PO Box 41
GRAFTON NSW 2460

16 July 2013

Productivity Commission
Locked Bag 2,
Collins St
EAST MELBOURNE VIC 8003

Re: Submission to Productivity Commission Draft Report (May 2013) - Mineral and Energy Resource Exploration

Dear Sir/Madam,

Please find enclosed my submission to the above draft report recently released for public comment. I acknowledge that my submission is submitted a day late but trust that you will, in the interest of good will, accept and consider it.

As mineral, energy and coal resources exploration, mining and extraction is very much a top public interest topic and issue at present it is unfortunate that the purpose and scope of the inquiry has been limited to (the non-financial barriers) to exploration only. Examination of such barriers across the broader spectrum - exploration/prospecting, approvals/permits through to operational and post operational compliance (environmental monitoring, reporting restoration etc.) - would have made this a more holistic exercise.

As a stand alone and narrow, eclectically focussed Inquiry quite a few of the draft recommendations make sense and are agreed with. These are in particular draft recommendations 3.1 to 3.4, 4.2, 5.2, 6.7 and 6.8.

I am however uncomfortable with a number of other draft recommendations as outlined below.

Draft recommendation 4.1

Given that in NSW, for instance, only about 8.8% (approx) of the state is in national park or conservation reserve (under NP & W Act) I found it interesting that it is being recommended that prior to dedication, evidence-based analyses of the economic and social costs and benefits of alternative or shared land use, including exploration should be undertaken. Conservation is “forever” whereas wealth from extracting (& producing) minerals, coal & energy is for the “few” and ultimately is short term due to its non-renewable nature.

National Parks agencies are already run down and under-resourced (in NSW at least) that to require them to provide such evidence-based analyses as suggested is to unfairly require them to justify the “short view” economics of nature conservation/biodiversity against mineral/energy or potential mineral/energy wealth. There is surely sufficient scope to search for and extract mineral, energy and coal resources in the 90 or more per cent of the land (and other area) outside of conserved areas and areas with high nature conservation potential.

Draft recommendation 4.3

The *Multiple Land Use Framework* is currently draft (as at December 2012) I believe. Similarly, the *Draft National Harmonised Regulatory Framework for Coal Seam Gas 2012* which acknowledges or incorporates the (draft) *Multiple Land Use Framework* is also draft. So it should be “hold your

horses" or proceed with caution with actions and recommendations in relation to these. Even if these documents were adopted and finalised they are new and any activities assessed and approved under them should be monitored closely to also assess the suitability and effectiveness of the frameworks.

Draft recommendation 6.2

Whilst on the face of it this recommendation would seem to make sense if State governments and Territories can be trusted to diligently and consistently administer and implement improved bilateral arrangements relating to environmental assessment and approval processes under the Environment Protection and Biodiversity Conservation Act in concert with the respective State/Territories environmental assessment and approval processes. The big question for the public is - **who will monitor and audit (and how) if the standards and arrangements are being properly adhered to?**

Further, will all processes, assessments, monitoring/auditing/reporting be transparent and publicly accessible?

Draft recommendation 6.5

Usually prescriptive conditions are applied as self management or self regulation by the industry or their employed or contracted operators to manage and achieve alternative environmentally sound outcomes cannot in itself be successfully monitored and scrutinised. I believe there would be a conflict of interest and loyalties. Enforcement and compliance by government regulators is often ineffective as they are under resourced and often the onus is on the regulatory agency to prove that the wrong thing has been done (where there is an alleged breach) even in the context of more prescriptive conditions.

A shift towards a more nebulous "performance-based environmental outcome" framework will make compliance, auditing and reporting more difficult and accountability more difficult to demonstrate. It will be a field day for the industry and for privately contracted/certified compliance operators. In many cases the "horse will have bolted".

Draft recommendation 6.6

This recommendation is a bit scary in the context of the Queensland experience recently reviewed by Dr Nicola Swayne (Swayne, N. 2012, 'Regulating Coal Seam Gas in Queensland: Lessons in Adaptive Environmental Management Approach?', *Environmental and Planning Law Journal*, vol. 29, no. 2, pp. 163–185). The Commission's draft report of course cites Dr Swayne.

Dr Swayne noted (pp. 33/34) *"….only time will tell whether the current adaptive approach will be able to protect the Queensland environment from what the Queensland Government acknowledges are the "unknown and unintended impacts" of CSG production…."*. Just as I have selectively quoted Dr Swayne from pp. 33/34, I note that the Commission's draft report has also selectively quoted her from page 34 in the context of what she noted what an effective adaptive management approach would require.

I would conclude my comment on this draft recommendation by quoting Dr Swayne's final sentence on her p 34:

"Most significantly, a truly adaptive environmental management approach must be able to embrace the hard decisions that go with "learning by doing" including the ultimate decision of ceasing CSG activities in Queensland in the face of significant information gaps and/or an unacceptably high risk of cumulative adverse impacts".

Of course I acknowledge that all of the above in relation to Dr Swayne relates to experience in QLD in what is largely more of a "production" environment. Exploration is the thin edge of the wedge to production and extraction/mining but government of course is in the business of protecting the broader public interest and hopefully not devolving or contracting all of its responsibilities onto the industry and private sector. More meaning needs to be given to and a stronger framework needs to be structured around "adaptive management" before exploration and production operates in accordance with such principles.

Concluding comment

I hope the Commission finds these above comments useful and constructive. The Commission is no doubt aware that in NSW its planning system is currently under review in a most hasty manner I should add – refer to recent public exhibition of White paper and Planning Bill 2013 - Exposure Draft).

The draft legislation is being drafted to enable the Director of Planning and Infrastructure (in a one stop shop approvals arrangement) to be the body to determine Mining leases under section 63 or 64 of the Mining Act 1992 and Production leases under section 42 of the Petroleum (Onshore) Act 1991. Refer to section 6.12 and Table 3 of draft Planning Bill.

Yours faithfully,

Terry Dwyer