P.O. Box 25
Rosewood QLD 4340
President: Ursula Monsiegneur

Secretary: Colin Dannevig

Web: www.rdpo.org.au

Submission No. 005

RDPO

Rosewood District Protection Organisation Inc

Infrastructure, Planning and Natural Resources Committee

IPNRC@parliament.qld.gov.au

Wednesday, 6 April 2016

Dear Committee Members

The Rosewood District Protection Organisation RDPO Inc. spontaneously formed in 2001 by local citizens as a direct result of community concern about the negative impact on the Rosewood district from expanding open cut coal mining operations of New Hope Coal Group at Tallegalla (New Oakleigh mine) and Jeebropilly, and the continuing operation of the Idemitsu mine at Ebenezer.

In 2002/3 RDPO spearheaded a large community action in the Lands and Resources Tribunal against the New Hope Coal Group's proposed expansion of the West Pit open cut coal mining lease at the Oakleigh Colliery a short distance to the north of the Rosewood township. We won some concessions from New Hope in how they would operate, and in forming ongoing Community Consultation meetings.

The case was based on the very real impacts on the surrounding native forest, rich farmland and close-settled community which preceded open cut mining in the area by over a century – blasting, noise, dust, light, water table loss, destruction of high value scenic amenity and endangered ecosystems .

Subsequently we have maintained a strong presence in our region, successfully containing and curtailing the Oakleigh mine which has now closed. We continue in positive participation with New Hope in the rehabilitation and restoration of the mine site.

Because of our direct experience of mining we readily support other community members in our region in their actions to prevent similar destructive impact from proposed or actual open cut mining imposed on our native ecosystems and productive rural environment.

The original *Mineral and Energy Resources (Common Provisions) Act 2014* should never been passed as the Bill as it stands is draconian in nature and is designed to take away all rights of the citizens of Queensland.

Our Community - Our Future

The primary policy objectives of the Bill are to amend the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERCP Act) to:

1) repeal yet to commence provisions within the MERCP Act which limit notification and objection rights for mining projects;
2) include key agricultural infrastructure within the definition of restricted land;
3) enshrine the distances for restricted land in the primary legislation;
4) repeal the proposed change which would have allowed a mining lease to be
5) granted over restricted land where landholder consent has not been given and compensation has not been agreed; and
6) remove the Minister's power to extinguish restricted land for mining lease applications where coexistence is not possible on proposed mining sites.

Even small mines may last for decades and have serious impacts on our finances, ecology, environment and society. Public objection rights are powerful rights to go to court, unlike mere consultation. Public objection rights to proposed mines are essential to enable the costs and benefits to be debated openly in Court and to deter the type of corruption exposed in New South Wales. I say do not change those existing rights under Queensland law.

- Clauses 418 and 420

These clauses remove existing community notification rights and rights to object to mining lease applications. Changing land tenure to allow for mining rather than another land use could impact on a broad section of the public. Therefore the narrow definition of an 'affected person' proposed, which would exclude neighbours or community groups or people in the water catchment, is absurd. Land use decision making processes for other industries provide for community submission and appeal rights, so there is no good reason why mining tenure should be exempt from this basic standard.

- Clause 245

Limiting community notification and formal objection rights to the Land Court to "site specific" environmental authorities will, in conjunction with the above clauses, remove all existing public rights to lodge formal objections to the Land Court in up to 90% of mining projects in Queensland. This is unacceptable and fails to recognise the positive impact of community objection rights. The same mining companies who want to limit public objections are often foreign owned. Suggestions by State government Ministers that objectors lodge frivolous or vexatious cases is entirely untrue, rather the opposite is true: there are no examples of such cases and objectors are very responsible. In the Alpha coal case (2014) the land holders and conservation group exposed that the mining company had a lack of hard data on groundwater impacts. Public spirited objectors went to Court and saved Ellison Reef (1967) from limestone mining and helped show the importance of protecting Fraser Island, now World Heritage Listed (1971)

- Clause 423 and 424

It is inappropriate to restrict matters that the Land Court can consider and give these powers, such as to consider the 'public interest', to the Minister. Decreasing judicial oversight, increasing ministerial powers and shutting out community participation has worrying implications for corruption.

- Clause 429

Removal of restricted land status when the miner is granted exclusive surface rights to access land removes one of the few rights of vulnerable landholders. No-one should have the land surrounding their house destroyed by an open-cut mine yet this would be possible under this clause.

I call on the Committee to approach the proposed legislation with a view to empower, rather than disempower, our communities to take responsibility for our State. In Queensland for decades any person or group has been entitled to object to any mining proposal in open court, to have the evidence scrutinised about the benefits and detriments of a proposed mine. I request that you do not accept these changes but instead keep existing provisions that require public notification of all proposed mining projects and that allow any person or incorporated group to object to all mining leases and environmental authorities on all the existing grounds.

We did not get a direct response from the committee but were left to make sense of the committees report to parliament.

These are the generic responses to our submission:

- Clauses 418 and 420

SECTION/INITIATIVE

Notification and objections – Affected persons

KEY POINTS

These clauses remove existing community notification rights and rights to object to mining lease applications. Changing land tenure to allow for mining rather than another land use could impact on a broad section of the public. Therefore the narrow definition of an 'affected person' proposed, which would exclude neighbours or community groups or people in the water catchment, is absurd. Land use decision making processes for other industries provide for community submission and appeal rights, so there is no good reason why mining tenure should be exempt from this basic standard.

DEPARTMENT RESPONSE

The policy intent of the notification and objection reforms is to provide for a notification and objection process that reflects the level of risk and scale of operations and that removes duplication, reduces project delays and lowers costs for industry in general.

The department considers that this clause achieves the intended policy intent. The department is of the view that mining lease applications which require a standard variation application for an environmental authority will not have fundamental impacts on communities. The eligibility criteria for such applications include:

> Numbers of employees; area of disturbance; and locational considerations, etc. As such, the risk of offsite issues from such applications is considered to be low and therefore a reduced notification regime is proposed in the Bill.

While there will no longer be a right for citizens, including landholders, community members, community groups and organisations, etc., to object to low risk mining leases, the public right to object has been retained for any application requiring a site-specific application for an environmental authority.

The evidence is that these are the applications that the community is concerned about and which potentially have social, economic and environmental impacts beyond the boundary of the proposed lease. For these mining projects, notification and objection rights are preserved under the Environmental Protection Act or through an Environmental Impact Statement.

The type of mine that requires a site-specific environmental authority generally includes all large scale mining projects, including all coal mining proposals.

The majority of mining leases in Queensland carry low environmental risk, and as such, a standard or variation application for an environmental authority will apply.

The Bill also proposes that notification of mining lease applications under the Mineral Resources Act 1989 is required for directly impacted landowners, occupiers, infrastructure providers and local governments. Landowners and local governments that are directly impacted will continue to be able to lodge an objection to the Land Court on matters that relate to the mining lease application.

The cumulative quantitative and qualitative benefits of the model proposed have been considered against the current regulatory burden and have been determined to provide the greatest net benefit of the options available.

As such the department is of the view that the proposed legislation achieves a balanced approach to notification and objections between industry, and individual landholder and community interests.

- Clause 245

SECTION/INITIATIVE

Notification and objections – Site- specific

KEY POINTS

Limiting community notification and formal objection rights to the Land Court to “site specific” environmental authorities will, in conjunction with the above clauses, remove all existing public

rights to lodge formal objections to the Land Court in up to 90% of mining projects in Queensland. This is unacceptable and fails to recognise the positive impact of community objection rights.

Suggestions by State government Ministers that objectors lodge frivolous or vexatious cases is entirely untrue, rather the opposite is true: there are no examples of such cases and objectors are very responsible. In the Alpha coal case (2014) the land holders and conservation group exposed that the mining company had a lack of hard data on groundwater impacts. Public spirited objectors went to Court and saved Ellison Reef (1967) from limestone mining and helped show the importance of protecting Fraser Island, now World Heritage Listed (1971).

DEPARTMENT RESPONSE

These changes only affect notification of environmental authorities associated with mining leases, not other types of mining activities (e.g. Mineral Development Licences, Mining Claims and Exploration Permits). Numerically, the majority of mining leases in Queensland carry low environmental risk (i.e. because the activity meets the eligibility criteria for the activity), and as such, a standard or variation application will apply. These standard and variation applications will not be subject to notification or objection rights on a case-by-case basis. Please note, however, that there is an opportunity for the community to have a say through a review of the completed before 31 March 2016.

This change reflects that the environmental authority application process has different levels of assessment according to the level of potential environmental risk associated with the environmentally relevant activity proposed.

Where the environmentally relevant activity for a mining project does not meet the eligibility criteria, a site-specific application will be required for the environmental authority. For these mining projects, notification and objection rights are preserved under the Environmental Protection Act 1994 or through an Environmental Impact Statement under either the Environmental Protection Act 1994 or the State Development and Public Works Organisation Act 1971. Generally, these site specific applications for an environmental authority will be required for all large scale mining projects, including all coal mining proposals. This will mean that environmental authorities for mines which may have environmental impacts on people some distance from a proposed mine, such as coal mines, will always be publicly notified.

For example, the Alpha coal case (which is specifically mentioned in the submission) was a site-specific application for an environmental authority which also had an Environmental Impact Statement prepared and published for comment under the State Development and Public Works Organisation Act 1971.

A site-specific application would also be required for any mining application in an area like Ellison Reef or Fraser Island, due to their location and the operation of eligibility criteria which requires a site-based assessment for activities within or near ‘category A environmentally sensitive areas’.

The Bill proposes to adopt a risk based approach to notification and objections by providing for those persons directly impacted by the issuing of a mining lease on their rights to use and enjoy the land they own or lease or the services that they own and manage to object to the Land Court in regard to those direct impacts under the Mineral Resources Act 1989.

The breadth of the matters the Land Court can currently consider increases the complexity of the process, and has led to objections being lodged that are beyond the scope of the Mineral Resources Act 1989 to condition. This, in turn, increases the cost to the applicant and the community.

The review of the role of the Land Court identified that some considerations needed to be redrafted for modern drafting style; some should be omitted as they were more appropriately considered under another jurisdiction or by the Minister without the advice of the Court or should be omitted as they were unnecessarily broad and vague.

The review also identified that additional considerations were required by the Land Court to ensure they could adequately deal with objections from local government and owners of the land over which access to a proposed mine is required. These have been added to the Court's jurisdiction.

The changes in the Bill clearly identify the jurisdiction of the Land Court to ensure that the issues considered by the Court relate directly to the impacts of the tenure on those directly impacted by the proposed mining lease application. For those considerations that will no longer require consideration by the Court, the Minister for Mining must still have regard to those considerations when deciding whether to grant the lease. As the Land Court provides recommendations to the Minster and is not a decision-maker there is no change to the existing situation where it is the Minister that decides whether the proposed mine will proceed having regard for those considerations that have been removed from the Court's consideration.

Additional rights to object are provided under the Environmental Protection Act 1994 in regard to environmental impacts for site-specific applications for an environmental authority under which any individual or member of the community or community group on behalf of the community or sections of the community may object.

As such the proposed legislation does seek to achieve a balance between individual and community interests.

- Clause 429

SECTION/INITIATIVE

Restricted land

KEY POINTS

Removal of restricted land status when the miner is granted exclusive surface rights to access land removes one of the few rights of vulnerable landholders. No-one should have the land

surrounding their house destroyed by an open-cut mine yet this would be possible under this clause.

DEPARTMENT RESPONSE

The purpose of the changes in restricted land for situations such as open cut mines result from the fact that there are clearly some situations where mining and residential uses cannot coexist.

It is not intended that the landholder will remain within the locality of the mine in the event that the Minister for Natural Resources and Mines is of the view that the mine should be approved with full surface rights and be expected to coexist without any restricted land.

Rather in such situations restricted land would be extinguished and the landholder would be compensated for not only the loss of the right of consent but also to relocate from their existing residence.

This is a significant change to the existing situation and in recognition of this, the Bill (clause 424 amending section 271 of the Mineral Resources Act 1989) includes a requirement for the Minister to have particular regard for any disadvantage that may result to the owner or occupier of the area of restricted land prior to deciding any such mining lease application.

- Clause 423 and 424

SECTION/INITIATIVE

Notification and objections

KEY POINTS

The proposed changes will mean far fewer people will be able to object to mining leases and landholder's rights will be weakened. The system is already stacked against landholders and communities and this will make it even worse.

It is vital that full objection rights are maintained to ensure that the public interest in the future of Queensland is given a voice. Otherwise, we are handing over our public interests and common rights to foreign-owned mining companies and their shareholders, allowing all the costs and impacts to be incurred on local communities and allowing all the benefits to be shipped offshore. Current legal rights are essential to ensure that the basic public interest is allowed to be explored in a court of law.

The Independent Commission Against Corruption in NSW has identified merits appeal rights for the public as a crucial measure to curtail corruption, because a decision-maker that knows any decision they make can be tested in court has to ensure the decision is made well and in accordance with the law.

DEPARTMENT RESPONSE

The intent of the package of reforms is to appropriately balance the right to object on matters that directly relate to the granting of tenure, whilst reducing regulatory burden and delays by minimising unnecessary jurisdictional overlap and providing more specific and tenure related grounds on which objections can be lodged.

The Bill proposes to adopt a risk based approach to notification and objections by providing for those persons directly impacted by the issuing of a mining lease on their rights to use and enjoy the land they own or lease or the services that they own and manage to object to the Land Court in regard to those direct impacts under the Mineral Resources Act 1989.

The breadth of the matters the Land Court can currently consider increases the complexity of the process, and has led to objections being lodged that are beyond the scope of the Mineral Resources Act 1989 to condition. This, in turn, increases the cost to the applicant and the community.

The review of the role of the Land Court identified that some considerations needed to be redrafted for modern drafting style; some should be omitted as they were more appropriately considered under another jurisdiction or by the Minister without the advice of the Court or should be omitted as they were unnecessarily broad and vague.

The review also identified that additional considerations were required by the Land Court to ensure they could adequately deal with objections from local government and owners of the land over which access to a proposed mine is required. These have been added to the Court's jurisdiction. The changes in the Bill clearly identify the jurisdiction of the Land Court to ensure that the issues considered by the Court relate directly to the impacts of the tenure on those directly impacted by the proposed mining lease application. For those considerations that will no longer require consideration by the Court, the Minister for Mining must still have regard to those considerations when deciding whether to grant the lease. As the Land Court provides recommendations to the Minster and is not a decision-maker there is no change to the existing situation where it is the Minister that decides whether the proposed mine will proceed having regard for those considerations that have been removed from the Court's consideration.

Additional rights to object are provided under the Environmental Protection Act 1994 in regard to environmental impacts for site-specific applications for an environmental authority under which any individual or member of the community or community group on behalf of the community or sections of the community may object.

As such the proposed legislation does seek to achieve a balance between individual and community interests.

As you can see the objections were all swept aside in the pursuit of the LNP's wishes. These wishes had nothing to do with what was good for the landholders, residents, fauna and flora or the environment but what the LNP saw as smoothing the way for the mining companies with the least amount of scrutiny or objection. There could be no objection as the 'peoples' right to object had just been removed by a pen stroke.

There were two committee members who raised doubts on the process, but when it got to the parliament floor and the doubts were introduced as amendments to the Bill there was no discussion or debate just a vote taken and the amendments were all defeated along party lines. There are no checks or balances within the parliament as there is no 'house of review', only the committee system, and when the committees are arranged in such a way that the majority of committee members are from the ruling party then whatever they want they get.

We have no great confidence that this Senate Committee is also stacked to find that there has been no wrong-doing or bias shown with this decision and the subsequent Mineral and Energy Resources Common Provisions) Bill 2014 Queensland.

The original Mineral and Energy Resources Common Provisions) Bill 2014 Queensland report contained two dissenting reports they were from Ms Jackie Trad MP, Member for South Brisbane Deputy Chair, Agriculture, Resources and Environment Committee and Mr Shane Knuth MP, Member for Dalrymple Committee member, Agriculture, Resources and Environment Committee/

Jackie Trad said:

I write to lodge a dissenting report on the Agriculture, Resources and Environment Committee's (the Committee) report on the *Mineral and Energy Resources Common Provisions Bill 2014* (the Bill).

I have attached additional recommendations on behalf of the Opposition that should have been contained in this report. The fact that this report does not address the key concerns of submitters to the Committee shows that the Newman Government is incapable of listening to Queenslanders.

The Opposition is extremely concerned that the Newman Government is not listening to the concerns of the overwhelming majority of submissions to the Committee and does not support recommendation 1 of the Committee's report that the bill be passed with consideration of minor amendments. The fact that the Committee's report does not make recommendations about any of the substantive concerns raised by stakeholders is a complete failure of responsibility on the part of LNP Members.

I do not support the removal of public notification and objection rights on mining lease applications and environmental authorities, the amendments to remove principal stockyards, bores, artesian wells, dams and other artificial water storages from the 'restricted land' legislative framework or the watering down of prescribed distances to be inserted in a later regulation rather than legislation.

The Committee received many submissions from concerned stakeholders including at public hearings on 6 and 27 August in Brisbane, 19 August in Toowoomba and 20 August in Townsville and Mackay.

Mr George Houen of Landholder Services Australia Pty Ltd told the Toowoomba hearing that:

"I am a rural consultant with Landholder Services… This is a wrecking ball. It is a train wreck. It is an acid bath for the rights of the landholder. There will be a great increase in the level of conflict between landholders and miners."

AgForce in their submission said that:

"The primary concerns with the proposed changes in the two discussion papers can be summarised as loss of rights to object in many circumstances, limited protection for non homestead property infrastructure and reduction in negotiating power (of producers) in general . The overall concern being that a reduction in existing rights will erode further any goodwill between the agriculture and resources sector and will not increase possibilities of co-existence."

Shine Lawyers representing regional landowners said in their submission that:

"As an overall statement we would like to say that the amendments for discussion concern us greatly as they seek to very substantially alter long held principles and rights of landholders in Queensland with virtually no benefits flowing back to them from the proposal. The government has made and continues to make promises that the idea of the reforms is to harmonise the various pieces of legislation and that no landholders will be worse off unless they agreed to be. Unfortunately, the proposals do not live up to that promise but rather almost entirely make landholders worse off."

The Opposition strongly opposes the removal of public notification and objection rights on mining lease applications and environmental authority applications which is without any policy justification. As the report notes the Committee found no evidence of significant costs or vexatious use of objections to small scale mining applications. Mining resources are held by the crown on behalf of the people and nearby landowners and the broader community have a right to know about, and to object to mining projects in their State.

The Opposition will be detailing further and more detailed problems with this bill when it is debated in Parliament.

Yours sincerely

Jackie Trad

MP Member for South Brisbane

Shane Knuth said:

I wish to dissent against the Agriculture, Resources and Environment Committee's ruling to support the Mineral and Energy Resources (Common Provisions) Bill 2014.

I believe this Bill is biased toward the mining giants while further removing landowners' rights.

My concerns regarding aspects of the Bill towards the restricted land can be conveyed by Mr Donny Harris of Donny Harris Lawyers, who has stated in the AREC public hearing in Townsville:

"The other concern with restricted land is the fact that the new definition removes what I would describe as some key infrastructure, particularly for graziers. The number one key infrastructure is water infrastructure. If you talk to any grazier or any farmer in fact, water is a key requirement for their enterprise. The other key infrastructure is the removal of the principal stockyards. Both these items are no longer going to be considered restricted land under the new definition so where does that leave landholders who were previously in a position where they could, for example, either negotiate make-good requirements for that principal infrastructure or at least negotiate a higher compensation value for the loss of that infrastructure."

I am deeply troubled about the removal of key infrastructure from the restricted land as the whole aspect of the management of a farm or grazing property is reliant on these key infrastructure components. Without them a property cannot operate.

As a committee member I am concerned about what has been pointed out under new section 260: *"…people's right to object to the issuing of a mining lease for a resource activity will be unduly restricted to 'affected persons', and that the definition of 'affected persons' has been further limited.*

"Further, low risk environmental activities/mining lease grants will not be subject to public notification. This will impact persons who live near a resource activity but who are deemed to be 'not directly affected' by its activities as well as the general public/local and wider communities who may not be aware that a resource activity for which there is a public interest being carried out."

The Bill removes all public notification and objection rights to land tenure decisions with only the impacted landholders having the right to object.

I am greatly concerned about opt-out agreements without any safeguards such as information and warning statements to ensure landowners are aware of the risks and implications of these agreements.

These are important issues that need to be addressed and it is disappointing that the committee has recommended that the Bill be passed without any safeguards.

Another concern is that, for example, if Ben Lomond Uranium Mine has a development application, landowners downstream, or the Charters Towers community, have no right to object even if uranium leaks into their water supply.

I also have great concerns for farmers in coal seam gas areas, whose rights have already been trampled. This Bill will further erode their rights and seriously affect their ability to manage their business.

Yours sincerely

Shane Knuth

MP Member for Dalrymple

Ursula Monsiegneur
President RDPO Inc

Col Thompson
Technical Advisor RDPO Inc

Colin Dannevig
Secretary RDPO Inc

RDPO

Rosewood District Protection Organisation Inc

P.O. Box 25
Rosewood QLD 4340
President: Ursula Monsiegneur
Phone: 0459 477 552
Email: umonsiegneur@gmail.com
Secretary: Colin Dannevig
Phone: (07) 5464 2343
Email: secretary.rdpoinc@outlook.com
Web: www.rdpo.org.au

Addendum to Submission No.005

Infrastructure, Planning and Natural Resources Committee

IPNRC@parliament.qld.gov.au

Friday, 8 April 2016

Dear Committee Members

This is an addendum to our original submission to your committee.

In our submission we highlighted the Bill *The Mineral and Energy Resources (Common Provisions) Act 2014* and its wording, which took away all of the residents and landholders rights:

1. To object to the proposed mine.
2. To refuse entry to their property without proper notice.
3. For neighbours to know what was being proposed by the mining company.
4. Of the community in the proposed MDL or EPC to know what was being proposed by the mining company.

Both Jacki Trad and Shane Knuth lodged a dissenting report to the original bill.

RDPO also has objections to the Bill for the above reasons set out.

The peoples' rights have been stripped from them and all rights handed to the mining companies.

As the Government you cannot sit by and see the people's rights stripped away by such a draconian Bill that works against the people of Queensland.

Yours sincerely

Ursula Monsiegneur

President RDPO Inc

Col Thompson

Technical Advisor RDPO Inc

Colin Dannevig

Secretary RDPO Inc

Our Community - Our Future