

Public submission to the Senate Economic References
Committee Inquiry into
Regional Inequality in Australia

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October 2019

Overview

I am an agriculture advocate living in the hub of Victoria's power generation in Latrobe Valley. Too many times poor planning decisions and policy from all levels of government are contributing to significant negative consequences for health and environmental degradation in Gippsland as well as economic, legal and social impacts.

Whilst mining exploration and production in Victoria, both offshore and onshore, may not have been considered inequitable or unjust in the past due to the economics benefits of the industrial revolution their legacy impacts are now putting regional communities at a significant disadvantage due to land use conflict, rehabilitation, access to clean potable water, as well as health, economic and legal complications.

In this submission I will address the risks posed to the person caused by inequality and unjust acts of the Crown in *EXERCISING* its *FREE WILL* in *ORDER* to protect its *INTERESTS*, at the exclusion of all others, i.e. the people, in *ABSOLUTE TERMS*.

Addressing the terms of reference:

The indicators of, and impact of, regional inequality in Australia, with particular reference to government policies and programs in the following areas:

- a) fiscal policies at federal, state and local government levels;
- b) improved co-ordination of federal, state and local government policies;
- c) regional development policies;
- d) infrastructure;

Victoria's Gippsland Region



Source: <https://www.rdv.vic.gov.au/victorias-regions/gippsland>

Gippsland is home to the state’s electricity industry and other key sectors such as agriculture, forestry, dairy, fishing, tourism, engineering, finance, health care and education. Gippsland’s economy is predominantly based around natural resources and commodities, with key industry sectors including agriculture, forestry, dairy and pastoral industries, fishing, and coal mining, oil and gas extraction and processing. The agribusiness sector is a significant employer in the region.

Gippsland supplies 97% of Victoria’s natural gas, 14% of Australia’s oil, 83% of Victoria’s electricity, 60% of Melbourne’s water, 20% of Australia’s milk, 25% of Victoria’s beef production, 29% of Victoria’s agricultural, forestry and fishing exports. 37% of Gippsland’s business is involved in agriculture and fishing.

EAST GIPPSLAND SHIRE¹

Industry	Value Added
Agriculture, Forestry & Fishing	\$289,556 M
Tourism	\$140,244 M
Mining	\$22,736 M

LATROBE³

Industry	Value Added
Electricity, Gas, Water, Waste	\$746,405 M
Mining	\$318,637 M
Agriculture, Forestry & Fishing	\$160,668 M
Tourism	\$127,926 M

SOUTH GIPPSLAND²

Industry	Value Added
Agriculture, Forestry & Fishing	\$318,668 M
Tourism	\$50,757 M
Mining	\$46,127 M

WELLINGTON⁴

Industry	Value Added
Mining	\$499,383 M
Agriculture, Forestry & Fishing	\$334,115 M
Electricity, Gas, Water, Waste	\$102,555 M
Tourism	\$83,729 M

BAW BAW⁵

Industry	Value Added
Agriculture, Forestry & Fishing	\$284,337 M
Tourism	\$83,731 M
Mining	\$8,362 M

Due to the diversity of the Gippsland economy and significant environmental values Gippsland has a high level of varied planning and policy frameworks. Unfortunately, many of these frameworks are inconsistent, ambiguous, archaic and adhoc.

For this reason, policy settings across the three levels of government work against their principled objectives of relevant legislation leading to regional, social and economic inequality.

At the top of the inequality experienced by rural land owners is the land we thought we owned, being only the surface rights, with the subsurface rights able to be transacted prejudicially by a third party to the land owner’s detriment.

¹ <https://www.economyprofile.com.au/eastgippsland/industries/gross-regional-product>

² <https://www.economyprofile.com.au/southgippsland/industries/gross-regional-product>

³ <https://www.economyprofile.com.au/latrobe/tourism/value-added>

⁴ <https://www.economyprofile.com.au/wellington/industries/gross-regional-product>

⁵ <https://www.economyprofile.com.au/bawbaw/industries/gross-regional-product>

'What other private commercial entity can enter your land without your permission for the sole purpose of making a profit and, adding insult to injury, eventually leave your property worthless?'
- John Nader QC (The Land Article, 'Mining Acts Need Severe Surgery')

The Role of Government

The defining power of our democratically-elected governments is to enact and enforce law to protect our lives.

The Australian legal system is based on a fundamental belief in the rule of law, justice and the independence of the judiciary. All people—Australians and non-Australians alike—are treated equally before the law and safeguards exist to ensure that people are not treated arbitrarily or unfairly by governments or officials.

Principles such as procedural fairness, judicial precedent and the separation of powers are fundamental to Australia's legal system.

Can we say **all people - Australians and non - Australians alike - are treated equally before the law?**

Yet, when it comes to the treatment of individual landowners versus mining companies under Victoria's Mining and Petroleum Acts, inequality is clearly evident, even more so when there is a crossover in jurisdiction between the State and Commonwealth.

The ability of the law to be corrupted

Australians have a choice for our future energy direction but the governments, both state and federal, appear to choose a course based on a flawed economic value in the absence of full cost analysis to the impacts.

Projects are continually assessed in isolation, rather than the full cumulative worth which includes putting a monetary value on the social, health and environmental impacts. As such, the full picture and any policy rationalisation are devoid of the two critical skills of common sense and forethought in the concept stage which is what we elect our governments to do. We do not elect a government to assume financial and political gain to the benefit of the few whilst the community bears the predictable cost burdens.

The questions need to be asked for all fossil fuel based extraction,

- will it cost us more in the long term?
- who will ultimately be the beneficiaries of the windfall?

In regards to transparency, how government controls information and society is how it maintains their power. Regardless of which state government approves mining licences it is the fact that the law can be corrupted or is corruptible that is the real issue. At the heart is government's own non-compliance of its own regulatory guidelines and policies with a total absence of accountability to its legislative goals and objectives.

As defined by law, the crown claims ownership of the land and under land tenure, the people are subject to laws that are *ENACTED* by the *CROWN'S REPRESENTATIVES* within our State and Federal Parliament.

Under the *TORRENS TYTLE* of land *TENURE*, the Crown forces the people to *VOLUNTARILY* claim *OWNERSHIP* of *LAND* whereby they *AGREE* to abide by the Transfer of Land Act 1958 in order they may *ENJOY* each parcel of land according to the designated purpose assigned to it by the Crown. This simple fact binds the people to the land on the Crown's Terms and Conditions meaning that the Crown can specify the *TERMS AND CONDITIONS* of all *LAND LEASES* including under the Torrens title.

By the transfer of land without regard to the purchase price, the State transfers land from one entity to another by the 'appropriate form' allowing the State to treat the land as its own which is reflected by the Terms and Conditions within the Transfer of Land Act 1958 that binds *ALL OCCUPANTS ON ALL LANDS* to all other State and Commonwealth laws!

As such, the people have no rights on the land that they ENJOY.

A government granted exploration licence accords a **legal economic privilege to a speculative industry that subordinates existing economic enterprises**, through occupation of private property, rendering landholders and communities subservient to the proponent in the absence of the right of veto.

So, when a government can enact legislative change (Kennett 1997) to give mining, as a land use, priority and exemption rights⁶ over other land uses and other life sustaining resources (water) to facilitate investment will inevitably lead to personal and rural inequality not subjected to in urban areas.

52.08-1 Permit Requirement

08/08/2012
VC87

A permit is required to use and develop land for earth and energy resources industry unless the table to this Clause specifically states that a permit is not required.

52.08 EARTH AND ENERGY RESOURCES INDUSTRY

08/08/2012
VC87

Purpose

To encourage land to be used and developed for exploration and extraction of earth and energy resources in accordance with acceptable environmental standards.

To ensure that mineral extraction, geothermal energy extraction, greenhouse gas sequestration and petroleum extraction are not prohibited land uses.

To ensure that planning controls for the use and development of land for the exploration and extraction of earth and energy resources are consistent with other legislation governing these land uses.

⁶ http://planningschemes.dpcd.vic.gov.au/schemes/vpps/52_08.pdf

Table of Exemptions

No permit is required to use or develop land for earth and energy resources industry if the following conditions are met:	
Mineral exploration	<ul style="list-style-type: none"> ▪ Complies with Section 43(3) of the Mineral Resources (Sustainable Development) Act 1990.
Mineral extraction	<ul style="list-style-type: none"> ▪ Complies with Section 42(7) or Section 42A Mineral Resources (Sustainable Development) Act 1990; or ▪ Complies with Section 47A of the Electricity Industry Act 1993.
Stone exploration	<ul style="list-style-type: none"> ▪ Must not be costeaning or bulk sampling.
Stone extraction	<ul style="list-style-type: none"> ▪ Complies with Section 77T of the Mineral Resources (Sustainable Development) Act 1990.
Greenhouse gas sequestration exploration	<ul style="list-style-type: none"> ▪ Complies with Section 189 of the Greenhouse Gas Geological Sequestration Act 2008.
Greenhouse gas sequestration	<ul style="list-style-type: none"> ▪ Complies with Section 191 of the Geological Sequestration Act 2008.
Geothermal energy exploration	<ul style="list-style-type: none"> ▪ Complies with the Geothermal Energy Resources Act 2005.
Geothermal energy extraction	<ul style="list-style-type: none"> ▪ Complies with Section 62 of the Geothermal Energy Resources Act 2005.
Petroleum exploration	<ul style="list-style-type: none"> ▪ Complies with Section 118 of the Petroleum Act 1998.
Petroleum extraction	<ul style="list-style-type: none"> ▪ Complies with Section 120 of the Petroleum Act 1998.

Because of this exemption from Planning Provisions of the Environment Protection Act 1987 the right of appeal to Victorian Civil and Administration Tribunal (VCAT) is also denied to the landowner.

The two relevant resource acts, Petroleum Act 1988 (PA) and the Mineral Resource (Sustainable Development) Act 1990 (MRSDA), provide the mechanism to gain that right of access. If a landholder does not provide consent and an appropriate amount of compensation cannot be agreed, then either party may refer to the Victoria Civil and Administrative Tribunal (VCAT). VCAT does not determine the right to access land, rather the amount of compensation to be paid to the landholder. Yet, in the determination of the amount of compensation to be payable by the licensee to the landholder, **this confers a right for the licensee to enter the land when, in fact, the landholder did not give authorisation.** This issue is relevant for future complications with accessing insurance coverage and being in default of mortgage conditions. Throughout both acts though, and many other documents, is the lack of key references to the landowner, the impact, their right to security of tenure and their future.

As the Crown own the mineral rights, all the normal legal recourse open to landowners is removed. The rationale for denying landholders a power of veto stems from the traditional common law notion that mineral rights are reposed in the Crown.

Additionally, this exemption gives mining priority over water rights, native vegetation, heritage and cultural values. Strategic Land Use plans will be implemented only to protect resource potential yet the critical elements that contribute to the viability of agricultural land yield no worth with the health of the environment accorded no monetary value.

For rural communities there are no principled objectives being applied under Victoria's two resource acts being the Petroleum Act 1988 (PA) and the Mineral Resource (Sustainable Development) Act 1990 (MRSDA) that would ensure the mining sector can genuinely co-exist without causing ongoing economic and social detriment to the person and regional communities.

As such the Government takes away the right of the landowner to:

- ***control our own land***
 - ***determine how and what we can farm with multi-land use policy***
 - ***make improvements to our land***
 - ***determine under what circumstances we choose to sell our land***
-

Furthermore, **social sustainability** is also dependent on having a marketable product and the business community's ability to profitably service the remaining farming community and tourist areas. The issue of privately held land on an exploration, retention or mining licence is of particular concern to an individual's right to determine when and on what grounds a property is put up for sale. The forced advancement of mining expansion into populated areas instantly devalues the land for that community with reduced accessible land, lack of infrastructure improvements and decreased produce supply causing impacts on existing viable industries which will cause a regional slump for the other diverse industries outside of mining.

With **multiple and sequential land use**, this confirms the presumption that leasing arrangements will be the preferred choice in the development of a resource, yet how will government impart any degree of social justice for the individual over the social licence afforded to the miner pre, during and post production which is contrary to the ideal of social sustainability.

This can never be achieved because merit-based land access for resource development is not founded on equal rights and equality before the law.

As well, the concern with mining expansion into populated areas is Government giving Industry a social licence with legal rights to trump the existing investments of landowners and community that already service the tourism sector and the all-important agricultural industry in each regional centre. This is not an indicator of best use of resources.

Social justice has all but vanished when a government lawfully transfers the rights of the person to a multinational company to exploit and profit while positioning the health of the person and the environment to a distant and lower priority ranking. The transfer of wealth to polluters by governments elected to govern in the best interests of the people is the greatest scandal of our time.

Past and present mining has and is continuing to leave a litany of legacy contamination via ignorance, poor planning, regulation and compliance with the responsibility/impacts borne by the taxpayer and individual property owners.

For impacts to state utilities like water, sewerage and gas pipes from land subsidence the cost is equally shared by the state. But other impacts are borne by the immediate community & dependent users for health (emissions), productivity (aquifer depletion, seawater intrusion, surface water quality), soil impacts (degradation/erosion), biodiversity changes (contamination), to name a few.

In a regional area like Gippsland where mining exploration is the norm the injustices to the landowner are further exacerbated by state policy in comparison to urban landowners

The challenges in addressing regional inequality for the Gippsland agricultural community is to recognise that for farmers to make ongoing investments in their business and livelihoods there needs to be surety of land ownership and access to clean, viable water as most smaller onshore mining exploration or development will be on livestock properties dependent on the export and domestic market.

Most of us have mortgages and public liability. But how can we ensure that our stock have not been exposed to chemicals in order to sign a National Vendor Declaration Statement.

This is relevant when miners are legally approved discharges licence to dispose of wastewater upstream of our farming enterprises or even to the farmland they mine.

PFAS contamination

Given the issue of PFAS contamination onto farmland from years of inappropriate management and disposal of PFAS chemicals, too many farmers in Gippsland can no longer use their stock and domestic bores due to high levels of PFAS chemicals and need water trucked in. There has been no progress in resolving the matter for primary producers who, **for no fault of their own, have had their whole business model trashed.**

What is failing regional Gippslanders, in part deliberate, is the contentious issue of land use now and into the future. This is known as multi and sequential land use with mining, as an industry, causing significant conflict with agricultural for both land and water availability and access to. This concept of co-existence does not mean it provides economic surety to the landowner and flow on security to those businesses that service the agricultural industry.

Again, **the model of social sustainability through resource development** creating jobs in local communities, arrested long-term population and service decline, and improved infrastructure **is seriously flawed.** This concept of co-existence is, therefore, dependent on the sustainable development of a resource that would not incur environmental impacts either via poor planning, management or naturally occurring events of fires, floods, seismic and subsidence.

The area of residential mortgage lending needs to be further clarified in regards to a landowner giving permission to allow exploration on their land as opposed to the Government, via VCAT ruling, that a landowner provide full access to the surface land to the exclusion of all others.

Could rural landowners risk loan paperwork be recalled if they allow mining on their land essentially creating a covenant, though not visible on the title, contractually binding all subsequent heirs and successors in Title?

Currently, **subsidence is not covered by insurance** so all those already impacted are at their own expense even though land impacts were caused by government sanctioned projects. The same can be said for the marketability of a property being compromised and not being able to attract appropriate insurance coverage. Furthermore, the storage of hazardous materials on a residential property could technically be in default of mortgage contracts.

A **retention licences** (RL) is a surety for holders of exploration licences to preserve their exclusive rights over potential mining sites, can be granted for up to 10 years and may be renewed twice for up to 10 years each.

As the RL becomes a barrier to agricultural development, small business confidence, transfer of land and community renewal, the landowner and business operators are subsequently placed in a position of potential insolvency.

For many farmers, the land is their superannuation.

- If farmers cannot sell their land for what it was prior to mining, how will the Government reconcile that with socio-economic support in rural communities?
- How will Government address the problems where legal responsibility of a company is forfeited when they choose or become bankrupt?

Economic inequality and the impact on property values

Furthermore, cumulative impacts from existing and proposed onshore mining exploration and production activities in rural communities also do not factor the consequential economic devaluing of the land, the long term depletion of groundwater and drawdown in already stressed zones and land degradation from pollutant contaminate accumulation.

Section 32

In regards to Retention Licences, the area of vendor disclosure now comes onto play.

As the government has granted approval for an outside entity to develop the subsurface of the land in question, it is now incumbent on the government to ensure that potential purchasers are not unduly impacted to the correct description of the title of land that is the subject of a sale.

This is also relevant in the purchase of land that may prevent a purchaser from using the land from original intention with the **Federal Government undermining the impact of PFAS contamination and consumption from its associations with negative health conditions.**

The following is an excerpt from the Dept of Conservation and Natural Resources December, 1995 subsidence report, *Assessment of Subsidence Potential along the Gippsland Coast due to Subsurface Fluid Production* by Sinclair Knight Merz.

This document was **withheld from the public by the State Government at the time.**

*The current indication that subsidence along the Gippsland coast is not yet **severe** in spite of tens of metres of local drawdown can be explained by time lag due to vertical heterogeneity of strata and does not of itself indicate that the material is necessarily over consolidated. If the material was initially normally consolidated, one might expect an order of magnitude elapsed for such rates to be occurring in some locations along the coast. Because over a period of more than two decades **water levels along the Gippsland coast have fallen about 40 m from an initial elevation of 50 m above sea level to currently about 10 m above sea level and are continuing to fall at a steady rate** (Walker, 1992), this order of magnitude estimate of a possible steady rate of subsidence may already be beginning to occur along parts of the coast.*

Note that if the affected thickness interval increases with time (say, it doubles), the rate of drawdown increases (say, due to increased rates of discharge from the basin aquifers), the eventual steady rate of subsidence will similarly increase proportionately.

Recommendations-

It is recommended that in order to improve the present estimates of possible subsidence and to reduce the uncertainties inherent in this issue, the following long term program of investigation be instituted.

6/

*Eventually, a groundwater computer model be developed for the entire Gippsland Basin such that **the area near the coast is not considered part of the boundary conditions.***

Eventually, a subsidence model be used in two ways –

- i. With field and laboratory data to back calculate field scale parameter values and*
- ii. To be used in conjunction with a groundwater model to predict subsidence and to **assist resource manager and planners in making responsible rational decision***

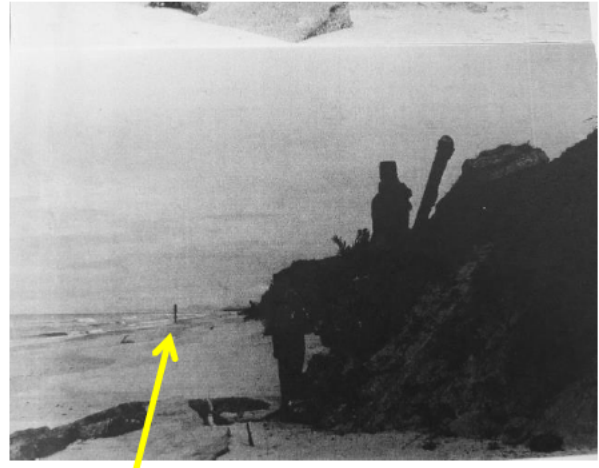
This was the first report that connected onshore generated subsidence with offshore hydrocarbon extraction inclusive of Commonwealth waters. Unfortunately, it has not informed responsible rational decision making as many examples exist and are growing for coastal/land subsidence along the Gippsland coastline.

Photos of McLoughlins and McGaurans Beach Gippsland



Photo taken from top of Lakes Oil rig **well #3** -
1950s

Notice the amount of land in front of rig



The straight stick in the background on surf edge is the **#3 well**. Well in foreground is well #2 -1980s

3 well on McLoughlins Beach is now in the water off the 3rd breaker unmarked.

This would be classified as a navigational hazard and legally should be marked.

The government & Gippsland Ports know where it is but could there be a reason they have not marked it for that would be evidence of land sinking or, in this case, land disappearing.



Photo above and right are of McGaurans Beach (a little west of McLoughlins). The fence line in the sand was put up by old DNRE 70s-80s to protect a cultural site. But this site used to be behind the primary dune. More evidence of land sinking.

The black material above right is the exposed peat bed.

Interestingly, a **federal precedent was set in 2006** to pay farmers compensation with a *SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES COMMITTEE REPORT* recommending,

Recommendation 8

The Committee recommends that the Commonwealth should, as a matter of urgency, address the impact of Commonwealth licensed oil drilling on the Latrobe aquifer and propose solutions which respect the rights of groundwater users.

This was the first time government responded and acknowledged the concerns by Gippslanders but only a small group of vocal farmers received 'assistance packages' while many other affected Gippslanders and farmers **silently carry the economic burden of environmental degradation to the Latrobe aquifer as a consequence of hydrocarbon extraction of by the oil and gas industry.**

Nothing has been done to prevent further damage and ongoing over-extraction to the Latrobe aquifer.

Subsidence causes cracking, ground movement, draining of rivers, swamps, infrastructure damages, sinkholes, coastal impacts with land subsidence on the coast cumulative to climate change effects so mining development should immediately be excluded from those fragile and stressed areas regardless of mineral worth.

Generalised subsidence (e.g. Yarram) is not dangerous, but it does cause major economic problems in the form of earth fissures (large cracks in the ground), and damage to structures, pipelines, drainage systems, and sewer systems. Classic example is movement to road surface with water getting into cracks and undermining the subsurface. However, subsidence around active fault-lines is a different story and has the potential to cause significant earthquakes. Unfortunately, the severity cannot be predicted.

Subsidence effects (mainly caused by industry) on private property are not covered by insurance, how will those people seek redress now and into the future for cracks in walls, broken windows and land sinking?

Likewise, infrastructure damage to state utilities as in dropped pipes for water, sewerage, gas and cracked roads has repairs paid by the public purse. **Is this fair?**

Past Federal Liberal Senator, Bill Heffernon, was an avid supporter of improved oversight given the granting to Esso of their offshore exploration licence with no environmental assessments.

'This is a lesson for all Australians. When we gave Esso an exploration licence for off the southern tip of Victoria there was no environmental work done about what they do about the recharge of the aquifer. In the next 40 years, as a consequence of the Esso gas and oil field, there is a better than 45 per cent chance that there is going to be major coastal subsidence into the sea in the Gippsland. That is because they did not do the science. The science for what you are talking about needs to be done...' Comment - Senator Heffernan SELECT COMMITTEE ON AGRICULTURAL AND RELATED INDUSTRIES 2009

No science done then. Plenty since with numerous peer reviewed scientific reports noting coastal subsidence for the Gippsland coast.

However, the terminology and its intent changed. It is now coastal inundation from sea level rising caused by climate change which is totally different from subsidence which is land sinking - clearly two different actions.

Was this to deflect blame and/or responsibility of the subsidence impacts on the coastal and broader communities?

Who was to benefit from this and what does it mean to those impacted?

The then 2011 Gippsland Coastal Board submission to the Inquiry into *Greenfields Mineral Exploration and Project Development in Victoria* noted the following -

The Regulatory Environment

*This Board considers that a shortcoming of the present regulatory environment is the division of responsibility for the offshore environment between the Commonwealth and State jurisdictions. It seems to us that **there is a lack of consideration by the Commonwealth in evaluating proposals for offshore oil and gas extraction, of the onshore impacts, particularly the effects on aquifers that extends from under the land to under the sea bed, and the potential for land subsidence as a consequence of extraction.***

There continues to be no formal subsidence disaster and economic protection plan for Gippsland's coastal areas. It is imperative that residents in the South Gippsland electorate whose families, homes, properties and investments are at risk are not disadvantaged to enable continued corporate profitability through off-shore oil and gas extraction.

A 2009 report by the *House of Representatives Standing Committee on Climate Change*⁷ recommended all levels of government work together to create a national coastal-zone agreement.

The Committee also recommended that the Australian Law Reform Commission undertake an early inquiry into the liability facing public authorities and property owners in respect of climate change⁸

'Given the complex nature of this issue and the potentially significant social and economic costs involved, the Committee believes further investigation of this important matter is urgently required.'

The Victorian Planning and Environmental Law Association (VPELA) Coastal Climate Change Advisory Committee provided a Briefing Report in January 2010 to the Victorian Government as a result.

⁷https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=/ccwea/coastalzone/report/index.htm

⁸file:///C:/Users/A660/Downloads/http_www.aphref.aph.gov.au_house_committee_ccwea_coastalzone_report_ch%204.pdf

Under section 7. Legal and Property Issues of the 2010 COASTAL CLIMATE CHANGE ADVISORY COMMITTEE ISSUES AND OPTIONS PAPER⁹ noted,

7.1.1 Coastal Accretion and Erosion

The Victorian Planning and Environmental Law Association (VPELA) report warns that while action is already being taken from a planning perspective to restrict future coastal development that may be at risk from coastal inundation, property owners must also be aware that when sea water encroaches onto dry land, this can have significant impacts on existing title boundaries under the common law doctrine of diluvion.

VPELA set out that under the common law doctrines of accretion and diluvion, land adjoining the sea can be increased or reduced in size:

...if the boundary between the land and water is modified gradually through a 'slow and imperceptible' process that is not visibly apparent.

...under the doctrine of diluvion, the boundary of land abutting the sea can be diminished as a result of erosion and the gradual encroachment of the sea.

While another report notes -

...that no compensation is payable for land (freehold) lost due to the gradual and imperceptible movement of the sea. In the case of catastrophic events however, the doctrine of Accretion/Diluvion would not apply as the movement would not be gradual and imperceptible. 11.2 Doctrines of Accretion & Diluvion¹⁰ -

(6) Whether or not the property boundaries will shift when a body of water encroaches onto or recedes from dry land, depends upon two factors:

- (a) how the boundary was originally defined; and*
- (b) how the shift occurred.*

Of course the intent of the report was to reduce government's potential liability in the event of sea level rising.

The reality is coastal inundation from sea level rising will impact freehold land in the future but this is entirely different from subsidence caused by artificial events which is land sinking (drawing the groundwater from the onshore as part of hydrocarbon extraction offshore).

Without appropriate attempts to decrease negative impacts from mining, the effect on visitation to our coastal areas would be profound in the future which would have a substantial negative tourism impact to the economy of Victoria with the Gippsland Lakes system being the key asset.

⁹ https://www.preventionweb.net/files/13489_CCCACIssuesPaperMainReport1.pdf

¹⁰ <https://www.propertyandlandtitles.vic.gov.au/surveying/advice-and-guidelines-for-surveyors/ambulatory-boundaries>

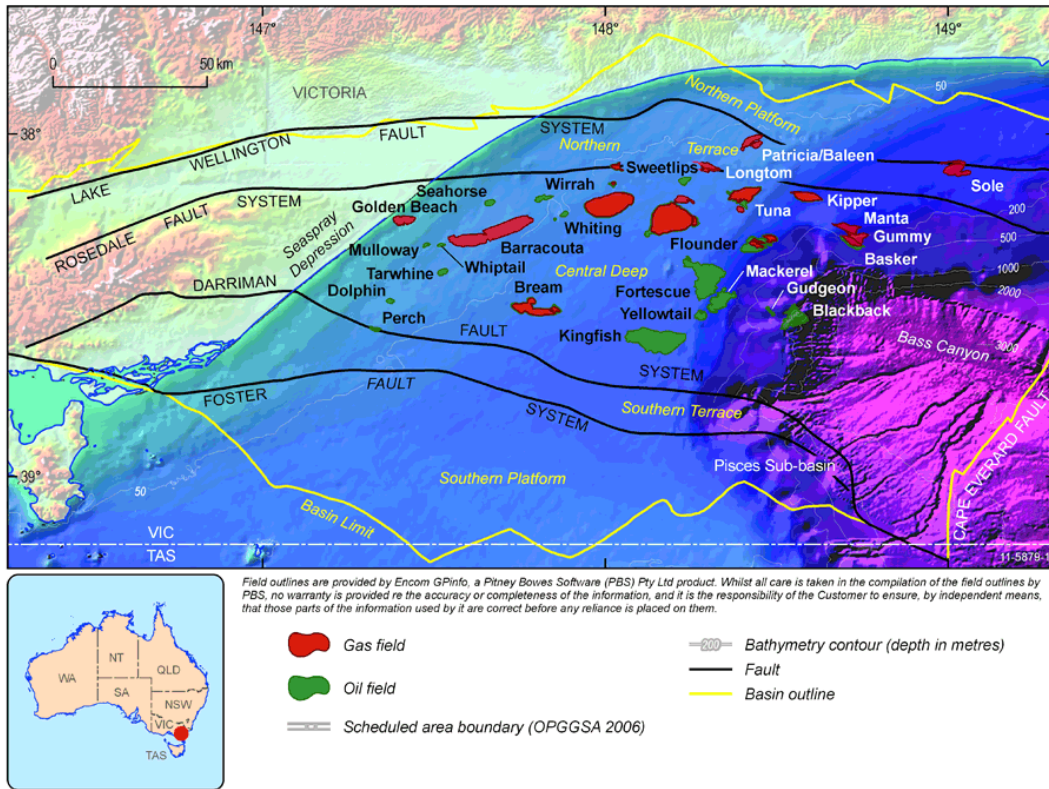


Source: <https://www.water.vic.gov.au/planning/long-term-assessments-and-strategies/sws/gipps>

New mining extraction proposed on the Mitchell and Tambo Rivers upstream of Bairnsdale is a real threat to Gippsland's major tourism attraction with enormous volumes of treated wastewater discharged into the waterways. Proposed damming off the Mitchell River to accommodate mineral sands processing will reduce stream flows that are essential for dilution of wastewater and concentrated contaminants that will be discharged downstream of mine workings but upstream of a major agribusiness area, Gippsland Lakes and a major regional towns drinking water supply.

Inverloch's coastal erosion from increased wave surges is a classic example of **coastal subsidence** from the southern margins/flanks of the offshore Gippsland Basin compacting creating deeper waters increasing tidal influences.

If the erosion events that have been evident at Inverloch were due to sea level rising then there would be a noticeable difference across the southern coast of Australia. This is not the case!



Source: <https://www.ga.gov.au/scientific-topics/energy/province-sedimentary-basin-geology/petroleum/offshore-southern-australia/gippsland>



Source: <https://www.basscoast.vic.gov.au/about-council/news-listing>

Gradual, but visible coastal inundation has been occurring across the region for decades to the detriment of the communities for tourism, social, economic and legal impacts.

Whilst it is well known about the coastal risks in Gippsland, it appears it does not prevent **abuse of ministerial discretion on planning decisions.**

The following case is in the public domain but the decision has never been reversed.

Previous State Nationals leader, Peter Ryan, was pressured by some in his electorate to change a revised flood overlay in the Port Albert area subject to floods which have occurred simultaneously with king tides and storm surges. This area is already subjected to subsidence and **WILL** be impacted by sea level rising as the double whammy.

I was also approached to lobby on their behalf but I refused as this was to provide an economic gain to some at the expense of the broader community and was in nobody's best interest. Eventually, after a planning panel review a flood overlay was able to be removed by the stroke of a pen under the guise of Ministers Discretion.

Unless Moses is in residence to part the waters, the area will flood and it will significantly impact land exempt from the Land Subject to Flood Overlay.

Victoria Government Gazette

G 3 16 January 2014 91

The Amendment applies the Public Acquisition Overlay to 5 Little Princes Street, Korumburra, to facilitate the development of the Korumburra Integrated Children's Centre.

A copy of the Amendment can be inspected, free of charge, at the Department of Transport, Planning and Local Infrastructure website at www.dpcd.vic.gov.au/planning/publicinspection and free of charge, during office hours, at the offices of the South Gippsland Shire Council, 9 Smith Street, Leongatha.

JOHN PHILLIPS

Director

Planning and Building Systems

Department of Transport, Planning and Local Infrastructure

Planning and Environment Act 1987

WELLINGTON PLANNING SCHEME

Notice of Approval of Amendment

Amendment C33

The Minister for Planning and the Attorney General have approved Amendment C33 to the Wellington Planning Scheme.

The Amendment comes into operation on the date this notice is published in the Government Gazette.

The Amendment updates flood mapping across Wellington Shire (excluding the urban zoned areas of Port Albert). New flood controls are introduced at McLoughlins Beach, the Tarra, Jack and Albert river areas, Merrimans Creek floodplains, the Macalister River floodplains between Lake Glenmaggie and Maffra (including Newry and Tinamba) and the Boggy Creek area. Modified flood controls are applied at Rosedale, Port of Sale, Seaspray to Loch Sport coastal areas, Lake Wellington surrounds and the floodplains of the Thompson and Avon rivers.

A copy of the Amendment can be inspected, free of charge, at the Department of Transport, Planning and Local Infrastructure website at www.dpcd.vic.gov.au/planning/publicinspection and free of charge, during office hours, at the offices of the Wellington Shire Council, 70 Foster Street, Sale.

JOHN PHILLIPS

Director

Planning and Building Systems

Department of Transport, Planning and Local Infrastructure

A Gippsland Times article in 2014 reported the following,

State Planning Minister Matthew Guy has approved an exemption for Port Albert from flood overlays included in Amendment C33 to the Wellington Planning Scheme.

The decision has been seen as a win for the local community, which was concerned proposed flood overlays would hinder development and impact the future of the town.

In responding to community unrest surrounding the introduction of the amendment, Mr Guy instigated a review of the flood overlays for Port Albert.

*Following consideration of the amendment, a panel report and the submissions from local residents, **the minister approved the amendment for revised flood overlays for the Wellington Shire, with the exception of Port Albert.***

The decision means flood overlays will not be applied to residential and commercial land in Port Albert.

Wellington Shire Council approved the amendment in April 2011 and submitted it to the Planning Minister for final approval. It has taken until now [2014] for a decision to be made.

Gippsland South MLA Peter Ryan said the flood overlay was threatening the future of the historic township.

“Development at Port Albert, which was threatened by this restrictive flood overlay, can once again proceed following the decision to exempt the township from Amendment C33,” he said.

“Amendment C33 had caused significant concern for residents of Port Albert, with locals claiming it hindered development and reduced property values, with many fearing it would impact tourism, the economy and the survival of township.”¹¹

For new house/land buyers in the irresponsibly, exempted zoned land what will happen with their ability to access insurance and would a claim be denied in event of the land flooding especially coinciding with storm surges.

The following Red Dot decision by VCAT is pertinent given the above.

IN THE MATTER OF Gippsland Coastal Board v South Gippsland Shire Council¹² the VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL ADMINISTRATIVE DIVISION found,

‘...it is imperative that planning decision makers are guided by relevant policy. It is not appropriate to exempt individual decisions from the application of policy because it is only through the consistent application of policy that objectives leading to net community benefit and sustainable development will be achieved.’

NATURE OF CASE	Dwellings in Farming Zone; land subject to flooding and likely inundation due to sea level rise as a result of climate change
REASONS WHY DECISION IS OF INTEREST OR SIGNIFICANCE	
POLICY – interpretation or application of policy	Location of rural living dwellings not related to agricultural uses in Farming Zone and outside settlement in coastal area – impact of sea level rise and risk of coastal inundation – impact of climate change – application of precautionary principle

¹¹ <http://www.gippslandtimes.com.au/story/2027023/port-albert-reprieve/>

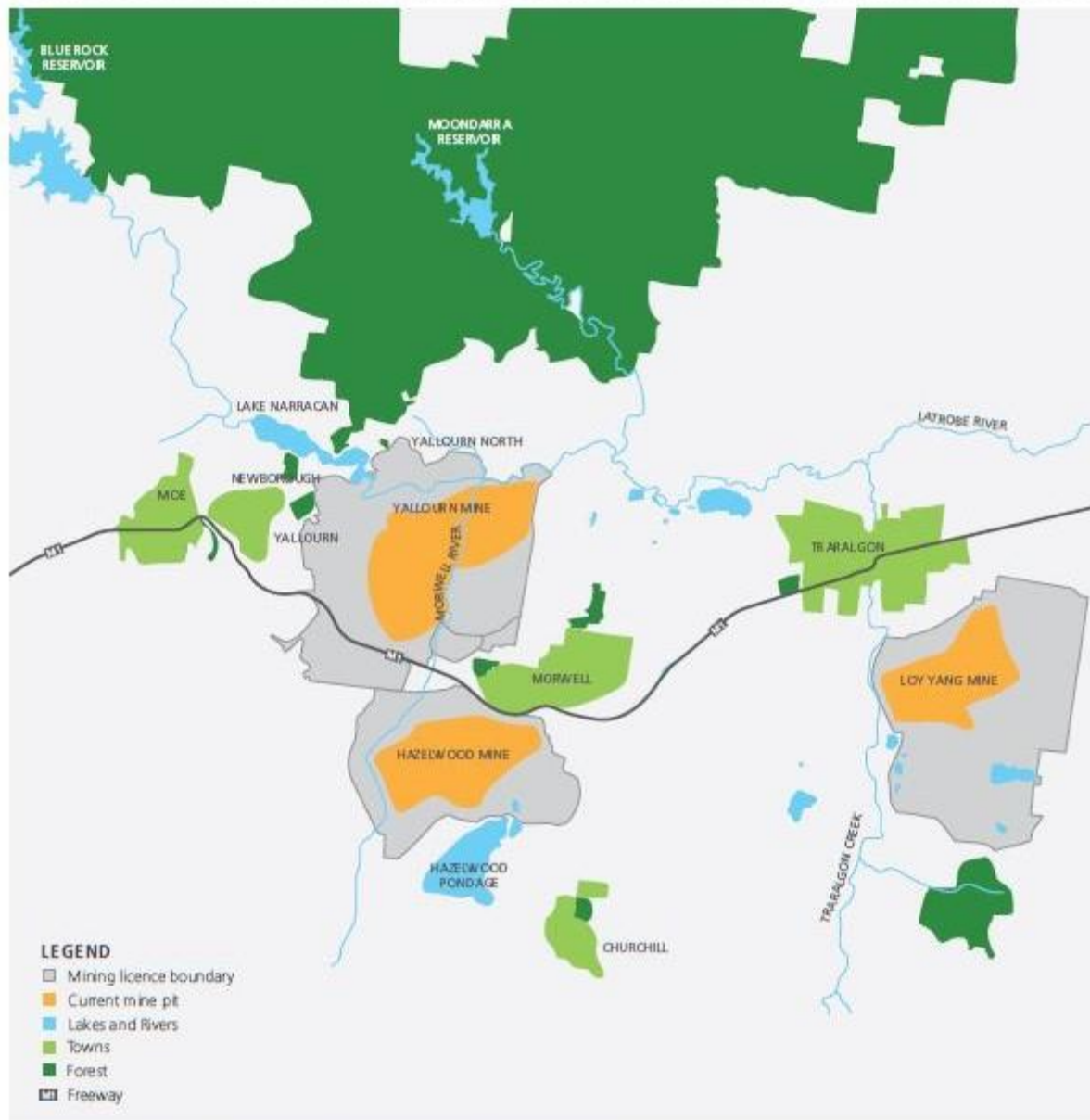
¹² https://www.vcat.vic.gov.au/sites/default/files/resources/gippsland_coastal_board_v_south_gippsland_sc_and_others.pdf

If **the application of principled objectives** in State Planning Policy Frameworks are clearly **misused and manipulated via ministerial discretion** in decision making how do our rural communities seek justice?

LATROBE VALLEY COALMINES – PAST, PRESENT AND FUTURE

How do WE resolve the negative injustice and inequitable impacts borne by the Gippsland region?

Figure 1. Map of the Latrobe Valley



Source: Adapted from GeoVic, Department of Economic Development, Jobs, Transport and Resources

Barriers to Growth in Latrobe City Absence of Energy and Coal Policy impeding Economic Diversification of the Latrobe Valley March 2017 highlights the utter complexities that the Latrobe Valley has experienced and what to plan for its future.¹³

¹³ https://www.pc.gov.au/data/assets/pdf_file/0020/214931/sub035-transitioning-regions-attachment.pdf

'The following summary was prepared in an environment of uncertainty surrounding future coal mining and energy sectors; with council, community and industry awaiting clear direction from the Victorian State Government regarding future coal and energy investment direction.

While the broader community understands the economic importance of the coal resource to the State and region, there is a high degree of sensitivity and uncertainty amongst the community.

*This is largely the **result of existing and future land use conflicts, ongoing community health and safety concerns resulting from coal mining** and conversely the stability of future employment associated with energy and mining industries.*

*This uncertainty has been significantly aided by **consecutive events occurring over recent years including the ongoing investigation two mine collapses (resulting in the Princess Freeway and local road closures), Hazelwood mine fire and subsequent health inquiry, lingering questions over mine rehabilitation and the imminent closure of the Hazelwood Power Station.** Each of these factors constrains the way in which the Latrobe City can plan for future growth.'*

Water scarcity in Gippsland will become the one key resource that will determine what direction and how our traditional industries can diversify and operate in the future. The winning of coal and power generation over the decades has led to a negative legacy of 90 metre drop in the water table as noted by the 2011 Gippsland Region Sustainable Water Strategy.¹⁴

This has had a significant impact for other uses in agriculture, for domestic commercial and industrial uses and for maintaining the environment.

Falling groundwater levels in the Latrobe Valley

Groundwater is extracted by power stations in the Latrobe Valley to dewater mine pits to ensure safe operating conditions for coal mining, and for process water in mine operation and power generation. As a result, water levels have declined by up to 90 m along the valley. The groundwater declines are lower away from the mines.

Occasionally land subsidence can result from groundwater extraction. This occurs when the pressure in an aquifer reduces as a result of water extraction and the overlying earth compacts and sinks. Compaction of the coal beds and localised movement of ground has resulted in the ground level dropping by up to 2.4 m near the Latrobe Valley coal mines.

The mine operators must comply with groundwater extraction licence and mine licence conditions which include managing the impacts of draw-down and any associated land subsidence.

¹⁴ <https://www.water.vic.gov.au/planning/long-term-assessments-and-strategies/sws/gipps>

Because of the Latrobe Valley's power industry over-extraction of surface and groundwater, the whole water resource is currently over utilised as is evident from declining groundwater levels, unhealthy river habitat and poor condition of the Gippsland Lakes.

Yet, future policy direction by the three levels of government would see a continuance of this misuse of a life sustaining resource.

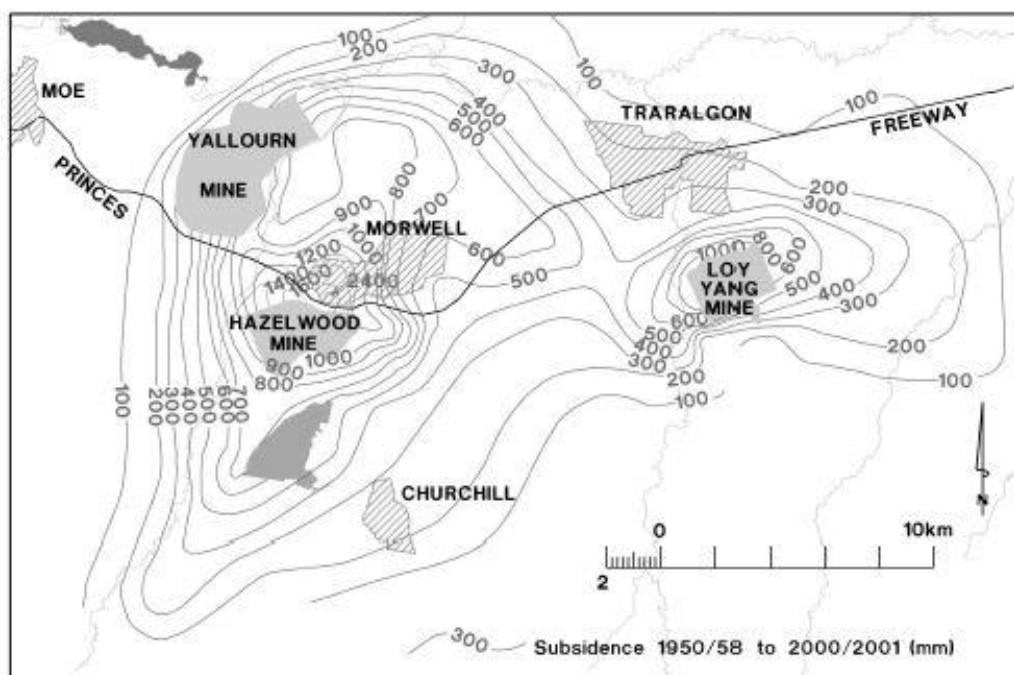


Figure 1: Regional Subsidence Contours

Source: The Potential for Artificial Recharge of the Tertiary Aquifers of Latrobe Valley Depression, Victoria, Australia 2001

Incremental subsidence as a result of dewatering the open cut coal mines just to keep the pits stable has resulted in soil creep in the township of Morwell towards the Hazelwood mine. The subsidence is continuing at 30mm per year after an incremental subsidence of 2.4metre noted in 2001 on freeway side of the Hazelwood coal pit.

In February 2011 deep holes appeared in Morwell's Princess Freeway, which runs close to the Hazelwood mine. This resulted in authorities closing a large section of road for approximately four months. The problem was attributed to water.

As a result of the freeway collapse the Morwell Land Movement Survey and Report¹⁵ undertaken by Pells Sullivan Meynink (PSM) was commissioned August - September 2011

Only the summary has even been released

The Coalition **refused to release to the public and all FOI requests have been refused.**
WHY???

¹⁵ <http://earthresources.vic.gov.au/earth-resources-regulation/information-for-community-and-landholders/mining-and-extractives/latrobe-valley-coal-mines/regulatory-reviews/morwell-land-movement/summary-of-morwell-land-movement-survey-and-report>

However, in a 2015 Panel Report for the Latrobe Planning Scheme Amendment C87 Traralgon Growth Areas Review¹⁶ the same author of the Morwell Land Movement Survey, Mr Tim Sullivan of Pells Sullivan Meynink, was also engaged to act behalf of LoyYang mine operators on geotechnical issues in Latrobe Valley.

His information was enlightening!!!

'Mr Sullivan listed 10 unforeseen stability issues which have arisen around various Latrobe Valley mines, including recent and historic incidents. One of these, the Lewis Anomaly 1966, has affected areas beyond what is now the ESO1 coal buffer. Mr Sullivan presented a plot of the distances of the 10 earth stability failures recorded, as measured from the Batter Toe towards the adjacent town boundary. The closest of these extended to only 270 metres from the town boundary of the buffer zone. This was the Princes Highway failure adjacent to the Hazelwood open cut north boundary in 2011.

Mr Sullivan states, in his written evidence, that '*The Latrobe Valley and the mines it contains is now a system with a large number of mutually interacting parts*' and that the area is prone to '*sudden transition from quiescent state to an unstable incident or collapse*'. He states that all the Latrobe Valley mines are subject to the following four types of movement:

- ***Valley wide groundwater induced settlement (subsidence).***
- ***A zone of in-situ horizontal stress relief extending outside the mine crest.***
- ***Ongoing creep movements still occurring decades after mining was completed in the area.***
- ***Movement related to slope instability type mechanisms, which can also be reinitiated a long time after mining is completed.***

He stated:

...even though some of the past and ongoing movement by themselves constitute a hazard, these movements may make the area sensitive to external water loading events, for example rainfall runoff and earthquakes.

The following points and more are noted in this report,

- In June 2012, the Morwell river diversion collapsed.
Energy Australia admitted to movement in the southern batter of Yallourn open cut mine. But movement was also observed by Professor Sullivan four years earlier. Both the Princes Highway and Gippsland railway line run close to the lip of the batter.

¹⁶ http://www.latrobe.vic.gov.au/files/5dc5e44d-b05a-47ff-a0de-a61a00f55366/C87_Panel_Report_-_22_June_2015.pdf

- In July 2012 a sinkhole had to be filled temporarily along the V/Line rail track until extensive work could be carried out to stabilise the area.
- Near the Yallourn mine southern batter, a backlog of water from the failed Morwell river diversion damaged the underpinnings of the Gippsland railway line, closing it for months for repairs.



A Channel Seven helicopter hovering over the scene confirmed that a 30 to 40-metre section of a levy bank at the mine had been breached, and water was flowing into two coal pits.



"A HUGE mine collapse that crippled a vital Latrobe Valley power station was caused by slack and lapsed safety precautions, a report has revealed."

<http://www.smh.com.au/national/experts-missed-obvious-signs-before-mine-collapse-20090103-79he.html>

While local and federal government see an ongoing future in coal power generation, the state government do not. However, what they do propose is just as irresponsible and entirely unjust for our major agricultural industry which could lead to severe restrictions on use of water constraining growth or just protecting their viability.

Recently, the state government's "draft preliminary land use vision" floated the idea of **turning the valley's coal mines into lakes to boost the region's appeal.**¹⁷

This was **released at the same time of the risk reports** for the government's cheapest option of flooding pit voids.

THIS WAS A DELIBERATE STRATEGY TO AVOID SCRUTINY OF THE RISKS!

¹⁷ <https://7news.com.au/news/melbourne-news/plan-to-turn-latrobe-valley-coal-mines-into-lake-attraction-c-487935>

The *LATROBE VALLEY REGIONAL REHABILITATION STRATEGY REGIONAL WATER STUDY: SYNOPSIS*¹⁸ noted the following for partial or full pit lake option,

1. WATER AVAILABILITY

The Latrobe Valley has experienced dry conditions since 1997, and the LVRRS will need to be able to account for uncertainty around future climate and water availability by planning for a continuation of this drying trend and a drier future.

- Hazelwood has a void volume of 640 GL which is 640,000,000,000, and using a combination of groundwater (pumped for stability) and surface water, would take **15 to 20 years to fill without interruption.**
- Yallourn has a predicted final void volume of 725 GL at closure (2032), and using the same amount of surface water currently used for power generation **plus a supply of surface water equivalent to that supplied to Hazelwood after supply to Hazelwood ceases**, would take 20 to 25 years to fill without interruption.
- Loy Yang has a predicted final void volume of 1,420 GL at closure (2048), and at current levels of groundwater and surface water usage would take 25 to 30 years to fill without interruption.
- **These timeframes could be extended significantly if filling from surface water sources is delayed due to dry conditions**, or shortened if smaller fill volumes are needed or additional water sources come available for use.

But just for topping up evaporative losses annually **would need,**

*'an external supply of water **totalling about 15 GL/y for all three mines per year but likely to increase under a drying climate.** The synopsis noted, 'for comparison, over 2017/18, Gippsland Water supplied about 13 GL of water to its residential and non-residential customers (excluding major industry)'*

***So, in a potential drying climate where will the water come from?
What happens with the Ramsar listed wetlands of the Gippsland Lakes, increase in groundwater salinity, reduction in surface water flows, ecological degradation of the waterways and loss of water availability for farmers?***

What are worst are the geotechnical risks¹⁹ associated with stabilising the mine pits (or voids) by creating full or partly full pit lakes upon rehabilitation.

How is it acceptable that the person, community and environment be exposed to significant risk factors from more poor planning decisions that favour a cheaper option at the expense of community safety and environmental health?

¹⁸ <https://www.water.vic.gov.au/waterways-and-catchments/our-catchments/RWS>

¹⁹ <https://earthresources.vic.gov.au/projects/lvrrs/project-information-and-factsheets/synopsis-reports>

GROUND MOVEMENT OVERVIEW

The mining induced ground movements of significance to rehabilitation are identified to be:

- Block sliding
- Sinkhole formation
- Floor heave
- Subsidence
- Lake loading
- Seismicity

History reveals how poor management of mine design and ongoing assessment and movement has, in the past and appears to continue into the future, resulted in substantial risks to the public purse and the environment. What the public is unaware of:

- Government create the policy frameworks
- Government approve inappropriate design and siting
- Government struggle to regulate compliance and then enforcement

There has never been accountability and transparency by the three levels of government with the Latrobe Valley coal mines.

There is no compensation or acknowledgement for affected properties that have been damaged via subsurface movement.

But real inequality and injustice certainly exists in Gippsland.

If we cannot preserve the ongoing prosperity and health of our regions and their future sustainability, how can we protect intergenerational equity when our governments cannot ensure the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations?

***For the Reinstatement of Social Justice and
Advance Australia Fair***