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8 November 2011

Email transmission

The Research Director
Environment, Agriculture, Resources and Energy Committee
Parliament House

Email earec@parliament.qld.gov.au

Dear Sir

Strategic Cropping Land Bill 2011

We act for and provide this submission on behalf of Macarthur Coal Limited (**MCC**). MCC is grateful for the opportunity to provide this submission to the Environment, Agriculture, Resources and Energy Committee (**Committee**) on the *Strategic Cropping Land Bill 2001* (**SCL Bill**).

MCC is a member of the Queensland Resources Council (**QRC**). It supports QRC's submission to the Committee dated 4 November 2011. MCC makes the general comment that the SCL Bill is unnecessary. Protection of Queensland's best cropping regions could have easily been facilitated through the existing environmental assessment processes already enshrined in legislation.

In addition, MCC makes the following submission based on its concerns in relation to the impact of the SCL Bill on its Monto Coal Project.

For over a year, industry has relied on numerous policy announcements and related material released by the Department of Environment and Resource Management (**DERM**) on the strategic cropping land policy.

Effective implementation of the promised transitional provisions relating to projects including MCC's Monto Coal Project is one of MCC's key concerns with the SCL Bill. Specifically, the level of protection offered to those projects that fall within the scope of Division 3 of Part 3 of Chapter 9 of the SCL Bill is far lower than industry expected on a reasonable interpretation of the policy documentation released by the Queensland Government.

As QRC's submission states:

> *'Provisions introducing an element of retrospectivity to the commencement of some obligations were also based on a reasonable expectation that the Bill would be consistent with the policy announcements with which the retrospective commencement has been linked, and that has turned out not to be the case, for the reasons which will be explained in more detail in this submission. Consequently, any possible justification which could otherwise have been argued for the elements of retrospectivity is now outweighed by the fact that the Bill is inconsistent with legitimate expectations based on policy announcements (Section 4(2)(g) Legislative Standards Act 1992).'*

The policy announcements created a reasonable expectation that the transitional provisions would operate in favour of all projects, regardless of whether they were situated in the management area or protections areas. It was expected that for those projects that met the transitional thresholds, they would be subjected to a less time consuming process than other projects. This is not the case.

The effect of the transitional provisions on projects that fall within Chapter 9, Part 3 Division 3 SCL Bill (which includes section 281) is limited to the extent that those projects are overlapped by a protection area. Chapter 9, Part 3 Division 3 SCL Bill affords no protection to those projects that otherwise meet the transitional requirements, but are located in the management area.

Section 278 SCL Bill states that, *'The permanent impact restriction does not apply for an environmental authority application and its related resource application if they are excluded under this division.'*

By definition, the *'permanent impact restriction'* applies only to land identified in a protection area (see section 93 SCL Bill). Therefore, for projects that fall within the management area **and** the scope of Chapter 9, Part 3, Division 3 SCL Bill (including MCC's Monto Coal Project), the SCL Bill offers no protection for the future development of these projects.

The current operation of the transitional provisions creates a significant financial impact to MCC that was not anticipated (due to the reasonable belief that projects such as the Monto Coal Project would be afforded a facilitative benefit under the transitional provisions).

Delay to the Monto Coal Project that will arise as a result of strategic cropping land assessment requirements represent significant costs to MCC. Additionally, the outcomes of that assessment may result in resource sterilisation. The Monto Coal Project meets the transitional thresholds. It should be protected from this harm.

Particularly, aspects of the Monto Coal Project covered by section 281(1)(b) of the SCL Bill include mining lease 80175 and any future mining lease applications out of exploration permits for coal 613 and 683 certified before 23 August 2012 (noting the typographical error the Department has confirmed exists in s. 281(1)(b) which inaccurately refers to 23 August 2010).

MCC can provide further information outlining the potential impacts on the Monto Coal Project on a commercially confidential basis if that is required.

In reliance on the expectation born from the previous policy announcements, investment decisions have been made for this project (and others) that did not anticipate these additional costs.

It is proposed as an alternative to section 278(2) SCL Bill that projects that fall within Chapter 9 Part 3 Division 3 are subject to an environmental authority condition requiring (as set out in the relevant policy statements) that the holder use reasonable endeavours to avoid, minimise and mitigate impacts on strategic cropping land that exists in the project area.

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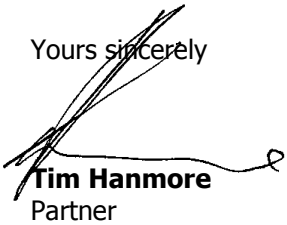
Yours sincerely



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