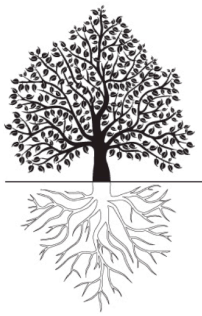

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Mr Anthony Roberts MP
Minister for Resources and Energy
Office of the Minister for Resources and Energy
Level 37, Governor Macquarie Tower
1 Farrer Place,
Sydney 2000

26 June 2014

Dear Minister Roberts,

Thank you for the opportunity to put to you in writing what was conveyed to you at our meeting on 28 May 2014.

Set out below are those thoughts and some examples of why I believe they would improve the current system, for landholders, for the environment and for government, and inevitably for title holders. Legislative references are primarily to the Mining Act 1992 (NSW), and, in general, [with only a few crucial exceptions] there are similar provisions in the Petroleum (Onshore) Act 1991 (NSW) (**POA**).

I spoke of three fundamental issues in the current system which can be simply remedied.

1 Bridge the current gap between science and law by requiring baseline data collection and regular monitoring;

2 Balance the inequality in the land access regime by implementing the principle that the landholder and the environment should be no worse off as a consequence of a title holder seeking access to their land; and

3 Remove the inefficiencies in the system by administering, monitoring and enforcing the current Acts. Consider a major shift in the legislation to ensure generation of State wealth by retaining ownership of the resource beyond extraction until sale for its market value. I understand that this is now the position in the majority of the world's resource legislation.

More detail on each of these points is set out below.

1 The current gap between the science and the law

There is no obligation in any of the relevant regulatory instruments: Acts, Regs, SEPPs which requires baseline data collection and regular monitoring before exploration begins. This lack of baseline data then impedes the ability of the landholder and or the State to remedy damage, ensure rehabilitation, pay proper compensable loss or enforce environmental protection laws.

This baseline data collection and monitoring needs to be undertaken independently of the title holder. There is no other industry where significant potential damage can be caused, which allows self regulation. For example the banking, consumer, superannuation, insurance, sporting, corporate sectors all have independent regulators.

Once access has been either agreed or determined, baseline data collection could be commissioned by the landholder or the State and paid for by the title holder out of its security. A landholder knows his land, knows what is valuable and requires protection. The data must be either owned or controlled by the landholder. It is only in the landholder's interest to preserve the value of their major asset. Inevitably it is in the State's interest to preserve this value. It is certainly not in the titleholder's interest. This data gives a landholder/the State/the EPA evidence to establish causation which is necessary for damages, rehabilitation, compensable loss and enforcement.

It is my view that certain fundamental items, such as groundwater and possibly soils, require regional baseline data collection for the purpose of establishing, on an environmentally sustainable basis or triple bottom line basis, whether any resources title should be issued.

2 The inequality in the current access regime

The greatest travesty of the current system is the enormous uncompensated cost burden which any landholder who wishes to protect their land is forced to incur in order to know their rights, what they can protect, what the title holder is approved to do and have this protection built into the access arrangement. This loss to the landholder can at least be mitigated by implementing a principle, which we are now calling the "Shaw Frost Principle", that the landholder and the environment should be no worse off as a consequence of the titleholder's activities on their land.

To provide you with a single example of which there are many others: In the case in the Bylong valley where KEPCO has pushed Craig Shaw and Paul Frost through the arbitration process, the landholders have incurred, since August 2011, over $100,000 in legal costs, spent many hundreds of hours, traveled thousands of kilometres to arbitration hearings and conferences with their legal team. These costs are currently unrecoverable. These costs were incurred to establish KEPCO's rights and approvals, the landholders' significant improvements, the examination of issues with access through a National Park, with a paper road, with the home sitting in the middle of the paper road, with creek crossings, with existing approvals and the necessary additional approvals. Added to these were costs for preparing submissions for 12 days of arbitration and for drafting and redrafting access arrangements. These costs do not reflect the actual costs, as very significant amounts of the legal costs have been written off, or not charged, the agents have not been compensated, the senior counsel overshadowing the matter have not been compensated, and most importantly the landholders have not been compensated for their time or disbursements.

Despite having a final determination for access made on 10 June 2014, and a clear requirement within that determination for KEPCO to contact the Landholders within 10 days in order to arrange an initial site visit, no contact has been made. If it transpires that KEPCO does not in fact proceed to exploration on their land the Landholders will be left high and dry, not even receiving any of the quite modest compensation amounts provided for in the arbitrated agreement.

If KEPCO had been properly and thoroughly prepared, in our view, it is unlikely it would ever have sought access to the Shaw Frost land, evidenced by the fact that the currently proposed mining lease area does not include their land. It was however in the interests of its operator Cockatoo Coal Ltd to drill as extensively as possible. I would call this an abuse of a landholder by a title holder, which currently is absolutely legal.

Similar circumstances of what could be called "stranded costs" also occur if the relevant land was to be relinquished as part of the renewal; if the title holder decided not to renew; or if the environmental circumstances were such that a title holder could not get the necessary approvals. In each case, a landholder is left with a substantial costs burden.

We hope that any review of the current legislative regime will ensure a shifting of the risk and the cost away from a landholder and onto the title holder, whether or not access is granted or undertaken. With exploration and mining now occurring on valuable agricultural land it can no longer be said there is any benefit from

exploratory or mining activity which runs to the landholder. There is currently only detriment. That detriment is in costs, time, stress, damage to the property and damage to the business run on the property. This detriment runs for many many years. To be frank, the current system is a travesty of justice for a landholder. This can, in the least, be mitigated by implementing the Shaw Frost Principle that neither the landholder or the environment should be any worse off as a consequence of the titleholder's activities on his land.

3 Remove the inefficiencies from the current system

Remove the inefficiencies in the system by administering, monitoring and enforcing the current Acts. The current system is not being efficiently administered, and as a consequence, leaves the government open to embarrassment, encourages waste, angst and impacts in negative development of the other resources on the land. For example:

(i) An exploration licence should not be renewed if no work has been done. This is a clear breach of the licence. The Minister has the power in the Act not to renew and the Acts are clear that no damages are payable.

(ii) Renewal should take place at the time of expiration of the previous term, not a year or years later, as is now often the case.

(iii) The exploration licence area on renewal should be relinquished, as set out in s114(6) of the Mining Act by 1/2 [there is a similar provision in the POA). This will further encourage exploration and focus the title holder to plan its exploration program on areas which have the most potential.

(iv) Each renewal date should be defined as the "related date" for the purpose of protecting and encouraging the development of “agricultural land” defined under the Mining Act.

(v) Exploration licences should not be given to title holders with no capital, experience or intention to explore.

(vi) Exploration licences should be auctioned and renewal fees increased. The system should not be such that title holders can take up licences for relatively insignificant fees, and then sell the shares in the title holder for a windfall profit. This does not benefit the State.

(vii) Exploration licences should not be granted over areas where mining will never occur - due to, for example, issues with ground water, urban expansion, heritage, tourism. To issue licences over land which inevitably, for whatever reason, will not be mined is inefficient, demonstrates poor planning, is embarrassing and query whether it exposes the State to claims for compensation.

(viii) Exploration licence areas should not be so large that it is truly impractical for an explorer to explore it in the term of the licence. For example AGL's PEL2 is enormous and despite the fact that is was issued more than a decade ago, it remains largely unexplored. The onshore petroleum exploration licence areas in general are too large. May I submit that the rationale for large petroleum licence areas offshore does not translate to the onshore scenario. Further, there is little possibility a title holder would ever be able to explore the area within the term. Licence areas for onshore titles should be large enough to encourage a good price to the State at auction, yet small enough to ensure thorough exploration.

(ix) Title holders should never be able to seek access if they have no approval to undertake the work they are seeking to undertake. They may never get that approval. The futility of the exercise should not result in a cost or time burden on a landholder.

(x) The system should be designed to ensure, or at least encourage, a title holder to plan thoroughly in advance. A title holder should never be able to drive a landholder through the access process and then decide it does not wish to access the land.

(xi) A more radical [for Australia, but not internationally] change would be to look to the now majority of resource systems around the world, where the State has retained ownership of the resource beyond extraction and sells it for value. In such circumstances, the sovereign wealth of some of these States has become vast: may I suggest looking at Norway, Malaysia, Indonesia, as examples. Attached is an article by

Mr John Nader QC RFD which refers to the benefits of such a scheme, and the issues with our current scheme, recently published in the NSW Bar News which he has kindly given me authority to include with this letter.

There are a number of other issues including:

- related to the process running up to obtaining development consent where landholders are concerned whether they will be in the acquisition zone or not, and the consequences for their business if not.
- issues with community consultative committees not listening to the community concerns.
- issues with amendments to the Mining SEPP where the "significance of the resource" now trumps the previous internationally recognised environmental sustainability of the project.
- effective removal of the only independent merits review of a project by ensuring the PAC undertakes public hearings, instead of public meetings.
- not to mention the issues in the development consent process where EIS' are hundreds of pages long, provided in sections so one cannot search across the entire EIS without having to look in each individual section. Where 28 days is wholly inadequate to consider and respond to landholder concerns. Where responses by proponents are not addressing the issues raised by objectors. Where the PAC at a public hearing gives 3 minutes to each objector to raise its concerns.
- issues with the lack of administration of the Water Management Act and the various licences and approvals required under that Act. For example: if an aquifer access licence is not required before drilling into an aquifer, how can one say whether the precondition to trigger the requirement to have the licence: extracting 3ML/year/licence area, is triggered.
- issues with ease of circumvention of the application of the trigger for state significant development provisions in exploration drilling of CSG wells in the State and Regional Development SEPP.
- issues with pilot production in exploration circumventing thorough environmental scrutiny required before production.

However these can remain the subject of a further letter or letters, should you be interested in hearing more.

I would welcome the opportunity to assist further in any improvements of the system.

For your information, I have been asked to provide a copy of this letter to Minister Goward, which Mr Peter Martin will do on MLPPL's behalf.

Thank you again for the opportunity to put these matters to you. I would be more than interested in your response.

Yours sincerely,

Marylou Potts

Copies to:

Hugh Price: CSG Science Forum
Warwick Giblin: CSG Science Forum
Craig Shaw: BVPA
Peter Martin: SHCAG