Ref: MWA40616 /MFW/M

28/11/16

Ms Carolyn McNally
The Secretary
Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2001

**Per email:** EIAproject@planning.nsw.gov.au

Dear Ms McNally

**Re: Feedback on Improving the Environmental Impact Assessment Process**

I am the principal of an environmental consultancy, MWA Environmental, which mostly works on projects in Queensland but has recently worked on projects in northern NSW. There are a number of instances which add to our concern that there is a need in most jurisdictions to improve the quality of environmental impact assessments.

As a specialist environmental engineering consultancy (www.mwaenviro.com.au) we concentrate on using computer simulation to evaluate potential impacts and their resolution in cases involving building and land development, manufacturing processes, extractive industry and, more recently, assessing the surface and groundwater impacts of CSG extraction and coal mining.

As such, we generally provide technical assistance to the consultants and legal teams of developers, councils and community groups. We find that our assistance is most useful at the concept and pre-lodgement stages but that it is often requested too late if left to the production of expert reports stage and the subsequent negotiation of joint expert reports when the conflict requires legal processes to resolve.

As many of the issues requiring our involvement in the legal process are in regional or rural areas and as principal of the consultancy and a director of a substantial rural enterprise in an area affected by CSG extraction, coal mining, power generation and irrigated agriculture, I have followed Warwick Giblin's posts with some interest and recognise him as a leader in his field.

I have just received his emailed letter to you concerning your EIA Project and would like to add this letter of support, with the following comments on some sections of his letter.

1. Acknowledgment of the unlevelness of the playing field

   Warwick is correct when he asserts that proponents use lobbyists to influence powerful parliamentarians and the information peddled by these people is largely un-professional and unsupported by independent advice by environmental and planning professionals.

   The resource industry's lobbyists have turned this into an art form and make it quite impossible for farmers and rural communities to enjoy the same level of contact with the ultimate decision makers – the responsible ministers.

Max Winders & Associates Pty Ltd tas MWA Environmental
Level 15, 241 Adelaide St, Brisbane GPO BOX 3137, Brisbane Qld 4001
P 07 3002 5500 F 07 3002 5588 E mail@mwaenviro.com.au
W www.mwaenviro.com.au
ABN 94 010 833 084

This is something that needs to preface your report on upgrading the EIA process. Ministers should not hold meetings with lobbyists until after the approving agency has reported upon a pre- lodgement meeting.

The pre-lodgement agency should then submit its report on the pre-lodgement meeting as quickly as possible and this report should be considered by the Minister's staff before allowing a further meeting with the proponent or their lobbyist.

This is the point at which the feasibility of "adaptive management" should be raised and the proponent asked to respond before the terms of reference for the relevant environmental assessment is issued for public comment.

2. Delivering earlier and collaborative engagement with affected communities

It is not much use having "a seat at the table" when the community group is outflanked by government officials on the one side (often people unlikely to impact on the resolution of the real issues) and by the proponent, their lobbyist, project manager, legal advisers, socio-economic and technical "experts" on the other.

The community group needs to receive funding for at least their legal advisers and principal environmental management experts – the team being pulled together as soon as practicable after the draft terms of reference are released for comment and before the final terms of reference are issued.

Just who should be funded at this stage is likely to be a matter of contention given that there are some organisations are already funded by donations from wider interest and international groups. However it is considered that a flat rate could be set for payment by the department concerned for the time spent by the community group's legal adviser and key environmental planning professionals to attend these meetings.

For example, it might be noted that recent legislative changes in Queensland now make it possible for the payment of costs to landholders by CSG and mining companies for the engagement of qualified hydrogeologists to negotiate balanced "make good" agreements for loss of underground water resources.

The need for developers to meet these costs, after assessment by the government agency, is one that developers need to bear – otherwise they will keep dragging the dispute out until the community group's resources and willpower are exhausted.

This would also reduce the costs that government has to bear in delivering the more-unpalatable news to developers that adaptive management should start at the EIA final terms of reference stage.

3. Precautionary Principle to underpin major project determination

Recently community pressure brought upon a revision of a Queensland act which sought to remove "ecologically sustainable development" from the *Water Act 2000* and to make decisions on CSG and coal mining being brought under the control of the *Environmental Protection Act 1994* which calls up the *Precautionary Principle.*

I recently found that this is an essential part of the environmental assessment process when contesting an application by a mining company to only apply a "significant consequence category" level of mine water management rather than a "high

consequence category" level of management which would have prevented them from discharging surplus mine water into an environmentally significant estuary rather than re-direct it into the pit and so require the mine to be virtually discharge-free in storm events up to the 1% AEP risk category.

It is difficult to properly present such arguments in Court under cross-examination. This type of technical issue should be addressed when the level of adaptive management is set by the administering agency. The technical people can then work out a suitable water management plan.

I might add that, in the same case, we were able to argue for low risk solutions regarding noise and dust nuisance – at least as far as setting relevant conditions for the environmental authority.

4. Strengthening monitoring and reporting on project compliance

It has been pleasing to see that the Queensland Government is now placing more attention towards assessing compliance with monitoring and compliance conditions and enforcing conditions when necessary.

The regular publishing of reports on monitoring and compliance on an agency's website would aid communities in being able to assess the extent of real impacts and to have access to data that they could consider when responding to future development proposals.

5. Improve the consistency and quality of EIA documents, including the accountability of EIA professionals

There is no silver bullet that can resolve this issue as, from my experience, the expectations of the consultants used by each of the parties vary widely at the outset and only narrow down to the real issues when the issue goes to court.

The processes used by the Queensland Planning and Environment Court to resolve arguments between experts have been found to be quite workable.

However, I agree with Warwick Giblin, that the compilation of EIA's is complicated by the need for them to be so voluminous and with so many appendices that it is hard to work out what is being said by the environmental professional experts and what is being written by the proponent's communications consultant.

6. Make the decision making time frames more certain and efficient

I support Warwick Giblin's comments in this regard.

I note however that Warwick has not made reference to development applications that may or may not be referred to the Australian Government for consideration under the *Environmental Protection and Biodiversity Conservation Act.*

We now have a problem with this in Queensland due to an arrangement made by the states under a previous Australian Government ministry which allowed the Queensland DEHP to make the state agency the decision maker - at a time when the Queensland DEHP appeared to be unduly influenced by industry lobbyists at the expense of rural stakeholders.

This situation appears to still be unresolved by the current Australian Government ministry and the lobbyists are working harder than ever, both state and federally.

Therefore I think that it is essential that the Independent Expert Scientific Committee set up under the Act to review “large” coal mining and CSG projects be advised by referral at an early stage so that they might add comment to the drafting of the terms of reference and make a decision whether or not their advice on the EIA should be considered by the state agencies.

That way at least the Australian Government gets a chance to have an input at an early stage and provide some quite experienced technical and scientific advice from an agency with a proven track record.

I would be pleased to provide further explanation of the above if you require.

Yours sincerely

M.F. Winders, BE FIEAust RPEQ No. 00642
**Managing Director**