

# ***Global Energy Demand Conflicts: Public Participation and Sustainable Development - the Elephant in the Room?***

## ***Part 1: Effective Public Participation & Conflict Management***

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### **Disclosure Statement**

*Ted Christie does not work for, consult to, own shares in or receive funding from any company or organisation that would benefit from this article, and has no relevant affiliations*

**Key Words:** Global energy; climate change coal; CSG; Australia; environmental impacts; community consultation; public participation; ADR; goals; power; information conflicts

*“How can we best resolve issues of major controversy between groups holding opposing, yet sincerely held, opinions in ways that most nearly satisfy the principles of the democratic ordeal ... solutions from which all parties can emerge with some sense of gain and certainly with the knowledge that their views have properly been taken into account by the ultimate decision-maker...”*

Former Governor-General of Australia, William Hayden (1991)  
commenting on public interest dispute resolution

### **SUMMARY**

- (i) Australia was the world’s largest exporter of coal in 2016. Australia will become the world's largest CSG producer in 2018.
- (ii) Around one-third of Australia is covered by coal and gas licences and applications.
- (iii) Controversy over CSG and coal mining, arising from Australia’s key role to meet global energy demand, has led to litigation and non-violent, peaceful protests over development and the environment.
- (iv) *The reason:* Limitations in the public participation processes used to manage and resolve information conflicts over potential environmental impacts and sustainable development.
- (v) The opportunity for the community to be involved in public interest environmental conflicts is now very much a global norm.
- (vi) Two public participatory models are evaluated for their effectiveness for managing and resolving information conflicts: *Community consultation* (the most common process used by Government) and *alternative dispute resolution-negotiation*.
- (vii) The level of power the community would have for collaborative problem-solving and conflict resolution is significantly different between both processes.
- (viii) Managing and resolving complex information conflicts and divergent scientific opinion, a feature of all public interest environmental conflicts, requires a process that facilitates effective collaborative involvement of all competing interests and Government, trust in process and a sense of ownership in outcomes: All elements of *ADR-negotiation* - but not *community consultation*.

## Background to the Conflict in Australia

Society is now confronted with the development and use of natural resources within a framework of natural and fiscal limits that were unimaginable in the past. Significant environmental concern for development to “*meet the needs of the present without compromising the ability of future generations to meet their needs*” has become a cornerstone for resolving public interest environmental conflicts in the 21<sup>st</sup> Century.

Expansion of LNG projects will see Australia take the world’s number one spot from Qatar in 2018. [Australia will also take a greater global role](#) to become the world's largest CSG producer; Australia will account for nearly one half of international output beyond 2020.

According to the International Energy Association, [Australia’s exports are set to increase](#) to nearly 70% of all gas produced in Australia.

In 2016, Australia was the [world’s largest exporter](#) of coal: The total amount of 389 Mt exported was either steam (52%) or coking coal (48%).

The [World Coal Association CEO](#), makes the following observation:

*“...the reality is that coal will continue to play a significant role in the world’s energy system. India, Pakistan, Bangladesh and parts of Southeast Asia will become the primary engines of future coal demand growth. Today, coal accounts for 27% of global primary energy demand, and is the second most important source of primary energy...”*

**Controversy over CSG and coal mining, arising from Australia’s key role to meet global energy demand, has led to litigation and non-violent, peaceful protests over development and the environment.**

**The community – conservation, Indigenous, farmers and graziers, local – have become galvanized into action over time.**

***The reason: Limitations in the public participation processes used to manage and resolve information conflicts over potential significant environmental impacts and sustainable development.***



The Adani coal mine and rail project has been strongly opposed by conservationists.

*In August 2013, over 1,000 people marched in Brisbane to raise awareness of new and emerging threats to the Great Barrier Reef. In 2018, the controversy had reached the stage in Queensland where Anti-Adani activists could be forced to foot the bill - if necessary - when police are called out to 'peaceful protests'<sup>1</sup>.*

## **Global Energy Demand & Environmental Conflicts in Australia**

Australia's role in meeting global energy demand has created a major challenge for Government to manage and resolve polarised scientific opinion.

### **Case Study 1: The “The Adani Carmichael Coal Mine and Rail Project”**

Controversy over the Adani project arose when assessment and evaluation first commenced in 2010. The project will be an open-cut and underground coal mine with a yield of 60 million tonnes per annum.

Extending for almost 50km, it will be one of the largest mines in the world; it will certainly be the biggest coal mine ever seen in Australia.

On 3 April 2016, the [Queensland Government gave a conditional environmental approval](#) to the \$21.7 billion project. Three individual mining leases, estimated to contain 11 billion tonnes of thermal coal were granted; 99 conditions were attached to the mining leases to protect the environment.

Concerns over [potential significant adverse environmental impacts](#) resonate with the enormous scale of the Adani Project and include: -

- Sustainability of water resources, local rivers and underground aquifers: Adani has been granted unlimited volumes of water for 60 years from the Great Artesian Basin - Australia's most important water resource.

*The **Great Artesian Basin** is one of the largest underground fresh-water reservoirs in the world. It underlies approximately 22% of Australia – occupying an area of over 1.7 million km<sup>2</sup> beneath the arid and semi-arid parts of Queensland, New South Wales, South Australia and the Northern Territory. For more than a century it has sustained much of the pastoral and community needs of a fifth of Australia's landmass.*

- Destruction and fragmentation of the habitat of threatened species of fauna and flora.
- Impacts on the Great Barrier Reef World Heritage Area from dredging activities associated with the huge expansion of the Coal Port Terminal.
- Uncertainty whether the burning of coal from the Carmichael mine will have adverse impacts on global warming and the World Heritage Values of the Great Barrier Reef.
- Indigenous Land Use Agreements.

#### **Case Study 2: CSG and Lock the Gate Alliance**

- The Alliance is a national grassroots organisation, formed in 2010 to protect land, water and communities. It is made up of over 120,000 supporters and more than 450 local groups
- Their key concerns relate to the extent and rapid expansion of coal and CSG mining developments in Australia – **37.3% of Australia is covered by coal and gas licences and applications** (an area almost 13 times the size of Great Britain) - and the potential risks to land and water resources - *Food security, prime agricultural lands, high value natural areas, underground water resources, many rivers and wetlands.*  
**Public health** is another major source of concern.

#### **Understanding Public Interest Environmental Conflicts in a Nutshell**

Public interest environmental conflicts involve multiple participants holding **competing interests and values** towards development OR the environment: **Reaching complete agreement on disputed facts is unlikely.**

The most probable outcome for resolving a public interest environmental conflict, through a negotiated agreement, would be a **compromise solution**; this means **concessions** would need to be made by the competing interests.

A negotiated agreement would also have to be reached by **consensus**. Consensus does not mean total agreement on every aspect of the outcome - but that all competing interests were prepared to live and abide with the outcome.

Another feature of public interest environmental conflicts is that the issues will be both complex and controversial; and for **divergent expert opinion** to prevail in the **best available scientific knowledge**.

The **information conflicts** that arise are the major source of environmental disputes.

So, it is not surprising that the protest and controversy associated with a public interest environmental conflict can create a political firestorm – **literally** - for Government.

Who can forget the vivid media images demonstrating community anger over the future management of the Murray-Darling Basin’s water resources? Divisive public opinion existed. Copies of the draft “*Murray-Darling Basin Plan*” were burnt in a street bon-fire in the Basin town of Griffith, New South Wales, following its release.



Copies of the draft Murray-Darling Basin Plan being burnt at Griffith, October 2010.

*PHOTO: Kate Geraghty/Fairfax Syndication*

When conflict over scientific information persists, Government takes steps to neutralise polarised public opinion and to maintain public trust.

The general approach taken by Government is to have the information conflicts assessed through some form of public participation. *The goal: To manage the information conflicts to determine how real and serious the potential environmental impacts might be; and to resolve conflict.*

- ❖ **Where public participation is ineffective, the unfortunate outcome is a *red corner ~v~ blue corner* scenario. *Competing development and environment interests* maintain their opposing positions towards the conflict - rather than finding a solution that satisfies their *interests* i.e. their *needs and concerns*, related to the conflict.**
- ❖ **The conversation in Australia on public interest environmental conflicts places an inordinate focus on jobs *OR the environment* – rather than as *sustainable development* problems that recognize the *inter-dependence between jobs AND the environment*.**
- ❖ **The choice of the public participation process used by Government to resolve public interest environmental conflicts is crucial:**
  - i. *Will it facilitate public trust and confidence in Government?*
  - ii. *Will the process provide meaningful involvement for all competing development and environment interests?*
  - iii. *Will the process restore, or enhance relationships between fiercely competing interests and Government?*

### **Effective Public Participation: *Concepts and Goals***

The link between *effective public participation concepts* and its *goals*, is a well-accepted body of knowledge within the social sciences.

For example: -

1. The *goal of public education* requires all relevant and reliable scientific information to be made freely available to the affected communities and in a form that is easily understood.
2. The *goal of improving the substantive quality of decisions made by Government* requires all competing development and environment interests to be identified and meaningfully involved, from the outset.

This is to ensure that the ultimate decision made by Government will be viable and able to be implemented.

3. The ***goal of reducing conflict between competing development and environment interests*** requires the public participation process to be based on shared involvement and responsibility. A public participation process based on shared involvement *e.g. joint fact-finding and problem-solving*, would be transparent and responsive to the community as it involves the Government sharing its power.
4. The ***goal of facilitating trust-building*** with Government is dependent on the public participation process providing the community - those who must live with the outcome - with a sense of ownership in the ultimate decisions made by Government *i.e. by recognizing the legitimacy of community needs and concerns*.

In turn, ***public confidence*** will flow on to Government when affected community interests know that they can *trust the environmental management and monitoring plans* that would be implemented.

Achieving all these goals should be a bottom line for Government. It would avoid a potential collision between the community and Government over the *effectiveness of the public participation process*. Examples of community concerns that could trigger a collision over public participation include: -

*Withholding information,  
or requiring legal proceedings to reveal it -  
through to community concerns  
that their views or submissions  
had not been properly taken into account.*

### **Community Consultation ~v~ Public Participation**

The opportunity for the community to be involved in public interest environmental conflicts is now very much a global norm.

Participatory processes for community involvement exist in several forms.

They vary in the level of power the community has in the outcome: -

*From simply commenting on the proposal or action  
by making written submissions;  
making recommendations as to the form of the final decision;  
through to sharing power with Government  
in the decision-making process.*

Two of the most commonly used public participatory processes are *community consultation* and *public participation*.

**(a) Community Consultation**

Consultation is a two-way process of information exchange between Government and the community. Community views and public comment (*e.g. by written submissions*) are sought during the consultation period. The submissions are generally summarised and published as a public document.

However, unless there is a statutory requirement for Government to be bound by the outcome of the consultation, *there is no legal basis for the advice received during community consultation to be accepted or taken into account to any particular degree in decision-making by Government<sup>2</sup>.*

A statutory obligation to consult is an obligation to consult, not an obligation to agree — unless such power is provided for in the statute. However, such a legal obligation is generally not provided for in environmental legislation in Australia.

Therein lies a source of a problem for consultation to be an effective participation process: Where consultation fails to resonate with some of the goals of public participation (discussed at pages 6-7).

*Such a case might be where the  
outcome of community consultation  
was ultimately inconsistent  
with the final decision made by Government.*

In these circumstances, **trust in process and Government** would decline as community consultation would be seen as **neither transparent nor responsive** to community needs.



Queensland's *Environmental Protection Act (1994)* and the Federal *Environment Protection and Biodiversity Conservation Act (1999)* provide for an obligation to consult, only. But, the Federal Water Act (2007) provides the Murray-Darling Basin Authority with discretion in preparing its Basin Plan<sup>3</sup>.

**(b) Public Participation: Alternative Dispute Resolution-Negotiation**

Shared involvement and responsibility is a central feature of effective public participation processes that have a framework of joint analysis and control over decisions and their implementation. Mediation and consensus-building may be an agreed part of the participatory decision-making process.

A structured process for public participation based on *alternative dispute resolution ("ADR")-negotiation* provides opportunities for competing development and environmental interests to engage Government through constructive **collaborative problem-solving**.

Unlike consultation, the *ADR-negotiation* process foundations are based on joint fact-finding (**conflict management**); as well as shared responsibility to then find mutually agreed solutions by negotiation (**conflict resolution**).

- (i) The *ADR-negotiation* process offsets the limitations of community consultation to manage information conflicts - through joint fact-finding - and to resolve conflict by negotiation. The level of power the community has in *ADR-negotiation* for collaborative problem-solving is significantly greater compared to *community consultation*.
- (ii) As power is shared with Government, solutions reached through *ADR-negotiation* facilitate trust-building; the participatory process would be seen as transparent and responsive for competing interests.
- (iii) Competing interests would have a sense of ownership in the solution reached by *ADR-negotiation* – an advantage for its implementation.

**Conclusion**

**Resolving complex information conflicts and divergent scientific opinion, features of all public interest environmental conflicts, requires a process that facilitates collaborative involvement of all competing interests, trust in process and a sense of ownership in outcomes. All elements of *ADR-negotiation* - but not *community consultation*.**

## End Notes

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<sup>1</sup> Domanii Cameron, "Adani protestors 'will pay.'" *Brisbane Courier-Mail* 16 December 2017 (p. 29)

<sup>2</sup> See: *Leichhardt Municipal Council v Minister for Planning No. 2* (1994) 78 LGERA 146.

The Land & Environment Court of New South Wales considered the meaning of the legal obligations for community consultation as imposed by the relevant environmental statute:

"Given its ordinary or common meaning, according to the Oxford Dictionary, consultation involves the taking of counsel, seeking information or advice from another and taking it into consideration either by deliberation or in conference.

*There is no imperative that the advice be accepted or that it be taken into account to any particular degree.*

*The object of consultation is to be apprised or informed of other opinions or positions in regard to a subject before the matter for decision is finally determined".*

The Appeal Court of the Supreme Court of New South Wales (1995) 87 LGERA 78, concluded:

*"...The obligation was to consult, not to agree".*

<sup>3</sup> Section 43(10) *Federal Water Act 2007*: in preparing its Basin Plan - the Murray-Darling Basin Authority is provided with the discretion to alter the Basin Plan as a result of its consideration of submissions received, in accordance with the statute, during the consultation period.