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1 September 2014

The Agriculture Resources & Environment Committee
 Parliament House
 George Street
 BRISBANE QLD 4000

[Via Email: AREC@parliament.qld.gov.au]

Dear Sir/Madam

RE: MINERAL AND ENERGY RESOURCES (COMMON PROVISIONS) BILL 2014

As the local authority responsible for local government throughout much of the Surat Basin, the Western Downs Regional Council (**WDRC**) asks to be heard by your committee in relation to the review by it of the *Mineral & Energy Resources (Common Provisions) Bill 2014 (the Bill)*.

We appreciate that the opportunity for submissions technically closed some time ago but in light of the extreme importance of the Bill to the community generally, the general public reaction to the Bill, and the committee's commendable approach to entertaining submissions beyond the strict times previously prescribed, we plead with the committee to entertain this submission.

It is ironic and exceedingly frustrating that the rapid expansion of resource activity in our local authority area has rendered us so busy in dealing with the implications of that expansion that we have been left devoid of the capacity to adequately follow, understand and have meaningful input into the far reaching legislative reform now being proposed within the comparatively short timeframe.

As with many other peak regional and/or rural organisations, we do not immediately have access to legal assistance or the extensive funds that would be necessary to cope with the pace and sheer magnitude of legislative reform in this area. Recent publicity has alerted us to the importance of the Bill and we are minded to make this plea accordingly.

We proceed on the assumption that our submission will be heard.

Introduction

WDRC applauds the intent of simplifying and streamlining regulation of resource activities in Queensland. WDRC is concerned that the community as a whole and WDRC in particular, were not adequately aware of the extensive implications of the Bill and that the existing extent of consultation has in the circumstances proven inadequate.

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We join with the comments of Mr Michael Roche in the Queensland Resources Council's recent supplementary submission to your Committee when he says:

"even by the standards of modern omnibus legislation, this is a highly complex one; which must pose a challenge for the Committee, particularly given the tight reporting deadline. Many of the amendments are technical in nature and they have a highly varied policy pedigree. Some amendments are the culmination of long-running consultative processes; whereas the rationale for other amendments remains recent and raw. Further complicating the task is that much of the detail of the amendments will be fleshed out in regulations, which are not yet available."

Mr Roche also commented as follows and we share this observation as well:

"Many of these policy objectives do affect existing statutory rights of Queenslanders, so it is important that these amendments are considered carefully by the Committee. Any change in statutory rights is intrinsically a source of concern, which merits careful scrutiny from Parliament."

WDRC is a body at law. As with other individuals and organisations, WDRC has rights that will be lost under the Bill and it has concerns in respect of the implications of the loss of those rights.

Background

The *Constitution of Queensland Act 2001* entrenches local government as a fundamental part of the government of Queensland and the *Local Government Act 2009* provides that as the local government for the Western Downs regional area, WDRC *"is an elected body that is responsible for the good rule and local government of (that) part of Queensland."*

WDRC covers an area of some 38,000 square kilometres and includes large parts of the Surat Energy Resource Province, the Darling Downs and the headwaters of the Murray Darling Basin, Dawson/Fitzroy and Mary river systems. It is traditionally a rural/agricultural area that has recently experienced strong growth and development in the electricity, coal, gas and energy industries.

As the relevant local authority, WDRC is therefore obliged by law and choice to provide "good rule and local government" to its 33,500 residents. That is a broad obligation that can vary extensively in its meaning over time. It is most commonly manifested in the range of services it provides. Those services can be as diverse as the provision and maintenance of roads, waste collection, library services, recreation and cultural activities, regulation of building and town planning, water supply, sewerage, public toilets, roads and street lighting, parks, community services, sporting facilities, public swimming pools, tourist information centres, caravan parks, cemeteries, crime prevention and community leadership and advocacy on important matters.

The allocation of the abovementioned services necessarily varies depending upon the community needs from time to time and is certainly heavily influenced by the nature and pace of development and growth and the population profile from time to time. As with all local authorities in Queensland, Council is primarily funded by rates and levies imposed on Landowners, government grants subsidy and its revenue base generally constrains the range of services it is able to provide.

However, the provision of services is not all that is encompassed in the role of the WDRC. In our view the role of local government extends to many aspects relating to the functionality and wellbeing of our community. This will include advocating on behalf of our community and considering what is in the best interests of the community for the future. For instance, the 2050 WDRC Community Plan provides for a

long term vision and strategic direction to enable the Western Downs community to guide its future in the midst of anticipated growth and changes. The plan was developed to facilitate strategic and planned development of the region and form the basis for more detailed strategic and operational plans.

For almost 170 years rural and agricultural production has been the lynchpin and mainstay of the region's economic, cultural and social development. Fourth and fifth generation farming and grazing families are not uncommon in the area. The region's long term focus on rural production and associated service industries has necessarily shaped existing community attitudes and social development. WDRC recognises and embraces the need to address reasonable security in future food production and access to water.

WDRC also recognises the importance resource exploration and development in our local authority area. The abundant natural gas and thermal coal reserves under the surface of the region's land has led to rapid growth and development with a \$100 billion energy industry emerging with in excess of 284 projects ranging in size and nature but include open cut coal mines, coal seam gas operations and numerous power stations either recently built or scheduled for construction in the near future.

Overarching Concerns

WDRC therefore:

- (a) seeks to ensure that the development of the finite resources under the surface of the land do not compromise the long term sustainability of good quality agricultural land on its surface
- (b) embraces and encourages the responsible and orderly development of the region's rich reserves of coal and gas;
- (c) welcomes and embraces the visitors that come to secure that development, but seeks to avoid the permanent alienation or diminished vitality of the rural character and fabric upon which the region has been based for so long, and to which it will inevitably revert when the sub-surface energy resources are realised or depleted.

It has been near impossible for WDRC to have been able to foresee all the implications of the emerging and rapidly expanding energy sector within our region and equally impossible for WDRC to have anticipated the extent of "flow-on" effects of that expansion.

Invariably mining in any form, including the development of quarries, brings a host of local authority considerations into play not all of which are adequately within our jurisdiction or control. Resource development can involve far ranging implications well beyond the immediate mine area including incidental impacts attributable to the need for workers accommodation villages, airports, water supply for workers and other purposes, increased sewerage obligations, the increase of over dimensional trucks and traffic, road re-routing or increased traffic implications requiring the opening of new roads, and a host of other issues usually within the purview of local authorities. Resource developments can even involve creek and/or river diversions, as well as significant impacts upon the social fabric of a community including from a change in the character of its people, a change in the mix of its commercial emphasis, the loss of food producing lands etc. Displacement of property owners from their agricultural properties is jeopardising the viability of industries ancillary to ongoing agricultural activity and the environmental stability of the land through decreased direct interaction and monitoring of environmental conditions.

Communities can be significantly impacted by sharp increases in population by temporary workforces including those of a "fly in, fly out" nature, with no long term association (or temporary) with the area, but

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which in the interim place extensive demands upon local services delivered by council including utility services, infrastructure, sporting facilities, housing, health, social services and the like without corresponding increase in Council's funding base. Short term fluctuations in property values can significantly impact upon Council's revenue base and therefore its long term financial health or ability to discharge its statutory obligations to provide.

Issues including the effects on medical services, the workforce available to existing businesses, the development of social grouping and divides, the impact on housing prices which may not in the long term be sustainable, and less direct impacts all warrant attention of the local authorities. Further to this, reporting focussed on the performance of companies with respect to fulfilling the conditions of the project, also warrant attention of the local authority. Drawing attention to those conditions which are not being met and publicly reporting on project performance is important to enable community involvement in all aspects of the project. This is particularly relevant for conditions that are imposed by the Coordinator General, that do not specifically relate to legislative provisions administered by State Government agencies.

Because of the array of impacts, local authorities need and expect, and are invariably expected by the community, to have involvement in the development of legislation and decision making. WDRC is one of the local authority areas most impacted by current resource development given that it extensively overlays the Walloon Coal Measures and the Surat Basin generally. Our experience over the last few years in particular has made the need for consultation and development of legislation as well as the ability to influence decisions within our area, abundantly clear.

The pace of development within our local authority area over the last decade has been unprecedented and could never have been foreseen by the architects of much of the existing legislative framework. That pace has only been matched by the extent of legislative reform that it has now induced.

WDRC does not feel it has been adequately consulted in relation to the implications of the Bill. It is almost impossible to keep abreast of the pace of change or to have adequate resources to be able to quickly respond to far reaching changes such as those the Bill proposes.

Current experience indicates that Council is in fact losing the ability to influence decision making in things that fundamentally determine our ability to function and plan and that our involvement is in fact being eroded by legislative change such as this Bill. Without the flexibility or ability to influence outcomes of activity within our local authority area, the aforementioned "flow-on" effects (both good and bad) will not be able to be appropriately managed and nor can we truly discharge our constitutional and statutory duties to the community.

Specific Concerns

WDRC urges the committee to delay the implementation of the Bill to enable proper consultation. It is clear that this Bill has far reaching ramifications and WDRC is concerned that those ramifications have gone largely unnoticed due to the lack of consultation and inadequate notice where consultation times were made available. WDRC requests further regional hearings with more extensive periods of notice such that those most affected by the Bill have the opportunity to make valuable and considered submissions.

Our current concerns in relation to the Bill are as follows:

1. Removal of grounds for objections to mining lease applications

Under the current provisions of the *Mineral Resources Act 1989* (Qld) (the MRA), WDRC has the right to object to all mines regardless of their size.

Section 260 of the MRA provides that any entity may object to the application for a grant of a mining lease. There is no limitation to the grounds upon which an objection may be made. The MRA leaves it to the Land Court's independent discretion to determine whether or not the grounds upon which an objection is made is either frivolous or vexatious. The MRA also provides a list of matters which the Land Court should take into account and consider when making its recommendation to the Minister in relation to the application for the grant of a mining lease - these are found under section 269.

The matters provided for under section 269 are broad and include such things as "the public interest" and "any good reason". The broad scope of matters within the Land Court's purview under section 269 therefore allows a broad array of grounds which an objector may utilise. Unfortunately the Bill proposes to dramatically alter this position by severely limiting both the entities who may object to the application for a mining lease and the grounds upon which those parties may object.

In the case of the local authorities, the only grounds for objection if the Bill is passed will be the following:

- a) *whether the provisions of the Act have been complied with; and*
- b) *whether the proposed mining operations, including, for example, the extent, type, purpose, intensity, timing and location of the operations, are appropriate, **having regard to the likely impact of the activities on infrastructure owned or managed by the relevant local government.*** [emphasis added]

WDRC has always been aware of these rights and considered them important. For example, WDRC previously made a submission in respect of the proposed Strategic Cropping Land framework in 2010 which relied in part upon these MRA rights. It said:

WDRC's primary position is that significant amendment to the Mineral Resources Act 1989 is not required beyond either clarification or strengthening of the provisions of Section 269 of that Act. That section already relevantly requires the Land Court in making a recommendation for an Application of a Mining Lease ("ML") to take into account and consider whether:

- "(k) the public right and interest will be prejudiced;*
- (l) any good reason has been shown for refusal to grant the Mining Lease; and*
- (m) taking into consideration the current and prospective uses of that land, the proposed mining operation is an appropriate land use."*

Amendment could be made to provide a new requirement...

We have therefore previously proposed that our rights under the MRA should in fact be expanded as a means of addressing those earlier legislative changes, so we are naturally deeply concerned to have that very legislation amended to remove grounds of objection rather than to expand them.

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We appreciate that strategic cropping land issues are now dealt with elsewhere as a result of other recent legislative changes and in particular under the *Regional Planning Interests Act*. However, even under that legislation, the ability of local authorities to influence decision making has been curtailed. For present purposes, the point WDRC seeks to make is that we have always been conscious of the relevance of the "public rights and interest" and "any good reason" grounds in section 269 and seen them as part of the means whereby Council can have input and influence over outcomes. The Bill proposes to remove those matters from the Land Court's purview when making its recommendation to the Minister.

Those two particular considerations reflect the necessary flexibility local authorities need in decision making. The single most important lesson of the last decade of resource development in our area is that the scale, scope, methods and implications of resource development can change rapidly. Any form of government needs flexibility to deal with changing circumstances not more rigidity as the Bill now reflects by removing these grounds.

It is a fundamental impediment to our functioning to be so fundamentally restricted in the input that we may have. It seems highly incongruous for local government to be able to have more input in applications under the *Sustainable Planning Act 2009* (Qld) which generally involve localised or confined areas of impact than they would for the extraction of a resource which can have more far reaching and broad impacts in the area of our local authority.

Even the grounds of objection left to us are extremely restrictive and open to interpretation that could be even more restrictive. The second ground turns on whether or not the "proposed mining operations" are "appropriate". Proposed mining operations are defined as "operations proposed to be carried on under the authority of the proposed mining lease". A strict interpretation of this definition, when read in the context of the examples, may only include things to do with the actual manner in which and location where the resource is extracted - e.g. drag line as opposed to truck and shovel). A broad view of the ground is that it would include ancillary matters such as the camps associated with the mine, the increased amount of traffic and amenity issues etc.

Further, the expression "infrastructure owned or managed by the relevant local government" is confusing as the implication is that it only relates to existing infrastructure? Our function requires that we do more than look after existing infrastructure. If we lodge an objection along the lines that a particular mining lease will result in impacts (e.g. rapid population growth) necessitating increased services and infrastructure beyond existing infrastructure, are we exceeding the permissible grounds of objection under the Bill?

WDRC is therefore left in a state of flux and uncertainty in relation to what grounds we may object upon. This uncertainty also increases the risk that, if the Land Court took a strict interpretation of the definition, the objection could be seen as being vexatious or frivolous and thus dismissed. It is naturally concerning that in situations where the strict interpretation is adopted, WDRC, or any other council for that matter, could not object to the impact that a dramatic increase in population would have on the sewerage or water infrastructure, nor the impact that the dramatic increase in traffic would have on the roads in the community and other such impacts which do not directly concern the manner in which or the location where the resource is extracted.

We do not believe that any other organisation has the necessary insight or capability to enable input that adequately reflects the consideration needed to enable us to discharge our constitutional and statutory duty.

2. Submissions on Environmental Authorities

It is true that, under the Bill, WDRC will still be able to have input into environmental conditioning and the EA process, however we make several observations in relation to that.

Firstly, we currently share the concern expressed by many that have made submissions to you, that there are significant differences between granting a mining lease and granting an Environmental Authority.

WDRC is well aware of the extensive changes made comparatively recently to the relevant procedures that make submissions and objections a relatively complex process. For instance, the objector may need to have lodged a submission to the relevant EIS in some cases, may be exposed to costs and is requested to adhere to the original grounds of objection at all times. These all make these issues more complicated than what they sound.

In any event, the amendments effectively remove any ability to object at all to "small scale mining". The fact that a particular mine is small does not mean that its implications are small for the community. Again there is a need for flexibility to accommodate the unexpected and/or unexpected developments, such as the flexibility that the aforementioned "public interest" and "any good reason" grounds available to an objector to the grant of a mining lease currently allow.

Cumulative impacts are also not relevant to the EA conditioning of a particular activity as we currently understand matters. The section 269 considerations would presumably allow consideration of such impacts – say for instance there was a proliferation of a particular type of mining in an area where council felt local authority considerations necessitated refusal or particularly strong conditioning on non-environmental grounds including, for instance, economic impacts.

Our local authority area includes many small towns that have made significant contributions to the fabric of our community and/or that continue to provide important local services. Current mining projects can be so large as to involve the loss of entire towns (such as has happened in Acland). It is important that we retain a broader influence and input accordingly. Even a small mine could be less an area than the entire town of Kogan for instance. Environmental or social considerations may well see those issues as being "of lesser importance" than the objection process under the section 269 grounds would allow in respect of the grant of a lease.

Standard conditioning for EAs is also of particular concern in respect of matters such as the control of weeds and pests. Local authorities have significant obligations to control pests and weeds in their local authority area. Increased traffic and road areas heighten that obligation. These issues might be seen as economic rather than environmental and be less likely to succeed in the EA conditions area as opposed to the mining lease application area.

Standard conditions would not allow input from WDRC on these small mines and yet they may well involve significant biosecurity risks or considerations that either individually or cumulatively warrant specific conditioning. Standard conditioning would deny WDRC the opportunity of raising those issues.

It is also important to note that the mining lease objection process is not just about whether or not the ML is granted. It is also about conditioning the terms of the actual grant. There are many ways in which issues that are not strictly environmental can be addressed in the conditioning of the ML as is currently contemplated for under section 276 of the MRA where it states that "*the Minister may determine a condition of a mining lease if the Minister considers the condition is in the public interest*". WDRC considers this to include matters such as the hours of operation for the mine, the proximity of the mine to

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local townships, the proximity of the mine to adjoining landowners' infrastructure used for their business and/or dwellings, and sites of historical interest or Aboriginal significance.

The Bill proposes that the Land Court will no longer be able to consider the public interest when making its recommendation to the Minister and nor will an affected person be entitled to object to the mining lease application on such grounds. In our view it is incongruous for the Minister to be able to consider such matters and make such matters conditions of the mining lease, yet the members of the public and those who will still retain a right to object will not be able to object and give evidence on such grounds. Surely the best parties to comment upon "local" considerations as to what is in the public interest are the members and stakeholders who form part of the affected community - as has been the logic under the current provisions of the MRA.

3. Legislation by Regulation and combined effect of legislative reform

WDRC was disappointed that the outcome of the Regional Planning Interests Regulations has meant that the influence of Council is only in respect of priority living areas. The Department of Natural Resources and Mines is now the assessing agency for applications for regional interest development approvals with respect to strategic cropping areas and the Agricultural Department is likewise for applications relating to Priority Agricultural Areas.

When the effect of the Regional Planning Interests Regulations is coupled with the effect of the proposed Bill, it will mean that WDRC now has even less influence over land use in the area of the local authority and even less say on the cumulative impacts that the granting of mining leases over the land within our district will have. In our view, Council has now been left with very little say or influence over what happens in the area of the local authority - a position which is in direct conflict with good rule and local government.

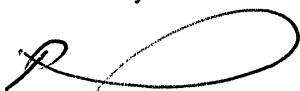
Given the above, WDRC is also deeply concerned to see the amount of legislation proposed to be prescribed by regulation under the Bill. It had been widely considered that WDRC would be the assessing agency for all regional interest development approvals in the local authority area, yet, when the regulations were released that was clearly not the case. This is a clear example of a situation where the whole thrust of the Act had changed simply by leaving matters for the regulations.

Conclusion

It seems much has been made of the extent of consultation with all relevant stakeholders in this process. WDRC has not been involved in that consultation and nor realistically can it be expected to respond within the timeframes allocated.

The Bill needs far more consideration and input than has been afforded to date. WDRC is particularly concerned that it is left "holding the baby" in dealing with the fallout of the new regime without adequate input into the most significant developments affecting its ability to discharge its duties. Failure for us to be empowered in those areas under the *Regional Planning Interests Act 2014* has made those few areas and grounds of objections, input or influence that we have left available to us even more important.

Yours faithfully



Phil Berting PSM
CHIEF EXECUTIVE OFFICER