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1 November 2013

Dams Safety Review
NSW Trade and Investment
GPO Box 5477
Sydney
NSW 2001

Copy by email: damsafety.review@industry.nsw.gov.au

Dear Sir / Madam,

Glencore is the largest producer of thermal coal in NSW. We have undertaken a review of the KPMG final report – “Review of the Dam Safety Act 1978 and Dam Safety Committee” (September 2013) and we offer our comments on the KPMG recommendations in the table below. Each recommendation is referred to by number, and our associated responses are provided. Our responses are provided from the perspective of both an owner of several prescribed dams in NSW, and also from a developer and operator of coal mines operating under or in proximity to prescribed dams.

Recommendation	Response
1	<p>The acceptance of operating strategies as a risk mitigation will require a management framework with more regular reporting and auditing to ensure compliance, compared to engineering solutions which inherently require less ongoing input to maintain control of the risk, and are less susceptible to human error.</p> <p>Agree with risk based approach as well as consideration of broader range and efficiency of control measures. However, legislation may end up with prescription on risk ranking categories & solutions to high risks treatment – this will need a great deal of stakeholder and expert input. Risk ranking should distinguish between “risk” as well as “3rd party” or “public” risk.</p>
2	<p>Monitoring of compliance should be on a scale commensurate with the level of public risk, or third party risk. Risk to the owner should be less heavily regulated. Do not disagree in more “hands on” approach from regulator, and checking compliance. The compliance matters and powers of the regulator need clarification.</p>
3	<p>The recommendation is not definitive enough, and recommends 3 options. Glencore recommends the composition of the regulator should be an industry independent regulator supported by staff, with an “Advisory/Steering Committee” comprising:</p>

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	<ul style="list-style-type: none"> • the agencies being Treasury, DP&I, DTI DRE and • SES • and Industry Reps (being NSW Farmers representative, NSW Minerals Local Govt, SCA/ State Water / Sydney Water etc)
4	<p>Risk creators are not only the dam owners. In the event that a downstream development is undertaken that increases the dam risk profile, for example a housing estate, then the downstream developer is the risk creator and the cost of that development should cover the cost of the dam's increased risk mitigation measures.</p> <p>Potential for funding based upon sliding scale based upon fatality consequence rating with lowest fatality consequence having lower fee and highest fatality consequence having a higher fee. For example <0.1 say \$250, 0.1 to <1 say \$500, 1 to <5 say \$2,500, 5 to <50 say \$5,000 and 50+ say \$25,000</p>
5	Agreed
6	The regulator should be compelled to report and consider the outcomes of consultation, to achieve transparency.
7	Agreed
8	<p>Current Planning processes already address/facilitate community consultation for new developments. Disagree with this recommendation as there shouldn't be a need to do this again. (Link DSA to EIS process and identify "risk" zones as suggested for recommendation 10.)</p> <p>Suggest a sliding scale of CBA required with lower fatality consequence dams requiring a basic level of CBA and with the higher fatality consequence requiring a more detailed CBA. For example <0.1 category could be a tick box exercise, a medium dam with 1 to <5 rating could be a CBA covering a set format and content and a major dam with 50+ rating could be a full CBA that is exhibited for public comment and peer reviewed</p>
9	Minimum standards for investment could be linked to fatality consequence and CBA outlined in Recommendation 8
10	<p>The systematic and proactive approach to planning should be achieved by the DSC regulator being engaged in the new Strategic Regional Land Use Planning process to be introduced by the government. The regulator should define "Development Risk" zones for inclusion on Strategic Regional Land Use Plans which are the framework for Local Government to develop zonings and Local plans.</p> <p>Development risk zones should also include "overlapping" zones for land use (such as in the case of stratified mining tenement) as well as downstream developments/risk.</p> <p>Could require that the dam owner provide Council with a notification zone that is placed on a layer in the LEP that requires a developer for any development within this zone to notified and consulted with the dam owner before the development application is submitted. Developments that fall within this zone could then need to be referred to the DSC for concurrence (with potential conditions) and enable the DSC to this point to determine if the proposed development would require the risk rating of the dam to be revised. The issue of any costs to the dam owner associated with an increased risk rating from the proposed would need to be considered with potential provision for apportionment of the cost conditioned on the development. This could be for any dam that is below a certain rating i.e. small to medium dams as it would be impractical to apply to large dams due to their greater extent.</p>
11	Yes, as recommended above. In addition, the Director General of Planning should include a standard requirement for State Significant Development (Director General's Requirement) to consider dam safety in the project EIS.

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	Section 89K of the EP&A Act 1979 could be expanded to include the Dams Safety Act.
12	Dot Point 2 The dam safety regulator should be concerned with safety only. The PoPI should consider the economic cost of water loss as an externality cost in the benefit cost analysis of developments.
13	Recommend leaving current DSEP approval as it is. General support from surveys, and already done in consultation with other government agencies. Alternatively, DCS could create a panel of independent private certifiers that can be engaged to review and make recommendations for approval of DSEPs on behalf of the DCS who then either approve or refuse the DSEPs based on the recommendation of the private certifier. The private certification cost would be borne by the dam owner.
14	Do not disagree.

Should you wish to discuss any of these recommendations please do not hesitate to contact the undersigned.

Yours sincerely,



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