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17 October 2016

Research Director
Agriculture and Environment Committee
Parliament House
Sent via email only: aec@parliament.qld.gov.au

Dear Mr Chair and Committee Members,

SUPPLEMENTARY SUBMISSION on the Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016

We refer to our submission dated 10 October 2016 made to your inquiry into the Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016 (**Bill**).

We thank you for inviting us to appear at the public hearing as part of your inquiry into this Bill on 12 October 2016.

Recommendation

As mentioned during our opening statements at the hearing, we strongly suggest that the Committee recommend that a provision be inserted into the Bill which ensures that the powers under part 5A of the *State Development and Public Works Organisation Act 1971* (Qld) (**SDPWO Act**) for a prescribed project and/or a critical infrastructure project would not be able to be used to interfere with or affect in any way the decisions or processes applicable to an associated water licence.

This recommendation is in addition to the recommendation we made in our initial submission to the inquiry, that the principles of ecologically sustainable development be required to be considered when assessing associated water licences, as they are for normal water licences under *Water Act 2000 (*Qld) (**Water Act**), chapter 2.

We provide explanation to clarify the need for this provision to be inserted into the Bill below.

Background to need for recommendation

On 7 October 2016 the Queensland Government declared that the 'Adani Combined Project' (**Adani Project**) is a 'prescribed project' and 'critical infrastructure' pursuant to section 76E(1) of the SDPWO Act. The Adani Project subject to the declaration is comprised of the Carmichael Coal Mine and Rail Project, the North Galilee Basin Rail Project and the North Galilee Water Scheme Project.

These declarations took effect from the date of publication in the Queensland Government Gazette on 7 October 2016.

In 2007 parts of the South East Queensland Water Grid were declared critical infrastructure when our water supplies were at very low levels. It is most unusual for a private mining development, let alone a contentious project such as the Adani Project, to be declared as 'critical infrastructure'.

Declaring the Adani Project to be a 'prescribed project' and 'critical infrastructure' gives the Coordinator-General the power to interfere with the decision making processes 'for any process required to be undertaken under a law of the State for a prescribed project'.[1] This power to interfere extends to the following powers to issue notices to decision makers for any process required for the project:

- *progression notice:* requiring the decision maker to undertake an administrative process required to complete the prescribed process within a specific period of time;
- *notice to decide*: requiring the decision maker to make a decision within a specified period of time;
- *step-in notice*: enabling, with the approval of the Minister, the CG to make an assessment and a decision about the prescribed decision or process. This step-in notice **removes all rights of the community and others to appeal the decision under normal merits appeal processes that may have been available under the particular process for which the CG is stepping-in.**

The declarations for the Adani Project are therefore highly pertinent to this Bill under your consideration.

If the Bill is passed, the assessment process for any associated water licence required to be obtained by the proponents of the Adani Project would be potentially subject to interference by the CG via one or more of the above methods.

If the CG utilised his powers described above for the Adani Project to interfere with or affect the associated water licence, this would be contrary to the policy intent supporting the provision of the associated water licence for advanced mining projects through the Bill, being to:

[1] *State Development and Public Works Organisation Act 1971* (Qld), section 76D.

> *'ensure the impacts of mining projects that are advanced in their environmental and mining tenure approvals are:*
>
> *(a) 'appropriately assessed for their impact on the environment'; and*
>
> *(b) 'underground water users and opportunities for public submissions and third party appeals are provided before underground water is taken in a regulated area for mine dewatering purposes'.*[2]

Pressuring decision makers to make decisions quicker does not ensure that impacts on the environment are adequately considered, instead it potentially jeopardises this process.

Further, if the CG uses his power to step-in on a decision making process for an associated water licence, the legal rights restored by the Bill will once again be lost, undoing the purpose of the associated water licence provisions. The Bill restores community appeal rights which were unjustly removed through the pending commencement of the statutory right to associated water introduced through the *Water Reform and Other Legislation Amendment Act 2014* (Qld). It does this by introducing the associated water licence for advanced mining projects for which assessors and other stakeholders would have been expecting that the mining project would be subject to a requirement to obtain a water licence under the Water Act, with consequent submission and appeal rights. Should the CG use the power to step-in, these merits appeal rights would be lost.

The policy intent for the associated water licence would therefore become completely void in its application to the largest coal mine to ever be built in Australia, one of the largest in the world. This is unacceptable and unjustifiable.

The proponents for the Adani Project should have expected to be subject to water licence requirements for dewatering their mining pits since they commenced preparation for applications for the Carmichael coal mine. Even as at the law today, the Adani Project would still be required to obtain a water licence as far as is necessary under the Water Act for dewatering the mine pit/s, along with for other water uses for which they may require licences. That there is a requirement to obtain a licence under the Water Act to dewater pit/s should be no surprise to the proponents for the Adani Project.

This is confirmed by the Department in their presentation to the committee inquiry hearing on 12 October 2016, as follows:

> *'The resources sector has concerns that the associated water licensing process for advanced mining projects is an additional requirement. However, under current law in the Water Act mining projects are currently still required to obtain a water licence to dewater in a regulated area which means following a similar process to that which is proposed in the EPOLA bill, including public notification, submissions and rights of appeal.'*[3]

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[2] Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016, *Explanatory Notes*, 1, available here: https://www.legislation.qld.gov.au/Bills/55PDF/2016/B16_0114_EnvironmentalProUWMOLAB16E.pdf.

[3] Public Briefing—Inquiry into the Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016, comments of Ms Leanne Barbeler, Acting Executive Director, Water Policy,

Further, this is not a duplication of process as claimed by some resource representatives at the Committee hearing. The water licence assessment under the Water Act is a legal process that relevant projects have had to undertake as part of their environmental assessment processes since the Water Act commenced, in addition to other environmental assessments under other frameworks. The Water Act licencing assessment process ensures proper scrutiny of the impacts proposed to arguably Queensland's most vital and sensitive resource – water, and particularly groundwater – with more depth and specificity than what has been required under other frameworks prior to this Bill. This Bill increases the strength of groundwater impact assessment under the *Environmental Protection Act 1994* (Qld), but advanced mining projects were not subject to this strengthened process – hence the need for the transitional 'associated water licence' provisions.

Of course, proponents can utilise and build on information they have generated for previous environmental assessment processes concerning groundwater impacts when applying for an associated water licence. But the assessment for a water licence or associated water licence is not the same as that required for any other environmental impact assessment, and is therefore not a duplication. If the assessment for an associated water licence were a duplication, there would be no need to provide for the strengthened provisions for groundwater impact assessment that are introduced by this Bill for the EP Act environmental authority assessment.

It is therefore essential that a provision is inserted into the Bill which ensures that the powers under part 5A of the *State Development and Public Works Organisation Act 1971* (Qld) (**SDPWO Act**) for a prescribed project and/or a critical infrastructure project would not be able to be used to interfere with, or affect in any way the decisions or processes applicable to an associated water licence.

We would be happy to clarify or discuss anything in any of the submissions we have provided to you to assist with your inquiry into this Bill as convenient to you.

Yours faithfully
Environmental Defenders Office (Qld) Inc

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Solicitor

Department of Natural Resources and Mines, 3, available here: https://www.parliament.qld.gov.au/documents/committees/AEC/2016/EPUWMOLAB2016/10-trns-pb12Oct2016.pdf