

**The Regis Resources Gold Mine Project, Orange, NSW, Australia:
A Precedent for Future Land Development Projects Or
A Catalyst for Linking Traditional Knowledge and Western Science?
A Conflict Assessment and Management Perspective**

Dr Ted Christie, 12 September 2024



Disclosure Statement

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“Protecting cultural heritage and development are not mutually exclusive; we can have both, but projects have to be well-designed.”

Federal Environment Minister Tanya Plibersek (2024)

There would be little dispute that the above statement should be a cornerstone for the evaluation and decision-making process by Government for major projects that may have adverse impacts on land that is Indigenous owned or controlled. But is this the case in Australia today?

The recent decision by the Federal Environment Minister, to shut down a tailings dam to protect Indigenous cultural heritage, has ignited controversy and conflict over the viability of the Regis Resources’ Gold Mine Project at Orange, Central-Western NSW.

*The decision highlights the complexity of the problem when **cultural heritage** (with its focus on Traditional knowledge) and **development** (with its focus on Western science) collide over land use.*

Media articles refer to the potential of the gold mine to create “580 construction jobs, 290 operational jobs and about \$200 million in royalties for the State and real benefits for local Traditional owners”.

But it could now take five to 10 years to develop plans and to gain approval to relocate the tailings dam. The projected cost of building the mine has now blown out to almost \$1 billion.

Understanding the Gold Mine Project Conflict in a Nutshell

Significant issues for effective decision-making relate to the primacy of the relevant legislation for *cultural heritage* and *development*; as well as differences between law and science for proof¹.

Key Commonwealth statutes that apply for this conflict include: -

- **Cultural Heritage:** *The purposes of the Aboriginal and Torres Strait Islander Heritage Protection Act (1984) "are the preservation and protection from injury or desecration of areas and objects in Australia and in Australian waters, being areas and objects that are of particular significance to Aboriginals **in accordance with Aboriginal tradition**": Section 3 (Author's emphasis).*

NOTE: Section 10 of this Act had been invoked to stop the Gold Mine Project's tailings dam to protect a "significant Aboriginal heritage area".

- **Development:** *One of the objects of the Environment Protection and Biodiversity Conservation Act (1999) is "to promote **ecologically sustainable development** through the conservation and ecologically sustainable use of natural resources"; where one of the prescribed principles for 'ecologically sustainable development' is "decision - making processes should effectively integrate both long - term and short - term economic, environmental, social and equitable considerations": Sections 3(b), 3A(a) (Author's emphasis).*

NOTE: A media article (Daily Telegraph, 01 September 2024) reported a NSW Environmental Protection Authority("EPA") statement "that environmental risks to receiving waters are minimal and can be effectively managed with standard practices and relevant licensing conditions."

COMMENT: *How best to evaluate and counter-balance Traditional knowledge and Western science to resolve a cultural heritage/development conflict is the challenge for decision-making that needs to be addressed.*

Towards A Cross-Cultural Pathway for Resolving Conflict

There is now community concern that history may repeat in Australia in the future, where proposed developments on Indigenous owned and controlled lands may have adverse impacts on cultural heritage.

To some extent this concern may also be a reflection of the area of Aboriginal and Torres Strait Islander people's owned land in Australia?

The area of Indigenous lands in Australia is much greater compared to the United States, where Indian tribes now hold only 6.7% of the land².

The [Productivity Commission](#) estimates that, nationally as at June 2023, 16.2% of Australia's land area was owned or controlled by Aboriginal and Torres Strait Islander people; but there are significant differences between the States and Territories on the proportion of all land that is Indigenous owned or controlled³.

Although the areas of mainland Australia and the United States (48 States and DC) are similar (*around 7.6 million km²*), there is a significant difference between Australia and the United States in the approach for resolving conflicts that may adversely impact Indigenous lands and peoples.

Environmental legislation in the United States

*for the assessment of proposed major development actions
integrates Traditional knowledge with Western science,
in the evaluation of information for the decision-making process.*

The legislation is the United States statute, the [National Environmental Policy Act of 1969](#) ("NEPA"), an innovative and pioneering United States statute regarded as possibly "*the most successful legal export in history*"; it has been the framework for environmental impact assessment adopted by over 100 countries.

Under NEPA, The US Environmental Protection Agency ("EPA") seeks participation of Federally recognized Indian Tribes as a "Cooperating Agency" when a proposed project's effects may affect Indian country and other Tribal areas.

COMMENT

1.0 Finding solutions for conflicts over cultural heritage and sustainable development on Indigenous lands should not be seen as the exclusive domain of Traditional knowledge or the sole province of Western science. Rather, that the decision-making process requires Traditional knowledge and Western science to be integrated by recognizing that protecting cultural heritage and development are not mutually exclusive.

2.0 The US cross-cultural model that integrates Traditional knowledge and Western science for environmental assessments warrants consideration by Government to resolve land use conflicts over cultural heritage and sustainable development that arise on Indigenous lands

3.0 Cooperating Agency status and the [Traditional knowledge of Tribes](#) in the US has shown it can provide valuable insight on various topics e.g.,

- ❖ *Scope of environmental analysis e.g., actions and impacts to consider*
- ❖ *Quality and adequacy of available information*
- ❖ *Purpose and need for the project*
- ❖ *Reasonable alternatives for the proposed action*
- ❖ *Project proposal's impacts on the natural and human environment*
- ❖ *Recommendations for potential protection or mitigation measures, to avoid, reduce, or offset adverse impacts to resources or communities.*

A related article provides a conflict resolution perspective on this issue.

Resolving land use conflict on Indigenous owned or controlled lands is based the inter-dependence between a United States cross-cultural model for environmental assessment and a sustainable development framework.

It is based on an address to widen the conversation on this complex topic given by Dr Ted Christie as an Invited Keynote speaker at the [National Native Title Law Summit, hosted by LexisNexis](#) (15-16 July 2009).

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KEY WORDS: *Regis Resources' Gold Mine Project; conflict; Indigenous lands; cultural heritage; sustainable development; Traditional knowledge; western science; cross-cultural pathway; Environmental Protection Agency; Lead Agency; Cooperating Agency National Environmental Policy Act of 1969 (USA); Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth); Environment Protection and Biodiversity Conservation Act 1999 (Cth)*

END NOTES

1 Scientists would generally accept that the standard scientific criterion for causality would be founded on a 95% (sometimes 99%) confidence level. The criminal standard of proof, "*beyond a reasonable doubt*", is better related to the scientific standard of proof than the civil standard of proof.

In a significant difference from science, the standard of proof required by law for civil actions is the balance of probabilities i.e., "more probable than not".

But it is not simply a question of relying on a probability of 51% - or to ask how short of 99% is required to establish proof. Proof of an issue cannot be established independently of the nature and consequences of the facts to be proved: For example, the seriousness of the issue; the gravity of the consequences flowing from a particular finding.

2 "In 1871, with Indian power waning, Congress declared that the U.S. would no longer view Indian tribes as separate nations and would sign no more treaties...The Indians who once held all the land retained only about 200,000 square miles. The whites now held about three million square miles".

SOURCE: Ezra Bowen (Editor) "*The Indians*" (The Old West) Time-Life Books/Alexandria, Virginia with text by Benjamin Capps (1973) at p155.

3 "Land owned or controlled by Aboriginal and Torres Strait Islander people includes the following tenure types: freehold, leasehold, crown, license and Aboriginal Deed of Grant in Trust; ...the different forms of land tenure can overlap".