SOUTH ENDEAVOUR TRUST

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Submission – Mineral and Energy Resources (Common Provisions) Bill 2014

1. South Endeavor Trust is a substantial long term investor in high-quality scarce Australian biodiversity assets. The Trust has a total investment to date of around $12 million in Queensland and is currently actively considering the investment of a further $15 million in property acquisition and development. We are extremely concerned that the provisions in the Bill relating to Mining Lease Applications for Standard projects will seriously reduce and compromise the security of our biodiversity investments. We are further very concerned that the Plan will compromise and degrade the landscape setting of our assets, further reducing both their capital value and their ability to provide high quality nature-based tourism services. Rather than the proposals in the Bill providing us with greater certainty as an investor and landholder, they greatly increase our uncertainty to the extent that we are reconsidering whether to further invest in Queensland.
2. South Endeavour's lead Directors have overseen the investment of billions of dollars into the mining industry. We are not at all anti-mining, rather we see it as a substantial comparative economic advantage of both Queensland and Australia. However, it is critical to the mining industry's social licence to operate that it act within acceptable bounds. We believe that the proposals in the Bill relating to Standard Mining Lease applications go beyond those bounds with a major loss of statute law rights for no significant economic gain. At the maximum the savings mooted in the discussion paper supporting amount to just 0.002% of Gross State Product and this is without considering the negative economic consequences on investors such as ourselves of the changes. Such a minuscule gain is in no way commensurate with the loss of equity and democratic rights proposed in the Bill.
3. We very strongly object to any reductions in the requirement for public notification of proposed mining tenements and, in particular, to the total removal of the requirement for public notification of Standard applications. We can see no public purpose whatsoever to be served by these proposals.
4. We very strongly object to proposals to severely restrict who can object to a Standard application. In particular, to remove all rights of adjoining landholders to object is a very major reduction in their rights to protect their property interests. Standard projects can have many impacts on adjoining landholders such as sediment pollution impacting local fisheries, the miner having a right to access through their property without them having any right to object to the mine itself, and things like blasting noise impacting upon their right to enjoyment of their property. There would appear to be no good reason whatsoever to remove the rights of adjoining landholders to lodge objections to standard project approvals.
5. We would like to object in the strongest possible terms to the proposal to remove the right to object on environmental grounds to standard applications. We have spent our working lives managing multi billion dollar investment portfolios where

uncertainty is more important than risk. The provisions in the Bill make no allowance for uncertainty, something that is critical if informed decisions are to be made. In our submission following we provide a very concrete example of how the use of risk proxies, as are used when classifying projects as "standard", can totally fail to capture the actual risk of a project because of the presence of uncertainty. The objection process enables uncertainty to be incorporated within the process. In the example we cite, if an objection based on environmental grounds is precluded, the actual outcome will be one where very "serious environmental harm" will be occasioned by an otherwise “standard” mining proposal without any prospect for mitigation of that harm. This is because the “serious environmental harm” that this project would cause is not covered by the standard environmental conditions. It is fanciful in the extreme to expect that any set of conditions devised by even the best bureaucrats could cover all circumstances where serious environmental harm might occur.

6. We also not that the discussion paper on these changes did NOT detail what changes were proposed to matters that can be considered by the Land Court. As such there was NO actual public consultation on these changes.
7. We accept that there are arguments for some streamlining of regulation for large and mega mines of State significance where there is a demonstrable state and/or national benefit, we submit that the same arguments do not hold for small miners. Rather than there being an argument to make it cheaper and easier for small miners to run roughshod over the democratic and statutory rights of property owners, there is a need for a full review of preeminent land use rights provided to small mining projects of no State significance. At the very least, there need to be much stronger measures in place to seek to internalize the adverse externalities that such miners place on others for private personal gain.

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Submission – Mineral and Energy Resources (Common Provisions) Bill 2014

South Endeavour Trust very much appreciates the opportunity to comment on the Mineral and Energy Resources (Common Provisions) Bill 2014.

This Submission is focused on provisions in the Bill relating to standard mining applications and is structured in four sections:
1. A brief introduction to South Endeavour;
2. Submissions on the importance of the public notification process;
3. Submissions on the critical role that the objection process plays in dealing with uncertainty;
4. Submissions on the proposed limitations on matters that can be considered by the Land Court;
4. Broad comments on economic and financial matters
5. Broad comments on the preeminence given to mining in a modern economy

1. South Endeavour Trust

South Endeavour Trust is a privately funded investor in high quality biodiversity assets. The Trust is of that the view that such assets are becoming increasingly scarce and that the demand for the services provided by such assets will increase substantially over time. The Trust is building up a portfolio of such assets with a view to providing very high quality nature-based experiences to the top end of the global tourism market. The Trust does not seek to make a profit overall, but rather intends to reinvest all revenues in maintaining and improving the quality of its assets.

To date South Endeavour and it's associates have invested over $15 million in building up its portfolio, which now consists of eight properties. Five of these are in Queensland including two large properties on Cape York, South Endeavour Station and Kings Plains Station. Together with operating capital, our total investment in biodiversity assets in Queensland is around $12 million. South Endeavour is currently actively considering the investment of a further $15 million into similar assets in Queensland.

While South Endeavour is an investor in biodiversity assets, we also have a separate strong professional interest in the development and success of the Australian mining industry. Two of South Endeavour's Directors, Simon Marais and Tim Hughes, have had very long experience at senior levels in the investment management industry and have overseen the investment of billions of dollars in the resources sector (please see summary biographies at the end of this submission) Further, one of South Endeavour's Directors, Tim Hughes, was previously a senior official in the then Northern Territory Department of Mines and Energy.

Just as miners want certainty, South Endeavour's investment strategy significantly depends upon the *security* of the biodiversity assets that it has invested in and in the management of the broader landscape within which our investments lie.

We are extremely concerned that the proposals in the Bill would:

1. **seriously reduce and compromise the security of the biodiversity assets in Queensland in which we have invested substantial equity capital**
2. **compromise and degrade the landscape setting of those assets, further reducing both their capital value and their ability to provide high quality nature-based tourism services.**

Rather than the proposals providing "greater clarity and certainty for all stakeholders" they would do the exact opposite for us and our investments.

2. The importance of the notification process in ensuring transparency and natural justice in the Public Policy Process

The public notification process plays an absolutely essential role in ensuring transparency in the mining process. Mining is unique amongst private land uses in that miners have absolute precedence of use over other people's land and have the legal right to impose substantial negative externalities on other private and public interests.

It is more than reasonable that, in exchange for this right, mining should be exposed to a very substantial degree of public scrutiny.

The alternative is to say that mineral rights rest with the landowner and it is then up to the mining company to negotiate with the landowner for mineral access after which the broader public interest should be considered. In effect this is the right that has been afforded to indigenous landowners and there is a strong argument that this should extend to the all owners of private lands.

In the absence of that, a fully transparent public process including extensive notification requirements and objection rights is an essential part of any sound public decision making process in terms of both providing equity to all parties and ensuring that final decisions are as informed as they can be.

We take great exception to the assertion in the discussion paper that preceded the Bill Paper that "requiring public notification for standard applications.....makes no useful contribution to the identification and management of environmental risk" (page 7). As we will illustrate in talking about the objection process, publicity and transparency can bring to light a host of facts and information about the potential for serious environmental harm that the State may have absolutely no knowledge of.

It is the height of bureaucratic arrogance to suggest that the state possess all relevant knowledge.

Overall, we can see no justification whatsoever for abrogating the democratic and statutory rights of the public by removing the requirement to advertise and to provide notification at

each stage of the process. Rather we see such publicity and transparency as an essential counter to the incredibly privileged position occupied by the mining industry.

3. The importance of the objection process for standard mining applications in taking uncertainty and negative externalities into account while ensuring full transparency in public decision making

The lead directors of South Endeavour have made their living over the past twenty five years or more by managing both risk and uncertainty. This is because risk is simply a measure of probability of some negative or unforeseen event occurring but, in the investment world where we live, when the unexpected does occur the consequences can be disastrous. This means that we end up managing uncertainty even more than we do risk. Uncertainty is all about dealing with the fact that risk assessments can be, and often are, wrong. And, even when the risk assessment is correct, a low probability of an adverse event occurring does not mean that it will not actually happen and it certainly does not spare you at all from the consequences of that event when it occurs. Put simply, if your risk assessment is wrong you have to have a Plan B.

These considerations of risk and uncertainty apply equally to mining projects and their impacts as they do in the investment world.

In the case of standard mining projects, the ONLY means of dealing with uncertainty, the ONLY Plan B, is the objection process.

The current assessment process for standard mining applications is primarily based on self-assessment and there are few meaningful checks on this.

Further, rather than make any attempt to actually assess the risk of serious environmental harm for a standard project, a number of proxy measures are used, which basically come down to whether the project will disturb more than ten hectares of land at any one time and whether it is in or near a Category A or B environmental area.

These are NOT measures of risk, or the probability of serious environmental harm, in any real sense, rather they are simply proxy measures. There is a not insignificant probability that they will misstate the level of risk and they make no allowance whatsoever for uncertainty.

While we are all in favour of risk based regulation, making the assumption that your risk measures will always be right and seeking to equate low risk with no risk is no basis at all for public decision making.

Rather, there need to be avenues for managing those instances where assumptions fail or when the probability of an unexpected adverse event is actually much higher than the proxy measures being used suggest.

A recent example of very direct relevance to us is Mining Lease Application ML 20562, a

proposed limestone project on what happens to be the northernmost karst area in Queensland and which lies just on the boundary of Kings Plains Station and the adjoining property Alkoomie.

The proponent classified it as a standard project and it was assessed that way. In discussions with us, the proponent asserted that there were no caves and no bats there and hence no risk of environmental harm. We purchased Kings Plains partly due to the known presence of a smaller karst area on the property with limestone caves and a number of endangered bat species. Based on this we suspected that the proposed area to be mined would be full of caves and endangered bats. As such, at our own expense we have conducted our own environmental investigations of the area with a substantial group of botanists, zoologists, cave experts and archaeologists.

As a consequence of these surveys, we now know amongst other things

i. It is habitat to at least 18 bat species, four of which are protected in Queensland and two of which are nationally endangered.
ii. It is a very likely breeding site of a nationally endangered species for which no known Australian breeding sites currently exist
iii. It contains the northernmost cave network in Queensland
iv. It is home to a new endangered rainforest based regional ecosystem
v. It has at least six Queensland protected plant species
vi. It has the only known Australian occurrence of a limestone dependent fern
vii. It has numerous indigenous occupation and rock art sites
viii. It is so visually spectacular as to have very strong potential as a tourist site

None of these facts were known to the State.

None of these facts were disclosed to the State by the proponent of the project

None of these facts were taken into account in the State's environmental assessment of the area

Most of these values are not covered by either the standard environmental conditions or other state legislation

Based on the investigations by eminent professionals, there is an overwhelming case in scientific fact that mining these karst outcrops as proposed would cause very serious environmental harm. In fact, mining would guarantee such harm as the cavernous outcrops are the very areas that the proponent wants to mine. It would also rob the property owner, the region and the State of a potential major tourist attraction.

Despite all of this new information, EHP informed us that because the project meets their proxy measures for risk, it cannot be treated as anything other than a Standard project. As a consequence, Standard conditions would apply which contain no provisions to protect either the spectacular scenery, the caves or the unique biodiversity of the area.

We were informed that the ONLY means of having any of these factors taken into

consideration is through the objection process.

There is a large number of very interested parties in this particular mining proposal due to recreational and professional concerns. Interested parties that have already written to the Minister regarding this include the Australian Speleological Federation, the Australasian Cave and Karst Management Association, the Chillagoe Caving Club and a number of academics.

Such bodies have very valuable experience and information as regards threats to and management of karst values.

It is impossible to see how it could not be in the public interest for them to have a right to object and be heard. Yet the Bill would absolutely preclude that from happening

The assumptions upon which the Bill is based, as described in the earlier discussion paper, is that there is no public interest in projects that have been deemed to be low risk. This one example above clearly demonstrates that this is NOT the case and that there can be a very strong public interest where the risk proxies used do not pick up key values or where a prior lack of information means that there are very valuable attributes that have not been taken into account.

There are many other instances where actions on one property can have significant consequences for other property owners. For example, we strongly suspect that alluvial mining on the West Normanby River two properties upstream of Kings Plains is significantly increasing the turbidity of the river through our property such that the Barramundi population is significantly less than it used to be. In turn, this significantly reduces the potential for us to earn income from fishing tours.

Such **negative externalities are not at all uncommon with mining projects and the objection process is absolutely vital in ensuring that they are taken into account and hopefully minimized**.

To remove such rights serves no public purpose and substantially diminishes public rights and the transparency of, and confidence in, the administration of mining.

4. No limitation on objections on environmental matters for standard applications.

The proposal to preclude the Land Court from considering objections to standard applications on environmental matters is totally without justification and acts totally contrary to good public policy decision making. As we have illustrated above, standard projects in sensitive areas can impose very major environmental costs and damage. These matters should be considered before any final approval to mine.

Given the diversity of unique environmental issues that can arise, it is simply impossible to devise a set of standard environmental conditions that will ensure that there is no serious

environmental harm. We submit that there should be no reduction in the scope of issues that the Land Court can consider. We can most definitely see no good reason why technical and financial maters should not be considered, given the potential for fatally flawed projects with no prospect of success to do great harm for no reward. We also would like to point out that there has been NO public consultation on such draconian changes as are proposed.

5. Economic and financial considerations

As stated above, two of our directors are very senior members of the Australian investment management community and are, or have been, responsible for the investment of many billions of dollars. Assessing investment proposals and the costs thereof is our professional bread and butter.

The nominated cost saving from these draconian measures to limit public participation in the Mining Lease application and approval process has been stated as $6 million. However, allowing for the fact that much of this is merely a transfer from one economic agent to another (e.g. Advertising costs), the net economic benefit, before taking into account increased negative externalities on those impacted by mining projects, but with no ability to object to them, is far less than $6 million. In fact, it is probably negative taking all impacts into account.

Nevertheless, let's assume that the savings are actually $6 million, which is described as a "significant benefit". The reality is that such a saving is of absolutely marginal economic significance, particularly as weighed against the loss of normal democratic rights. In economic terms Queensland's 2012-13 GSP was estimated at $290,158 million. As such, the maximum value of the savings proposed from this par of the Bill are just 0.002% of Gross State Product. There is no context of any State relevance where this could be described as "significant".

We very strongly argue that this proposal provides no significant savings and that there is no net economic benefit even vaguely commensurate with the loss of public rights entailed in these proposals.

6. **The economic role of mining and the issue of preemptive land use rights**

The major reason why mining attracts such critical scrutiny and creates such dissension in the community is because it is the only private land use that has precedence over normal property rights. This is certainly not the case in all jurisdictions, for example the United States.

This precedence given to mining is largely an artifact of the Nineteenth Century when relatively small scale mining was a major driver of economic activity, employment and wealth at a state and national level.

That is no longer the case for small scale mining.

We are now in a world of the mega mine, or large and very large scale projects which are major drivers of our economy. Obviously it is in the state interest for such mega mines to have a degree of precedence as a land use, although it is also the case that in nearly all such instances (CSG aside) the miner buys the land and becomes the landowner

However, small mines are now of very little or no state significance and yet cause ongoing land use conflict. This is largely because small private operators are able to impose substantial negative externalities on others while capturing all economic returns for themselves.

There are very major issues in equity associated with this. Just because the State owns the mineral rights on property does not mean that the State could or should just walk on to people's land, interfere or destroy their lifestyle and economic interests and then walk away leaving the owner with nothing but loss. It would be politically unacceptable.

We raise this here because this is exactly what happens with many small mines. The Bill seeks to make it even easier and cheaper for small miners to run roughshod over other people's property rights, when we should actually be asking the question as to how we can internalize the externalities that small miners impose on others, both private and public?

Conclusions

1. We strongly submit that there should not be any reductions in the requirement for public notification of proposed standard mining tenements. We can see no public purpose whatsoever to be served by these proposals
2. We very strongly submit that there should be no reduction in rights to object to standard projects. The proposals to severely limit rights to object to standard projects runs contrary to transparency, good public policy and equity. Further the proposed process would make no allowance for uncertainty, something that is critical if informed decisions are to be made.
3. We strongly submit that there should be no further constraint imposed on matters that can be considered by the Land Court. In particular, it would be the antithesis of good public decision making to preclude the Court from considering objections on environmental grounds to standard projects. Such projects can impose very substantial negative environmental costs and these should be considered before final approval is granted.
4. While there are certainly arguments for some streamlining of regulation for large and mega mines of State significance, rather than make it cheaper and easier for small miners to run roughshod over the rights of property owners, there is a need for a full review of preeminent land use rights provided to small mining projects of no State significance. At the very least, there need to be much stronger measures in place to seek to internalize the adverse externalities that such miners place on others for personal gain.

Tim Hughes
Director

8 July 2014

Brief Biographies

Simon Marais is the Founder, Co-Owner and Chief Investment Officer of Allan Gray Australia, a multi billion dollar investment management business. He is also Chairman of Allan Gray, Africa's largest privately owned investment management company with funds under management of around $40 billion.

Tim Hughes has been Chief Investment Officer of Rothschild Australia, Value Capital Management, Catholic Super and NGS Super. He was also Chief Economist of the Rothschild Australia Group and was an economics columnist for the Courier-Mail from 1995 to 2013. He is currently an advisor to HESTA, a $27 billion superannuation fund. He also sits of the Board of ASX listed drug discovery company, Alchemia Limited.