

Coal Seam Gas, Native Title, and Indigenous Land Use Agreements in Southern Queensland

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This presentation based on:

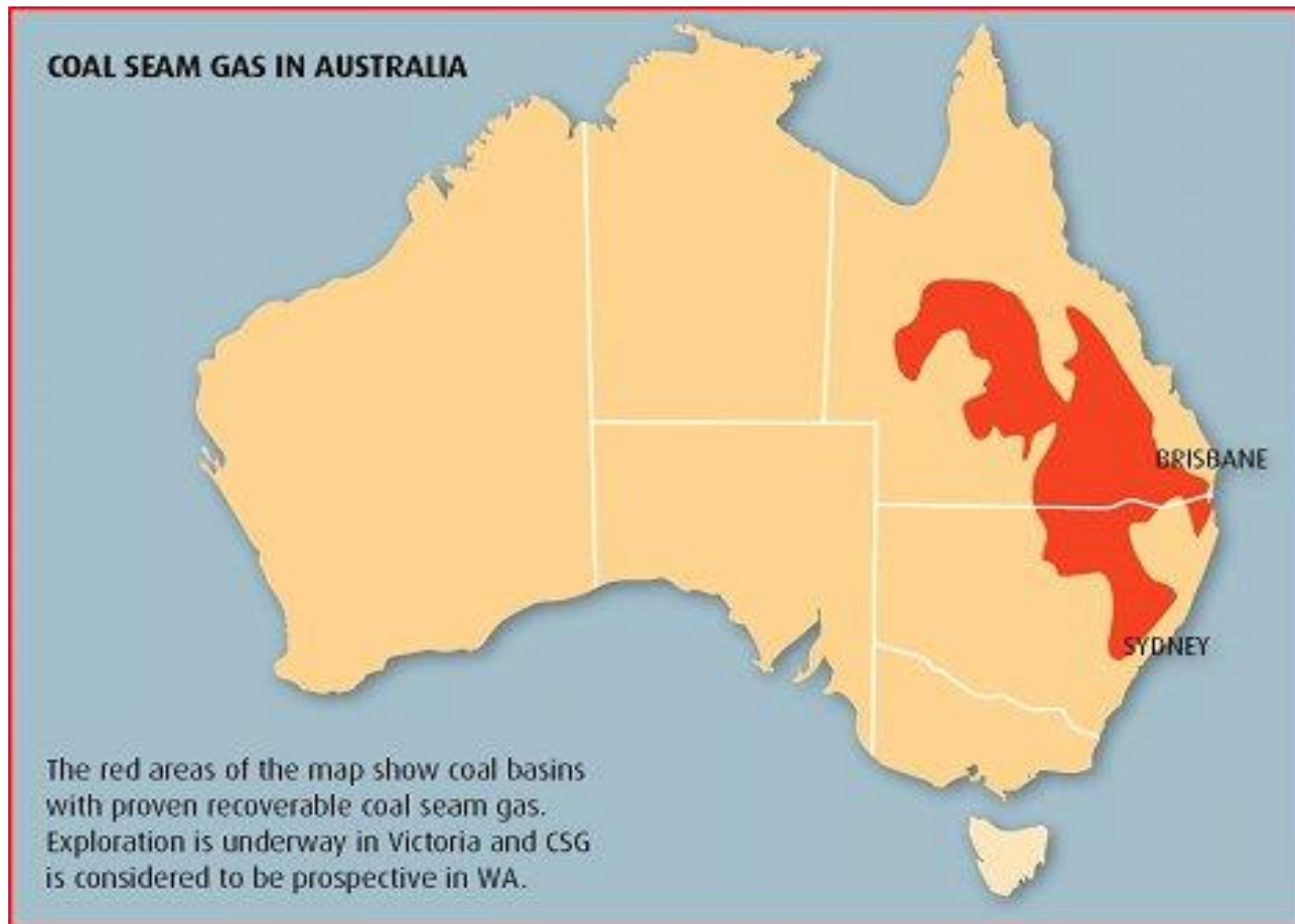
Coal Seam Gas in Australia: Aboriginal engagement and Agreement-making with a new and rapidly developing resource industry.

Extractive Industries and Society (2014) Open access here:
<http://dx.doi.org/10.1016/j.exis.2014.08.001>).

Authors: D. Trigger, J. Keenan, K. de Rijke, W. Rifkin

Also informed by my own postdoctoral research on coal seam gas developments, land use, concepts of 'nature' and the sociocultural aspects of dispute in the Darling Downs (QLD) and the Northern Rivers (NSW).

1. Brief overview of CSG developments
2. Key aspects of the research project



Source: <http://www.aph.gov.au/~media/05%20About%20Parliament/54%20Parliamentary%20Depts/544%20Parliamentary%20Library/BackgroundNotes/2011-12/CoalSeamGas.jpg>

Coal seam gas well, typically on 1ha well pad



A coal seam gas field in QLD

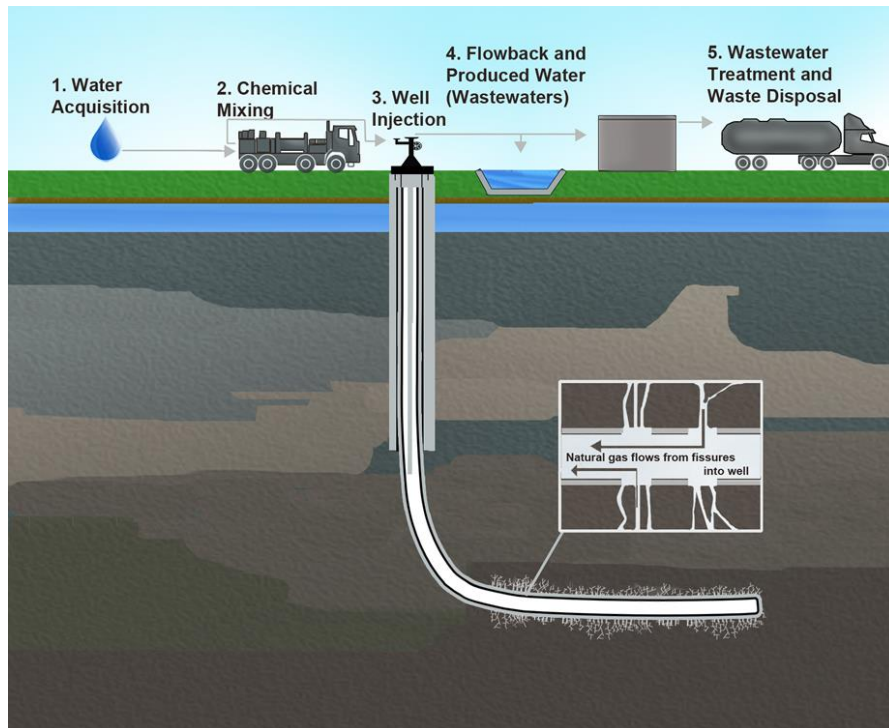


Source: Google Earth

A central processing plant under construction in the Darling Downs



Hydraulic fracturing aka 'fracking'



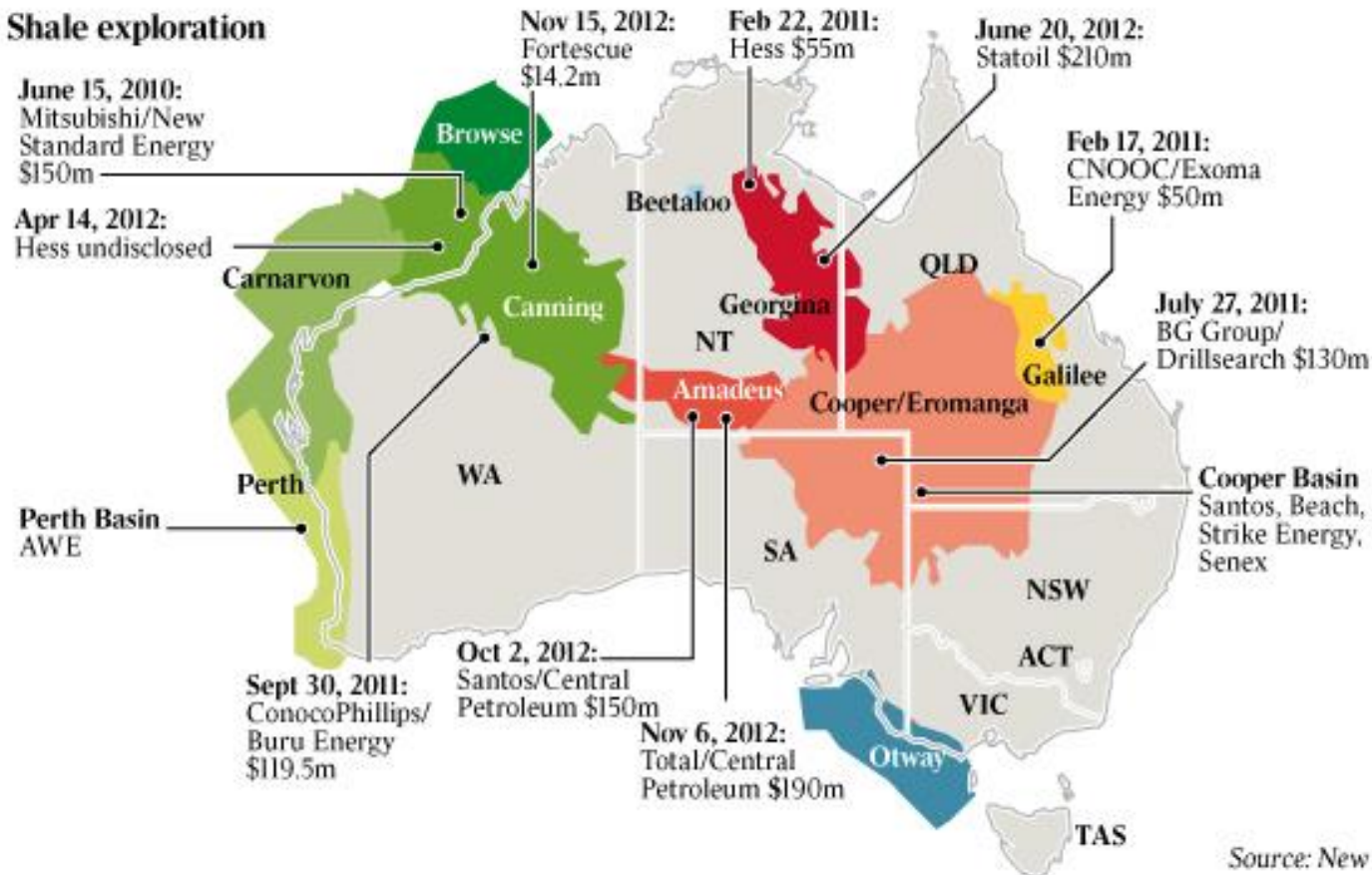
'Illustration of hydraulic fracturing and related activities', 28 February 2012, US Environmental Protection Agency, CC-PD-Mark 1.0, <http://www2.epa.gov/hfstudy/hydraulic-fracturing-water-cycle>



'Fracking the Bakken Formation in North Dakota', 11 August 2011, Joshua Doubek, CC 3.0, http://upload.wikimedia.org/wikipedia/commons/thumb/9/90/Frac_job_in_process.JPG/800px-Frac_job_in_process.JPG

Shale gas exploration elsewhere

Shale exploration



Source: The Australian. <http://resources3.news.com.au/images/2012/12/07/1226532/469747-121208-b-shale-map.jpg>

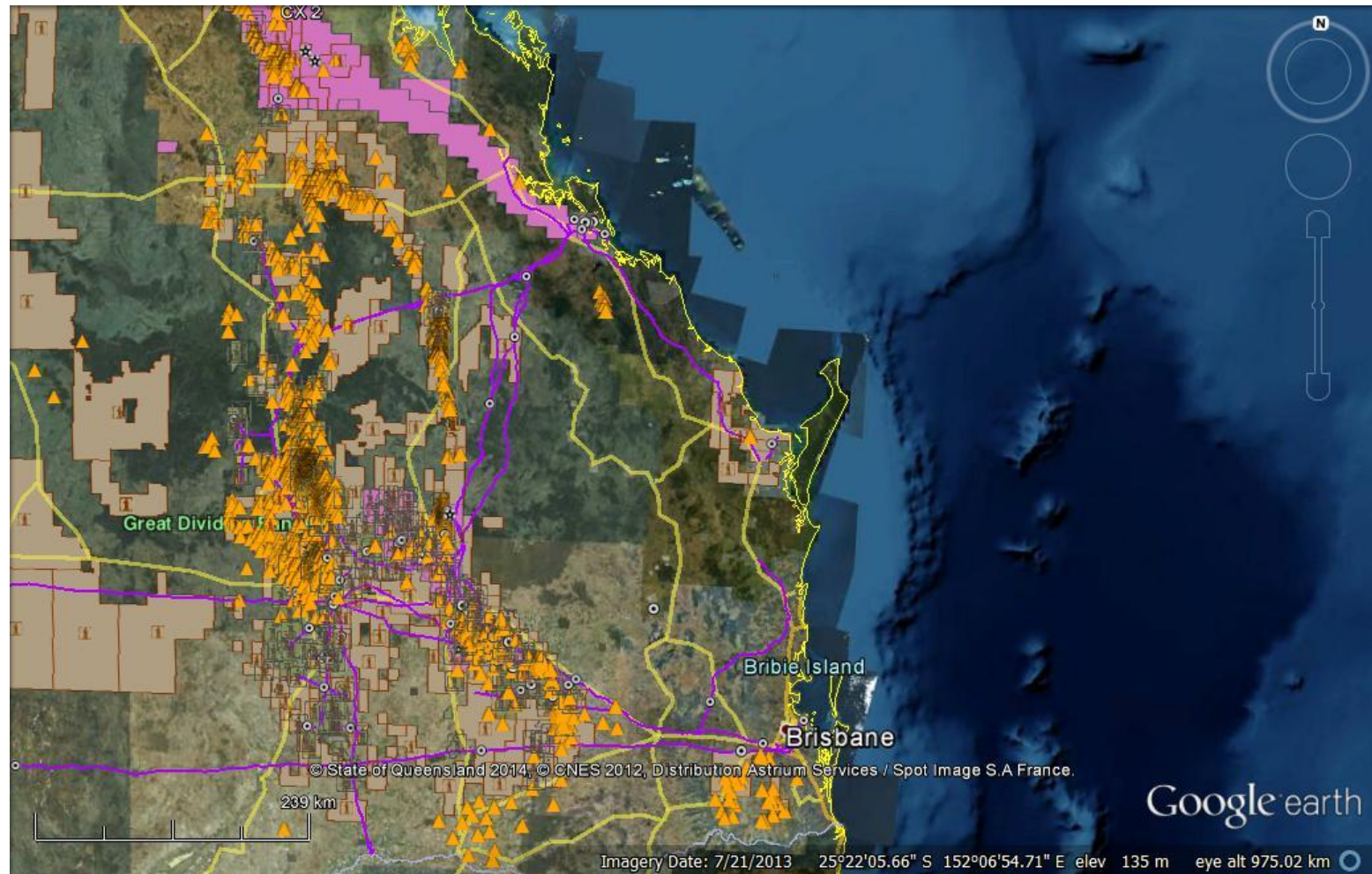
Developments are regional



Regional issues associated with large volumes of subterranean ‘produced’ water



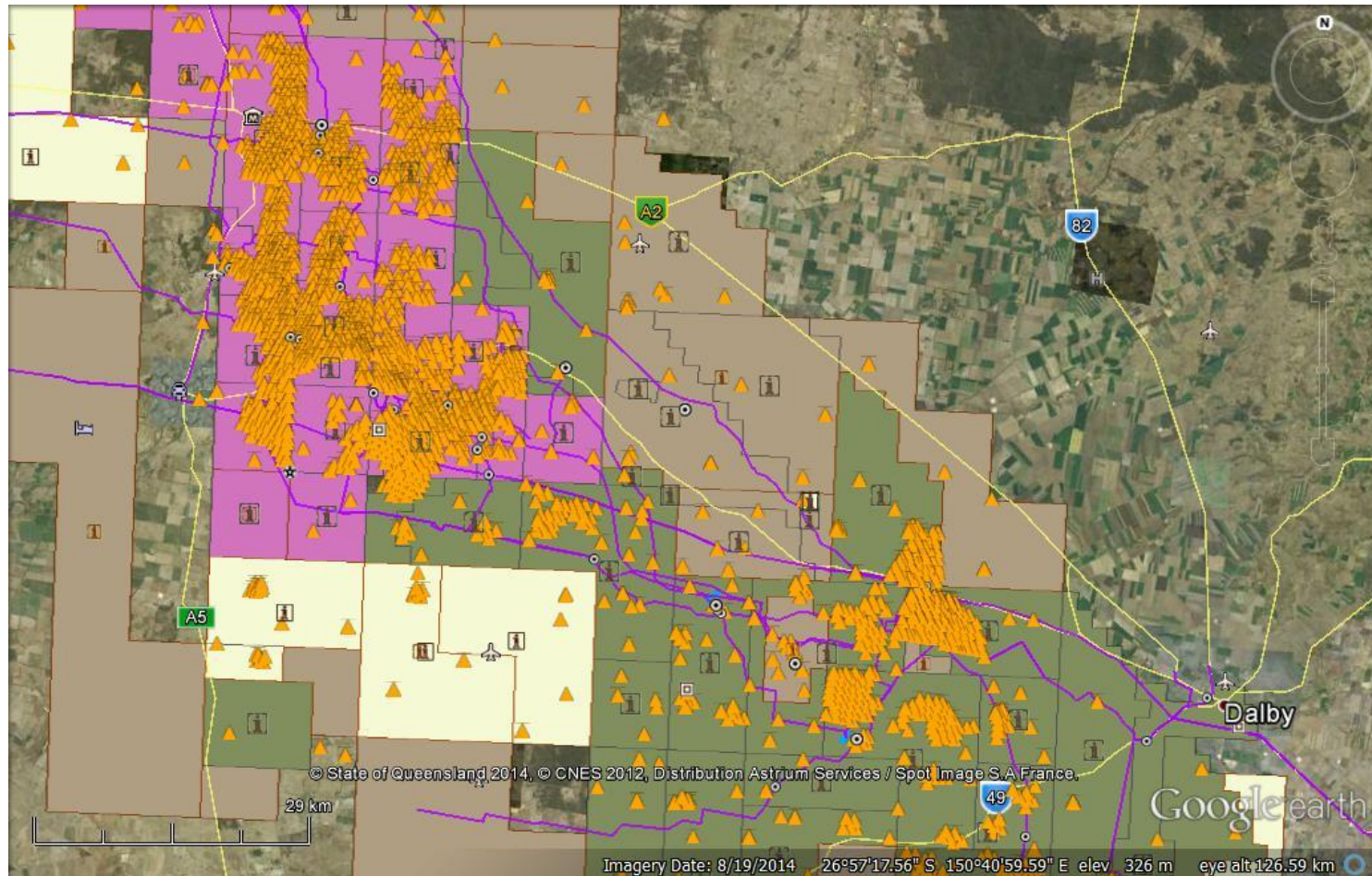
The Surat and Bowen Basins



CSG wells, petroleum leases, petroleum prospecting authorities, pipeline licenses, petroleum facility licenses, petroleum survey licenses and potential commercial areas.

11 Feb 2015 ('coal seam gas globe', QLD Gov. dataset)

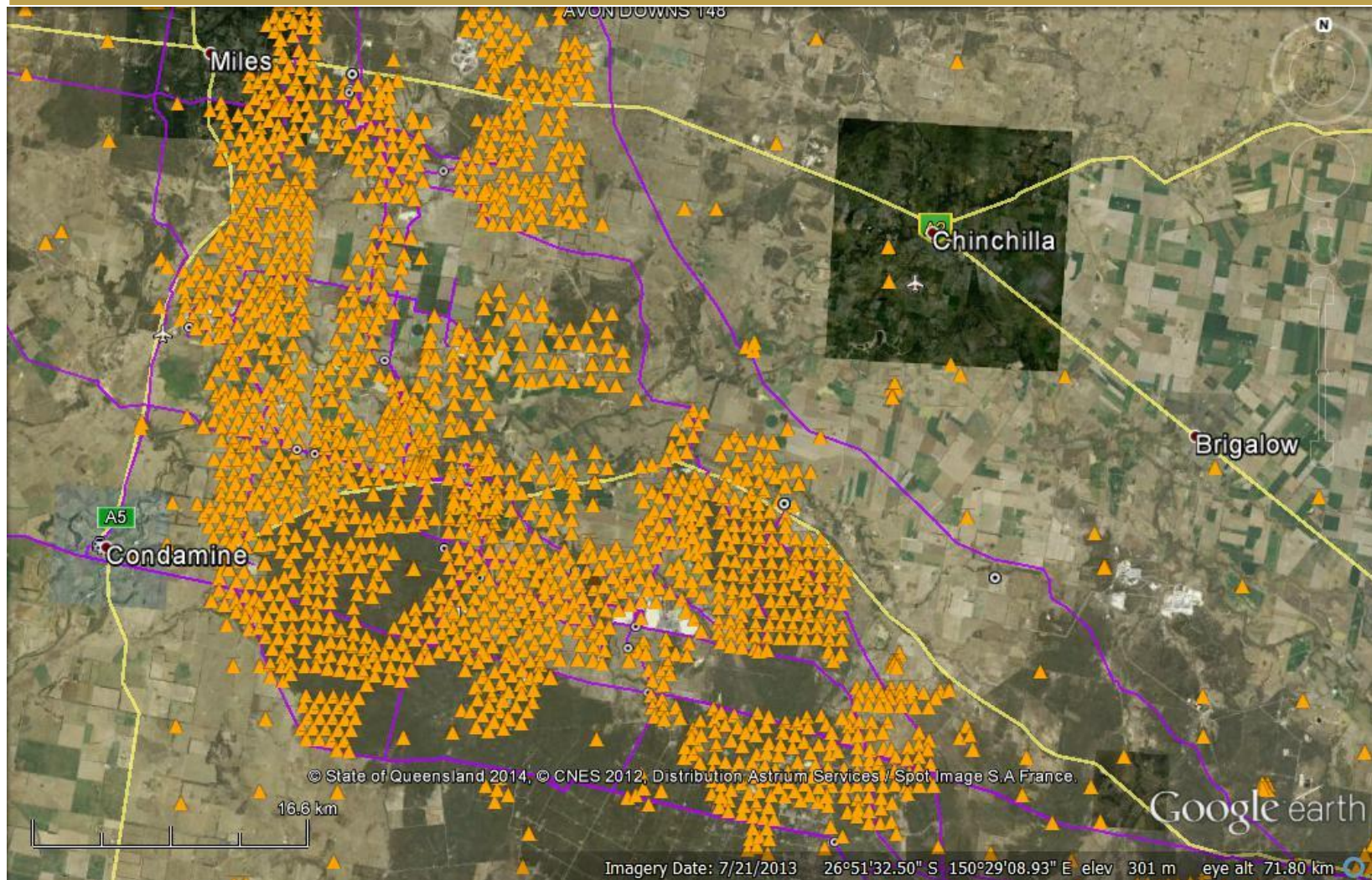
Part of the Darling Downs (QLD)



CSG wells, petroleum leases, petroleum prospecting authorities, pipeline licenses, petroleum facility licenses, petroleum survey licenses and potential commercial areas.

11 Feb 2015 ('coal seam gas globe', QLD Gov. dataset)

Zoom further down: gas fields in the region of my research



CSG wells, pipeline licenses, petroleum facility licenses.
11 Feb 2015 ('coal seam gas globe', QLD Gov. dataset)

Extraction and impacts on surface and subterranean water sources, particularly in arid regions (springs, aquifers, creeks and rivers; also related to the release of treated produced water). Concerns about the speed and regulation of developments. Heavily contested knowledges, perceptions of risk, and visions for future livelihoods.

Fragmentation of the landscape; cultural heritage as well as ecological aspects

Human health, emissions, environmental legacy questions. Potentially up to 40,000 wells in QLD. Questions about well depletion rates and the need for ongoing drilling programmes.

Enormous monetary investments, job creation (temporary in construction), increased regional services, development and state revenue; all in a context of broader energy geo-politics.

Interviews with ‘practitioners’: 12 individuals in professional roles, half employed by CSG companies as ‘Indigenous relations’ staff, remaining were consultants to CSG companies and Indigenous parties (3 lawyers, 3 specialists in community relations, 2 consultants had worked only for Indigenous parties, 4 interviewees were female)

Material on Aboriginal perspectives from the authors’ various academic and applied research on native title claims, agreements, and publicly available legal cases

Wider literature on Aboriginal engagements with extractive industries

Findings relevant to regions where shale gas and other unconventional gas developments may occur in the future.

CSG in Australia has increased interaction between Aboriginal people and industry.

Companies and Aboriginal parties face challenges implementing Land Use Agreements.

Challenges include capability and strategy of companies and contractors.

Challenges include capacities, factionalism, and legal concerns within Aboriginal groups.

35 CSG Indigenous Land Use Agreements have been signed in Queensland 2010-2013

Far more than the number typically signed for development of mines

CSG extraction presents unique challenges relevant to agreements, eg the extensive footprint on the landscape, speed of development & required decision making, areas of regulation.

Our research addresses issues from both Aboriginal rights holders and 'practitioner' viewpoints.

Features of agreement-making (i)

The broad geographic spread of CSG projects (across an area roughly 200km by 200km plus 500km pipelines to the coastal LNG plants) means that there is a large number of agreements with many different Aboriginal groups

CSG: eastern Australia

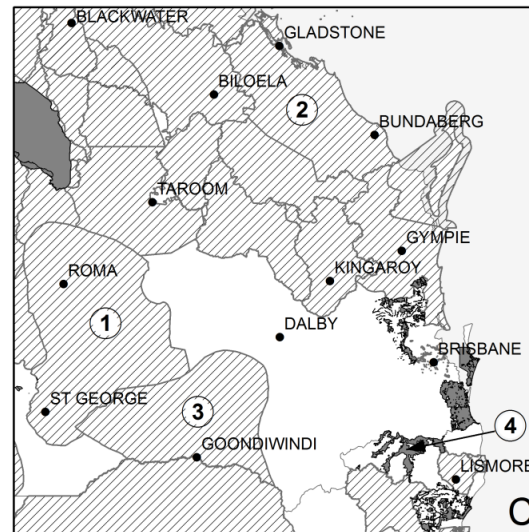
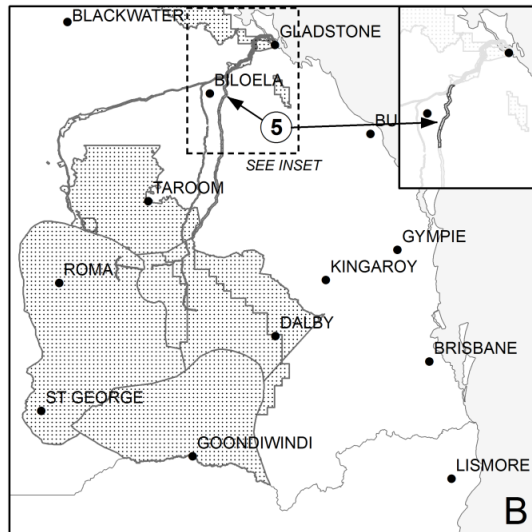
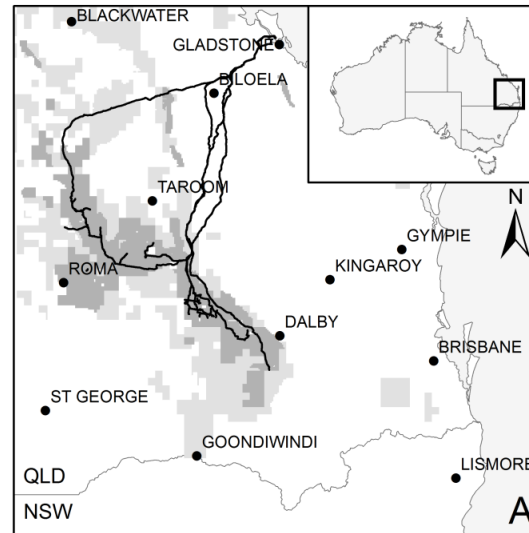
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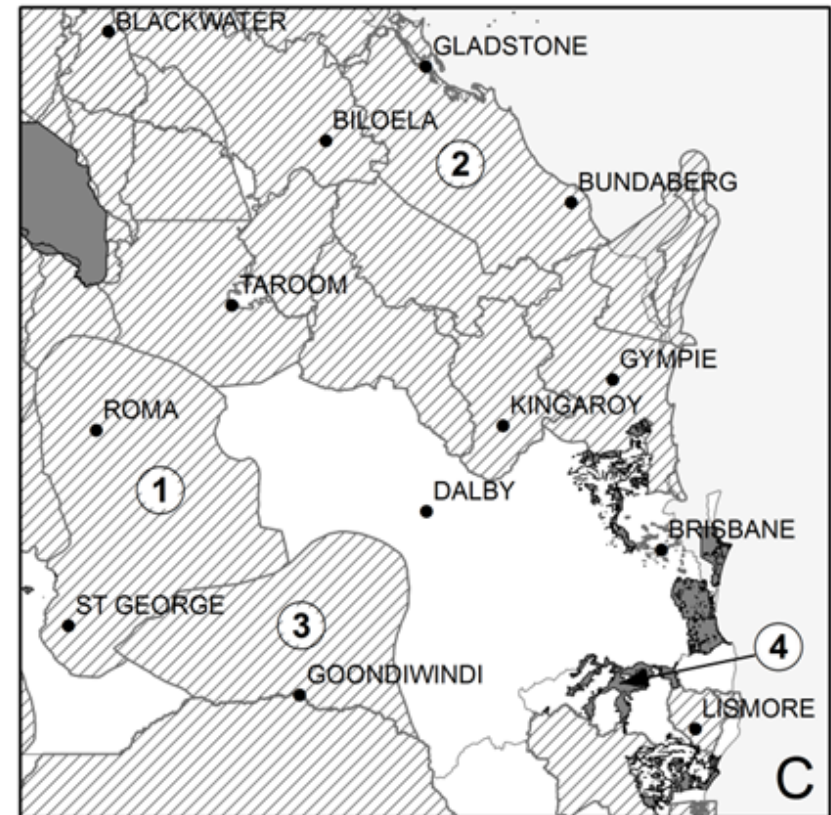
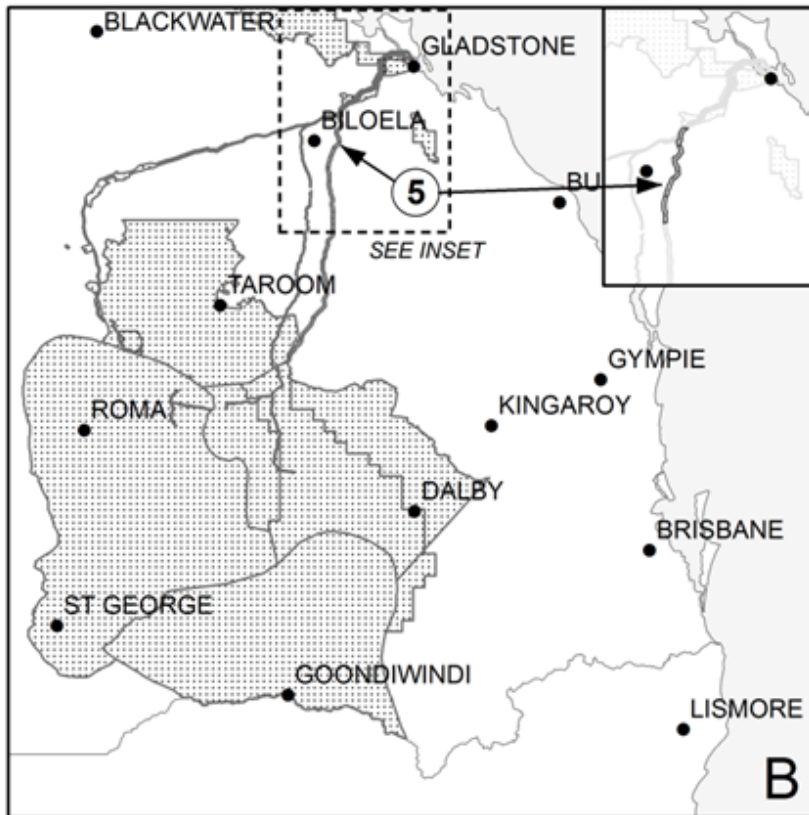
- Town
- CSG pipeline licence
- CSG production area
- CSG exploration area
- ▨ Indigenous Land Use Agreement
- Native Title Determination
- ▨ Native Title Determination Application

Case study areas:

- ① Mandandanji People Native Title Claim
- ② Port Curtis Coral Coast Native Title Claim
- ③ Bigambul and QGC Pty Limited Australia ILUA
- ④ Githabul People Native Title Determination
- ⑤ Gangalu and Warrabal and QGC Pty Ltd ILUA

Scale: 0 100 200 400 Km





ILUA areas (L) and native title claims (R).

Note absence of claims in the heavily developed CSG region around Dalby

Features of agreement-making (ii)

Four multi-billion dollar CSG joint ventures in the region means that some Aboriginal groups have agreements with more than one proponent, and companies are working with groups who have more than one agreement to manage;

In Queensland, the four current projects include: Arrow Energy's LNG Plant and Surat Gas Project in partnership with Shell; Origin Energy's Australia Pacific LNG Project with ConocoPhillips and Sinopec; QGC's Queensland Curtis Liquefied Natural Gas project involving BG Group and the China National Offshore Oil Corporation; and Santos Gladstone Liquefied Natural Gas) in partnership with Petronas Australia Pty Limited.

Features of agreement making (iii)

- The legal basis for negotiation as it emerges over time in relation to native title rights and interests (determination by the Federal Court) is unresolved for a large portion of the development areas;
- Claims to native title rights and interests, and associated cultural heritage custodianship, are in a significant number of cases subject to internal Aboriginal disputes, which impact the implementation of agreements;
- Disputes and engagements with the resource industry are informed by the historical, economic and cultural legacies of colonialism, as well as the politics of indigenism in a relatively young post-settler country.

Overview: agreements can cover ...

native title holders agreeing to future acts

financial compensation for loss or impairment of native title, including employment & training

how native title rights and interests coexist with 'future acts'

access to an area for development, protection of heritage areas

extinguishment of native title by surrender to governments in return for agreement benefits

the continuing or reinvigorated exercise of native title rights and interests: visits, fishing, camping, hunting, taking bush resources

Practitioner views ... (i)

Governance of agreements: challenges relate to Indigenous capacity, forms of representation, transparency, accountability and the consequences for delivering sustainable development outcomes

Apparent 'consultation fatigue' and high turnover of Aboriginal representatives, though interestingly this was not mentioned as a problem for practitioners themselves;

High turnover of company staff that disrupts working relationships, though reasons for the turnover were not addressed directly;

Engagement with Aboriginal community members other than those on company-community committees; negative undermining of representatives, positive 'due diligence' to avoid conflicts or grievances.

Practitioner views (ii)

low (available) Aboriginal capacity in areas of administration, planning, financial literacy and community development.

Aboriginal resistance and resentment re finance management and outcomes.

working with native title cases yet to be determined through either mediation with the State government (and at times other parties) or litigation;

interaction with Aboriginal people in relation to cultural heritage (e.g., in identifying the appropriate stakeholders to engage for development of cultural heritage monitoring plans or employing particular individuals to conduct site clearances);

Practitioner views (iii)

- legal challenges from Aboriginal individuals, families or groups to the representativeness of persons acting as 'applicants' for the claim and/or related issues of claim group composition and membership;
- lack of baseline/needs analysis before negotiation and early implementation;
- working under significant business-related time pressures (note managerial challenges as a result of enormous growth of companies in the last 5 years);
- lack of long-term or strategic planning for implementation over the lifetime of an agreement;
- difficulty of switching between an adversarial approach during negotiation and a post-agreement dialogue for a positive working relationship;
- lack of non-judicial grievance mechanisms, meaning that disputes between Aboriginal parties or Aboriginal and non-Aboriginal parties are being held up in the court system;
- the issue of multiple companies/agreements existing with a lack of coordination among them.

Aboriginal views (i)

Includes analyses of (legal) cases to indicate some of the issues (see article for more details):

Mandandanji (questions about representation; payments quarantined by the Federal Court)

Port Curtis Coral Coast (notions of site damage, locality-specific rights and interests?)

Bigambul/Darling Downs (authorisation, agreements with “persons who may have rights and interests”)

Githabul People (NSW) (post-determination factionalism)

Gangalu/Warrabal (authorisation, adverse information ignored?, questions about the future of agreements and benefits arising from them)

Aboriginal views (i)

Desire to revitalise links to 'country':

Centred on extended family links to land, membership of groups of beneficiaries, cultural identity negotiations, representation of collective Aboriginal interests and related governance of groups, and leverage required to negotiate with and extract real outcomes from resource companies

Desire for economic benefits

Concern about lack of apt formal qualifications; the rapid development of industry (2-year timeline for pipeline construction) outpaces a group's ability to establish or expand a business; lack of access to contracts/contractors (because contracts are too large for local or fledgling businesses to take on, or sub-contractors – who may contract out smaller jobs – are not easily identified); + an apparent lack of interest from contractors and a lack of requirements for Indigenous business development in major contracts. Frustration with continued training without resulting employment.

Marginalisation and lack of agency:

Dispersed families and individuals associated with named claim groups and a commensurate lack of experience in formulating a collective negotiating position, with difficulties instructing legal representatives

Historical disputes between and among Aboriginal groups preventing consensus on agreement issues;

Lack of access to legal and financial representation, advice and to information at the same level as the companies; lack of leverage due to the possibility of compulsory land acquisition by the State and consequent access by CSG companies; and little opportunity to hold companies accountable for their actions or failures.

Issues arising from the research

Understanding the cumulative impacts of agreements and the sociocultural issues in engagements with Aboriginal groups

Complications of the economic development issues

Revealing of non-financial outcomes of agreements

Analysis of governance capacity issues for CSG agreements with Indigenous groups

The role in agreement-making of representative bodies, anthropological research, governments and the Federal Court?

The value & challenges of cross-disciplinary work including anthropology, law, economics, planning, human relations, engineering, environmental science ...