

# A Legal Perspective on the Assessment of Cumulative Environmental Impacts

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using the law to protect the natural and built environment



# Outline

- What is cumulative impact ?
- Cumulative impact and mines in the Tarkine
- The EPBC Act and cumulative impact
- Options to address cumulative impacts



# What is Cumulative Impact?

- Not mentioned in the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)
- Mentioned but not defined in state legislation – *Environmental Planning and Assessment Regulations 2000* (NSW)



# What is Cumulative Impact?

## VICTORIA

**“...where a project, in combination with one or more other proposed projects, or existing activities in an area, may have an overall significant effect on the same environmental asset.”** *Department of Sustainability and Environment, Ministerial Guidelines for assessment of environmental effects under the Environment Effects Act 1978, 7th ed., June 2006, p.18*

## TASMANIA

**“Potential cumulative impacts of this proposal in light of other activities underway or approved also need to be addressed. Interactions between biophysical, socio-economic and cultural impacts should be identified.”** *General Guidelines for preparing a Development Proposal and Environmental Management Plan For Level 2 activities and ‘called in’ Activities Board of the Environment Protection Authority January 2014*

## QUEENSLAND

**“Cumulative impact is defined as ‘combined impacts from all relevant sources (developments and other activities in the area)’.”** *Generic draft terms of reference for an environmental impact statement. Department of Environment and Heritage Protection*



# What is Cumulative Impact?

## Victorian Civil and Administrative Tribunal

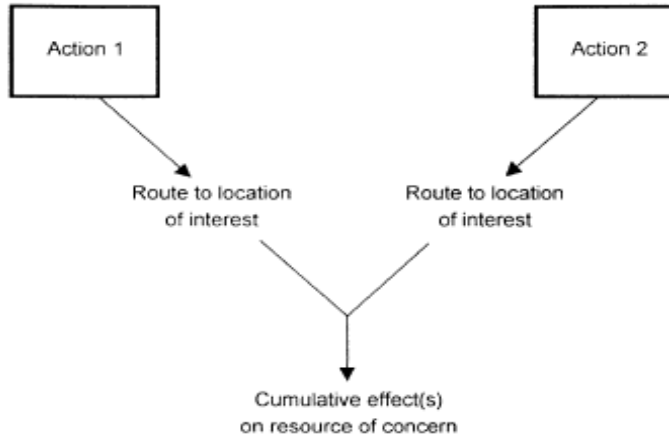
An assessment of cumulative impact would also review the existing amenity of the locality, particularly identifying hotspots, amenities and public safety infrastructure and programs. This is not to say that a cumulative impact assessment has to be a comprehensive social impact statement. The guidance provided by the Tribunal is that an **assessment should be proportional to the perceived risk** of the premises and the locality. *Simmons v Yarra CC* [2014] VCAT 15 (my emphasis)

## NSW Land and Environment Court

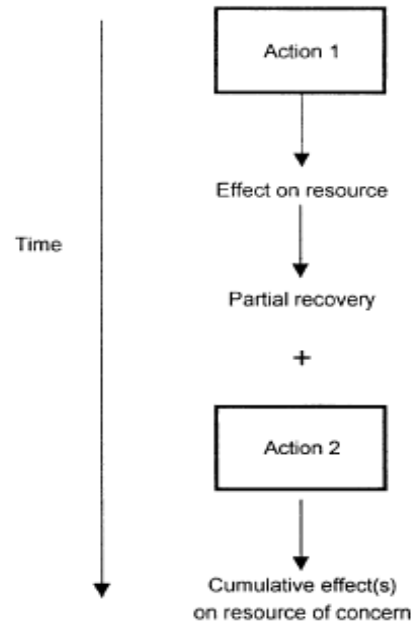
The word “cumulative” anticipates a consideration of not just the development the subject of the application, but the development in combination **with other development in the locality** and the effect that the accumulation of such development **and successive development of a similar type**, will have on the community or locality. Per Pain J in *Hastings Point Progress Association Inc v Tweed Shire Council and Ors* [2008] NSWLEC 180 (my emphasis)

MacDonald, I "Evaluating and Managing Cumulative Effects: Process and Constraints" Environmental Manager Vol 26, No 3 pp 219 - 315

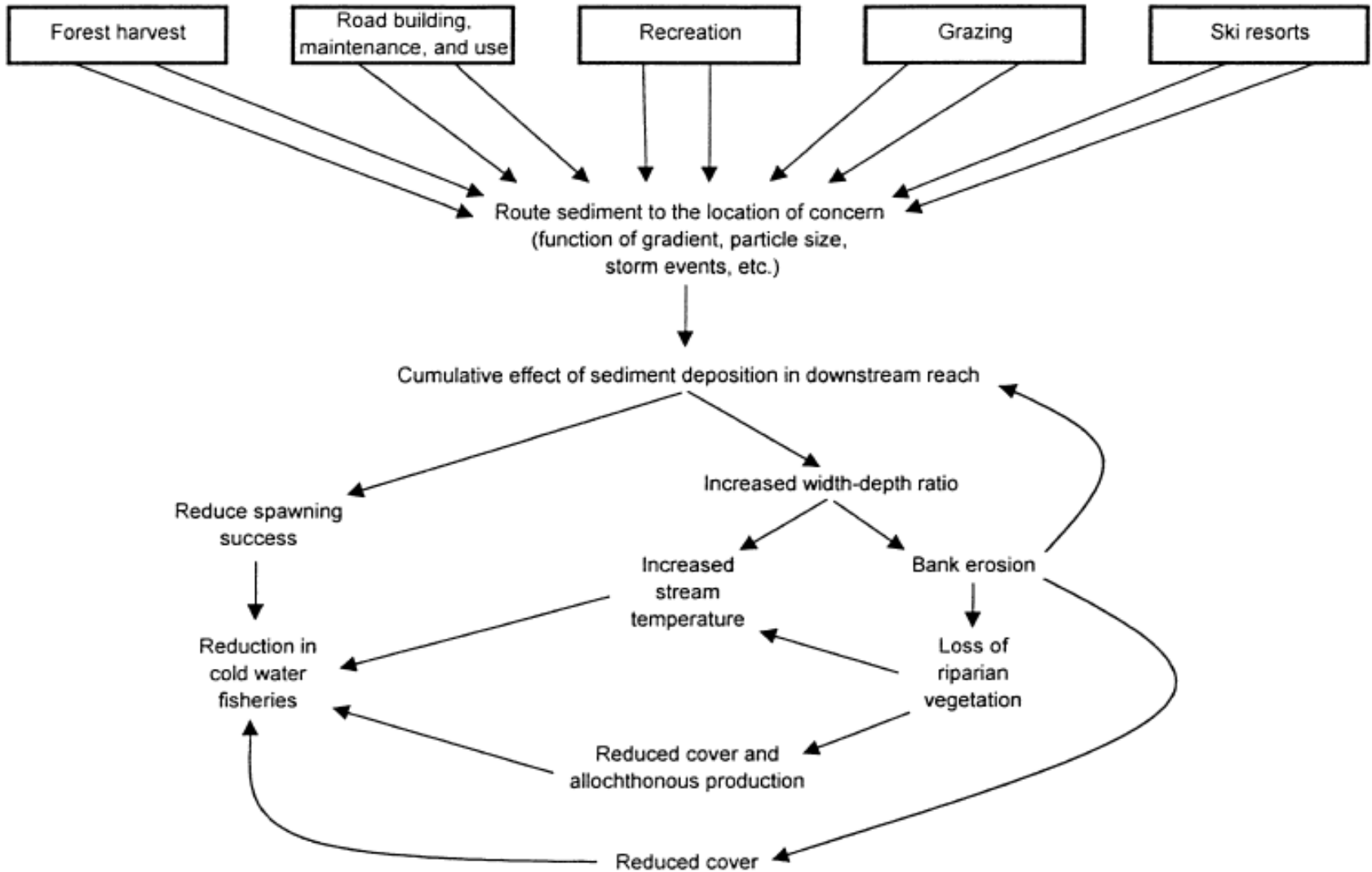
a) Cumulative effect in space



b) Cumulative effect in time



MacDonald, I "Evaluating and Managing Cumulative Effects: Process and Constraints"  
Environmental Manager Vol 26, No 3 pp 219 - 315



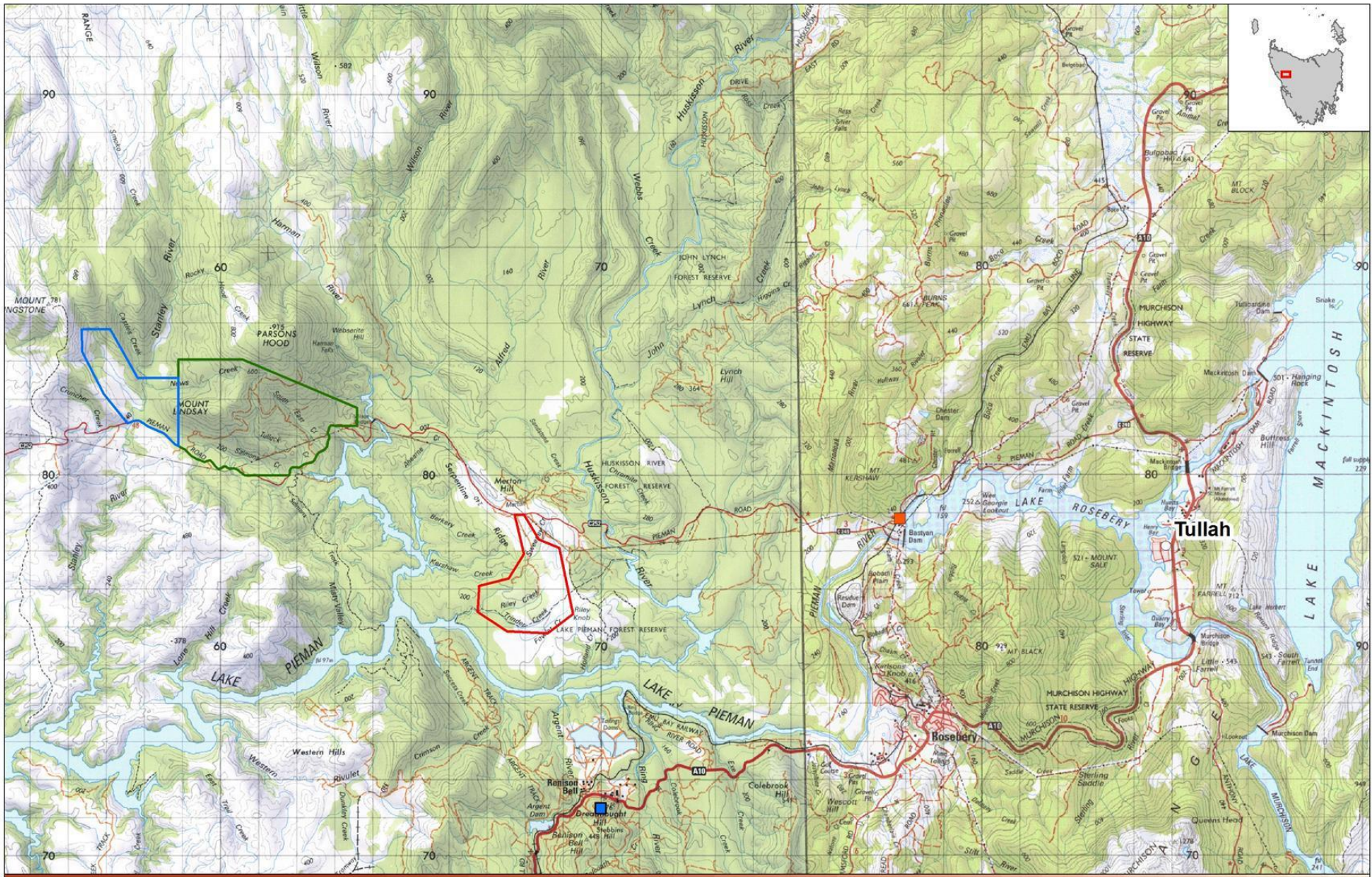





# Cumulative impact and mines in the Tarkine

- Riley Creek Mine proposed by Venture Minerals
- Assessment document – Development Proposal and Environmental Management Plan
- Produced following EPA issuing guidelines which required assessment of cumulative impacts






 Data sources:  
 Base Image by TASMAT (C) State of Tasmania  
 Mining Lease data from MRT (C) State of Tasmania  
 Map produced by pittsashery Date: 1/10/2012  
 Map ref: HBT1411\_HBDA\_MLA\_LocalSetting\_12P\_RevC



Legend					
	Bastyan Rail Loading Facility		Riley Mining Lease Application		Mt Lindsay Mining Lease Application
	Renison Bell Tin Mine		Livingstone Mining Lease Application		

**VENTURE MINERALS LIMITED**  
**RILEY LOCAL SETTING**





# Cumulative impact and mines in the Tarkine

- Riley Creek Mine proposed by Venture Minerals
- Assessment document – Development Proposal and Environmental Management Plan
- Produced following EPA issuing guidelines which required assessment of cumulative impacts – including impacts of Livingstone and Mt Lindsay on threatened species



# Cumulative impact and mines in the Tarkine

*Environmental Assessment Report – Riley Hematite DSO Mine - Board of the EPA May 2013*

“The Board notes that it can only consider potential impacts from existing sources in relation to any environmental impact”

“The Board cannot and has not taken the information in this section [which included cumulative impact] into account in its decision making”



# Cumulative impact and mines in the Tarkine

- Tasmanian legislation does not require consideration of cumulative impact of “any other development application whether actually lodged or to be lodged”.
- No obligation to consider proposed mines
- “Neither the Livingstone nor Mount Lindsay proposals have reached that stage and, consequently, are beyond the scope of any power in these proceedings.”



# The EPBC Act and cumulative impact

EPBC Act section 526E – Meaning of Impact

(1) For the purposes of this Act, an event or circumstance is an impact of an action taken by a person if:

(a) the event or circumstance is a direct consequence of the action; or

(b) for an event or circumstance that is an indirect consequence of the action-- ..., the action is a substantial cause of that event or circumstance.



# The EPBC Act and cumulative impact

*Queensland Conservation Council Inc v  
Minister for the Environment and Heritage*  
[2003] FCA 1463 per Kiefel J

[38]... The assessment to be undertaken of a proposed action may be very wide ranging. None of these indicate a focus narrowed to a direct and not an cumulative effect. The enquiry might extend properly to the 'whole, cumulated and continuing effect' of the activity of which Cripps J spoke in *Kivi v New South Wales Forestry Commission*."





# The EPBC Act and cumulative impact

*Brown v Forestry Tasmania (No 4)* [2006] FCA 1729 per Justice Marshall

102 I agree...that the **present and likely future forestry operations** of Forestry Tasmania in Wielangta will, in the context of the EPBC Act, have a significant impact on the eagle, notwithstanding the presence of other impacts which may be even more significant, .... The forestry operations of Forestry Tasmania will, ....., 'have a significant impact on the eagle because they form part of the well established cumulative impact of native forest harvesting in Tasmania on the eagle'. **(my emphasis)**





# The EPBC Act and cumulative impact

*Tarkine National Coalition Incorporated v Minister for the Environment* [2014] FCA 468 per Justice Tracey:

[The Minister] was not required, either expressly or by necessary implication, to have regard to the cumulative impact, actual or potential, of the projects and proposed projects nominated by Tarkine National.



# Options to address cumulative impacts

- Strategic Environmental Assessment
- Legislative reform – EPBC Act
- Judicial application of the principles of ecologically sustainable development



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