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Submission to the Senate Inquiry into the Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012 into the future

There is a need for independent assessment of projects that could impact our Matters of National Environmental Significance and that the Federal Government is required to hold those powers.

Here are five reasons why this is important:

1. If more environmental assessment power is given to the States, and a project proponent is a wholly-owned State corporation, or a private/public partnership set up for a specific project by the State Government then there is a conflict of interest. How can there be any independent environmental assessment? This need for independent assessment was clearly demonstrated with the federal assessment of the proposed Traveston Crossing Dam.

2. There have been major changes that have taken place in Queensland own planning and assessment laws and procedures over the past few years with in particular "fast-tracking' of major state-owned projects. The concern about these changes is the reduction in the amount of assessment, reduced or eliminated opportunity for public comment and removal of most of the legal avenues for review of decisions. Queensland's political system is unique in having no upper house to review decisions made in the lower house and by making extensive use of it's powerful State Development Act. This Act is administered by the unelected government position of Coordinator-General (unique to Queensland), a position which has a history of direct political appointments and whose decisions have no judicial review.

3. There have been previous failures of the State Development and Public Works Organisation Act (SDPWO) Environmental Impact Assessment (EIS) process eg approval of Paradise Dam and the assessment of the proposed Traveston Crossing Dam. There is no offence provisions in the SDPWO Act which prohibit false or misleading statements at any stage of the EIS process. The SDPWO Act has no pro-environment objects or deliberative obligations, so it allows the Coordinator General's EIS assessment reports to preference creating employment and development the State over protecting the environment. Most importantly, declaration as a significant project prevents state government agencies (including the Environmental Protection Agency) from requiring the project to be refused or imposing conditions inconsistent with those required by the Coordinator General.

4. Protect environmental approval conditions need to be independently monitored and enforced if necessary. How can this be, if there is a conflict of interest and the project is built, conditioned and monitored only by the state?

5. The core problem is lack of effective governance. State ministers, bureaucrats and the mining industry lobby would have us believe that the mining industry is heavily regulated, that rigorous assessment processes are in place and the common good is are well enough protected. In fact there are no regulations to stop the entry and establishment of mining and the existing assessment processes are manifestly flawed. Currently

miners can go wherever they can afford the real estate; with mineral prices on the rise this has literally brought exploration into the suburbs.

Below outline the inherent faults of the Environmental Impact Statement (EIS) currently used by the Queensland Government to ‚evaluate and manage the impacts associated with mining".
1. *The EIS methodology is based on a false premise*: The EIS methodology presumes that any development project can be made socially acceptable if it is overlaid by an „impact mitigation strategy". History shows that the EIS methodology has never found against a mining proposal in Queensland because of the costs it is likely to inflict on local communities and the natural environment. For the sake of consistency and credibility this country needs additional „mine evaluation" tools that can be used to stop completely the entry and establishment of those proposals most likely to fail the community's benchmark of social acceptability.

2. *Each EIS is initiated by a development application*: This means, by definition, that EISs are not an instrument of systematic, long term land use planning. *ambreCTL*, for example, has arrived at the EIS-stage after conducting exploration throughout the Felton region and developing an Initial Advice Statement – both without community consultations that would have revealed „local preferences". If pre-emptive and comprehensive planning processes were to find that large scale mining is not an appropriate use of a given land area, then all mining activity, including exploration, would be excluded. The Queensland Government could have introduced the concept of „no-go" areas years ago by making mining proposals in Queensland assessable under its *Sustainable Planning Act 2009*.

3. *EISs are undertaken by consultants hired-by and paid-for by the proponent*. This necessarily results in bias. In practice the hired consultant becomes an advocate for the proposal and the report generated can look more like an Operating Manual than a critical and dispassionate analysis of expected long term social, ecological and economic impacts.

Currently the Commonwealth has very little involvement with assessing and licensing of mining activities. Obviously this leads to inconsistencies between states. But more concerning is the fact that the states are not acting in unison with the commonwealth for the purpose of mitigating climate change and achieving global targets for GHG reductions. The natural inclination of the states is to encourage fast and furious development of the mining industry for the sake of the secondary benefits it generates – in the form of job creation, new spending and royalties. So whatever the Commonwealth does to bring about GHG reductions is likely to be undone by the pro-development attitude and behaviour of the states. The fact that secondary benefits accruing at a state-level come at the expense of local communities and loss of quality farming country doesn't seem to matter. The commonwealth/state funding model and the inherent vagaries of the election cycle seems to prevent the states" decision makers from thinking far enough ahead to stop the looming disaster everyone else can see coming.

To get a comprehensive picture of mining's footprint, it would be necessary to model the following: a) The location and area of land already mined-out and its status (eg, wasteland, rehabilitated, etc); b)The location and area of land currently being mined and its estimated productive life as a mine; c) The location and area of land being explored with a view to it being mined in the future; special note should be made of areas being explored for more than one resource eg, coal, gas, bauxite, etc d) An aggregation of the above showing the cumulative footprint of the mining industry over its projected life; and e) Some objective estimate of the externalities flowing from particular mining activities that act to increase the effective size of the footprint. These externalities include dust, noise, congestion, water pollution, GHG, etc. If mining did not give rise to such large and damaging externalities, no-one would be all that worried about it.

Using the area of land currently being mined as an „indicator" of the impacts that will eventually be inflicted on rural communities, the natural environment and future generations is a crude attempt at deception. It is not generally appreciated that 80% of Queensland is already covered by mining exploration permits. Heavily settled farming areas like the Darling Downs are blanketed from top to bottom by such exploration permits. If mining is allowed to develop in a manner suggested by the number and extent of exploration permits, it is not inconceivable that most of Queensland"s best farming land could be lost to massive holes in the ground. When open cut mining is allowed to take the place of cropping – as has already happened at Acland – there is no after-life; feasible methods of rehabilitating the land have not yet been discovered. This means that mining"s effective footprint just gets bigger and bigger. Eventually the area actually being mined will be

dwarfed by the area already mined – and left behind as „wasteland". Without intervention, the cumulative area lost to mining will eventually exceed the area left for food production, natural habitat and habitation, enjoyment and other options yet to evolve.

State

Currently, mining proposals in Queensland are not assessable under the *Sustainable Planning Act 2009*. This is „logical" in the sense that mining eventually exhausts the supply of mineral resources (making the industry unsustainable by definition) but the issue of sustainability remains relevant to managing the externalities associated with mining activities. If, in the process of extracting the resource, a mine is likely to threaten the functionality of surrounding soil, water, air and habitat generally, then it should be assessed under the *Sustainable Planning Act 2009*. This would put mining on the same footing as other large-scale development proposals. As noted above, the EIS methodology is not comprehensive enough to address the issue of sustainability since it presumes that all impacts, however destructive, can be satisfactorily addressed by an „impact mitigation strategy". This is a myth that must be put asunder.

The two industries will not operate harmoniously until the Strategic Cropping Land policy becomes law and this law stops encroachment by mining. Strategic cropping land legislation could deliver greater balance across the full spectrum of social, economic and political imperatives that apply to good land use planning. The micro-level application and rationale for the strategic cropping land legislation applies to the land itself and by extension to the communities that depend on the land. The record of suffering and indignities inflicted by coal mining on households in the Hunter Valley and at Acland should signal to state governments throughout Australia how not to treat their citizens.

Federal

Since it is the states that license mining activity it should be the states that protect the rights of existing and future communities from encroachment by mining. But for the sake of risk management we believe the federal government must play an active role in the licensing of new mines. This would make the conditions surrounding the establishment of mines more consistent throughout the nation and it would give the commonwealth scope to harmonise national policy goals with on-ground activity – particularly with respect to those mining activities with large carbon footprints and those that threaten long term food security.
The commonwealth's involvement should be via its *Environmental Protection and Biodiversity Conservation Act 1999.* In its present form this act is restricted and has rarely been used to arbitrate at the interface between mining and agriculture. But with amendments, EPBC could stop socially objectionable mining proposals outright. Thus EPBC is fundamental different from the State's EIS approach and has the potential to optimise the balance between mining, the natural environment and agriculture. To this end, EPBC should be amended:

1. To specify when and where the Act itself should apply
2. To specify how EPBC should be applied to bring about outcomes that are optimal from long run local, national and global perspectives.

With respect to 1 above, EPBC should be applied to all large scale mining proposals, after they have issued their Initial Advice Statement and before they have commenced development of their Environmental Impact Statement. Thus EPBC would be triggered by the standard development application but the EPBC assessment process would be pre-emptive, separate from the EIS and demonstratively independent. We think the EPBC assessment should be carried out by officers from the relevant commonwealth agency and the cost would be borne in the first instance by that agency. The mining development proponent would be invoiced following completion of the EPBC investigations and a determination.
The terms of reference applicable to the EPBC assessment would take in critical determinants of social acceptability. Several examples are outlined below.
1. *Food security:* While the Queensland Government is currently developing Strategic Cropping Land (SCL) legislation to protect the state's best cropping land from development projects that would lead to permanent alienation of such land, analogous provisions do not yet exist in the other states. This means EPBC should have the capacity to protect high value agricultural land throughout the nation. Those landholdings used for growing cash crops or supporting intensive livestock production within regions are relatively 'high value' and should be protected as such.

2. *Integrated land use planning*: Queensland's SCL legislation is focused strictly on a land area's cropping potential. As such it does not recognise the impact on nearby households or agriculture stemming from an embedded mine – that might not occupy SCL but be completely surrounded by it. This is a ludicrous situation; as we all know it is the externalities stemming from large-scale mining that causes environmental pollution, health problems and destruction of habitat. EPBC should have the capacity to consider the cumulative economic, social, cultural and environmental context surrounding a given mine development application and make a determination that reflects its net social worth within the context of all relevant considerations.

3. *Water*: Australia is the driest inhabited continent on Earth. Mining projects often consume very large quantities of water and pollute any left over. EPBC should have the capacity to protect rivers and aquifers from the worst effects of mining.

4. *Consistency with international obligations*: Conforming to international GHG reduction targets will be made all the easier if mining projects likely to generate 'excessive' GHG
emissions are assessed as such and stopped before they start. EPBC is much better equipped to do this job than an EIS administered by the states.

5. *Other*: We have not attempted to compile an exhaustive list of the issues that could be made assessable under EPBC.

Therefore I request that the Federal government needs to retain Approval powers, seek independant valuations and act accordingly in the interests of Australia and its future generations.

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