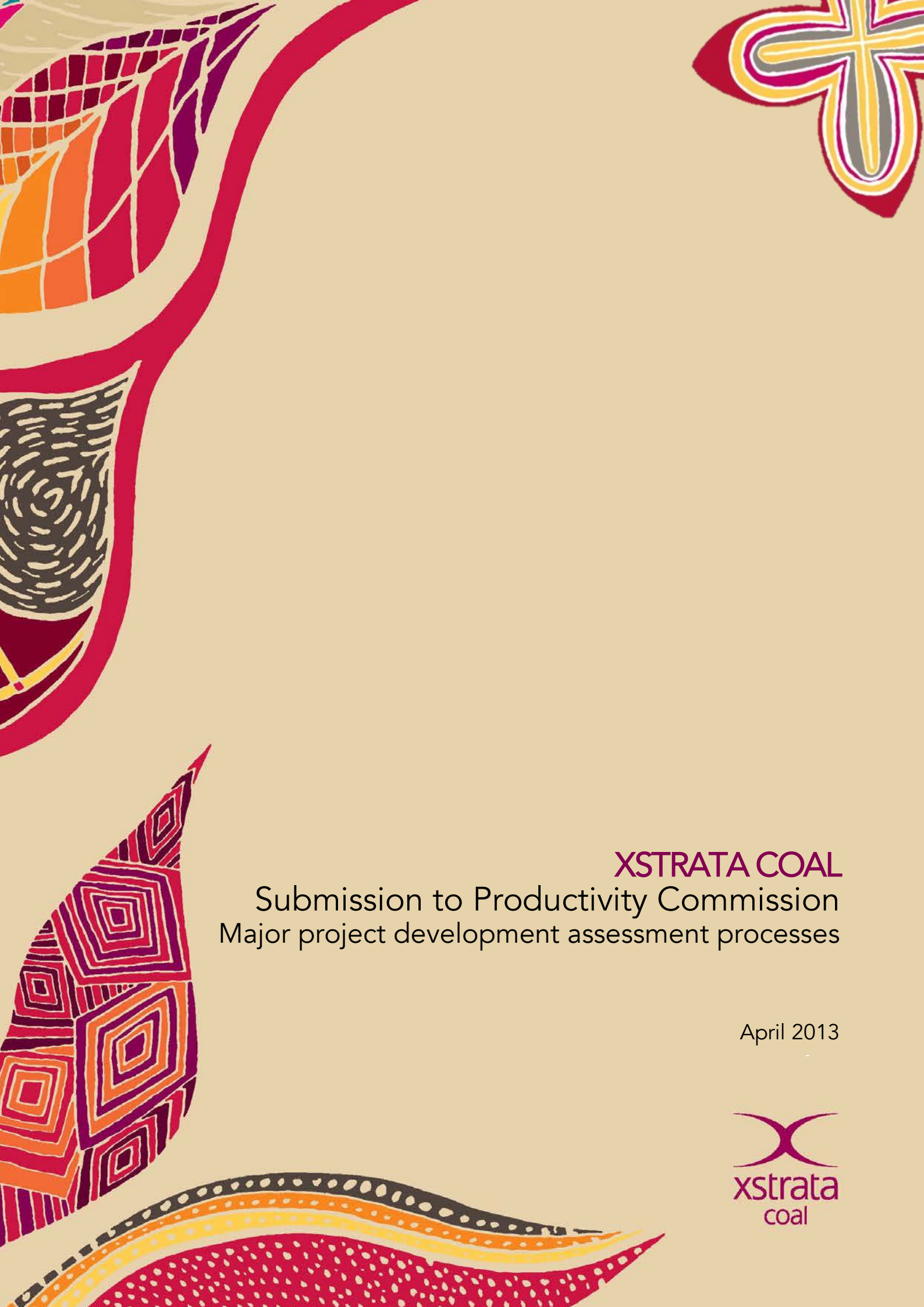

XSTRATA COAL

Submission to Productivity Commission

Major project development assessment processes

April 2013

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24 April 2013

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Major Project Development Assessment Processes
Productivity Commission
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Dear Mr Lanning

XSTRATA COAL SUBMISSION: MAJOR PROJECT DEVELOPMENT ASSESSMENT PROCESSES

We welcome the opportunity to make a submission to the Productivity Commission in relation to the major project development assessment process in Australia.

The attached submission provides a mining company perspective on the current operation of existing major project development assessment processes in Australia at both a national and State level. While major projects must comply with a raft of assessment and regulatory approvals, our submission has focussed on the environmental approval process because it is central to other Tier 1 approvals and has the most material impact on project development and execution. Our submission also provides responses to the direct questions outlined in the Productivity Commission's Issues Paper.

Beyond the existing approvals regime, we have included a number of case studies from within our business to highlight particular key issues. We have also proposed a new conceptual assessment model we believe that would address a number of critical flaws in the current regime.

Xstrata Coal is the world's largest exporter of seaborne thermal coal which is used to generate electricity and one of the largest producers of metallurgical coal used to make steel. Globally, we produced 106.4 million tonnes of managed coal (from mines we operate, whether fully or jointly owned) in 2012 and exported around 89% of our sales. Headquartered in Sydney we manage interests in over 30 open cut and underground coal mines in Australia, South Africa, Colombia and exploration projects in British Columbia, Canada. We are also developing iron ore projects in West Africa.

Our company is the largest coal producer in New South Wales and is a significant producer in Queensland. Last year we produced more than 74 million tonnes of managed coal and employed 9,000 Australians, including contractors. In 2012 we contributed over $7 billion dollars to the Australian economy through royalties and taxes, wages, goods and suppliers and investment.

We deliver a natural resource that is at the heart of everyday life and is central to the development of society. Our objective is to grow and manage its portfolio of businesses to deliver vital natural resources, industry leading shareholder returns and sustainable value for our shareholders. We are proud to pursue this aim in partnership with our stakeholders, developing our people and assets to their fullest potential and making a lasting positive contribution to society.

We are committed to working constructively with Government and other stakeholders on key public policy reforms. We would welcome the opportunity to discuss the detail contained in this submission and answer any questions the Commission may have.

Yours sincerely,

Mick Buffier
Group Executive for Sustainable Development & Corporate Affairs
Xstrata Coal

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EXECUTIVE SUMMARY

We recognise that the operating context globally and in Australia is increasing in complexity.

We recognise that it is the Government's right to set policy and regulation related to major projects and the accompanying investment in the national interest. Australia's future economic prosperity to a large extent will depend on the ability to attract ongoing investment across a range of industry sectors. Predictable, strong, stable, efficient and streamlined regulatory regimes are an important part of maintaining continued investment.

In Australia, the coal sector is facing unprecedented regulatory intervention on a range of issues and greater public scrutiny and focus on our licence to operate. In recent years the resources sector has seen a dramatic increase in ad hoc, reactive regulatory measures at both a State and Federal level which do not represent good public policy development. The net result has been a reduction in the effectiveness and efficiency of the regulatory regime for major projects and a weakening of ongoing business certainty and investor confidence.

It is vital that both State and Federal levels of Government regain lost ground in terms of providing a transparent, accountable, stable and predictable political and fiscal environment for investment, including streamlined regulatory approvals process for major projects.

Our submission is set against the current global operating context, which includes the following:

Competition for Resources	Competition to secure access to good quality new coal resources, means a higher price is paid to access and entry into new geographies
Resource Nationalism	Increasing frequency of new taxes, royalties, levies and other payments increases the complexity and cost of doing business
Licence to Operate	Rising community expectations, NGO activity will continue to test our licence to operate credentials for existing and new projects
Increasing legislation	Increased legislation across the board – land, water, climate change, resource taxes etc. Increases our operating costs and compliance burden
Constrained Inputs	Critical skills shortages and procurement pressures for key items (trucks etc.)
Competition for Inputs e.g. Water	Competition with other users for essential inputs for our operations e.g. energy, water etc.

A fall in commodity prices coupled with a continuing strong Australian dollar continues to negatively impact on the Australian coal sector. We believe that currently up to 35% of thermal coal supply and 46% of coking coal supply in Australia is currently loss making.

According to ABS figures, 9,000 people lost their jobs in the QLD and NSW coal industry in the past six months. Over the past 12 months we have shed over 700 jobs and are currently re-structuring our business to ensure the long term sustainability of our operations in Australia.

Current challenging market conditions are being exacerbated by increasing cost pressures in Australia including: increases in taxes and royalties, labour, consumables and increasingly regulatory compliance notably from the impact of costly project approval delays.

We support a nationally consistent regulatory framework that balances environmental, economic and social considerations for major projects. However, this cannot be developed by governments in a vacuum nor delivered in silos. We have been able to work cooperatively and constructively with government officials on major project approvals with some notable successes. It is our hope that these successes can be built on and extended across the regulatory chain at a Federal and State level.

We note that the Productivity Commission refers to the DA / DAA process throughout its paper. For the purpose of this submission we have focussed specifically on processes around environmental assessment and approvals given their materiality to obtaining overarching major project approvals (e.g. mining lease).

At a macro level we believe that the current regulatory regime would be greatly improved by consideration of the following recommendations.

Recommendations:

1 A Minister is the key decision maker in project approvals (excluding relevant court processes) while advisory committees or project teams groups may provide advice on a needs basis to the Minister in line with clearly defined terms of reference and timelines. These teams or Committees should not exist indefinitely and should be convened as early in the approval process as is practicable.

2 Identify and eliminate areas of duplication and overlap in assessment and approval processes for major projects across Federal and State jurisdictions. This should include the development of national assessment criteria which would greatly improve the approvals' system and reduce delay and uncertainty.

3 Improve quality and scope of strategic planning and strategic assessments, by including early consultation process between regulators, project proponents and the community, particularly in areas of high environmental value or other areas of significance.

4 Greater recognition or possible accreditation of internal company project management processes, approval gate guidelines, standards and peer review processes.

5 Establish a single point of contact or State authority for major project approvals that has authority for the following:

   a. Issuing clear upfront guidance upfront to project proponents on methodologies, technical studies and other standards to be included as part of the approval process;

   b. The ability and authority to incorporate associated secondary approvals under the major project approval process; and

   c. Coordinating with Federal regulators to ensure that requirements issued to project proponents also cover relevant matters under the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act).

6 Improve transparency and accountability of Government departments or agencies in relation to the costs and timeliness of approvals, in particular rationale for use of "stop the clock" provisions. Results would be published via an annual public report.

7 Findings from the Productivity Commission's study should be used to inform ongoing Council of Australian Government (COAG) discussions on regulatory reform.

Principles to guide reform

We support a principles-based approach to guide any reform of the major projects assessment process. A principles approach may include but is not limited to the following:

1. Accountability and transparency: project proponents, government officials and Ministers have clear responsibilities and the authority to make timely decisions and are accountable for their decisions. Changes to policy and regulation are developed in consultation with industry.

2. Streamlined: adoption of a whole of Government approach where duplication of regulatory regimes and requirements is eliminated to increase effectiveness and efficiency.

3. Certainty: for project proponents and regulators is increased by adopting robust project management, agency coordination and performance measures (e.g. timeliness) as part of the approvals process.

4. Scientifically-based: public policy and regulation are grounded in sound science and balance social, environment and economic factors.

5. Continuous improvement: regulatory regimes should be subject to periodic reviews to ensure they remain current in terms of best practice regulation standards and emerging scientific or other developments.

6. Competency: regulators should rely on subject matter experts as part of the assessment process and should encourage further development of internal skills base of officials.

Overview of the current process for major project approvals

We have considerable experience interacting with the approvals regimes at a Federal, New South Wales and Queensland level. Based on our current business plan for Australia, we have at least 60 major permitting approvals to be obtained in the next five years across the business.

There are a range of concerns we have identified with the current approach to major project assessments in Australia. Perhaps one of the more material concerns is the delays and length of time the assessment process is taking for major projects. We estimate that approval timeframes for projects has increased from ~ 7 months on average (2002) up to ~18 -36 months (2012). Further detail on this issue is included in case studies attached to this submission.

We have developed a robust project management and management control framework for environmental and social impact assessment. Xstrata has been recognised globally by the Dow Jones Sustainability Index for its achievements in sustainable development. Increasingly our ability to manage the impacts of our projects and operations is a key determinant of license to operate and corporate reputation.

As part of continuous improvement, we stay abreast of emerging trends and standards in project management and sustainable development practices. Our preference is to work cooperatively with regulators as part of a mutually respectful dialogue. In Australia, we have had some success working with regulators in the area of recognition of site rehabilitation for biodiversity offsets and water management.

Beyond these positive examples, however, we continue to be concerned about the current process for major project approvals in Australia. To follow is a summary of the key concerns we have experienced in relation to the existing Federal and State approvals processes:

a) Duplication of statutory processes between State and Federal levels of Government and a lack of coordination between agencies and jurisdictions.

b) A general lack of accountability amongst regulatory officials in terms of engagement with project proponents and a poor record for timely, clear, informed and constructive advice, exacerbating project proponent costs and certainty.

c) Increasing trend towards delegation of statutory decision-making powers away from the Minister or Government agency to third party or so called "expert" Working Groups, or Committees or commissions.

d) Dramatic increase in ad hoc regulatory interventions on top of the existing regulatory or assessment processes (e.g. strategic cropping or land use legislation, aquifer interference policies or agricultural land impacts) which increases the regulatory burden, often for no material environmental gain. Many of these new regulatory requirements lack clarity in terms of practical implementation with ambiguities and are often left to the project proponent to resolve.

e) Significant increase in project approval costs (both direct and indirect costs), including costs associated with consultants, court challenges, contractor and employee holding costs during caused because of a result in by delays to in timing of approvals and erosion of project value due to delays in the timing of approvals.

f) Inadequate levels of resourcing, experience and subject matter competency of Government regulatory agencies which has a flow on impact to project assessments in terms of quality of guidance to project proponents, time delays on decisions and inconsistent application of legislation.

g) A fundamental lack of understanding of the resources industry, in particular, the commercial aspects of major project investment and development.

We are of the view that the current regulatory environment will hinders Australia's long-term competitiveness in the mining and resources sector, primarily due to the uncertainty, inefficiency, delays and costs involved in the major approval process. Furthermore, the major project approvals process has become increasingly complicated and burdensome over time.

Independent surveys such as the Fraser Institute Annual Survey of Mining Companies 2012/2013 highlight this point. Each year the Fraser Institute (a Canadian think-tank) surveys mining and exploration companies to assess how mineral endowments and public policy factors such as regulation affect exploration investment.

In 2012/2013 the Fraser Institute surveyed and ranked ninety-six jurisdictions according to the extent that public policy factors encourage or discourage investment. Jurisdictions were evaluated on every continent except Antarctica and were given a policy potential index based on fifteen policy factors which affect investment decisions. Jurisdictions were then ranked according to their policy potential index. Finland was the highest ranked jurisdiction, followed by Sweden, Alberta, New Brunswick, Wyoming, Ireland, Nevada, Yukon, Utah and Norway. The top ten jurisdictions were all either in Canada, the United States of America or Eurasia. There were no jurisdictions from Australia, Oceania, Africa, Argentina or Latin America and the Caribbean Basin in the top ten jurisdictions.

The highest-ranked Australian jurisdiction in the Fraser Institute Survey was Western Australia, with a ranking of 15/96. New South Wales ranked 44/96 and Queensland 32/96. Australian jurisdictions received significantly lower policy potential index scores compared to the top ranked jurisdictions. For example, Finland, Sweden, Alberta and New Brunswick all scored between 90.8 and 95.5 on the index whereas Australian jurisdictions scored between 56.4 (New South Wales) and 79.3 (Western Australia) on the index. This highlights that the 'gap'

between the ranked countries is significant and that Australian jurisdictions are significantly less attractive for investors than the top-ranked Canadian, American and European jurisdictions.

Furthermore, these rankings have fallen considerably in the last ten years. In the Fraser Institute 2003/2004 survey Western Australia, New South Wales and, Queensland ranked 13/53, 3/53 and, 9/53 respectively. While Western Australian has only fallen two places in the last ten years, New South Wales has fallen forty-one places and Queensland has fallen twenty-three places in a decade. Interestingly, respondents ranked Western Australia significantly higher than both New South Wales and Queensland on the criteria "uncertainty concerning environmental regulation" and "regulatory duplication and inconsistencies". This highlights the real impact which these factors in particular are having on the mining industry.

We hope that the outcome of this Productivity Commission review will be an improvement in regulatory certainty and a significant reduction in regulatory duplication and inconsistency. The ability of Australia to improve the current regulatory regime for major projects will drive future investment decisions and the relative "ranking" of Australia in terms of sovereign risk compared to alternative investment destinations.

In order to determine appropriate changes to the major projects approval system, we recommend the Productivity Commission obtain a better appreciation of the current process for major project approvals and the complexities associated with multiple layers of approvals imposed upon the industry.

The current approval process is has progressively grown more complicated in each Australian jurisdiction. Securing the necessary approvals for a major project now involves dealing with multiple State/Territory agencies and Federal Government departments as well as numerous pieces of legislation.

There is also a raft of secondary approvals in relation to environment and community perspective that are required prior to the construction of a mine or other major project. These approvals also require significant time and resources to complete. They include but are not limited to:

- Social Impact Management Plan (SIMP)
- Stakeholder Engagement & Management Plan
- Cultural Heritage Management Plan
- Air Quality Management Plan
    - Greenhouse Gas & Energy Management Plan
- Noise Management Plan
- Blasting & Vibration Management Plan
- Biodiversity Management Plan
- Weed & Feral Animal Management Plan
- Erosion & Sediment Control Management Plan
- Topsoil Management Plan
- Construction Soil Management Plan
- Site Water Management Plan
    - Site water balance
    - Surface & groundwater monitoring
- Rehabilitation & Closure Management Plan
- Industrial Waste Management Plan
- Waste Geochemisty Management Plan
- Traffic Management Plan

We note that in addition to environmental approvals, other key approvals required for new coal mines include the following:

- Security of mine tenure – mine lease approval.
- Change from exploration tenement title to mine lease
- Cultural heritage approval
- Native title approval (where if necessary)
- Land access/acquisition approvals
- Dangerous goods approvals
- Local council related approvals
- State road access and works approvals
- Rail access and works approvals

We have prepared a number of simplified flowcharts which show the major approvals process in New South Wales and Queensland. **Please note that these flowcharts show only the environmental approvals.** While major projects must comply with a raft of assessment and regulatory approvals, our submission has focussed on the environmental approval process because it is central to other primary or Tier 1 approvals (Mining Lease, Development Consent and Environmental Protection Licence or Authority) and has the most material impact on project development and execution.

A comprehensive list of legislation which may apply to a major project approval in Queensland and NSW included in the Appendices to this submission.

Figure 1: Queensland environmental approval process and Federal process

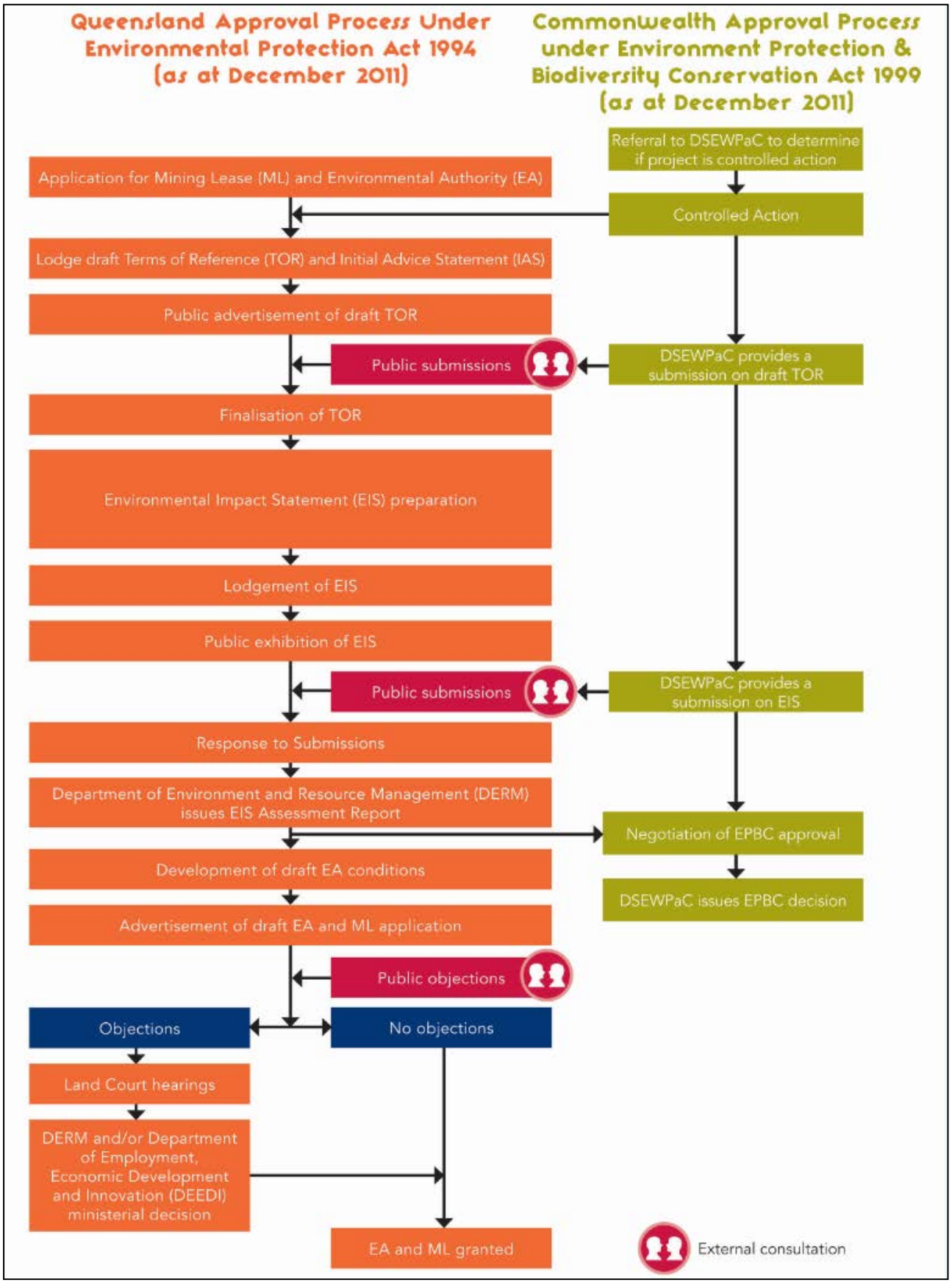
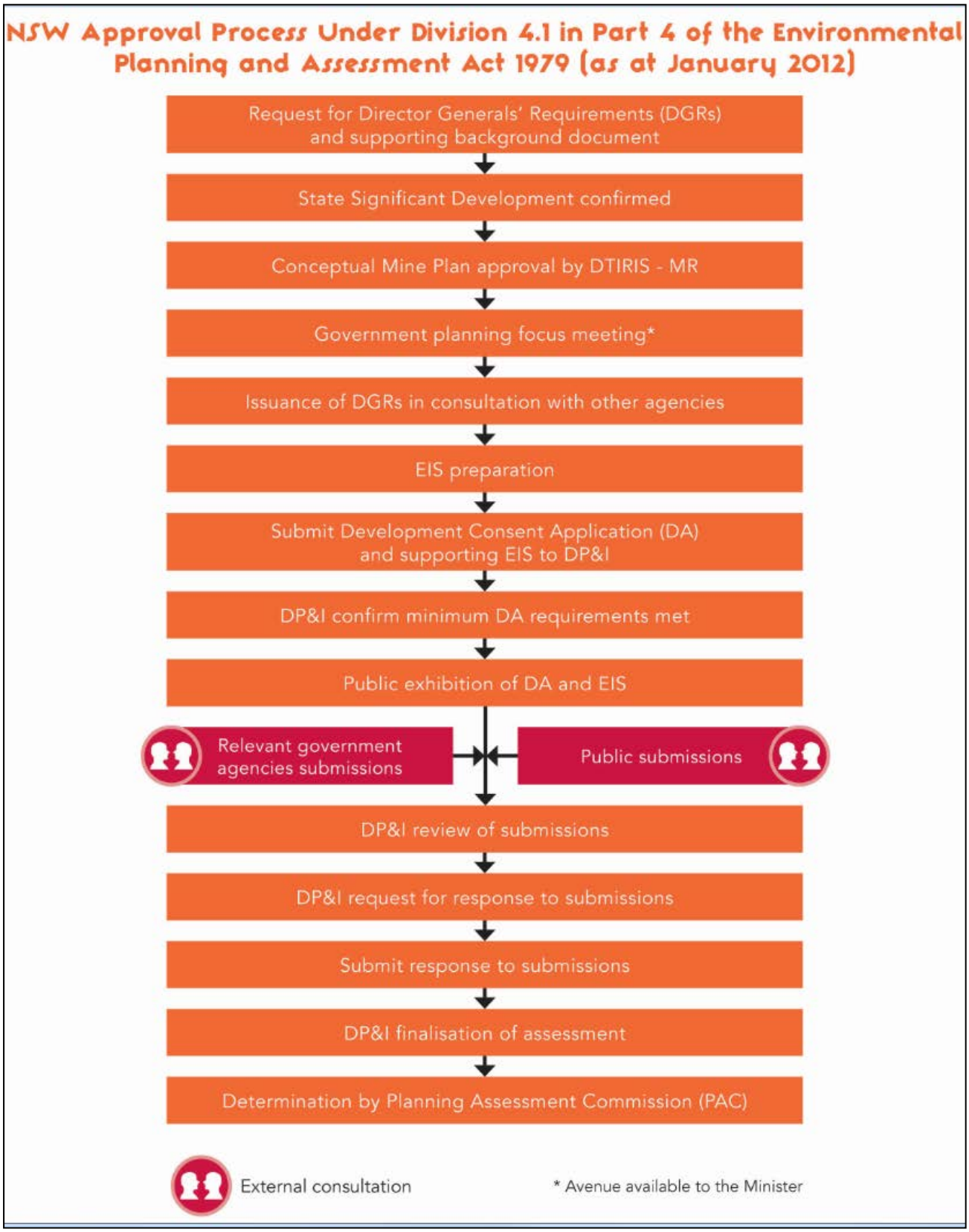


Figure 2: New South Wales environmental approval process



Case studies

We have included three case studies as examples which highlight deficiencies in the existing approvals process and consequences for each project. We are also currently involved in a project in Canada which is trialling a whole-of-Government approach for environmental approvals between Federal and State jurisdictions. We have provided commentary a case study on our experience under this approach to date.

CASE STUDY 1 - Ulan Continued Operations Project

Background

The project

The Ulan Continued Operations Project represented an opportunity for an existing coal mine to consolidate and contemporise modernise its existing planning approvals, whilst at the same time facilitating the creation of a new underground mining area known as Ulan West and the expansion of an open cut mining area. The NSW Project Approval that was ultimately obtained from the relevant minister permits Ulan to recommence and extend the existing open cut, as well as concurrently mining the approved Ulan No. 3 underground and the approved Ulan West area under a modified mine plan.

This approval resulted in an extension of the currently approved mine life by approximately 10 years through to 2031, permitted extraction of up to 4.1Mtpa of ROM coal from an open cut pit over a period of up to 11 years and allowed up to 20Mt of product coal to be produced per annum (representing an increase from the previously approved limit of 10Mtpa).

Approvals process

The Ulan coal mining complex previously operated under four major NSW development consents, 18 modifications and 16 other minor development approvals for various mining related activities across the complex. At the suggestion of the NSW Department of Planning, Ulan applied to rationalise the approvals that applied to its mining operations at Ulan into one consolidated development consent. This occurred as part of a Project Application under Part 3A of the *Environmental Planning and Assessment Act 1979* (NSW). Approval was also required under the *Environment Protection Biodiversity and Conservation Act 1999* (Cth).

Ulan experienced a number of delays in obtaining the Project Approval under the NSW legislation (refer to chronology below). The project experienced further delays when the Project Approval was subjected to a merit review process in the NSW Land and Environment Court. These proceedings were commenced by a Third party objection.

The new aspects of the project are currently under construction.

Key issues

- **NSW approval process:** there were long periods of inactivity by the Department of Planning in the assessment of the application during 2010, which led to delays in the timing of the final approval. We understand these delays were due to inadequate resourcing of departmental staff and the lack of formal policies in relation to some of the environmental aspects..
- **EPBC approval process:** the Commonwealth approval required Ulan to create biodiversity offset areas that are different to the biodiversity offset areas required by the NSW approval, which has made ongoing management of those biodiversity offset areas more difficult.
- **Role of local Government:** there were protracted negotiations with Mid-Western Regional Council regarding the voluntary contributions to be made by Ulan to local community infrastructure. This had the effect of delaying the grant of the Project Approval because the Department of Planning required the Voluntary Planning Agreement to be agreed between Ulan and Council before the approval could be

granted. Although the Voluntary Planning Agreement has been signed, an ongoing dispute exists with Council regarding contributions to for the upgrade and maintenance of Ulan Road by Ulan, Council and other mines in the area. This matter is outside of the VPA process and is a separate condition of the Project Approval. This matter has been ongoing for in excess of 18 months and is yet to be resolved.

- Land and Environment Court challenge: The legal challenge was unsuccessful as the Court process resulted in no material changes being made to the original Project Approval. The merit review process therefore delayed the final Project Approval by 17 months for no environmental benefit a part from a relatively small area of additional biodiversity offsets. Ulan was also required to educate the Court on the features of the Clean Energy Act, and the reasons why there was no need to impose additional greenhouse gas-related conditions on the project as those issues were adequately addressed by the Clean Energy Act. While Ulan was able to commence the development during the appeal process, due to the length of the process this resulted in the company to being exposed to significant financial risk (in the 100's of millions of dollars) should the appeal have been upheld. Cases like this significantly undermine investor confidence.

Chronology

Date	Approval milestone
August 2008	Project Application submitted to NSW Department of Planning pursuant to Part 3A of the Environmental Planning and Assessment Act 1979 (NSW)
September 2008 – September 2009	Preparation of Environmental Impact Statement by Ulan and review of its adequacy by NSW Department of Planning
23 October 2009 – 4 December 2009	Environmental Impact Assessment Report on public exhibition
8 December 2009	*Environment Protection and Biodiversity Conservation Act 1999* (EPBC) Referral submitted to the then Commonwealth Department of Environment, Water, Heritage and the Arts (DEWHA)
20 January 2010	DEWHA determined that the Project was a Controlled Action requiring assessment and approval under the Commonwealth EPBC Act prior to the action proceeding
February 2010	Ulan responded to public submissions regarding Environmental Impact Assessment Report (44 submissions in total)
March 2010 – October 2010	Assessment of the Project Application by Department of Planning and other NSW Government agencies
August – October 2010	Negotiations with Mid Western Regional Council regarding the content of a Voluntary Planning Agreement for the project
15 November 2010	Project Approval granted pursuant to *Environmental Planning and Assessment Act 1979* (NSW), subject to conditions
30 November 2010	Department of Sustainability, Environment, Water, Population and Communities (DSEWPaC, previously DEWHA) approved the project, subject to conditions.
10 December 2010	Class 1 Proceedings commenced by Hunter Environment Lobby Inc. in NSW Land and Environment Court seeking NSW Project Approval set aside or re-approved with more stringent

	conditions
June 2011	3 week hearing held in the NSW Land and Environment Court
18 November 2011	Clean Energy Act 2011 (Cth) passed by Commonwealth Parliament
24 November 2011	Preliminary judgment delivered by the NSW Land and Environment Court. The judgment approved the project 'in principle' but required the parties to negotiate and agree revised conditions, including proposed conditions that duplicated and were inconsistent with the Clean Energy Act
2 December 2011	Proposed additional court hearing to discuss revised conditions was vacated due to illness of judge
10 February 2012	Further court hearing to discuss revised conditions. Land and Environment Court requested further submissions from the parties to explain the effect of the Clean Energy Act.
13 March 2012	Further court hearing for parties to explain the effect of the Clean Energy Act. Final judgment issued by Land and Environment Court, subject to final orders being made (with the greenhouse gas conditions sought by Hunter Environment Lobby being rejected by the Court)
5 April 2012	Final orders issued by Land and Environment Court attaching new Project Approval with some slightly modified conditions as compared to original November 2010 Project Approval

CASE STUDY 2 - Wandoan Coal Project

Background

The project

The Wandoan Coal Project is a greenfield 30 million Mt per annum (Run of Mine) thermal coal mine development project located in Southern Queensland, that will involve linking multi-billion dollar new railway (Surat Basin Rail) along with upgrades to existing rail lines, and new port facility in the Gladstone area. The Project covers approximately 30,000 hectares of land across three separate mining leases, and also incorporates a raw water supply, power supply, from the national grid, a rail spur, biodiversity offsets, a new 1 Mt/y per annum quarry development (Weringa Quarry), road realignments and upgrades, a new aerodrome, three types of worker accommodation, and working with the local council on local infrastructure upgrades to meet Project requirements, potable water and wastewater treatment plant upgrades and a new 1 Mt capacity landfill.

Approvals process

The overall primary approvals processes have, at the time of preparing this submission, taken more than six years. While the Project's environmental authority has been approved, it has not been issued pending completion of the mining lease application process (currently on hold pending the outcome of the Queensland Land Court's determination of compensation for three remaining landowners where agreement could not be reached). However, a number of related (mainly off site) post-approvals commenced in 2011 and will continue throughout the life of the mine. Most of these post-approvals will be obtained prior to or during the construction phase of the mine and other off-mining lease infrastructure developments.

Key issues

- QLD approval process: there were long delays experienced from the Office of the Coordinator-General in the assessment of the Environmental Impact Statement and Supplementary Environmental Impact Statement during 2010, which led to delay in the issuing of the Coordinator-General's evaluation report on the Environmental Impact Statement. These delays were due to inadequate resourcing of departmental staff.
- EPBC approval process: the Commonwealth EPBC Act approval requires the Wandoan Coal Project to create biodiversity offset areas that are different to the biodiversity offset areas required by the Queensland Coordinator-General. An amendment to the EPBC Act decision notice was recently obtained so as to have consistent timeframes for the delivery of the Biodiversity Offset Strategy and Biodiversity Offset Packages to the Commonwealth and Queensland State Governments. Offset areas are different sizes and different ecological community types from the Commonwealth and Queensland State Governments which will require negotiations with SEWPAC (Commonwealth), NRM (Queensland) and DEHP (Queensland) so that offset areas can be agreed and legally secured.
- Role of local Government: following the issuing of the Coordinator-General's Report, various approvals for off-mining lease infrastructure commenced. Delays of over 12 months were experienced between application submission for Material Change of Use and receiving approvals. These delays were due in part to the significant number of applications being assessed as a consequence of resource development in the region and inadequate resourcing of relevant state and local government assessment teams to manage those assessments.
- Land Court challenge: The Wandoan Coal Project has been subject to two separate legal processes in the Land Court. The first Land Court Hearing on the mining lease applications and draft Environmental Authority resulted in no material changes being made to the mining lease applications and Environmental Authority, and took a total of 15 months including 7 months awaiting the Court's recommendations. The second Land

Court Hearing was undertaken to determine the compensation for 3 landowners. Hearing for the Mining Leases, with legal processes starting in July 2012, the hearing held in November and December 2012. As at 17 April 2013, and Xstrata Coal and the 3 landowners are awaiting the final determination.

- Supreme Court challenge: Although not part of the approvals process, in November 2012, judicial review action was commenced in the Supreme Court of Queensland by a group of Wandoan landowners against the Minister for Environment and Heritage Protection's August 2012 decision to approve the Wandoan Coal Project's Environmental Authority. Court proceedings are on-going with hearings expected in Q2/Q3 2013.

- Overlapping mining and petroleum tenures: Queensland has legislative processes for dealing with overlapping mining and petroleum tenures. The Wandoan Coal Project footprint is overlapped by a number of petroleum tenures. Complying with legislative requirements and reaching agreement with petroleum (ie coal seam gas (CSG)) proponents has been a significant undertaking for the Wandoan Coal Project. The legislative requirements are complex and the administrative burden is onerous to reach agreement with each of the overlapping petroleum tenure proponents.

  For the Wandoan Coal Project, the three mining leases were applied for prior to overlapping petroleum leases being applied for by petroleum proponents. However mining tenements adjacent to the Wandoan Coal Project held by Xstrata Coal were applied for subsequent to petroleum tenure applications. The *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* both stipulate lengthy processes for agreeing coordinated arrangements between the coal and petroleum proponents, the order of precedence with which proponents approach negotiations for coordinated arrangements, and the Minister's ability to make a "preference decision" if so required (although the Minister has not exercised this ability to date).

  Xstrata negotiated detailed co-development agreements and associated co-ordination arrangements with overlapping CSG proponents for the Wandoan Coal Project, the most significant of which were finalised in December 2011. Where the Wandoan mining leases overlap granted petroleum leases, these coordination arrangements must be approved by the Minister before the mining leases may be granted. Despite submitting the coordination arrangements in December 2011 for approval, as at the date of this submission, these coordination arrangements are still in the approvals pipeline. This is due to the delay in consideration of the coordination arrangements by the relevant department and an absence of any clarity or certainty as to what these co-ordination arrangements should cover and in what detail.

  As a consequence, amendments have been required which in the view of the parties to these agreements and their legal advisors are not required by the legislation. Our frustration with this process is compounded by the fact that the parties are required to reach agreement, but having done so in good faith and at considerable cost, the department's consideration of the agreements is fraught with delay, uncertainty and the imposition of new and onerous requirements.

The approvals processes for the Wandoan Coal Project are summarised in the table below.

Chronology

Date	Approval Milestone
June 2007	Preliminary environmental studies and monitoring commenced
December 2007	Initial Advice Statement provided to the Coordinator-General (Qld)
21 December 2001	Declared a significant project for which an Environmental

	Impact Statement (EIS) is required by the Coordinator-General (Qld)
June 2008	*Environment Protection and Biodiversity Conservation Act 1999* (EPBC) Referral submitted to the Commonwealth Minister for the Environment, Heritage and the Arts
June – July 2008	Department of Environment, Water, Heritage and the Arts publicly displayed and assessed the EPBC Referral
July 2008	Project determined to be a controlled action by the Commonwealth Minister's Delegate and accredited the Queensland EIS process under Part 4 of *State Development and Public Works Organisation Act 1971*
August – September 2008	Coordinator-General (Qld) advertised the draft Terms of Reference for the EIS for public comment
November 2008	Coordinator-General (Qld) issued the final Terms of Reference
December 2008	EIS supplied to the Coordinator-General (Qld)
December 2008	Coordinator-General (Qld) publicly notified EIS
December 2008 – February 2009	Public submission period on EIS
March 2009 – November 2009	Supplementary EIS prepared and submitted, based on public submissions and comments by the Coordinator-General (Qld)
November 2010	Coordinator-General (Qld) produced a report evaluating the EIS and Supplementary EIS (approved, with conditions)
December 2010 – February 2011	The Mining Lease Applications and draft Environmental Authority are publicly advertised by the Mining Registrar
2011 – 2013	Local Government authority development applications submitted and approved for specific off-mining lease infrastructure, based on the Coordinator-General's Report
March 2011	Commonwealth Minister for Sustainability, Environment, Water, Population and Communities granted conditional environmental approval
April 2011 – March 2012	Land Court hearing of objections and recommendations on the Mining Lease Applications and draft Environmental Authority
August 2012[1]	Environmental Authority determined by the Minister for the Environment and Heritage (not issued pending grant of mining leases)
July 2012 – ongoing (anticipated Quarter 2 2013)	Filing of valuations by Xstrata Coal and landowners with the Land Court, consistent with s281 of the *Mineral Resources Act 1989* (Qld) Compensation Hearing for the Mining Leases (November 19 2012 and December 2 2012). Currently awaiting Land Court's determination.
Anticipated Quarter 2/Q3 2013	Mining Lease to be determined by the Minister for Natural Resources and Mining

[1] *Note that in November 2012, judicial review action was commenced in the Supreme Court of Queensland by a group of Wandoan landowners against the Minister for Environment and Heritage Protection's August 2012 decision to approve the Wandoan Coal Project's environmental authority. Court proceedings are on-going with hearings expected in Q2/Q3 2013.*

CASE STUDY 3 – Canadian Model Trial

Background

Xstrata Coal is proposing to develop an integrated surface and underground coking coal mining operation known as Sukunka in British Columbia, Canada. The project, currently in a pre-feasibility study phase, will consist of two open cut mining areas, an underground mining operation and wash plant with associated infrastructure, access and haul roads, power transmission lines and a rail load-out and corridor.

As part of the Canadian Government's willingness and recognition to provide for a more timely and efficient environmental assessment process and to avoid duplication and the costs often associated with cooperative and/or concurrent process, both the Canadian Federal Government and British Columbia provincial Governments signed a memorandum of understanding (**MOU**) on the substitution of environmental assessments where both Government agencies are required. Substitution allows proponents to submit just one application approval for determination by both the Federal and provincial governments and has been explained by the Canadian government as follows:

This agreement was recently (15th March 2013) reached between British Columbia (BC) and the Canadian Federal Government agencies for projects which require provincial and federal review. An MOU was signed between both agencies to substitute the environmental approvals process where these two Government bodies are required.

"Substitution means the substitution of the provincial process for the federal process while still requiring two separate decisions by the BC Minister of Environment and the Federal Minister of Environment. It does not involve the implementation of an equivalent process."

The MOU establishes the timing and process for determining whether substitution is suitable for a project, procedures for delegating Aboriginal First Nations consultation, and the requirements for substitution.

A process of substitution may be initiated by the Province on written notice to First Nations (i.e. original aboriginal land holders), the public and stakeholders, of its decision to request approval from the Federal Minister for a substituted process. Once initiated, the next step is for the Province to contact the Federal Minister of Environment (Canada) to request substitution for an environmental assessment pursuant to the MOU. If approved, the Province will conduct the environmental assessment and Aboriginal First Nations consultation and prepare a report for consideration by the Federal Minister of Environment (Canada) and the BC Minister of Environment.

If the project is not approved for review under a substituted process, the Parties may enter into discussions to arrange a cooperative assessment or joint review panel.

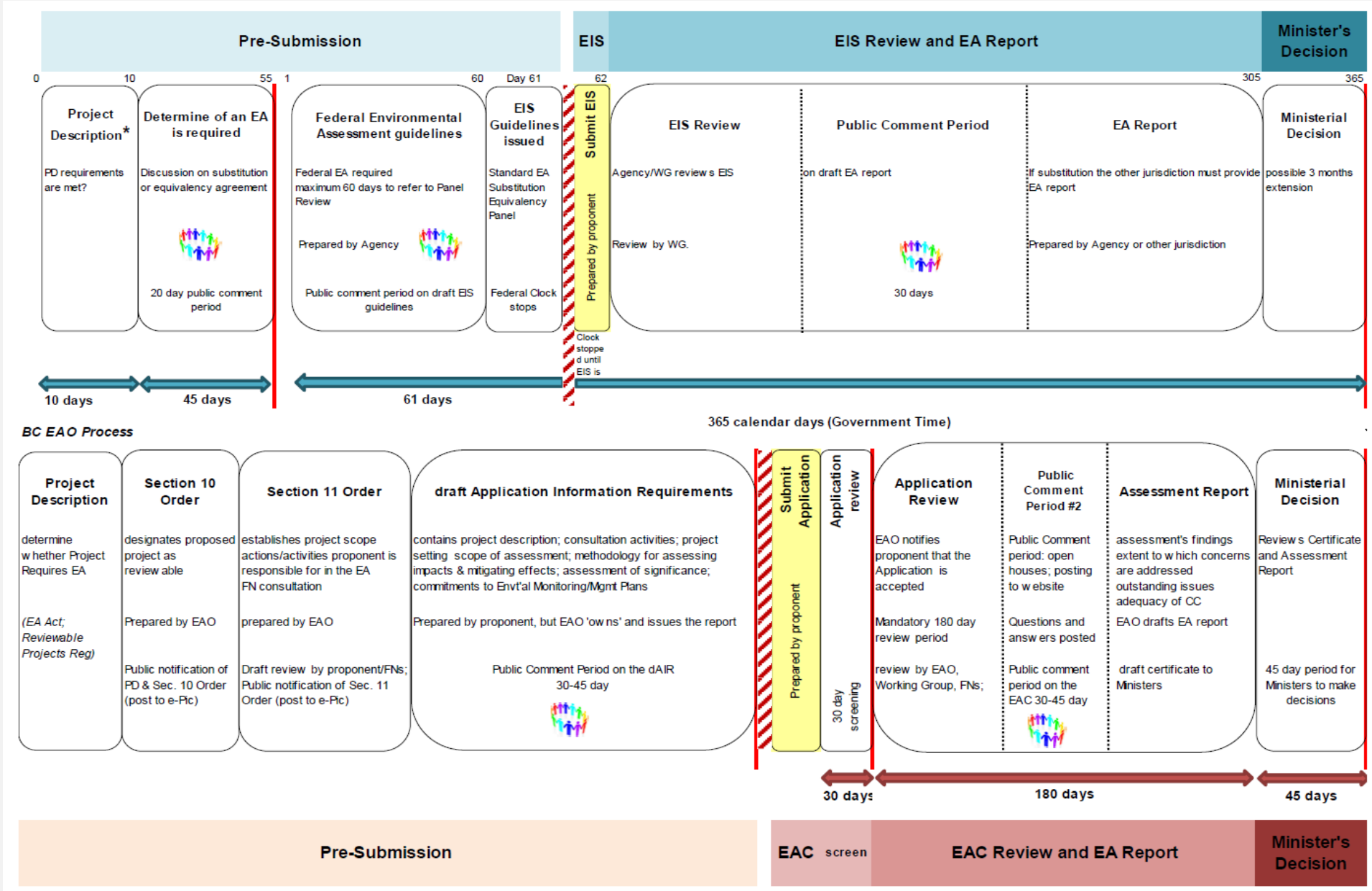
Key Issues

Important thing to recognise is the substitution process and its MOU has:

- Clearly defined timelines
- Establishes an administrative framework that leads to a decision by respective federal and provincial ministers
- Describes roles and responsibilities of for each party
- Facilitates information exchange on:
    - Project description

    - Information on Aboriginal First Nations consultation planning
    - Whether a project is in fact a candidate for substitution and if so, if an environmental assessment is required
- Enables coordination of decisions and announcements
- Provides for the implementation of a steering committee, responsible for:
    - Developing the terms of reference
    - Developing procedures and, guidance material
    - Resolving differences in interpretation of the MOU or substitution process, if it cannot be adequately managed and addressed by the provincial lead agency
    - Monitors the assessment process on an ongoing basis in order to identify opportunities to improve on the MOU
- The MOU between province and federal agencies can be terminated by either party after 45 days' written notice to either group. Any decision to terminate the MOU won't affect the substituted assessment approval by the Federal minister.
- To follow is a flowchart which shows the assessment process under the Canadian model.

Overview of Canadian Assessment Process



An improved approach – Xstrata Coal's proposed streamlined model

We recommend the streamlining of the major project development approval process across Australia and the adoption of a whole-of-Government development assessment process by Commonwealth, States and Territories, applied consistently in all jurisdictions.

Central to this approach would be a common set of environmental and social assessment criteria and methodologies embedded into respective Federal and State legislation. Consideration could also be given to specific sectoral issues.

Key attributes or elements of an alternative model include:

- Transparency in Government decision-making, particularly in relation to project approvals that are on critical time pathways, and improved (meaningful) consultation with industry prior to new regulations or legislation being introduced.
- Effort must be made by all jurisdictions to ensure that any new regulations or legislation must not duplicate existing regulations (including State/Commonwealth) and should meet robust criteria for good regulatory practice.
- The Commonwealth agrees to delegate its powers to the States/Territories through conditions established in bilateral agreements (including criteria to guide decision making) so that the States/Territories carry primary regulatory responsibility. Once a project is approved by the State/Territory regulator it is deemed to have been approved by the Commonwealth.
- While Government departments may continue to carry responsibility for separate legislation, the major project approval process would require establishment of a "lead coordinating agency" that will bring all relevant agencies together under a single point of coordination with appropriate authority and legislative oversight powers to make decisions or recommendations to Ministers.

  This "lead coordinating agency" model has been in place in Queensland for a number of decades and there is much which can be learnt from the Queensland experience. We refer the Productivity Commission to the table below which sets out the key features of the Queensland model, how these features have operated in practice, whether these features should be adopted in the new lead coordinating agency model and our comments as to what features/mechanisms would be more appropriate in the new model.

  The Queensland government has recently released a regulatory strategy which aims to streamline the process and make the lead agency model more effective in Queensland. We urge the Productivity Commission to review the Regulatory Statement (full details are included in the bibliography at the end of this submission),
- Project proponents would be required to make only one application for environmental approvals and would be entitled to make other necessary applications concurrently. This approach has recently been adopted in Canada in regions where we operate and we see this as a simple way to save proponents time and money in the approvals process.
- The Minister should be responsible for granting approvals.
- Clear, consistent and agreed terms of reference / methodologies and criteria to be used in the assessment process. These terms of reference / methodologies would need to be agreed by the Commonwealth and all States and Territories and should be made publicly available.
- Statutory timeframes in decision making processes are enshrined and there are deeming provisions to ensure projects are not delayed if statutory timeframes are not met.

  - Where appropriate the scope of pre-submission consultations between regulators and project proponents should define and be restricted to only the key material impacts associated with major projects, and therefore restrict the environmental assessment and approvals processes to the key material impacts.

- Acknowledgement that third party or external stakeholders are entitled to comment or scrutinise major project proposals. This input should occur at the start of the approval process (at the terms of reference, environmental impact statement or equivalent stage) rather at the end of the process to avoid costly delays or de-railing the assessment process.

- Providing third parties and external stakeholders with the opportunity to comment on proposals at the beginning of the process ensures that review can be limited to judicial review. Merits review at the conclusion of the process is not needed as these parties have already had an opportunity to provide their comments and a further opportunity simply undermines the decision-makers power and creates unnecessary delay and uncertainty.

- The Government may appoint working groups or Expert Committees and determine who is to sit on these groups and committees to ensure that all relevant parties and stakeholders have an opportunity to participate.

- Government appointed working groups or Expert Committees have a legitimate role in providing advice to the decision maker, however these groups cannot usurp the Parliamentary powers of elected Ministers to grant project approvals.

Figure 4: Lessons from the Queensland Lead Agency Model

The SDPWO Act has a number of provisions already which allow for the Coordinator-General under certain circumstances to take a proactive position in relation to the coordination and granting of approvals for specific projects. These provisions (mainly to facilitate private projects) include:

i. coordinated projects (under Part 4 of the Act)
ii. prescribed development (under Part 5)
iii. prescribed projects (under Part 5A)
iv. State development area (under Part 6)
v. private infrastructure facilities (under Part 6)

While coordinated project, State development area and private infrastructure facility provisions have been used extensively by the Coordinator-General to assist the planning and development of major projects across the State, the same cannot be said for the prescribed development and prescribed project provisions. These latter two provide the type of powers and provisions which this submission considers should be available to a lead agency, with the appropriate checks and balances.

For example, the objectives of the prescribed projects to provide a scheme for certain projects of significance, to be declared by the Minister to be prescribed projects, to prevent unreasonable delays in the assessment and decision stage for necessary approvals, licenses, permits or other authorities. The declaration of 'prescribed project' by the Minister will allow the Coordinator-General to:

- require the decision-maker to make a decision or undertake the process related to the prescribed decision or process *within a prescribed time period*; and
- the role of decision maker in relation to a prescribed decision or process and *assess and make the decision*.

It would appear, however, that despite the recognised purposes and availability, there may be a lack of political will to utilise the prescribed development and prescribed project provisions, even though there is an obvious need for such powers to be exercised from time to time to reduce delays, duplication in process and costs to the proponent and the State associated with major project assessment and approval.

Under the Queensland model, the Coordinator General (**CG**) has the ability under the *State Development and Public Works Organisation Act 1971* (Qld) (**SDPWO Act**) to declare a number of

different types of projects as a category of project which falls under the Act. The CG's powers differ depending on which type of project has been declared.

In our experience, the CG lead agency model is only effective if the lead agency is vested with the power and, critically, the mandate to steer projects to approval. In our view, this requires:

- sufficient legislative power to take decision-making out of the hands of various agencies or to direct agencies to make timely decisions (as discussed below in relation to 'prescribed projects' in Queensland);

- the commitment of the government of the day to drive a culture of **development** of projects rather than **assessment** of projects (while maintaining rigorous environmental and other standards); and

- the commitment of the government of the day to properly resource the lead agency and the other agencies responsible for assessment, to ensure that experienced and effective staff are retained and projects delivered in a timely fashion.

The table below outlines some features of the CG model and how these can be incorporated into a new lead agency model for major project approvals in Australia.

Features of the CG model	Benefits (in theory)	Examples in Queensland	Does Xstrata support the inclusion of this feature?	How this feature can be improved
The CG may declare different types of projects and has different powers in relation to each. For example a project is a: **'coordinated project'** if it has a complex approval process, is of strategic significance to the region or has significant environmental effects or infrastructure requirements; **'prescribed project'** if it is of significance, particularly economically and socially, to the State or Region; **'prescribed developments'** if the development is of major economic significance and affects an environmental interest of the State or region.	The most critical projects obtain the most attention and use of the CG's resources. However, the CG model is also available for smaller projects.	There are a number of 'coordinated projects', fewer 'prescribed projects' and no 'prescribed developments' declared to date.	Yes	We support this conceptually, but not necessarily the division of project type as currently exists under the SDPWO Act. E.g. significant mining projects (often declared as a 'coordinated project') would benefit from the increased powers to ensure timely decision making given to the CG for 'prescribed projects'.
The CG takes on the role of coordinating the environmental assessment for a 'coordinated project'.	Environmental approvals may be needed under various	A number of mining projects and other	Yes	The coordination of the environmental assessment of a project by the CG does not

	Acts; this ensures there is no duplication and each is issue/approval is considered in light of the others.	resources projects (such as the CSG - LNG projects proposed in Queensland) have been declared as 'coordinated projects'.		necessarily result in this process being fast-tracked. It would be beneficial if the CG could also issue notices to require timely decision making, as the CG may do for prescribed projects. In addition (and in contrast to a prescribed project), it has no impact on the other approvals which must be obtained.
The conditions imposed by the CG's report for a 'coordinated project' cannot be overridden by other agencies in certain circumstances. If the project includes a mining lease, any conditions imposed by the CG are taken to be included in the mining lease (if granted), and any such conditions override any other conditions to the extent of any inconsistency.	This is a necessary component of a successful lead agency model	Applies to all coordinated projects in Queensland	Yes	The lead agency's conditions should prevail in all circumstances, and other agencies should be precluded from imposing contrary conditions despite the circumstances
In considering objections against a mining lease or environmental authority, the Land Court is precluded from making a recommendation to the Minister which is inconsistent with the CG's conditions	This facilitates targeted Court processes, reducing unnecessary cost and consideration of matters which would be a waste of the Court's time	Applies to all coordinated projects in Queensland	Yes	We do not propose any improvements.
Compulsory acquisition of land and native title for 'private infrastructure facilities' (previously called 'infrastructure facilities of significance') may be allowed for a coordinated project (only as a 'last resort' and if specified criteria are met)	This is a significant benefit to proponents in the event that agreement on the purchase of land and/or negotiation with native title claimants is not successful.	Components of a number of projects have been declared 'infrastructure facilities of significance', including the Alpha Coal Rail Corridor project, the QCLNG,	Yes, but It is important that it is retained only as a 'last resort' option to encourage acquisition by	We do not propose any improvements.

		GLNG and APLNG projects.	agreement.	
For a 'prescribed project', the CG has the power to ensure timely decision making, by issuing a 'progression notice', a 'notice to decide' and a 'step in notice' (the latter only with the approval of the Minister),	This gives the CG model 'teeth' so that timely decision making can be steered by the CG through the various decision making agencies.	[This information does not appear to be publicly available. Does Xstrata have any experience of this?]	Yes.	We support the inclusion of this feature for other types of projects (i.e. not just 'prescribed projects' in Queensland). To avoid this power being abused, it could be subject to particular criteria depending on the type of project. Our view is that this feature is important for any project being coordinated a lead agency. Without this, the lead agency lacks the ability to enforce his/her directions and becomes a 'toothless tiger'.

Figure 5: Conceptual Model for Major Projects (Environmental Approval)

Notes: 1. Coordinator General to provide a link between the Proponent, the relevant Government agencies and the independent review body (if one is deemed necessary). 2. Target timeframe is 4 to 6 months from date of lodgement of applications to date of determination.

Specific responses to the questions raised by the Productivity Commission

No.	Questions raised by Productivity Commission	Xstrata's response to questions raised by Productivity Commission
1	Is a mainly qualitative approach to benchmarking appropriate for this study?	We are of the view that both a qualitative and quantitative approach to benchmarking is appropriate for this study as the qualitative results will give the quantitative data a more meaningful context. However, the effectiveness of this approach will be determined by the 'qualitative criteria or principles' adopted by the Productivity Commission. If a quantitative approach to benchmarking is adopted it is likely to identify significant differences in the DAA processes between the various States, Territories and at a Commonwealth level.
2	Are there specific aspects of DAA processes that can be benchmarked in a quantitative way? If so, what data should be used?	There are a number of aspects of the major project DAA process that can be benchmarked in quantitative ways including: a. assessment timeframes; b. compliance costs; c. court appeals and timeframes (including the number of appeals and the outcome of these appeals).
3	Are there appropriate assessment criteria for benchmarking major project DAA processes in Australia and international jurisdictions? Are additional criteria relevant?	We generally agree with proposed assessment criteria as suggested by the Productivity Commission in the Issues Paper but would like to note the following. Xstrata Coal suggests that the proposed criteria "consistency with other regulations" should be expanded to "regulatory duplication and inconsistencies". In addition, mandatory statutory timeframes related to decision making and objections should be incorporated as an assessment criterion for benchmarking major project DAA processes in Australia and international jurisdictions In the context of mandatory statutory timeframes, consideration should also be given to deeming provisions in relevant statutes whereby a failure to make a submission within the statutory timeframe means a party is deemed to have no comment or no objection to the project. In Queensland the *State Development and Public Works Organisation Act 1971*, section 27(2) stipulates that for a project to be declared as a "coordinated project" at least one of the following is to apply: a. complex approval requirements imposed by a local Government, the State or the Commonwealth; b. strategic significance to a locality, region or the State, including for the infrastructure, economic and social benefits, capital investment or employment opportunities it may provide; c. significant environmental effects; d. significant infrastructure requirements. Note that at Commonwealth, State and Territory levels there are definitional differences as to what constitutes a major

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		project. This means that what may constitute a major project in NSW may not trigger the major projects assessment regime in another State. There should be a 'national definition' as to what constitutes a major project. Ideally, if the Commonwealth, States and Territories adopted an effective single development assessment process that was then enshrined in each States' or Territories' relevant legislation would be preferable. In considering proportionate and flexible regulatory requirements, the Commission should also be mindful of the range of development pathways available in some jurisdictions such as Queensland. As an example, a coal mine in Queensland may be developed via the *State Development and Public Works Organisation Act 1971* or the *Environmental Protection Act 1994*, as both Acts provide for project development requiring an Environmental Impact Statement (EIS). If a single development assessment process were nationally adopted for major resource projects, the streamlining and removal of effectively duplicate legislation could facilitate more cost-effective, clear, predictable, open and transparent processes. Also consideration should be given by the Commission of not only the Acts or Regulations, but also the supposedly complementary guidelines, standards, operational policies and procedures or similar documentation prepared by Government agencies but not necessarily referred explicitly to in an Act or Regulation that influence the implementation, consistency, effectiveness, clarity and predictability of regulatory outcomes for developments. It can be these documents that can drive increased development costs and timeframes due to: a. lengthy negotiations with Government agencies; b. repeated requests for information from Government agencies with no fixed timeframes for an outcome for a Government agency to make a decision; c. impractical criteria that is overly conservative which lacks a risk based approach and stipulates a worst case scenario design for everything. In considering the accountability of decision makers, the use of mandatory statutory timeframes for decisions may assist in driving more effective and timely decisions from Ministers, Ministers delegates, departmental officers, and Judges of where required, the Court (such as the Land Court in Queensland). Project developers are regularly faced with stipulated timeframes for delivery of specific milestones in Acts and Regulations, but this is not universally, equally and/or proportionately applied to Regulators and decision makers. In the case of major project development in Queensland, assuming the application of the *State Development and Public Works Organisation Act 1971*, a largely qualitative approach is applied in determining what projects are suitable to be "major projects", as described in sections 27(1) and 27AB of the Act: (a) detailed information about the project given by the proponent in an initial advice statement (b) relevant planning schemes or policy frameworks of a local Government, the State or the Commonwealth (c) relevant State policies and Government priorities

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		(d) a pre-feasibility assessment of the project, including how it satisfies an identified need or demand (e) the capacity of the proponent to undertake and complete the EIS for the project (f) any other matter the Coordinator-General considers relevant (g) a separate statement detailing the proponent's financial and technical capability to: i. complete an EIS for the project; and ii. provide any supplementary information requested by the Coordinator-General under section 35(2); and (h) a separate statement (pre-feasibility assessment) assessing the technical and commercial feasibility of the project.
4	Should these assessment criteria be weighted in evaluating the efficiency and effectiveness of assessment and approvals processes in different jurisdictions? If so, how should trade-offs between assessment criteria be managed?	Rather than applying a formal weighting scale to criteria, it may be appropriate to develop an approach that establishes some form of prioritisation to relevant assessment criteria.
5	How should the choice of 'peer' countries for benchmarking be determined? How important is it to focus on countries with similar community preferences, levels of economic development and legal and Government systems? Are other criteria, such as those countries that compete with Australia, relevant?	Peer countries for benchmarking purposes should be chosen on the basis of how strong the statutory development processes are in each relevant country as determined against the assessment criteria identified in the Issues Paper. Recommended peer countries are: 1 Canada – similar environmental and planning assessment processes to Australia (we have provided a case study on the Canadian system in this submission); 2 United States of America - however the system in the USA differs to Australia in that it has both State and Federal laws and agencies. Those agencies which are typically State agencies in Australia are Federal agencies in America (e.g. the Environmental Protection Authority and the National Parks Service are both Federal agencies in the USA). 3 United Kingdom - the jurisdiction on which Australian planning laws are based; 4 New Zealand - although New Zealand does not have a major mining industry the principles and processes in the relevant legislation (the *Environment Act 1986 (NZ)* and the *Resource Management Act 1991 (NZ)*) may be adapted to the development assessment processes for major resource projects in Australia.
6	Should the choice of 'peer' countries vary across economic activities? For example, are the	For the purposes of benchmarking DAA processes across international jurisdictions it is not necessary to vary the 'peer' countries for different types of economic activities. The purpose of the benchmarking exercise is to identify

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	most relevant jurisdictions for benchmarking DAA processes for major mining projects different to those for major infrastructure projects?	efficient and effective DAA processes for major projects. Whilst acknowledging that mining is not a major industry in the United Kingdom and New Zealand, it is feasible that the processes in these countries may be worthy of consideration in that principles and processes under the relevant legislation may be adapted for development assessment processes for major resource projects in Australia.
7	Which countries (or sub-national jurisdictions) do you see as particularly successful at designing and administering efficient DAA processes for major projects? What aspects of their arrangements are especially attractive? Do you have direct experience with, or can you provide evidence on, DAA processes in other countries that work well?	Canada is recognised as being reasonably successful at designing and administering efficient DAA processes for major projects. We have operations projects in British Columbia, Canada, and the DAA process in this State has recently been changed to streamline the process. Under the new streamlined process, proponents will be able to make just one submission in order to get obtain both Federal and State approvals. The Canadian model uses working groups from very early on in the assessment process in an attempt to deal with issues early on in the process. Once a decision is made, judicial review is the only form of review available (there is no merits review). More detailed information regarding the system in British Columbia is included in the Canadian case study included in this submission. The system in British Columbia is so new that it is only just being implemented so we are unable to comment on the effectiveness and efficiency of the new system at this stage. However, we support this streamlined process and we are hopeful it will improve the efficiency of the DAA process in Canada. As discussed in further detail throughout the submission, Xstrata Coal supports the concept of a 'lead agency' model. Specifically, we support the introduction of such an office which has 'teeth', i.e. the power to steer the timely development of a project, without compromising environmental and other assessment.
8	Is there other information or data that the Commission could draw on in undertaking this study?	The Productivity Commission may wish to consider the approval process and system for major infrastructure projects in both NSW and Queensland as an example of how the process operates. We also refer the Productivity Commission to the list of additional reading included in the Appendices to this submission. Xstrata Coal welcomes the Queensland Government's recently announced regulatory strategy, which (quoting from http://www.ehp.qld.gov.au/management/planning-guidelines/policies/regulatory-strategy.html) recognises that: (a) the department's role is to set the limits on what an approval holder can do; (b) that business and industry are best-placed to work out how to stay within those limits; and (c) that the responsibility for managing the risk from an activity sits with the person carrying out the activity and not the department, and commits the department to: i. working collaboratively with industry and the community to develop standards to manage and protect the environment and heritage places; ii. reducing red tape by streamlining the process of applying for approvals from the department, and imposing approval conditions that focus on the outcomes the client must achieve; iii. increasing its monitoring of clients to check that they are complying with their obligations and taking strong enforcement action where necessary.

No.	Questions raised by Productivity Commission	Xstrata's response to questions raised by Productivity Commission
9	Which case studies examined as part of other reviews provide useful insights? What sorts of new case studies should the Commission undertake?	The Commission should consider actual case studies. We provide a number of case studies which highlight the issues and difficulties associated with the current system. These case studies include Australian case studies from New South Wales and Queensland as well as an international case study from Canada.
10	How do 'call in' powers for Government Ministers operate in practice? In what circumstances do these powers apply? How does this differ across jurisdictions?	By way of example, in NSW the Minister's power to 'call in' major projects is based on the project satisfying specified criteria in the *State Environmental Planning Policy (State and Regional Development) 2011*. Despite the Minister's power to determine these major project applications, in almost all cases, this power has been delegated to the Planning Assessment Commission. Recent amendments to the Commonwealth EPBC Act have introduced the concept of a 'large coal mine' with associated 'call in' powers for the Federal Minister. However, the definition of 'large coal mine' is incredible vague and only serves to add uncertainty as to whether a particular project falls within the purview of the EPBC Act. In Queensland, 'call in' powers are available in certain circumstances for developments assessed under the *Sustainable Planning Act 2009* (Qld). Under the *State Development and Public Works Organisation Act 1971* (Qld) (SDPWO Act), the Coordinator-General may issue 'step in' notices to local Governments or other assessment agencies if the CG considers that the assessment process has become unnecessarily prolonged. While these powers exist we note that there is a pronounced reluctance by regulators to exercise these powers in practice in relation to major projects (and in the case of resources projects in Queensland, the call in or step in provisions generally do not apply). However, we support the use of these 'call in' powers where appropriate and believe where preconditions for their use are clearly met, then in consultation with key stakeholders the regulator should be encouraged to consider greater use of these powers. In addition to project-wide 'call-in' powers, there are examples of decision-specific powers which allow a 'lead agency' to issue step-in, progression and decision notices in circumstances where another agency has responsibility for a decision but has failed to do so in a timely fashion. One example of these powers exists under the Queensland Reconstruction Authority Act 2011 (Qld), which was passed to form the Queensland Reconstruction Authority and empower it to take action in response to natural disasters which have had a significant impact on Queensland infrastructure.
11	How do preliminary assessment (or 'sifting') mechanisms operate in practice? How is responsibility for these assessments assigned? Does this vary between jurisdictions and between levels of Government?	We support an approach across jurisdictions to introduce preliminary assessments that are targeted and limit the scope to key material issues, otherwise there is a risk that the preliminary assessment process becomes too broad and adds little value. Preliminary assessments are relatively new and differ significantly between jurisdictions. In some States the preliminary assessment processes are formally implemented whilst in other jurisdictions the process remains informal and voluntary, or lacking in any real detail. Xstrata Coal is of the view that such a process is a key contributing factor to delay in completing the already extensive project approval process. The requirement for a preliminary assessment can add 3 to 6 months to the front end of the approval process. Our experience is that preliminary assessments become redundant where Government agencies ask applicants to

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		'cover the field' of issues in the development assessment process, regardless of the substantive merits of each particular issue and its relevance to the specific project, so the preliminary assessment mechanism has little effect in practice.
12	How has the timeframe involved in major project DAA processes in Australian jurisdictions changed over time? How does it compare with the international experience? Has it led to better regulatory outcomes?	The timeframes for the assessment of major projects in Australia have increased over time to such a point where it now sometimes takes Xstrata Coal 3+ plus years to obtain all approvals for a mine. For example, the Wandoan Coal Project is now well into its 6th year of assessment, with final statutory approval timeframes still uncertain. We are aware from our international experience that the assessment times for major projects in other jurisdictions is significantly less. Unfortunately, longer assessment timeframes not only add to project costs and uncertainty for project proponents, but also poses ongoing uncertainty for communities and local businesses connected to the project. A deemed approval mechanism for all DAA processes would encourage a consent authority to determine the development application within the required statutory timeframe. Presently there seems to be little incentive for consent authorities to determine applications in time. Additionally, the current deemed refusal regime creates significant expense for proponents who are required to commence Court proceedings to obtain a merits review of the application. We consider a provision similar to that contained in section 331 of the *Sustainable Planning Act 2009* (Qld) would be a suitable addition to the planning laws in other States. Generally, this provision provides that once the decision-making period passes without a decision having been made, the proponent may give a 'deemed approval notice' to the assessment manager, each referral agency and the local Government. Within 10 days of receiving the deemed approval notice, the assessment manager must give the proponent a decision notice approving the application, or approving the application subject to conditions. There is a similar provision which now applies in Queensland to applications for environmental authorities following the passage of the Environmental Protection (Green tape Reduction) and Other Legislation Amendment Act 2012 (Qld). The *Environmental Protection Act 1994* (Qld) now includes a 'deeming' provision which means that a standard application will be automatically decided on standard conditions if no decision has been made within the required period. We support this type of deeming provision as it encourages timely decision making, but we do not support a model which results in the application not being properly considered. For example, the Queensland reforms mean that an application for a variation (i.e. non-standard conditions) is deemed to be decided on standard conditions if no decision is made within the time period. This encourages decision makers to refrain from making any decision and disadvantages applicants who likely have a good reason for seeking a variation from the standard conditions.
13	Are major project DAA processes subject to unnecessary delays? If so, what factors or regulatory processes are contributing to unnecessary	Ideally there should be a single agreed national set of development assessment criteria for all major projects, which could be similar in format to the National Environment Protection Measures. We believe that having national assessment criteria would greatly improve the approvals system and reduce delay and uncertainty.

No.	Questions raised by Productivity Commission	Xstrata's response to questions raised by Productivity Commission
	delays? What costs do unnecessary delays impose?	We are of the view that major project DAA processes are almost always subject to unnecessary delays. The principal factors contributing to these unnecessary delays include: a. Government agencies prefer an applicant to 'cover the field' of issues in the development assessment process, regardless of the substantive merits of each particular issue and its relevance to the specific project; b. The volume - and often duplication - of laws, regulations, policies and guidelines. As an example, we have attached a list of the legislation relevant to the mining approvals process in NSW and Queensland to this submission. The list highlights that, in addition to the thirty-four Queensland laws and seventeen NSW laws there are also eight Commonwealth laws which potentially apply to the approvals process for major projects. These laws are all administered by different Government agencies with very limited coordination; c. Government agencies are poorly resourced in financial terms (despite having received hundreds of thousands of dollars and sometimes millions in major project application fees which Xstrata Coal understands are specifically aimed at addressing the administrative costs of, and expediting the processing of, such applications within a reasonable time frame). For example, in NSW this resourcing issue has been compounded by the recent increase in the use of the Planning Assessment Commission and its interaction with Department of Planning and Infrastructure on project assessments; d. Government agencies have insufficient staff at a level of knowledge and experience in the major projects assessment teams at a level of experience that is not commensurate with the complexity and extent of the issues that arise in connection with major mining projects; e. Broader recognition of the deleterious implications of unnecessary assessment measures and delays, for example in Queensland multiple and delayed requests for information by different arms of Government (even within a single Department) has resulted in extended delays in the assessment of water licences and other approvals; f. Limited appreciation within Government of the commercial and global investment drivers behind the development of major projects, and the sovereign risk created by lack of decision making, ad hoc changes/interpretation of legislation and related assessment processes; g. A lack of consistency of approach by Government agencies because of an absence of guidelines or policies about how legislative provisions should be applied; h. A lack of consistency of approach within each of the Government agencies because of apparent personal preferences in the interpretation of available guidelines or policies about how legislative provisions should be applied; i. Conflicting views of different agencies and the inability or unwillingness of key decision-makers to resolve matters efficiently and effectively. For example, in NSW the Department of Planning and Infrastructure does not step in to resolve matters, resulting in major projects being held up for lengthy periods of time with no progress being made. In the Queensland context, although not applying to mining projects, the call in powers of the Minister/s under SPA do not apply to mining, but there is no equivalent provision to 'call in' to resolve stalemates in the

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		assessment process for mining projects. also appear to be used more on an ad hoc rather than consistent basis; j. The desire to be seen to make independent and transparent decisions, which can lead Government agencies to take an overly cautious approach or consider issues which are not applicable in the particular case; k. Unnecessary duplication of responsibilities; l. Lack of flexibility within the approvals system to allow for the implementation and modification of mining projects, which by their nature involve a level of fluidity and change that is unique to this industry; m. Landowners' consent being withheld or delayed in situations where the landholder is the Crown, the administering body is a Government agency and the development is occurring in an area that is specifically designed to where mining is to occur; n. Failure to have a single decision-maker or approval lead agency that has the authority to compel timely recommendations or decisions on approvals. We would strongly recommend further review and extension of a body such as the Office of Coordinator-General in Queensland as a possible model that could be adapted to improve the timeliness of decision making and coordination of Government agencies and approvals at a Federal, State and Territory level. o. Third party objector appeal rights and automatic standing of objectors in courts with little, if any, cost implications; We have prepared a table which highlights how legal proceedings commenced by third parties have contributed to significant delays in the obtaining final approval for mining projects. p. Inability or unwillingness of Government agencies to work meaningfully with proponents to achieve better environmental, social and economic outcomes; and q. Government agencies imposing policies or implementing practices which differ from the available avenues or requirements under legislation. For example, in Queensland, coal miners such as Xstrata face significant cost and delay in dealing with overlapping petroleum (including coal seam gas) projects. Although the legislation includes a 'circuit-breaker' in the Minister's ability to make a 'preference decision' between competing projects, proponents of both industries are aware that this power has never been used and departmental practice requires the parties to reach an agreement, which must then be separately approved by the Minister (a process which is also subject to significant delay). The post-approval phase must also be more certain and efficient, particularly in relation to appeal rights and subordinate approvals. In terms of third party objector appeals there are ways in which to improve the process and reduce the additional time and costs associated with these subsequent appeals. We submit that the issues or mechanisms that should be considered as part of the Productivity Commission's report include the following: a) Public notification and submissions regarding the project should be focussed on the early initial terms of reference or EIS stages only:

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		b) Limiting appeals on approval decisions to judicial review (i.e. there would be no merits review for major projects development approvals that have included public notification, public consultation and call for and review of submissions). In order to do this, there would need to be a process whereby any interested parties are able to comment or object to an approval early on in the development application process and not beyond the EIS stage. The only exception to this would be if a public hearing, commission of inquiry (or similar) was held. - Public involvement at the beginning of the process could be through public hearings or possibly through working groups (working groups are used in Canada). Allowing public involvement by any interested party at this stage would negate obviate the need for merits review; c) Preference for consistency in making the period for making an application for judicial review of any approval to be 28 calendar days in all jurisdictions (28 calendar days is the current period for merit appeals in most Australia jurisdictions); d) If the Productivity Commission chooses to adopt a model which includes merits review, we submit that third party objector merit appeals should be limited to the subject matter of the objector's submission to the consent authority (ie the Minister) in relation to the application. - Based on recent experience in a third party objector appeals in the NSW Land and Environment Court and the Queensland Land Court, it is not uncommon for an objector to raise additional issues in Court that were not the subject of the original submission (or indeed matters that had been considered and assessed as part of the original approval). This means the proponent and in many cases the consent authority are required to dedicate significant resources, not to mention the Court's resources, on an issue that could have been fully canvassed at the assessment and determination stage. Recently the NSW Land and Environment Court refused approval for a mine on the basis of traffic impacts which were not pleaded by the applicant (objector) in the proceedings. - Xstrata Coal submits that all States and Territories should have provisions which limit objectors to a single opportunity to have their objection considered. - In some circumstances (such as the QLD Land Court's consideration of objections to a mining lease), merits appeals in Queensland are limited to parties who have previously objected or commented on an approval and appeals must be on the specific issue which was raised in the objection (rather than a broad range of issues, including new issues). We submit that all States and Territories should have provisions which limit objectors to a single opportunity to have legitimate objections considered; e) If merits appeals are allowed for major project approvals in NSW, we suggest that the circumstances in which a merit appeal is available to an objector after involvement by the Planning Assessment Commission (PAC) in the review/assessment of a development application should be limited. We consider given the independence, make-up and powers of the PAC and considering its "quasi-judicial" functions there should be no right of merit appeal available to third party objectors if the PAC has:

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		- reviewed an application at the request of the Minister and made recommendations to the Minister to approve the application; or - determined an application; or - undertaken a public inquiry, or hearing or meeting in relation to an application and heard considered submissions including from anyone who has made a written submission either to the PAC or the Minister in relation to an application. f) Limiting any right for a third party to object or be heard on a project approval to legitimate objections brought by an entity with appropriate standing with respect to a the project, for example directly impacted landowners; g) Requiring an independent arbiter to determine whether a legal challenge satisfies a certain 'materiality threshold' within defined timeframes before subjecting the objector, the proponent and the consent authority to a costly and extremely lengthy litigation process; h) Consideration should also be given to the potential for court challenges to substantially delay the commencement of development and the associated benefits that will be delivered to the States and Territories; - We would support (subject to exceptional conditions) a requirement where the relevant Court is required to provide a recommendation within a known timeframe, rather than "a reasonable time". What is "reasonable" to the Court (6 to 12 months) may be very unreasonable to a project proponent and its investors. i) Enabling proponents to claim costs of unsuccessful merits appeals. At present, proponents in many States and Territories cannot claim any costs for successfully defending a merits appeal of a project approval/development consent. We submit that legislation such as the *Land and Environment Court Act 1979 (NSW)* be amended to enable proponents to claim costs for any unsuccessful merit appeals. Such an avenue for cost recovery would go some way to addressing the present situation where objectors are entitled to pursue 'public interest' litigation with poor prospects of success, seemingly for the purpose of delaying the commencement of development and causing the proponent to incur additional expense, and without any exposure to adverse costs orders. In Queensland, a proposed amendment to the Sustainable Planning Act 2009 (Qld) was abandoned, which would have introduced a general presumption that 'costs follow the event' (as opposed to the regime where parties bear their own costs in the Planning and Environment Court). The legislation was amended so that in limited circumstances, the Court may award costs, unless otherwise ordered. We can provide an example (among others) of the significant delays in the project approval process. In August 2008 we lodged a Preliminary Environmental Assessment and major project application under the former Part 3A regime in NSW for the Ulan West expansion Continued Operations Project. Due to various delays it took the Minister for Planning until November 2010 to determine the application (i.e. over two years). The approval was then challenged by a public interest litigant in the NSW Land and Environment Court in December 2010. The hearing occurred in June 2011 and the outcome of that appeal remained was not finally determined until March 2012. It was extremely disappointing that it was more than three and a half years passed from lodging its development application before to

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		a final determination that the project was able to proceed.
14	Does the timeliness of DAA processes for public and private sector initiated projects differ?	Our observation is that public sector initiated projects are generally processed more quickly than private sector initiated projects. There are a number of possible reasons for this including: a. Decision makers at all levels act more quickly for public sector initiated projects; b. There are fewer appeals against public sector initiated projects. For example, in NSW one key reason why the DAA process for major projects carried out by the public sector is quicker than the process for the private sector is the fact that third party objector appeal rights against public sector projects is significantly limited. This provides greater certainty to a public sector project once approval is granted.
15	Is the time that it takes to complete a DAA process predictable? If not, what are the impacts of, and factors contributing to, a lack of predictability? Are there ways to shorten the duration and improve the predictability of DAA processes while still meeting regulatory objectives?	The DAA process for major projects and the associated timeframes is not predictable in any way despite (in some jurisdictions) there being statutory timeframes by which an application must be determined. The reasons for this unpredictability are essentially the same as the issues identified above in response to Question 13 regarding the principal factors contributing to these unnecessary delays. It should also be noted that in some circumstances project proponents may be the cause of time delays due to internal approval or review processes or unforseen developments. Methods to improve the predictability of this process could include: a) the State Government agency coordination, cooperation and resourcing could be streamlined and made more efficient by the adoption of a 'whole of Government approach' to major project assessment, including implementation of timeframes for development assessment and determination. This approach would limit duplication and shorten the duration of the process whilst also achieving much needed certainty; The Queensland model already exists under the powers and functions of the Coordinator-General through the SDPWO Act. However, despite these existing provisions, it is argued that the practical application of the whole of Government facilitation through the CG's office is lacking, primarily through a lack of resourcing, knowledge and experience. b) in NSW, the Minister for Planning and Infrastructure should be responsible for making determinations in relation to all major projects and this function should not be delegated to any other body individual; c) in NSW and Queensland, the hierarchy, consistency and strategic purpose of plan making should be improved through the flexible application of these plans in order to enable the coexistence of multiple land uses, where appropriate, and to realise the full economic and social potential of a locality; d) the post-approval phase must be more certain and efficient for proponents, particularly in relation to appeal rights and subordinate approvals including project specific management plans; and e) the planning system should allow more flexibility for the implementation and modification of mining projects without the need for additional approvals (or at least a simplified and truncated approval process for modifications of a less material nature than an entirely new project).
16	Do major project DAA processes impose unnecessary compliance	Major project DAA processes certainly impose unnecessary compliance costs on proponents and there is no doubt that compliance costs have increased significantly in recent times. The compliance costs are significant and include:

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	costs? How significant are these costs? Can you provide evidence of this? Have compliance costs been increasing or decreasing in recent years? How do compliance costs associated with DAA processes compare with the international experience and across jurisdictions in Australia?	a) Preparing environmental impact assessments (EIS, ESIA, EIA depending on the State), with the EIA Terms of Reference driving a one size fits all approach. This results in EIAs devoting time, effort and expense in areas that have little or no relevance to the project. For example, an EIS Terms of Reference (ToR) requiring a proponent to prepare an EIS that provides impact assessment on marine species (dolphins, whales, etc) for a coal mine project that is located in Western Queensland with a 400km+ river length between the project site and the marine environment. - A marine study of the negligible impact can still cost a proponent tens of thousands in reporting and Government negotiation. Add this type of ToR scope across multiple EIA topics (noise, air, water, ecology, visual amenity, etc.), and the cost of addressing ToR scope that has little or no relevance to the project and provides no positive environmental or social outcome, can easily exceed hundreds of thousands of dollars within months of a project EIA commencing. b) We recommend that a risk based approach is adopted by Government agencies (in consultation with the proponent) when developing the ToR for a project, ensuring that only relevant issues are addressed and the ToR documents the risks considered. c) Preparing a wide range of management plans which each need to be reviewed annually, regardless whether or not any changes have occurred during the year. For example, Environmental Management Plan, Water Management Plan, Air Quality Management Plan, Noise and Blasting Management Plan, Vegetation Management Plan, Cultural Heritage Management Plan. The departmental requirements for the content of these management plans have expanded in recent times such that management plans are regularly hundreds of pages in length. Aside from the initial cost of preparing those plans, the ongoing cost of complying with such management plans is substantial and often involves the employment of staff who are dedicated to implementing the requirements of the management plans; d) Auditing of management plans and project approval conditions (noting that in NSW it is the proponent's responsibility to pay for the costs of the independent auditor appointed by the Department of Planning); e) Reporting on and auditing other statutory approvals and licences. For example, in NSW each mining operation is currently required to report on its environmental performance to at least three separate Government agencies and the format for such reports are is different for each agency despite the information being largely the same; f) Biodiversity offsetting requirements are unnecessarily excessive. In our experience agencies often rigidly apply a set ratio rather than assessing the need for offsets on a case by case basis. The involvement of both State/Territory and Commonwealth agencies in determining offsets also increases compliance costs. While each coal mine approval costs vary, the typical costs for a proponent in consultancy fees alone to prepare an Environmental Impact Statement (EIS), Supplementary EIS and negotiate a Coordinator-General's Report in Queensland for a new coal mine, rail or port can range from $3 million to $15 million per development type. Expansion of an existing mine that requires preparation of an EIS and amendment to an existing Environmental

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		Authority will typically cost between $1.5 million to $12 million, depending on the size and complexity of the expansion and any associated infrastructure. In Queensland, fees stipulated by Government agencies for the submission of project applications typically range from $30,000 to $150,000 per application, with a major project often requiring multiple applications for various facets of the development. Application fees alone to progress a major project can easily exceed $500,000 with no guarantee from Government agencies that specific Government staff will be dedicated to work on the project, that Government staff will be suitably relevantly qualified and experienced in mining to understand and comprehend the complexity of a mining project, and also that any statutorily defined timeframes for Government agencies will be met. The fees paid are well in excess of the costs to pay Government staff salaries and overheads for the staff put forward to co-ordinate a project, with the level standard of service from Government agencies not matching the fees stipulated in Regulation. The imposition of approval conditions under the EPBC Act also increases compliance costs across Australia, particularly when those such approval conditions duplicate or impose additional requirements that are similar to State or Territory requirements.
17	Are particular processes or areas of regulation especially costly? For example, compliance costs associated with offset provisions, or post-approval conditions? How can unnecessary costs be eliminated or reduced while still meeting regulatory objectives?	There are a number of processes and areas of regulation which are especially costly for Xstrata Coal. These are: a) Biodiversity and other offset provisions. We find the compliance costs of offset provisions high for two reasons: - First, both States/Territories and the Commonwealth have offset policies and these policies often differ. - Second, there is a lack of scientific rigour in determining ratio offsets and this results in uncertainty and unpredictability. For example, it is not uncommon for a State agency to require an offset ratio of 1:6 and the Commonwealth to require a ration of 1:10. Not only are there costs associated in dealing with two agencies, but these costs are then increased even further when there are different requirements to be met by the different levels of Government. b) Offset costs can obviously be reduced by having a streamlined development assessment process with one set of offsets required (covering both Commonwealth and State requirements). We also suggest that the Productivity Commission consider a range of models for meeting offset requirements. For example, one approach currently used allows proponents to contribute funding into a Government trust for offset projects rather than individually purchasing land (and potentially competing for the same parcel) and carrying out offset projects themselves. This model would simplifies the process greatly and reduce compliance costs for proponents whilst still meeting regulatory objectives. c) The Productivity Commission may wish to examine the current Upper Hunter Strategic Assessments initiative which is being undertaken by the mining industry in NSW in conjunction with the Commonwealth and NSW Governments. Although in its early stages, this initiative has the potential to produce a greatly enhanced approach to offsetting for major mining developments.

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		d) Auditing and reporting requirements. We pay significant sums of money to independent auditors to prepare monthly, quarterly and annual reports on a wide range of issues. Whilst we agree that auditing is important, the current scale and volume of reporting required is burdensome. National environmental standards will go some way towards reducing this compliance cost as proponents will be able to adopt the same processes and reporting guidelines across jurisdictions. e) There is an apparent 'rising tide' of regulatory requirements, whereby a new or more stringent condition on any one project seems to set the standard for subsequent projects, whether or not there is a sensible environmental reason for that particular condition or requirement to be imposed; f) Strategic cropping land (SCL) assessment, specifically in Queensland, has the potential to add significantly to the cost of assessment, but also has the potential to put at risk existing mine operations and projects under development. - The poor quality of Government mapping of SCL has seen significant areas of the State considered to be SCL, which has increased the assessment costs by proponents to then allow a determination by Government as to where land is, or is not, SCL. Under certain provisions, land may be developed even if SCL, for a fee of $6000 per hectare. - This fee does not take into account the significant costs to rehabilitate cost of that land, required to be undertaken as part of development conditions which could cost anywhere between $30,000 and $50,000 per hectare. We remain concerned that SCL could be applied retrospectively to an existing operation or approved projects (in circumstances where an amendment to an Environmental Authority will also trigger SCL assessment). Recent Government moves in Queensland to review the SCL provisions through the regional planning framework provide little if any comfort that mining will not be seriously impacted by any proposed changes. given the Government's apparent intent to prohibit open cut mining in what it deems to be 'priority agricultural areas'. g) Significant compliance costs are often a result of the multi-plenary State Government agencies that have compliance responsibilities and enforcement powers with respect to major projects, particularly large mining projects. Overlapping areas of responsibility between agencies and across jurisdictions represents the risk of conflicting compliance requirements and differing compliance obligations being owed to a variety of State Government agencies. Key issues in relation to compliance costs are often compounded include: - Duplication of legislation covering common areas which often results in a single incident triggering multiple breaches of legislation with multiple enforcement actions by different agencies and the imposition of multiple criminal penalties by agencies or the Courts; - If a particular incident is governed by one piece of legislation, and that incident was regulated by a single enforcement agency, duplicate or multiple charges would be avoided. However, this outcome is not always

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		achieved due to the recent trend (particularly in NSW) towards creating more offence a wider range of offences under separate pieces of legislation which are to be enforced by different Government agencies without coordination; - In addition, we consider that the current merit appeal and judicial review mechanisms should be improved to reduce costs and avoid delays in the planning process. Opening up additional opportunities for appeals and reviews will only create further uncertainty and erode investor and community confidence in the major project DAA process; - Most project approvals now contain a significant number of conditions (sometimes between 50 to 400 conditions) attached to project approvals and management plans. Many of these conditions require documents or plans to be prepared and subsequently approved by, or to the satisfaction of, the consent authority or State agencies prior to work commencing; - Satisfaction of these conditions often takes months, and in many cases significantly delays the commencement of the development for which approval has been granted (often after a lengthy application and assessment process in the order of two or more years). These further delays add to the uncertainty of the planning system, and create an additional element of commercial risk that is difficult to predict when making investment decisions
18	Are the regulatory objectives of major project DAA processes at all levels of Government clearly defined? Are there specific examples of inconsistent or contradictory regulatory objectives within or across jurisdictions? How have regulators sought to balance competing policy objectives?	The regulatory objectives of major project DAA processes often overlap with the objectives and controls imposed by other State legislation relating to protection of the environment and the built environment e.g. in NSW the objectives of the *Environmental Planning and Assessment Act 1979* overlaps with the *Heritage Act 1998* and the *Water Management Act 2000*. These overlapping objectives mean that various State Government agencies have the power to impose assessment requirements and compliance requirements in relation to the same issue but with different outcomes. In Queensland, amendments to relevant legislation are proposed (under the Land, Water and Other Legislation Amendment Bill 2013) to remove water licence requirements for creek diversions taking place on the area of a mining lease, where the environmental impacts have already been looked at under the Environmental Protection Act 1994 (Qld). This is a sensible amendment, reducing unnecessary layers of assessment In addition, The objectives and roles of each level of Government are often poorly defined. In the past this has led to inconsistencies, inefficiencies and conflict between agencies in assessment and enforcement of approvals. Accordingly, it is critical that the procedural aspects of any planning system are streamlined and that agencies have clear guidance in relation to consistent application of relevant legislation to avoid this outcome. It is important that the objectives of the planning system promote the achievement of desirable economic, social and environmental outcomes.
19	Are the roles and responsibilities of agencies involved in assessing and approving major projects clear? Is there overlap in the functions	The coordination of consent authorities with various Government agencies needs to be improved and made streamlined so as to provide a 'whole of Government' approach to planning and assessment. In particular there needs to be:

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	agencies perform?	(a) Authority to better co-ordination between the lead department (e.g. the Department of Planning in NSW or the Office of the Coordinator General in Queensland) and other agencies in relation to the assessment and determination of applications relating to the coal mining industry; (b) greater consistency of approach to the assessment requirements for the determination of applications for State Significant Development (NSW) and Coordinated Project (Queensland); and (c) meaningful early consultation between the lead department and the proponent to identify whether there are any likely material issues, including any raised by other Government agencies, associated with the proposed project which need to be more fully addressed in the environmental assessment process. The development application, mining lease application and environmental authority application processes and the Government bodies responsible for assessment and determination of these applications should be co-ordinated so that the applications are considered at the same time and any issues required to be assessed addressed by the proponent can be done once rather than multiple times to minimise the costs and time involved in obtaining these approvals. From our experience there is often significant time lost during the assessment period due to delays in various departments providing concurrences and other approvals. Time frames should be legislated for agencies to respond to requests for information or advice in relation to environmental assessments and environmental assessment requirements. If an agency does not respond within that time frame, there should be a deeming provision whereby the relevant agency is deemed to have no comments or objections. On a project by project basis the coordinating body should have capacity to stipulate and enforce time frames for agency decision-making to give proponents and the community more certainty regarding the likely timing for determinations. We suggest that there be a deemed approval provision, so that if a Department does not respond within a certain time, their concurrence or approval to a project is deemed to have been given (as is the case, for example, under the *Sustainable Planning Act 2009* (Qld) : section 285) and, as noted above, in relation to certain applications under the recently amended Environmental Protection Act 1994 (Qld). . Additionally, agencies should prepare and publish guidelines or protocols to: (a) guide their decision-making; (b) clarify the information required of proponents; and (c) identify the scope of discretion or the relevant issues to be considered by such agencies in their decision-making, although it is important that agencies should not seek to limit their own discretion where this is not provided for in legislation. Where approvals are not included in a streamlined and concurrent assessment process, it has the effect of placing one potential impact above all others contrary to the requirement that impacts and benefits are appropriately balanced in the assessment process. Additionally, if the further approvals and their conditions are not before the consent

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		authority at the time of the project's determination, this effectively prevents the consent authority from fully considering all the potential impacts and benefits of a proposal. In particular, we submit that the mining lease requirements should be provided concurrently with the environmental assessment requirements following the lodgement of the project application. This would enable both the mining lease and the project development application to be exhibited publicly at the same time and would decrease the likelihood of steps being repeated by the proponent through later individual assessment processes. We note that Queensland does this to some extent already, however the process could be improved. An integrated assessment process which incorporates both development assessment of the project application as well as the concurrent assessment of the various other approvals by the relevant Government agencies should be overseen by a Coordinator-General. The Coordinator-General should have responsibility for ensuring that the various Government agencies provide timely assessments and work together on the assessment of the issues. This will make the assessment process more efficient for both proponents and Government departments, avoid duplication in requests for information and eliminate unnecessary delays in assessment. In NSW, we are of the view that the role of the Planning Assessment Commission (**PAC**) should be changed and improved and because its role currently overlaps with functions those other agencies perform. At present, the PAC does not become involved in the development assessment approval until late in the process. In our experience, the PAC often requires a proponent to re-address questions or issues that the proponent has already addressed at earlier stages of the approval process. This duplication is obviously very inefficient and arises from the fact that the PAC operates independently and is not involved in the approval process until the final stages of the process. Another problem with the PAC is that it can raise new issues at a late stage in the development approval process and delay the approval process significantly. If these issues were raised earlier in the approval process they could be addressed without causing additional delay to the approvals process. In Queensland, reform is urged to consider the considerable overlap and duplication between the EIS processes, and the subsequent MRA and EP Act processes. As previously stated, the current MRA/EP Act processes for the granting of mining leases and issuing of Environmental Authority (which occurs after the EIS has been completed) allow for previously assessed or even new issues to be raised in relation to the Project's environmental credentials. In effect, this is a waste of State, proponent and appellant resources in dealing with matters previously assessed and approved, and one in which the Land Court (in hearing and dealing with the objections) has little to no jurisdiction to overturn (the CGs conditions relating to an EIS are final and are without merit appeal). As the current process does not provide any real improvement in environmental outcomes, streamlining of the MRA/EP Act processes is highly recommended to increase proponent and community confidence in the assessment process and timeframes.
20	What is the appropriate role for Local Government in major project DAA processes?	We are concerned that Local Government in NSW approvals is given weight over other stakeholders and business groups in the community when their submissions about a major project application are being considered. Major projects such as mining developments often traverse multiple local Government areas (**LGAs**) and it is inappropriate for these projects to be forced to comply with different, and potentially inconsistent, controls across a number of LGAs or subregions; and by their very nature, local and regional planning policies can only take into

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		account or balance local issues including the impacts and benefits of a proposal, which would fail to take into account the State and regional impacts and benefits of the major project being assessed. It is essential that a separate approval regime is maintained for major projects due to the large-scale nature of these developments, and the wide range of impacts (both economic and non-economic) that are experienced from these projects at the local, regional and State levels. The broad geographical spread of impacts from major projects, particularly mining projects, and the subsequent influence of those impacts on the standard of living, dictates that approvals should be managed and coordinated at a State, rather than local or regional, level. One area of Local Government involvement which we would like to see improved are voluntary planning agreements (which operate in NSW). We have found that negotiating voluntary planning agreements is an uncertain and difficult process which varies dramatically according to the specific council. In our experience, the negotiation of voluntary planning agreements contributes is a substantial contributor to delay in the approvals process. Although the negotiation of voluntary planning agreements is not supposed intended to hold delay the approval process (as there is no legal basis for this), in practice, it causes delay as approvals are not given until the agreements are negotiated and in some cases finalised. We suggest that guidelines for voluntary planning agreements be implemented to improve the process and provide more certainty for proponents.
21	How do DAA processes at different levels of Government interact? Are DAA processes administered by separate agencies well-coordinated? If not, what are the key problems? What costs does this impose?	At present, the DAA processes at different levels of Government and administered by separate agencies vary between reasonably well co-ordinated to poorly co-ordinated, resulting in a costly, inefficient and uncertain processes at times. State/Territory Government agency coordination, cooperation and resourcing must be improved through the adoption of a 'whole of Government' approach to major project assessment, including implementation of timeframes for development assessment and determination, and the State/Territory assessment regime must be aligned with the Commonwealth process under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (the **EPBC Act**) and other approvals required for major projects. We support the establishment of a formal lead agency in each State/Territory and is of the view that this agency should have an expanded role to include ultimate responsibility for ensuring that the relevant agencies are working together as a team in the case management and assessment of State significant projects. This coordinated and active approach is essential to oversee the efficient and timely management of the development assessment process. We believe that the lead agency, if given an appropriate mandate, could successfully achieve the desired outcomes. The involvement of the lead agency, where required, would ensure that the proposed case management approach to assessment for State Significant Development is implemented and supported from the top down and encourage cooperation and teamwork across agencies. The lead agency should be given responsibility for actively overseeing various State agencies during the development assessment period. This would ensure that a whole of Government approach would be adopted throughout the assessment process which would prevent unnecessary delays caused by inconsistencies and duplication between agencies.
22	What is your assessment of how well regulators perform their functions? Are regulatory agencies	There is currently a lack of consistency of approach by State agencies because of an absence of guidelines or policies about how legislative provisions should apply, or alternatively a lack of willingness by State agency staff to follow

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	well-coordinated? If not, can you provide evidence and specific examples?	available guidelines or policies. The existing assessment procedures for major projects and associated approvals of other Government agencies must be streamlined and made more efficient (including by having set timeframes for completion of the various steps in the assessment process) so that all secondary/ancillary approvals necessary to fully implement a development can be obtained when development consent is granted or soon after. A Coordinator-General should be appointed with responsibilities to coordinate the various Government agencies involved in granting other approvals necessary to fully implement development throughout the assessment process. This would enable information sharing, avoid duplication, increase communication across Government departments and encourage consistency in decision making. Given the nature of mining projects, it is not appropriate for issues to be considered in isolation from the overall development. Due to the number and variety of interrelated approvals, permits and licences that may be required by an individual mining project, it is essential that a 'whole of Government' approach is taken to the assessment and determination of proponents' applications for those approvals, permits and licences.
23	Are regulatory agencies adequately resourced with skilled and experienced staff to efficiently assess and approve major projects? Has the amount of resources dedicated to DAA processes evolved in line with the number and complexity of major project development applications? Is resourcing of regulatory agencies more of an issue in some jurisdictions than others?	There is definitely a lack of resourcing (human and financial) within State agencies to process applications despite having received hundreds of thousands of dollars and sometimes millions in major project application fees which we understand are specifically aimed at addressing the administrative costs of, and expediting the processing of, such applications within a reasonable timeframe. There is currently a lack of transparency in respect of the use of such application fees. Despite the best efforts, the level of experience and resourcing in the major projects assessment teams that is not commensurate with the complexity and extent of the issues that arise in connection with major mining projects. Often proponents are confronted with Government agency staff who have little no major project management/facilitation experience, have never worked outside of Government, may not even be suitably qualified or experienced to deal with coordinating major project approvals, and/or lack interest in coordinating approvals of a major project but prefer to operate as a "letterbox" and just want to be facilitate other Government agencies to talk to the proponent directly. The central role needs to be seen inside and outside of Government as key influencers and decision makers, and not note takers. The resourcing of Government departments and agencies is an important issue for the Productivity Commission to consider, since the planning legislation dictates, to an extent, the level of assessment, engagement and consultation that must be carried out by Government departments and agencies. As noted above, the Queensland Government's recently announced regulatory strategy provides an insight into a more sensible approach than we consider is currently adopted in Australia, with a focus setting standards for industry to meet (rather than prescribing detailed conditions) and then expending resources on enforcing those standards (rather than on impact assessment).
24	Is there evidence or specific examples to suggest that regulator	We of the view that overzealous regulatory behaviour by all levels of government is significantly contributing to

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	behaviour is contributing to unnecessary compliance costs? What mechanisms are in place to guard against improper regulator behaviour and to ensure regulators are accountable for their decisions?	unnecessary compliance costs. A number of examples of this behaviour are given below. For example, the regulatory requirement in respect of management plans to be prepared by proponents (and the content and level of detail of those management plans) have increased significantly in recent years. This has occurred even though there is no legislative instrument by which this change in policy has been mandated. In Queensland in 2008, a central Queensland mine (not an Xstrata Coal mine) was flooded due to an apparent failure of a flood levee. The mine had any 'older' Environmental Authority (EA) that permitted discharges as long as they met stock watering guidelines. The mine discharged water from flooded pits in accordance with the license through the dry season when there was limited base flow in the system. Following complaints from downstream landowners and the City of Rockhampton, the then DERM introduced model discharge conditions that were applied to all EA's in the Fitzroy Basin, with no discussion with industry over 2008. These conditions imposed end of pipe discharge limits were impossible to comply with. In 2009, 2010 and 2011 major wet seasons with approximately double the average rainfall and no discharge opportunities were able to be used. Temporary Environmental Programs (TEP's) were used to try to allow some releases during specific events; however, the time taken to achieve the approvals meant that most of the TEP's were ineffective. This change in regulation had, and is continuing to have major impact on the mining industry. Some 250 gigalitres of mine affected water is stored in open cut pits across various Queensland coal mines. The water quality continues to deteriorate, prevents effective mine planning and restricts access to higher quality coal reserves. Lack of consultation by Government with the industry and failure to full appreciate the impacts of the changes has placed major cost pressures on the mining industry and leads to poor environmental outcomes. In fact, the legacy water issues are still to be resolved. Another Example 2: In Queensland, for a number of years the sizing and design of dams and levees in mines was guided by "Site water management", in *Technical guidelines for the environmental management of exploration and mining in Queensland*, January, Department of Minerals and Energy (DME), Brisbane, 1995. These guidelines are well understood by the mining industry, consultants, contractors and Government. However between 2009 and 2012 there were various draft forms of regulated structures guidelines and associated model conditions prepared with eventual issuing of *Manual for Assessing Hazard Categories and Hydraulic Performance of Dams* in February and March 2012. However, individual officers were implementing draft forms since 2009. The Manual is largely based on the 1995 technical guidelines for mining prepared by the DME. However, the original 1995 guidelines were applied primarily to tailings dams and were appropriate. When the guidelines and the new Manual are applied to pit water dams, sediment dams and raw water dams, they were and continue to be completely inappropriate. It is impossible provide the design storage allowance (DSA) in dams with a catchment. The guidelines are not based on the ANCOLD or any accepted risk assessment methodology and greatly increase construction costs by ultra conservative freeboard required. The implementation of the regulated structure guidelines and Manual has been applied retrospectively. There is a requirement to upgrade all existing dams and levees to the new Manual. No definitive assessment has been made of the costs, but for Xstrata Coal it is likely to represent $30 million. Once again guidelines have been applied retrospectively with no appreciation of the uses or risks associated with the existing

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		structures.
25	Are existing processes cost-effective? If not, what are the primary reasons for this? For example, are existing processes redundant? Too onerous? Too prescriptive? Excessively complex? Unclear? How large are these costs?	The current major project DAA processes are prolonged, and demonstrate substantial duplication and inconsistency which in turn means that the processes are not cost effective. We propose that each State Government should bring together assessment expertise from different agencies to work as a team in undertaking the assessment of major projects until assessment is completed. This will minimise unnecessary delays in assessing projects and ensure that duplication and inconsistencies do not occur in the assessment process. We believe that the most effective method of ensuring that this proposed reform is achieved is for the assessment of major project applications to be coordinated by a single specialist agency with sufficient legislated authority to ensure a whole of Government approach is undertaken that supports the economic objectives of the State and ensures that approval processes are undertaken in a timely, efficient and transparent manner. The process should afford the proponent opportunity to be consulted in the process, and not provided with a '*fail accompli*'.
26	Do the current regulatory arrangements adequately account for the commercial realities of project development? If not, how could they be improved?	No – the current regulatory arrangements of not adequately account for the commercial realities of large resource / mining project development. Government departments and agencies often lack an understanding of commercial realities of major project development. This includes the cumulative contributions/fees/charges/rates/taxes to the whole-of-government that a mining company makes, rather than just the contributions/fees/charges/rates/taxes to a single government agency. Current regulatory arrangements typically have little regard for the scale or pace of development, which in the mining industry is driven by factors such as commodity price, value of the Australian dollar, human resourcing availability and capabilities, sourcing and transportation of construction materials, liabilities, insurances, ability to obtain project funding, payment of royalties, payment of property rates, and taxation payments. As previously stated, we support a whole-of-Government approach in bringing together assessment expertise into a team for the approvals of major projects.
27	To what extent are jurisdictions undertaking strategic planning? What are its benefits and costs? Does it assist in reducing the time and cost associated with major project DAA processes? Does it deliver better regulatory outcomes? Can this be demonstrated with examples? Are there good international examples of strategic planning that the Commission	Many jurisdictions are currently attempting to undertake strategic planning for their respective States, however at present this strategic planning is being carried out on an ad hoc basis. Most of these are being undertaken under a regional planning framework. We agree that any new planning system must have an increased emphasis on strategic planning which evolves as a result of clear research and/or science based evidence rather than as an expression of the ad hoc interests of various community and environmental groups. We support the creation of a dedicated planning policy in each State which articulates the State Government's policy direction and position on different types of major projects, such as mining. Strategic plans should be given the some weight within the current statutory framework but they should not be a mandatory consideration. This would provide the consent authority with the discretion to consider strategic plans and give the plans the appropriate weight in

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	should consider?	assessing a particular development application, without being bound by them. A strategic plan is useful in that it provides a general direction for a particular locality area; however a consent authority should still have discretion as to whether to apply a plan to a particular development. Whilst a development may not be entirely consistent with a strategic plan, it should not be prohibited as it may still be beneficial for the area locality provided its environmental impacts are acceptable when assessed on its merits. For this reason strategic plans need to be flexible in their application and simply be another matter which must be considered in balancing considerations. We would stress that these plans should focus on how to accommodate multiple and sequential sector use of land and resources and not simply focus on "protection" and "exclusion" provisions as appears to be the case in many jurisdictions. Whilst strategic plans have the potential to provide more certainty and ensure that land uses are appropriately located, the primary limitations of such plans are that they can take many years to prepare and can never fully contemplate or predict the likely demand for or use of land. As such, the planning system needs to ensure that development is not delayed whilst such strategic plans are being prepared nor should development automatically be refused because of lack of compliance with a plan.
28	Where strategic planning is in place, do major project DAA processes take into account the strategic planning objectives? Could existing processes more appropriately incorporate strategic planning? If so, how?	We accept strategic plans have the potential to provide more certainty to the community and industry and ensure that land uses are appropriately located, however the primary limitations of these plans are that they: a) can never fully contemplate the likely demand for or use of land in the future; b) fail to recognise the fact that many land uses currently coexist happily with others with minimal or no land use conflict; c) categorise each development into a general land use type and fail to take into account the individual characteristics of each particular site, development and its adjoining land uses; and d) are regional in scale and therefore cannot and should not be implemented on an individual property scale. The effect of the above limitations is that strategic plans must not be inflexible documents which effectively quarantine or 'ring fence' individual parcels of land from certain types of development based on regional scale maps that are incapable of accurate implementation on a local scale. The Government must also ensure that strategic plans are the subject of regular review and capable of modification so that over time, they can be adapted to contemporary circumstances including the changing needs of the State, technological and scientific advancement and potential changes in a locality or region. This is particularly important for the mining industry as it is constrained not only by being able to achieve appropriate environmental and community outcomes, but more importantly by the fact that economically-mineable resources of coal and other mineral resources are contained in a limited number of fixed locations across Australia. A mining company cannot simply pick up its project and take it elsewhere. This is one of the reasons that strategic land use plans must be flexible in their application and should not prohibit land uses in particular areas. The other reason that strategic plans should be flexible in their application by a consent authority is that the prohibition of land uses in a strategic plan could effectively sterilise land and operate as a clear barrier to the orderly

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		and sustainable development of land in each jurisdiction.
29	Where strategic planning frameworks are not in place, what are the reasons for this? How could these issues be overcome? How does the absence of broader strategic planning impact on major project DAA processes?	Not applicable to Xstrata Coal.
30	How well are the cumulative impacts of major projects accounted for under the current arrangements?	The cumulative impacts of multiple developments of the same general type in a locality or region are currently taken into account by consent authorities. For example, in the case of State Significant Development in NSW the Director-General may (and usually does in the case of coal mines) require as part of the environmental assessment requirements (**DGRs**) for a project, an assessment of the cumulative impacts of the subject development, including for example assessments of cumulative dust, noise and traffic impacts of proposed projects. Recently in Queensland, cumulative impact assessment has driven significant cost and time implications over and above the ordinary assessment timelines. For example: a. the cumulative impacts of the proposed development of the Abbot Point Coal Terminal and related activities has been assessed jointly by the proponents of the T0, T2 and T3 terminals; and b. the major liquefied natural gas proposals in Queensland triggered additional cumulative impact assessment at the Commonwealth level, where the Commonwealth Minister commissioned independent review of the cumulative impacts in addition to the environmental impact assessment work already carried out by the proponents. If the Environment Protection and Biodiversity Conservation Amendment Bill 2013 (Cth) is passed by the Senate, all new 'large coal mining developments' and coal seam gas projects likely to have a significant impact on water resources will trigger EPBC Act approval requirements. A 'large coal mining development' is defined by the EPBC Act to be project that has, or is likely to have, a significant impact on water resources (including any impacts of associated salt production and/or salinity) in its own right, or when considered with other developments, whether past, present or reasonably foreseeable. Essentially, this will mean that the application of the EPBC Act to certain projects will be determined with reference to the cumulative impact of the project. This is not considered necessary. However, the challenge with conducting comprehensive cumulative assessment for a major development is that data and information from adjacent operations, projects or communities may not be readily shared or available. In Queensland, some Government staff expect and stipulate cumulative impact assessment in the Terms of Reference for an EIS, but then refuse or are unable to provide relevant data from their own departments to enable comprehensive completion of cumulative assessment. Adjacent operations or projects by other proponents may be reluctant to share data or information because of commercial confidentiality (perceived or actual). If the Environment Protection and Biodiversity Conservation Amendment Bill 2013 (Cth) is passed by the Senate, all

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		new 'large coal mining developments' and coal seam gas projects likely to have a significant impact on water resources will trigger EPBC Act approval requirements. A 'large coal mining development' is defined by the EPBC Act to be a project that has, or is likely to have, a significant impact on water resources (including any impacts of associated salt production and/or salinity) in its own right, or when considered with other developments, whether past, present or reasonably foreseeable. This consideration of the cumulative impacts of developments in a region will be relevant to whether any new coal mine falls under this definition, which is likely to result in almost all new coal mines being subject to EPBC Act approval.
31	Do major project DAA processes deliver good regulatory outcomes for the community? Do the current arrangements strike the right balance between economic, social and environmental objectives?	In general, delivery of positive community outcomes is an area which has improved in recent years. We have a good record and reputation in dealing with the community in both the development approval stage and post project-approval. That being said, from a community perspective there are still significant concerns regarding the openness and transparency of Governments in the decision-making process which has resulted in a lack of confidence among stakeholders in the planning process. In attempts to address perceived shortfalls in community and social impacts resulting from major project development, Government has introduced a range of prescriptive measures as conditions of project approvals, which has had the effect of increasing the administrative burden on proponents and Government rather than delivery of better local outcomes. Many of the community concerns regarding openness and transparency often stem from a lack of understanding by the community of the processes involved in project approvals, rather than the actual process itself, because of the types of approvals, various approval pathways, and time taken in project development and approvals to achieve an outcome (such as an operational mine). The processes are typically perceived as overly complex (which they are becoming), and therefore perceived by the community that the Government and proponents are hiding something, because the "devil is in the detail". Some of the post-approvals issues associated with local communities receiving the benefits (good regulatory outcomes) of major developments can vary significantly, depending on the level of Government, the interpretation of "regional benefit" and other political, economic or Government policy drivers occurring at a particular point in time. We have a good track record of negotiating to have Government conditioned requirements for a project benefit the local community and local infrastructure, with examples of this for the Wandoan Coal Project where the local community and infrastructure will benefit from considerable funding of receive approximately $100 million in capital works over the life of the mine (most received during the mine's construction phase associated with road relocations and upgrades of local infrastructure services), rather than a large lump sum of money deposited into Queensland Treasury with no guarantees that the money would be spent in the communities that need it. Another example is the negotiated outcome to develop the Wandoan Buffer Zone agreement, where the community's request for a 2km buffer zone around the town of Wandoan was driven and negotiated between Xstrata Coal, the Wandoan District Liaison Committee and Western Downs Regional Council. The outcome, which was based on iterative assessments and modelling for air, dust and vibration impacts, provided certainty for the community, and certainty for Xstrata in terms of future mining operations.

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32	Do the current arrangements provide appropriate opportunities for public participation in major project DAA processes? What are the benefits and costs of public involvement in these processes? How can the benefits be enlarged and the costs reduced?	The current planning frameworks provide sufficient opportunity for public participation in the major project DAA processes. However, whilst community engagement is an important part of the planning process, special interest groups usually push advance their own agendas only and do not balance their own needs and desires with those of the region or the State or give reasonable consideration to the overall benefits of a project. We support the involvement of the community in the DAA process but is of the view that: a) the Government might should engage with environmental groups and other stakeholders as it deems appropriate, however this must not be a legal obligation as it will disrupt and delay key projects and infrastructure. We acknowledge that community engagement is an important part of the planning process, however it is concerned about the manner in which community engagement currently takes place. It is essential that the community is consulted in a way which is meaningful in order to achieve outcomes that are truly reflective of the views of the wider community. An example of where we chose to go beyond the basic statutory public consultation requirements has been on the Wandoan Coal Project. To engage with the local community in as meaningful way as possible, and allow the community the opportunity to participate in development of the project, public presentations are given at the various milestones of the project, a community reference group was established in 2007, a permanent project office was established in Wandoan township in 2008 which is staffed locally local people, and a range of community and stakeholder investment initiatives have been funded which allows us to engage directly with local community to understand the community's needs. Although the Wandoan Coal Project is still yet to receive its final approvals (being the three mining leases), there is recognition in the local community that we have a genuine and positive interest in the local community and the community's needs, and that the mine presents job opportunities which would otherwise not exist. As raised in responses to earlier questions, we support the establishment of a working group involving various Government Departments in project DAA processes, with this group taking into account, and potentially having key local community and NGO groups participating in the working group. This could potentially reduce the costs and time associated with project development, particularly associated with legal actions.
33	Are major project DAA processes open and transparent? Are appropriate monitoring and enforcement mechanisms in place to ensure compliance with the regulations? Is regulation subject to regular review?	Major project DAA processes are open and transparent. Examples of how the current major project DAA processes are open and transparent include: a) An Environmental Impact Statement (**EIS**) is typically prepared by consultants engaged by a proponent and the EIS is tested throughout the assessment process by Government officers and through public notification processes (e.g. opportunity is provided to make comment on draft terms of reference and the EIS; EPBC Act referrals also provided opportunity for public comment). This is a transparent process and should create sufficient public confidence in the integrity of the relevant EIS. It is the responsibility of the assessing officers to critically evaluate the assessments contained in the EIS and to then provide full, frank and independent advice to the consent

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		authority. The public should be entitled to rely on the assessments of these appropriately qualified officers, and any other expert consultant engaged by relevant Government department; b) it is also open to the public to play a role in ensuring the integrity of an EIS and a rigorous assessment of the EIS through the provision of submissions and/or criticism of an EIS during the public exhibition process; and c) the facilitation of a third party consultation process which gives the proponent an opportunity to engage with the broader community in relation to the project, including by providing a forum for the proponent to respond transparently to issues raised by the community.
34	Are there any other impacts or concerns stemming from existing major project DAA processes in Australia that the Commission should consider?	Refer submission
35	Has the establishment of a 'Lead Agency Framework' in some jurisdictions improved the efficiency and effectiveness of DAA processes? Can you provide evidence and examples of where improvements have been achieved? Is there any relevant international experience?	There is no doubt that the establishment of a 'Lead Agency Framework' can improve the efficiency and effectiveness of DAA processes if it is successfully implemented. We are of the view that Each State would be greatly benefited bybenefit from the appointment of a Lead Agency with similar powers to the Coordinator-General in Queensland. The role of the Coordinator-General in Queensland is to '*undertake and commission such investigations, prepare such plans, devise such ways and means, give such directions, and take such steps and measures, as the Coordinator-General thinks necessary or desirable to secure the proper planning, preparation, execution, coordination, control and enforcement of a program of works, planned developments, and environmental coordination for the State and for areas over which the State claims jurisdiction*.' [*State Development and Public Works Organisation Act 1971* (Qld): section 10(2)]. More specifically, the Coordinator-General has the powers to: a) establish a program of works (e.g. the Statewide water grid approved in December 2007); b) declare a project to be a 'coordinated project' and coordinate the environmental impact assessment of the project; c) declare a project to be a 'prescribed project' if it is deemed by the Coordinator-General to be economically and socially significant to the State or a region and use the declaration to overcome any unreasonable delays in obtaining project approvals; d) declare State development areas to promote economic development and address areas of market failure in the development of industrial land and multi-user infrastructure corridors in the State; e) recommend to the Minister and Governor in Council that the Coordinator-General, a local body or another person undertake works on behalf of the Coordinator-General; and f) acquire land or easements for authorised works, works in a program of works or approved development scheme,

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		works undertaken by a local body or department of the State Government, State development areas, or a private infrastructure facility. We note that the Coordinator-General's powers in Queensland differ depending on the type of project. Many of his powers primarily relate to public works but do extend to incorporate private infrastructure development. To facilitate a whole of government response on environmental effects of any development, the Coordinator-General may declare a development to be a 'coordinated project' (previously referred to as a 'significant project'). A major mining project may be declared by the Coordinator-General as a 'coordinated project' and while certain benefits attach to such a declaration, The Coordinator-General also has expanded additional powers in relation to, for example, 'prescribed projects', which are generally infrastructure projects such as pipelines which may provide benefits to mining projects. We support the introduction of a Coordinator-General model or a similar 'Lead Agency' approach in States where no such office exists. However, we note that the Coordinator-General model is only effective if the lead agency has both the power and the resources to steer the projects assessment and approval towards ecologically responsible approvals. This requires sufficient legislative power to take decision-making out of the hands of various agencies or to direct agencies to make timely decisions (as the Coordinator General in Queensland may do for 'prescribed projects', by issuing a progression notice, a notice to decide or a step-in notice). Critically, the Coordinator-General model requires the commitment of the Government of the day to drive the timely development of projects. Our experience is that the Coordinator-General model in Queensland is most effective when the Government is focused on sustainable development delivery rather than the assessment stage itself regulation of projects. The Coordinator-General as the Lead Agency should facilitate inter-Governmental department meetings in relation to major projects to ensure that there is a whole of Government approach and enable information sharing between Government departments. This should be directed towards will ensuring that the proponent is not required to answer multiple requests for the same or similar information from different Government departments. It will also increase efficiency within Government departments and avoid unnecessary additional cost and time for the proponent. Strong interdepartmental communication coordinated by the Coordinator-General will also increase consistency in decision making as between the various Government departments.
36	Are there drawbacks or risks associated with adopting a 'Lead Agency Framework' or similar approaches? Does consolidating multiple functions in a single agency pose risks? How material are these risks?	As noted above, the Coordinator-General or 'Lead Agency' model can be successful where its focus is on driving development and this is supported both by legislative power and by the Government's priorities. If this is not the case, there is a risk that the Lead Agency could become yet another layer of regulation and source of delay for major projects. An example of delay of a project using the Lead Agency model is Xstrata Coal's Wandoan Coal Project. The Supplementary EIS for the Project was submitted to the Coordinator-General (Qld) in November 2009; however the Coordinator-General's Report on the Project was not released until November 2010. This delay largely resulted from a lack of human resources in the Coordinator-General's Office to progress the Project, and the Government suitably empowering its staff to drive and progress project development processes through the various State and Commonwealth Governments.

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		In order for the Lead Agency framework to work effectively, there needs to be strict criteria to ensure that only major projects are dealt with by the Lead Agency. If the Lead Agency has too many projects it will not be able to give appropriate time to the major project approvals and the benefit of having a Lead Agency will be lost. The Lead Agency needs to be limited to a handful of major developments that are so complex and/or of such importance to the State that it will benefit from whole of government facilitation and coordination of approvals.
37	Are there other ways to reduce duplication and improve coordination while still meeting regulatory objectives?	We are of the view that there should be one Act only for the planning system. Separate and overlapping Acts create confusion, duplication, lead to greater cost and delay in the development application process, through potentially having to deal with multiple consent authorities and Government agencies, and create issues in how the various Acts interrelate. There are already multiple environmental planning instruments and various pieces of environmental legislation that are relevant to the projects of Xstrata Coal, and to those of most other proponents, and the any separation of the planning Acts will simply exacerbate this. We also support the broad aims of the proposed changes to development assessment including removing concurrence requirements where a project complies with a strategic plan, reforming State significant assessment by integrating and streamlining assessments, smarter and more timely merit assessment, increasing code assessment and extending reviews and appeals in relation to rezoning and compatibility certificates.
38	Is it practical to identify statutory time limits for particular assessment and approval processes? What are the benefits and risks of this approach? What has been the experience for regulators and project proponents in those jurisdictions where statutory timelines have been introduced?	Time frames should be legislated for agencies to respond to requests for information or advice in relation to environmental assessments and environmental assessments requirements. If an agency does not respond within that time frame, there should be deeming provisions whereby the relevant agency is deemed to have no comments or obligations. A deemed approval mechanism for all DAA processes would encourage a consent authority to determine the development application within the required statutory timeframe. Presently there seems to be little incentive for consent authorities to determine applications within statutory timeframes. Additionally, the current deemed refusal regime creates significant expense for proponents who are required to commence Court proceedings to obtain a merits review of the application. We consider a provision similar to that contained in section 331 of the *Sustainable Planning Act 2009* (Qld) would be a suitable addition to the planning laws in other States. Generally, this provision provides that once the decision-making period passes without a decision having been made, the proponent may give a 'deemed approval notice' to the assessment manager, each referral agency and the local Government. Within 10 days of receiving the deemed approval notice, the assessment manager must give the proponent a decision notice approving the application, or approving the application subject to conditions.
39	Are there other ways to shorten timeframes while still achieving relevant regulatory objectives? How would such measures improve the efficiency and effectiveness of DAA	In order to achieve a more timely assessment and determination of major projects, we suggest that where the secondary agencies, for example the Planning Assessment Commission in NSW, is to be the determining authority, the PAC should be involved as early as possible in the assessment process. Ideally the involvement of this approval agency should occur soon after submissions have been received from the public and before any response to submissions has been prepared by the proponent. The early involvement of the decision maker will ensure that they

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	processes? Can you provide evidence and examples of this?	do not have to reopen the assessment of issues raised by the public that have previously been assessed and dealt with by the Department and will help to reduce the current delays in the determination of applications for State Significant Developments. In theory, this whole of government consideration and communication already occurs in Queensland under coordinated project provisions facilitated by the Coordinator-General. In practice, it falls short of providing a means to shorten timeframes most likely due to volume of work and associated resource constraints. in NSW. Similar provisions should be included within relevant Queensland statutes to deliver similar outcomes.
40	How should trade-offs between timeliness and other characteristics of good regulatory process (such as opportunities for public participation) be managed?	Our comments throughout this submission in relation to the need for timely decision making and support for a centralised body such as a Coordinator- General should not be at the expense of robust and transparent environmental and other assessment. We recognise the importance of robust and transparent environmental and other impact assessment. That said, we are of the view that it is practical and appropriate to impose statutory time frames for proponents, agencies or departments and third parties. Statutory timeframes are a way of providing some certainty regarding the length of the development approval process. However, in order for statutory timeframes to be effective they must apply to Government departments as well as proponents. At present, while proponents are expected to comply with statutory timeframes, many Government departments show little or no regard to such timeframes. This means that proponents cannot effectively plan or rely on the statutory timeframes. The risk of having one set of statutory timeframes is that the system is inflexible and consideration is not given to the type or complexity of a major project. However, this could be overcome by having different statutory timeframes for different types of projects, with projects differentiated by size or industry. The relevant timeframes could be determined on a project by project basis by the Lead Agency We suggest the use of deeming provisions for State/Territory/Commonwealth agencies and third parties in order to provide certainty for proponents and reduce delays. Under deeming provisions, if an agency/department has not made a decision regarding an approval within the statutory time frame then the particular approval will be deemed to have been granted. Similarly, if a third party fails to comment or object within a statutory time-frame then they will be deemed to have no objection or comment.
41	To what extent are risk-based approaches to regulation being used for major project developments? What are the impacts of this?	We support a risk based approach to major project assessment and approvals. In Queensland, the Terms of Reference (ToR) for an EIS (regardless of whether the EIS is conducted under the SDPWO Act 1971 or the *Environmental Protection Act 1994*). Our experience is that risk based approaches are not currently employed in any meaningful way for major project developments in Australia. We favour an outcomes-based approach where, for example, a proposed modification to an existing approved development should be able to proceed without the need for further approval if the proponent is able to demonstrate that the proposed development (as modified) will continue to comply with the limits of approval and environmental protection criteria that are already in place for the existing development. This could involve the use of "standard" ToR as a template for all projects. The standard ToR forms a reasonable basis upon which to prepare an EIS with assurances given by Government at the

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		start of a project that the ToR can be "refined and tailored" to be specific to the project. However in practice, very little refinement or tailoring of th standard ToR occurs, as Government agency staff are encouraged to be risk adverse and typically have limited experience with mining projects (or in some cases project development in general), wanting environmental impact assessment on everything, regardless of whether the risk to the environment or community is real and material or irrelevant given the project scope. The result of Government agency staff taking a risk adverse, one-size-fits-all approach is that many thousands of dollars can be spent on consultancy reports with no significant impact on the environment or community identified, and significant time and effort wasted. There have been a number of instances where the same risk adverse Government staff requesting assessments on irrelevant or out of scope topics then complain to proponents about how much they have to read in the EIS for the project.
42	How can 'scaling' mechanisms enhance the efficiency and effectiveness of DAA processes? Can you provide evidence and examples of this?	'Scaling' mechanisms have the potential to significantly improve the effectiveness of the DAA process. Scaling mechanisms can be used to provide certainty as to whether a certain approval is needed as well as to ensure that different scaled projects are treated differently and appropriately. For example, at present it may be difficult to determine whether a new development approval (or EA amendment in Queensland) is needed for a fairly minor modification on a mine site or whether a modification will be sufficient. In NSW, due to the uncertain legal requirements, we would usually submit a new development approval. In Queensland, amendments under the "Greentape Reduction Act", have at least provided greater certainty in relation to the type/extent of assessment required for new projects and existing mine expansions based on the scale of the proposed development. By having a scaling mechanism or using thresholds, industry is would be given confidence that only a modification is required and could save the time and cost of a new development approval/EIS amendment.
43	What are the risks and drawbacks of adopting a more risk-based approach to regulation? In what ways can these issues be managed?	Using risk-based approaches to regulation may have drawbacks, particularly if there are significant unknowns either with the technology proposed to be used in the project, or a lack of knowledge on the existing environmental conditions of a site. As with all types of project development, the risks can be reduced and minimised where both proponents and Government agency staff are suitably qualified and experienced to understand, identify and deal with the risks in a professional and pragmatic manner. A major potential drawback of adopting a risk based approach is that it will lead to even further delays due to a large number of projects being classified as high risk and being bogged down in further scrutiny and reporting requirements. In order for a risk-based approach to regulation to function properly, staff at the relevant government departments and agencies need to be properly qualified and trained in order to make accurate risk assessments. Furthermore, there should be clear guidelines as to how projects are classified on the risk scale.
44	Do regulatory agencies have the flexibility to adopt 'risk-based' approaches to project assessment and approval?	In Queensland, regulatory agencies do have the flexibility to adopt risk-based approaches to project assessment and approvals, and have historically undertaken this approach for a number of years until the early to mid-2000's. However, the want and desire of the current regulatory agencies to pursue risk-based approaches is far less apparent, with many Government agency staff seeing themselves or being instructed to act as project facilitators and mediators,

No.	Questions raised by Productivity Commission	Xstrata's response to questions raised by Productivity Commission
		rather than drivers of the project approvals process, and staff are not being required to understand the overall scope of the projects they are "regulating" nor where they fit in the approval processes to which they are meant be follow. Risk-based assessment has been substituted by 'risk averse'
45	How have bilateral environmental assessment agreements improved the efficiency and effectiveness of major project DAA processes? Is there a case for extending or expanding these agreements?	Yes. Bilateral environmental assessment agreements have improved the efficiency and effectiveness of major project DAA processes, particularly in relation to assessment of ecological communities and threatened plant and animal species that are protected as matters of national significance under the *Environmental Protection and Biodiversity Conservation Act 1999*. In Queensland, a single EIS can be prepared that deals with ecological issues at both State and Commonwealth levels. There is a case for extending the concept of bilateral agreements to cover environmental approvals, rather than just environmental assessment. However, if there was an agreed rational, efficient and cost effective development process that was consistent for all jurisdictions in Australia there would be no need for bilateral assessment agreements. More importantly as is evidenced in NSW there is no compulsion on a State to have a bilateral agreement.
46	Would bilateral approval agreements improve the efficiency and effectiveness of major project DAA processes? How material are these benefits?	We support both bilateral "approval" and "assessment" agreements between the Commonwealth and States and Territories as a vital part of improving efficiency and effectiveness of major project approval and assessment process. It is absolutely critical that any new planning approval regime be designed and introduced in consultation with the Commonwealth Government so that the approval process will be accepted under a bilateral approval agreement or accredited approval process under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).
47	Are there other measures or regulatory devices that have been implemented in Australia or overseas that have successfully reduced unnecessary costs? What evidence do you have of their efficacy?	We refer the Productivity Commission to the Canadian model, highlighted in the case study in this submission. This model has reduced unnecessary costs in a number of significant ways. Firstly, only one submission application needs to be made and this submission application covers both Federal and State approvals. Secondly, working groups are involved in the approval process from very early on (before the environmental impact statement is prepared). This ensures that objections and issues are raised early on in the approval process rather than halting the approval at the end of the process. It also provides efficiency in responding to objections as proponents only have to respond to objections and issues raised once, rather than at multiple points in the approval process. Finally, there is no merits review available once an approval is given. This means that proponents do not have the costs involved in litigation or the loss in revenue and project value due to court delays.

APPENDICES

Timeframes for major project approvals involving court challenges

Project	Date of application	Date approval granted	Date of appeal decision	Date of grant of mining leases	Timeframe
New South Wales major projects					
Ulan Continued Operation Project (XC)	17 August 2008	15 November 2010	13 March 2012	Expansion	Nearly 4 years
Duralie Coal (non-XC)	13 October 2008	26 November 2010	10 November 2011	Expansion	3 years +
Warkworth Extension Project (non-XC)	1 March 2010	3 February 2012	15 April 2013 Refused by Land & Environment Court	Expansion	3 years +
Berrima Coal Project (non-XC)	29 September 2010	20 June 2012	27 February 2013	Expansion	Approx. 2.5 years
Ashton South East Open Cut Project (non-XC)	11 March 2009	4 October 2012	Still to be heard in August 2013	Expansion	Approx. 4 years
Queensland major projects					
Wandoan Coal Project (XC)	21 December 2007	12 November 2010	27 March 2012 August 2012[2]	Anticipated in Quarter 2, 2013	6 years +
Alpha Coal Project (non-XC)	18 September 2008	23 August 2012	Still to be heard in September 2013	Yet to be granted	5 years +
Carmichael Coal Mine & Rail Project (non-XC)	22 October 2010	Supplementary EIS being prepared	-	-	2 years +
China First Project (non-XC)	28 October 2008	Supplementary EIS public consultation period	-	-	4 years +
South Galilee Mine (non-XC)	11 March 2010	Supplementary EIS being prepared	-	-	3 years +
Kevin's Corner Project (non-XC)	10 August 2009	Supplementary EIS being assessed	-	-	3 years +

[2] *Note: under Qld legislation, further Land Court action was initiated in July 2012 as compensation was unable to be negotiated. There is no determination as at 4/4/13, with ML grant dependent upon the outcome of this process and any pending appeal.*

List of relevant legislation and Government agencies

The following is a list of legislation that is potentially relevant to major projects in NSW and Queensland, together with the Government agency responsible for administering that legislation.

Commonwealth legislation

Legislation	Agency Owner
1. *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth)	Dept. Attorney General
2. *Airports Act 1996* (Cth)	Department of Infrastructure and Transport
3. *Civil Aviation Act 1988* (Cth)	Civil Aviation Safety Authority (CASA)
4. *Clean Energy Act 2011* (Cth)	Dept. of Climate Change
5. *Energy Efficiency Opportunities Act 2006* (Cth)	Dept. Resources and Energy
6. *Environmental Protection and Biodiversity Conservation Act 1999* (Cth)	Department of Sustainability, Environment, Water, Population and Community of Environment
7. *National Greenhouse and Energy Reporting Act 2007* (Cth)	Dept. of Climate Change
8. *Native Title Act 1993* (Cth)	Dept. Attorney General

Queensland legislation

Legislation	Agency Owner
1. *Aboriginal Cultural Heritage Act 2003 (Qld)*	Department of Aboriginal and Torres Strait Islander and Multicultural Affairs
2. *Acquisition of Land Act 1967 (Qld)*	Department of Natural Resources and Mines
3. *Building Act 1975 (Qld)*	Department of State Development, Infrastructure and Department of Housing and Public Works
4. *Coal Mining Safety and Health Act 1999 (Qld)*	Department of Natural Resources and Mines
5. *Environmental Protection Act 1994 (Qld)*	Department of Environment and Heritage Protection
6. *Explosives Act 1999 (Qld)*	Department of Natural Resources and Mines
7. *Fisheries Act 1994 (Qld)*	Department of Agriculture, Fisheries and Forestry and the Department of National Parks, Recreation, Sport and Racing (to the extent that it relates to Fish Habitat Areas)
8. *Forestry Act 1959 (Qld)*	Jointly administered by the Department of Agriculture, Fisheries and Forestry and the Department of National Parks, Recreation, Sport and Racing
9. *Gas Supply Act 2003 (Qld)*	Department of Energy and Water Supply
10. *Geothermal Energy Act 2010 (Qld)*	Department of Natural Resources and Mines[3]
11. *Greenhouse Gas Storage Act 2009 (Qld)*	Department of Natural Resources and Mines
12. *Land Act 1994 (Qld)*	Department of Natural Resources and Mines
13. *Land Court Act 2000 (Qld)*	Department of Justice and Attorney-General
14. *Land Protection (Pest and Stock Route Management) Act 2002 (Qld)*	Department of Agriculture, Fisheries and Forestry; and Department of Natural Resources and Mines (to the extent that it is relevant to Stock Route Management)
15. *Mineral Resources Act 1989 (Qld)*	Department of Natural Resources and Mines[3]
16. *Mining and Quarrying Safety and Health Act 1999 (Qld)*	Department of Natural Resources and Mines (except to the extent administered by the Queensland Treasury and Trade and also the Department. of Environment and Heritage Protection)
17. *Nature Conservation Act 1992 (Qld)*	Department of Environment and Heritage Protection, Department of Agriculture,

[3] *To the extent that the* Act *contains a royalties component, Queensland Treasury and Trade is the administering agency.*

	Fisheries and Forestry and the Department of National Parks, Recreation, Sport and Racing[4]
18. *Off-shore Facilities Act 1986 (Qld)*	Department of Natural Resources and Department of the Premier and Cabinet
19. *Offshore Minerals Act 1998 (Qld)*	Department of Natural Resources and Mines[3]
20. *Petroleum Act 1923 (Qld)*	Department of Natural Resources and Mines[3]
21. *Petroleum and Gas (Production and Safety) Act 2004 (Qld)*	Department of Natural Resources and Mines[3]
22. *Petroleum (Submerged Lands) Act 1982 (Qld)*	Department of Natural Resources and Mines[3]
23. *Queensland Heritage Act 1992 (Qld)*	Department of Environment and Heritage Protection
24. *State Development and Public Works Organisation Act 1971 (Qld)*	Department of State Development, Infrastructure and Planning
25. *Strategic Cropping Land Act 2011 (Qld)*	Department of Natural Resources and Mines (Ch 5 administered by the Department. of Agriculture, Fisheries and Forestry (excluding ss 139(1), 143 and 144)
26. *Sustainable Planning Act 2009 (Qld)*	Department of State Development, Infrastructure and Planning
27. *Transport Infrastructure Act 1994 (Qld)*	Department of Transport and Main Roads
28. *Transport Operations (Road Use Management) Act 1995 (Qld)*	Department of Transport and Main Roads
29. *Vegetation Management Act 1999 (Qld)*	Department of Natural Resources and Mines
30. *Waste Reduction and Recycling Act 2011 (Qld)*	Department of Environment and Heritage Protection
31. *Water Act 2000 (Qld)*	Department of Natural Resources and Mines, and Department. of Environment and Heritage Protection and the Department of Energy and Water Supply[5]
32. *Water Supply (Safety and Reliability) Act 2008 (Qld)*	Department of Natural Resources and Department of Energy and Water Supply
33. *Work Health and Safety Act 2011 (Qld)*	Department of Justice and Attorney-General
34. *Wild Rivers Act 2005 (Qld)*	Department of Environment and Heritage Protection

New South Wales Legislation

Legislation	Agency Owner
1. *Environmental Planning and Assessment Act 1979 (NSW)*	Department. of Planning and Infrastructure
2. *Protection of the Environment Operations Act 1997 (NSW)*	Dept.Office of Environment and Heritage
3. *Mining Act 1992 (NSW)*	Department. of Trade and Investment, Regional Infrastructure and Services (division: Industry, Innovation, Resources, Energy, Hospitality and the Arts)
4. *Water Management Act 2000 (NSW)*	Department of Trade and Investment, Regional Infrastructure and Services (division: NSW Department of Primary Industries)
5. *Water Act 1912 (NSW)*	Department of Trade and Investment, Regional Infrastructure and Services

[4] *The Department of Environment and Heritage Protection is the agency responsible for administering the* Act, *except to the extent that it is relevant to demonstrated and exhibited native animals (administered by the Department of Agriculture, Fisheries and Forestry) and to the extent that it is relevant to the management of protected area estate and forest reserves (excluding Nature Refuges)).*

[5] *The Dept. of Natural Resources and Mines administers the* Water Act 2000*, except to the extent administered by the Dept. of Environment and Heritage Protection (who have responsibility for Ch 3) and the Dept. of Energy and Water Supply (who are responsible for Ch 2, Part 2, Divisions 2A and 4 (excluding s 34C); Ch 2A; Ch 4 (to the extent relevant to Category 1 Water Authorities); Ch 9, Part 2; and to the extent relevant to all these parts, Ch 5, 6 and 7).*

	(division: NSW Department of Primary Industries)
6. *Pipelines Act 1967 (NSW)*	Department of Trade and Investment, Regional Infrastructure and Services (divisions: Industry, Innovation, Resources, Energy, Hospitality and the Arts; NSW Department of Primary Industries)
7. *Dams Safety Act 1978 (NSW)*	Department of Trade and Investment, Regional Infrastructure and Services (division: NSW Department of Primary Industries)
8. *Crown Lands Act 1989* (NSW)	Department of Planning and Infrastructure; Office of Environment and Heritage; Department of Trade and Investment, Regional Infrastructure and Services (division: NSW Department of Primary Industries); Office of Sport and Recreation[6]
9. *Roads Act 1993* (NSW)	Roads and Maritime Services Agency; Department of Trade and Investment, Regional Infrastructure and Services (division: NSW Department of Primary Industries); Office of Environment and Heritage; Department of Premier and Cabinet (division: Local Government)
10. *National Parks and Wildlife Act 1974* (NSW)	Dept.Office of Environment and Heritage
11. *Heritage Act 1977* (NSW)	Dept. of Planning and Office of Environment and Heritage
12. *Native Vegetation Act 2003 (NSW)*	Dept. of Planning and Office of Environment and Heritage
13. *Rural Fires Act 1997 (NSW)*	Department of Attorney General and Justice (division: NSW Rural Fire Service)
14. *Fisheries Management Act 1994 (NSW)*	Department of Trade and Investment, Regional Infrastructure and Services (division: NSW Department of Primary industries)
15. *Coastal Protection Act 1979 (NSW)*	Dept. of Planning and Office of Environment and Heritage
16. *Mine Subsidence Compensation Act 1961 (NSW)*	Department of Trade and Investment, Regional Infrastructure and Services (division: NSW Department of Primary Industries; relevant entity: Mine Subsidence Board)
17. *Petroleum (Onshore) Act 1991 (NSW)*	Department of Trade and Investment, Regional Infrastructure and Services

[6] *The* Crown Lands Act 1989 (NSW) *is administered by the Dept. of Planning and Infrastructure only insofar as it relates o the Luna Park Reserve – otherwise, the Office of Environment and Heritage, the Dept. of Trade and Investment, Regional Infrastructure and Services (division: Dept of Primary Industries) and the Office of Sport and Recreation are the agencies responsible for administering the* Act *to the extent that it relates to that particular agency.*

	(division: Industry, Innovation, Resources, Energy, Hospitality and the Arts)

Bibliography/additional reading for Productivity Commission

No.	Document	Document Description	Source
1	Fraser Institute Annual Survey of Mining Companies 2012/2013	This is an annual survey of mining and exploration companies to assess how mineral endowments and public policy factors such as regulation affect exploration investment	http://www.fraserinstitute.org/uploadedFiles/fraser-ca/Content/research-news/research/publications/mining-survey-2012-2013.pdf
2	Submission by Xstrata Coal in response to the issues paper on the NSW Planning System Review dated 2 March 2012	Submission by Xstrata Coal to the NSW Planning System Review	http://www.planningreview.nsw.gov.au/LinkClick.aspx?fileticket=p8fL7xiOfQc%3D&tabid=119&mid=569
3	XCN Green Paper submission should be included here as Submission by Xstrata Coal NSW on the Green Paper dated September 2012	XC's submission on 'A New Planning System for NSW – Green Paper' dated 14 July 2012	http://www.planning.nsw.gov.au/PolicyandLegislation/ANewPlanningSystemforNSW/GreenPaperSubmissions/tabid/600/language/en-US/Default.aspx
4	Measuring the Costs of Regulation, June 2008	This is a document prepared by the Better Regulation Office, part of the Department of Premier and Cabinet	http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0003/23979/02_Measuring_the_Costs_of_Regulation.pdf
5	Guide to Better Regulation, June 2009	A guide prepared by the Better Regulation Office to assist agencies in ensuring regulations are required, reasonable and responsive	http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0009/16848/01_Better_Regulation_eGuide_October_2009.pdf
6	NSW Premier's Memorandum 2012-02: Red Tape Reduction – new requirement	This Memorandum advises Ministers and Directors General of the implementation of the Government's election commitments to impose a 'one on, two off' requirement for new legislation and introduce a target to reduce regulatory costs for business and the community by 20 per cent by June 2015	http://www.betterregulation.nsw.gov.au/ministerial_media_releases/2011_media_releases/m2012-02_red_tape_reduction_-_new_requirements
7	On the right track: progress on the Streamlining Mining and Petroleum Approvals Project, October 2011	A report prepared by the Department of Employment, Economic Development and Innovation – Mines outlining the progress being made in streamlining the mining approvals process in Queensland	http://mines.industry.qld.gov.au/assets/mines-pdf/GIIG_report_Final_Oct11_web.pdf
8	Business Advisory Forum paper entitled Major Projects Approvals	A paper prepared by the States and Territories for the Business Advisory Forum outlining initiatives aimed at improving major project approvals in the States and	http://www.dpmc.gov.au/publications/baf/docs/Major-Projects-Approvals-Reforms.pdf

No.	Document	Document Description	Source
	Reforms, December 2012	Territories	
9	Queensland Government Issues Paper – Regional Planning in Darling Downs and Central Queensland	The Regional Plans are being prepared to resolve land use conflicts arising from agricultural and mining activities, foster diverse and strong economic growth; plan and prioritise infrastructure; and manage impacts on the environment.	http://www.dlg.qld.gov.au/regional-planning/the-darling-downs-regional-plan.html
10	Regulatory Strategy released by the Queensland Department of Environment and Heritage Protection	This statement outlines the long-term vision for the Department's regulatory, compliance and enforcement activities. The strategy aims to streamline the approval process in Queensland.	http://www.ehp.qld.gov.au/management/planning-guidelines/policies/regulatory-strategy.html
11	Queensland Environmental Practice Reporter, Volume 18, Issue 82 2012/2013, article titled "*Environmental Assessment of Mining Projects in Queensland: Does the State Development Act's 'Significant Project' Process Result in Adverse Environmental Outcomes?*"	The article discusses the efficacy of environmental assessment and approval systems for Queensland mining operations for both applications under the EP Act and for projects declared 'significant' under the State Development Act. The article then considers how the new *Greentape Reduction Act* (Qld) will further affect assessment processes and will conclude by providing pragmatic guidance to practitioners when dealing with environmental assessment of mining projects under these acts.	http://www.qela.com.au/_dbase_upl/QEPR%20Vol18Issue82O.pdf
12	Xstrata Coal Queensland Pty Ltd & Ors v. Friends of the Earth – Brisbane Co-op Ltd and Ors, and Department of Environment and Resource Management [2012] QLC 013	The judgement and recommendation from the Land Court (Qld) on the Wandoan Coal Project from CAC MacDonald, delivered on 27 March 2012.	http://www.landcourt.qld.gov.au/documents/decisions/MRA092-11%20Xstrata.pdf

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