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11.1.24
14 August 2014

12 August 2014

The Hon David Gibson MP
Chair
State Development, Infrastructure and Industry Committee
Parliament House
George Street
Brisbane QLD 4000

By email: sdiic@parliament.qld.gov.au

Dear Mr Gibson

Comments on *Regional Planning Interests Regulation 2014*

Rio Tinto Coal Australia (***RTCA***) provides this letter of comment on the *Regional Planning Interests Regulation 2014* (the ***Regulations***) and follows our submission on the Regional Planning Interests Bill under cover of a letter dated 15 January 2014, and our submission on the draft Regulations under cover of a letter dated 11 April 2014.

We appreciate the opportunity the Queensland Government has provided for input on the Regional Planning process to date and acknowledge the careful consideration of submissions on the legislation from the agriculture and resources sectors.

Amendment Requested
RTCA proposes that the Regulations should be amended so that the 2 per cent restriction in clause 11(d) of Schedule 2 of the Regulations does not apply where the applicant is the owner or the applicant has obtained the owner's voluntary consent.

In support of this submission is:
1. This letter;
2. Attachment 1 – A worked example of the difficulties with the current Regulations; and
3. Attachment 2 – Further specific comments regarding the Regulations.

The changes made to the draft Regulations address some of the concerns RTCA raised in its earlier submissions. The introduction of Required Outcome 3 and the applicable prescribed solutions in sections 12 and 13 of Schedule 2 to the Regulations provides greater certainty to RTCA's interests. In circumstances where a resource activity is being carried out on 2 or more 'properties (SCL)', the Regulations permit permanent impacts on strategic cropping land subject to appropriate mitigation measures and agreement with the owner of each property not owned by the applicant.

However, this Required Outcome will rarely be available to sites managed by RTCA in Queensland, due to the historical position taken by RTCA (and many other resource companies) to purchase the land on which the resource activity would take place. By purchasing the land (and in many cases, leasing land back to the original owners until it is required for mining purposes), RTCA minimises the impact of mining on the landowners in the area, and provides them with capital in advance of any potential disturbance to their activities.

RTCA (or its related bodies corporate, and the other joint venture participants) owns much of the land in the areas that it intends to mine. Such areas will be treated as one 'property (SCL)' under the Regulations because of the operation of paragraph (b)(ii) of the

definition of 'property (SCL)' in Part 1, Schedule 2 of the Regulations. Even though a tenement area may cover several individual lots, this definition and the common ownership mean it will be treated as a single 'property (SCL)'.

In such circumstances Required Outcome 2 and the applicable prescribed solutions in sections 10 and 11 of Schedule 2 of the Regulations apply. Due to the structure of Part 4 of Schedule 2, Required Outcome 2 is the only Required Outcome that can apply where impacts are proposed on a single 'property (SCL)'. Prescribed solution 11(d) of Schedule 2 restricts permanent impacts to no more than 2 per cent of the strategic cropping land on the property. This restriction has the potential to significantly constrain future development of RTCA's managed exploration and mineral development tenements throughout Queensland.

RTCA considers that this 2 per cent restriction should be removed from clause 11(d) of Schedule 2 of the Regulations because:

1. It is inconsistent with the prescribed solutions for Priority Agricultural Areas.

   The prescribed solutions for Priority Agricultural Areas only place a 2 per cent limit where the applicant is not the owner of the land, or a voluntary agreement has not been entered into with the landowner (see section 3 of Schedule 2 of the Regulations).

   The inconsistency is clear given that if a Strategic Cropping Area is also mapped as a Priority Agricultural Area, the prescribed solutions for Priority Agricultural Areas applies (see section 14(4) of the Regulation).

2. Resource companies should not be disadvantaged under the Regulations for implementing historically positive land ownership arrangements.

3. The previous *Strategic Cropping Land Act 2011* (***SCL Act***) did not place a percentage restriction on permanent impacts on SCL in 'management areas'. Rather, resource activities that permanently impacted on SCL in a management area under the SCL Act were required to consider a hierarchy of controls including avoidance and mitigation measures. All RTCA tenements were located in management areas.

   The Queensland Government's 'Review of the Strategic Cropping Land Framework Report' released late last year recommended that the level of protection for SCL in 'management areas' be retained. The prescribed solutions for Required Outcome 2 appear to be contrary to the recommendations of the review.

4. The distinction between one 'property (SCL)' and multiple 'properties (SCL)' appears to be arbitrary for the purpose of the 2 per cent limit, given there is no minimum lot size for a 'property (SCL)'.

A worked example of Required Outcome 2 is detailed in Attachment 1.

RTCA has also proposed a number of potential solutions in Attachment 2.

RTCA proposes that the prescribed solutions for Required Outcome 2 (section 11(d) of Schedule 2 to the Regulation) reflect the prescribed solution for Required Outcome 1 relating to Priority Agricultural Areas (section 3(3)(a) of Schedule 2 to the Regulations). RTCA proposes that the Regulations should be amended so that the 2 per cent restriction in clause 11(d) of Schedule 2 of the Regulations does not apply where the applicant is the owner or the applicant has obtained the owner's voluntary consent.

We would welcome the opportunity to provide any further information or clarification to support our submission by contacting Anthony Russo, Manager – Project Approvals on [redacted] in the first instance.

Yours sincerely

Tim Kassulke
GM Health, Safety, Environment and Community
Rio Tinto Coal Australia Pty Limited

Attachment 1 – Kestrel Expansion Worked Example

Figure 1 shows some of the landholdings of the Kestrel Joint Venture, as well as the relevant mining leases for the Kestrel Mine.

The Kestrel Mine Extension #4 shown on the attached plan is being assessed under a protection decision under the SCL Act. However, the *Regional Planning Interests Act 2014* (the ***Act***) will apply to any future development of the Kestrel tenements.

If the next development was to the immediate west of the current Kestrel mine and to the east of Lilyvale Road (within MDL 182), this development would cover only one 'property (SCL)'. This is because the lots are commonly owned (see Section 1 of Schedule 2 of the Regulations).

Assuming that the underground mining at Kestrel was determined to be a 'permanent impact' on the strategic cropping land, the current drafting of section 11(d) of Schedule 2 to the Regulations will prevent mining activities on greater than 2 per cent of the strategic cropping land on the 'property (SCL)'.

The 2 per cent limit significantly constrains any future development of RTCA's mineral development permits at Kestrel Mine.

Kestrel Mine was located in an SCL management area under the previous SCL Act. Section 2.5 of the Government's report following the review of the Strategic Cropping Land Framework focused on different management regimes for potential SCL depending upon whether the SCL was located within a 'protection' or 'management' area.

The report noted that in management areas, developments that have a permanent impact on SCL or potential SCL can proceed, subject to conditioning and mitigation requirements. Having received broad stakeholder feedback, the report recommended (Recommendation 4):

> *It is recommended that:*
> - *the current level of protection within SCL Protection and Management Areas be retained*
> - *the relevant statutory regional plans incorporate the same level of protection currently afforded for development on SCL or potential SCL in protection areas (i.e. no permanent impact unless in exceptional circumstances).*

The Regulations do not retain the current level of protection for SCL within a Management Area, where that activity is being conducted on a single property (SCL). The Regulations restrict permanent impacts on SCL on a property, to no more than 2% of the property, regardless of whether the property is in a 'management' or 'protection' area.

No such blanket restriction on permanent impacts in a 'management area' existed under the SCL Act. Rather, permanent impacts on SCL were allowable subject to conditions and mitigation on a case by case basis. Assessment on a project by project basis is the most appropriate mechanism for the management of SCL in existing management areas.

RTCA considers the regulatory approach that previously existed should be retained, consistent with the recommendations.

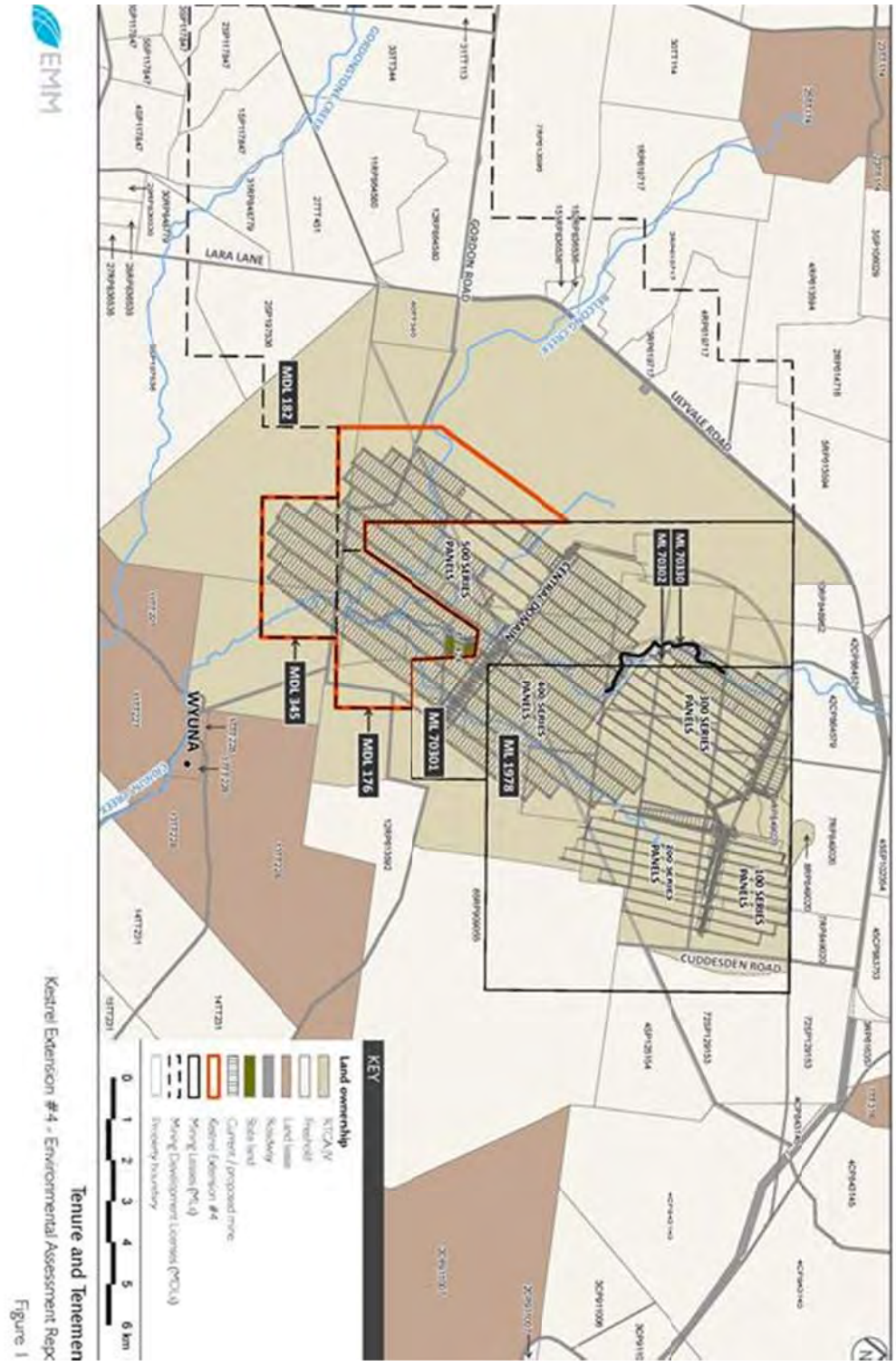

Figure 1 – Kestrel Mine Landholdings and tenements

Attachment 2 – Further Specific Comments

The following further specific comments on the draft Regulations are provided as they apply to Strategic Cropping Areas.

Required Outcome 2

Required Outcome 2	RTCA Submission
This section applies if the activity: (a) does not meet required outcome 1; and (b) is being carried out on a property (SCL) in the strategic cropping area. The activity will not result in a material impact on strategic cropping land on the property (SCL).	The determination of whether there is a material impact on strategic cropping land needs to take into account the conditions that are to be imposed on the activity and the mitigation for the impact. *Alternative wording:* *The activity will not result in a material impact on strategic cropping land on the property (SCL) taking into account the proposed conditions for the regional planning development approval, the mitigation proposed and the benefits (including economic) of the proposed activity impacting the strategic cropping land.*

Prescribed Solutions for Required Outcome 2

Solution Required under the draft Regulation	RTCA Submission
The application demonstrates all of the following—	
if the applicant is not the owner of the land and has not entered into a voluntary agreement with the owner—the applicant has taken all reasonable steps to consult and negotiate with the owner of the land about the expected impact of carrying out the activity on strategic cropping land;	Where the relevant land is unallocated State land, clear guidance should be available about whether the State will be willing to enter into a voluntary agreement with respect to that land, and on what terms. RPI Act Guideline 03/14 provides no assistance on this point.
the activity can not be carried out on land that is not strategic cropping land, including, for example, land elsewhere on the property (SCL), on adjacent land or at another nearby location;	RTCA requests that the State engage with industry to further develop the available guidance documents, to ensure that they better reflect industry realities and achievable outcomes.
the construction and operation footprint of the activity on strategic cropping land on the property (SCL) is minimised to the greatest extent possible;	RTCA agrees that this is reasonable and part of ordinary mitigation steps.
if the activity will have a permanent impact on strategic cropping land on a property (SCL)—no more than 2% of the strategic cropping land on the property (SCL) will be impacted.	RTCA provides the following recommendations to amend this requirement (in order of preference): 1. this requirement should only apply where the activity will have a permanent impact on strategic cropping land, and the applicant is not the landowner and has not entered into a voluntary agreement with the landowner. This amendment would bring the criteria in line with the criteria where the land is in a Priority Agricultural Area (see section 3(3)(a) of Schedule 2). This amendment

Solution Required under the draft Regulation	RTCA Submission
	would also be consistent with Recommendation 4 of the review the Strategic Cropping Land Framework (discussed in Attachment 1); 2. where the landowner is the applicant, or a voluntary agreement has been entered into with the applicant, the 2 per cent limit should be removed and the applicant should have the option of agreeing mitigation measures with the chief executive; or 3. The definition of 'property (SCL)' for this provision should exclude lots or parts thereof which at the commencement of the Act were held by the applicant, and for which the applicant was already authorised to impact the land, or had previously impacted upon the land.

Required Outcome 3

Required Outcome 3	RTCA Submission
This section applies if the activity: (a) does not meet required outcome 1; and (b) is being carried out on 2 or more properties (SCL) in the strategic cropping area. The activity will not result in a material impact on strategic cropping land in an area in the strategic cropping area.	As with Required Outcome 2, the determination of whether there is a material impact on strategic cropping land needs to take into account the conditions that are to be imposed on the activity and the mitigation for the impact. Reference to strategic cropping land in an area in the 'strategic cropping area' is circular, as 'strategic cropping area' is defined under the Act to mean 'areas shown on the SCL trigger map as strategic cropping land'. If the intent is to consider the strategic cropping land in the context of the surrounding properties, the wording should be amended. *Alternative wording:* *The activity will not result in a material impact on strategic cropping land taking into account the proposed conditions for the regional planning development approval, the mitigation proposed and the benefits (including economic) of the proposed activity impacting the strategic cropping land.*

Prescribed Solutions for Required Outcome 3

Solution Required under the draft Regulation	RTCA Submission
The application demonstrates all of the following—	
the activity cannot be carried out on other land in the area that is not strategic cropping land, including, for example, land elsewhere on the property (SCL), on adjacent land or at another nearby location;	As with Required Outcome 2, mining activities can only occur where the resource is located. *Alternative wording:* *The activity cannot be carried out on other land in the area that is not strategic cropping land, including, for example, elsewhere on a property, on an adjacent property or at any other nearby location. Where a resource is located on strategic cropping land, the resource activity is not required to be undertaken elsewhere.*
if there is a regional plan for the area in which the activity is to be carried out—the activity will contribute to the regional outcomes, and be consistent with the regional policies, stated in the regional plan;	This requirement should be removed as regional plans contain imprecise outcomes, some of which are not relevant to 'areas of regional interest'. Assessment against imprecise outcomes creates unnecessary uncertainty.
the construction and operation footprint of the activity on strategic cropping land is minimised to the greatest extent possible;	RTCA agrees that this is reasonable and part of ordinary mitigation steps.
either: (i) the activity will not have a permanent impact on the strategic cropping land in the area; or (ii) the mitigation measures proposed to be carried out if the chief executive decides to grant the approval and impose an SCL mitigation condition.	The drafting of paragraph (ii) creates some confusion. RTCA's assumption is that this paragraph requires the applicant to propose suitable mitigation measures to be carried out following the completion of the activity. *Alternative wording:* *(ii) mitigation measures sufficient to mitigate the impact of the activity will be carried out to the satisfaction of the chief executive.*
Subsection (3) applies for each property (SCL) on which the activity is to be carried out if the applicant is not the owner of the land and has not entered into a voluntary agreement with the owner.	
The application must demonstrate the matters listed in this schedule, section 11 for a prescribed solution for required outcome 2 for the property (SCL).	