundwater. This has been extensively documented in New South Wales’ Hunter Valley.”

“In the Galilee Basin, the proposed mines are close to areas where much of the recharge to the Great Artesian Basin is thought to occur. There may be effects on the groundwater flow field (the pressures controlling direction and rate of groundwater flow), that extend into these areas.” and

“The projected total water consumption of the mines is tens of thousands of megalitres per year, but the estimates from individual mines are uncertain. In light of these issues, it is extremely concerning that cumulative impacts on water – that is, the combined impact of the full set of proposed mines – have to date not been examined.” and

“We have the modelling tools to assess cumulative impacts of mining on groundwater. However, we need more data on the degree of connectivity between individual aquifer layers and their key hydraulic properties to run them effectively. Without this data and unless we model the strata as a connected system that is simultaneously affected by combined stresses, the real impacts can’t be accurately captured.”

“The mining sector is increasingly affecting Australia’s precious water. Communities are reasonably concerned about long-term effects on livelihoods, the environment and our capacity to produce food. The federal government’s introduction of a better assessment process for coal and CSG impacts on water makes sense. But the process is clearly not working if individual mines in an area of intense new development can be approved on a staggered basis without a regional, cumulative assessment of total impact.”

“Everyone involved, from federal and state government, to the mine proponents and investors, should respect that this needs to be part of a proper assessment process, which is required in order to safeguard some of our most important national assets.”

“Matthew Currell RMIT University does not work for, consult to, own shares in or receive funding from any company or organisation that would benefit from this article, and has no relevant affiliations.” End of quote from The Land.

EEMAG members wish to thank The Land newspaper for permission to quote from this article.

SEPARATING POLICY AND REGULATORY FUNCTIONS – ARE TRULY INDEPENDENT REGULATORY AGENCIES ATTAINABLE ?

The concept of institutionally separating environmental policy from regulatory and enforcement functions in all jurisdictions as described in the Draft Report sound excellent in theory.

- HOWEVER EEMAG’s initial submission to the Productivity Commission provided clear evidence that negotiations between the East End mine and State Government Ministers traded-off the welfare of affected stakeholders and environmentally sustainable management of water resources in a “minimum compliance” strategy that has no sunset clause. This resulted in a “Top Down” regulatory system with regulators legally bound to adhere to the confidential “minimum compliance” regulatory standards agreed to between the Minister/Cabinet and East End mine.

Whilst it is indeed highly desirable that the promotion /management of mining and environmental regulation should be quite separate, we cannot see how this will effectively remedy / counteract the above situation where regulators are legally bound by confidential, but *unofficial* Cabinet decisions which are at variance with public policy statements and legislated policies and not consistent with claims of rigorous and comprehensive environmental impact assessments with enforcement of “stringent environmental standards”.

Significant Project Status / Adaptive Management

EEMAG’s well documented experiences of minimum compliance finds a ready parallel within State and Federal significant project status. In Queensland, the Coordinator General’s Department has carriage over major project assessment and approval processes and at their discretion, projects may evade public objection processes and /or other checks and balances.

The enormity of modern day projects means that proponents are reluctant (or perhaps unable to raise the funds) to commit what may well be tens of billions of dollars unless they receive ‘project certainty.’ Many of these projects come with new and sometimes unproven technologies. Politicians are therefore placed under enormous pressure to hastily consent to confidential in principle agreements without the benefit of a properly conducted risk analysis. The scale of the projects means that delays may result in crippling cost overruns or conceivably even cause abandonment of the project.

The ultimate proof of Queensland being the least stringent approval denominator of projects can be gauged by the extent of coal seam gas development in Queensland as opposed to New South Wales where upper house resistance to indiscriminate and unjustified haste has slowed such political approvals.

So, the real dilemma is how to approve and deliver such projects while safeguarding the interest of other stakeholders coupled with sustainability and protection of the environment? Exit the Precautionary principle and Ecologically Sustainable Development and enter adaptive management.

We see adaptive management as a “deal with it as you go” philosophy. Inherent within this strategy is the likelihood that approvals are pre-emptive and that knowledge is mostly accrued in hindsight. Viewing adaptive management from our experiences, it is a high risk strategy geared to the interest of the proponent and governments increasingly dependent upon major projects for royalties, jobs and economic development. The legacy risk is high and even urban dwellers are stakeholders.

- As EEMAG has already demonstrated in our initial submission, when project approvals are first granted, subsequently Section 251 (4) of Queensland EP Act allows for amendment of the original Environmental Authority without reconsideration of, or public objections against, the original existing environmental authority even if the original Environmental Authority is completely inadequate and inappropriate.

The risks to strategic cropping land and its aquifers for short term exploitation, is not being adequately factored in to the Commission’s considerations and recommendations.

There is evidence Australia is in grave peril of permanently damaging these agricultural / food producing resources which should be recognised and properly protected as an enduring national asset.

REVIEW AND APPEAL OF REGULATORY DECISIONS

In EEMAG’s initial Submission (No 38) we documented how our access to regulatory and administrative representations and / or appeals and reviews process were ultimately frustrated / denied / circumvented by the binding agreement between East End mine and the Queensland Government / Cabinet for “minimum compliance” with the mine’s environmental approvals framed on the [false] basis of no off-lease impacts.

We understand that Mining and Gas extraction projects are exempt from compliance with COAG Agreements on Water Reform and the National Water Initiative with no appeals on the merit for stakeholders when science used for a Water Resource Plan is demonstrably inaccurate and shaped fit to a political agreement with a mining company.

We note the Productivity Commission has considered a limited Merits Review and that under a limited Merits Review, stakeholders may be restricted to only raising matters that were raised in their initial objections to a project, such as an EIS.

- We consider the above proposal is fraught for affected stakeholders and is likely to limit / deny their opportunity for access to justice.

Our reasons are as follows;

(1) EEMAG's evidence in Submission 38 shows that the Queensland Coordinator General has the power to decide that no public objections may be permitted against an EIS or part of the project included in an EIS. Our Submission documents that in 2001 Queensland's Environmental Protection Agency, through using an outdated and allegedly false and misleading Hydrology Report contained in a 1996 IAS/EIS, unjustly circumvented EEMAG members opportunity to lodge objections against the adequacy and appropriateness of East End mine's Environmental Authority that remains fixed on the false basis of no off-lease dewatering impacts.

EEMAG members were not informed of EPA's decisions of October 2001 and the details of their decision only became available through FOI in early 2003. We therefore had no opportunity for Judicial Review within its very limited timeframe.

(2) The adequacy of potentially affected stakeholders' initial objections may be limited by the fact that stakeholders are generally lay persons and may not be capable of reading, digesting and evaluating negative impacts reported in a weighty EIS document. The Arrow Energy EIS weighed twenty seven kilograms! Small landholders / others are routinely hampered by inadequate funds, lack of access to independent technical experts regarding likely impacts (acknowledged by the Productivity Commission), by ignorance of administrative systems and legislations, and are thus often at a considerable disadvantage when developing a dissenting case against EIS. Farmers are routinely disadvantaged when faced with weighty technical and academically challenging reports and ill-equipped to effectively respond to protect their own interests. Their views and long term local knowledge do not carry enough weight to ensure correction of inaccurate findings.

(3) From EEMAG's experience the IAS and EIS processes are often fast tracked, deficient, untrustworthy and can be marked by grossly inaccurate science. Consultants who do the Report(s) are selected and paid for by the proponent. This does not provide an independent assessment of the issues. From our evidence the consultant's role is to produce a report that will present the best possible view of the company's prospects so as to satisfy the administrative process that the proposed project should proceed under terms suitable to the proponent. It is our understanding that Environmental Impact Statements may not reveal the full details of adverse impacts, emissions etc. We recall that some industrial projects in the Gladstone area fundamentally changed their design *after* their IAS/EIS approval.

Thus if a potentially affected stakeholder lodges an objection against an EIS and neglects to object against the full range of issues, through inadequate information in the EIS document, through lack of access to the correct information, lack of understanding of potential impacts, lack of experience / being unable to foresee of what will occur; in addition, if completely unforeseen issues emerge *after* the project is operational, the stakeholder could be denied access to even a limited merits appeal.

Adverse Cost Awards

Prudent litigants must always consider the possibility of an adverse cost award being made against them should they lose in the court. Recently we have seen clear examples that the NSW government through its proposal to more heavily weigh economic development ahead

of other competing interests and by pursuing costs against the Fullerton Residents Action Group Inc (September 2013) in what is arguably a public interest case, is demonstrating, in the first instance, a pronounced bias in favour of industry, and in the second, a punitive approach to deter other would-be stakeholder litigants.

In closing, we wish to reiterate the importance of obtaining face-to-face interviews and input from a broad basis of affected stakeholders and of observing / investigating for yourself the cumulative effects of failure to rehabilitate / remediate mining impacts.

In our experience Resource Industries will deny that they need to be subsidised by their communities and the environment to be profitable, yet that is exactly what is happening, due to failure to require an effective remedy to adverse impacts.

Thank you for accepting EEMAG's Submission.

Yours sincerely,

Heather Lucke
Assistant Secretary