Submission No. 024
17 January 2014
11.1.14

Submission regarding the Regional Planning Interests Bill 2013
Submitted by Friends of Felton
January 2014

Introduction

Friends of Felton formed in 2008 in response to a proposal from Ambre Energy to establish an open-cut coal mine and petrochemical plant in the Felton Valley. The strength and commitment of our community has allowed our group to become a leading voice, speaking on behalf of rural/farming communities, in the land use planning debate. It is with this experience that we are able to comment on the Regional Planning Interests Bill.

The Bill

We agree with the intent of Regional Planning Interests Bill (the Bill); that is, to provide a framework to protect agriculture, people and the environment from the externalities associated with large scale resource development. Effective legislation would give surety to both the resource and agricultural sectors, and would recognise and protect areas that contribute to regional community and environmental health.

We are concerned however, that the Bill in its current form would not provide sufficient protection to agriculture, community and the environment, and in fact could fast track resource development across much of Queensland.

Specific Concerns

Coexistence

For the past six years, we have called for a planning scheme that gives absolute protection to prime agricultural land from mining or gas developments. It appears the concept of 'coexistence' is driving the current land use debate and the absence (in this bill) of a definition or criteria for 'coexistence', makes it impossible for us to gauge its likelihood of success.

The circumstances under which resource activities and highly productive agriculture can operate in one place at the same time, to mutual advantage, are highly complex and rare in any event. This reality means that placing coexistence at the centre of land use planning for the Darling Downs region is wrong-headed. For us, the planning process should be aimed at excluding incompatible resource activities from priority agricultural areas and from strategic cropping areas.

The level of public objection to a proposed development should in itself be an indication of whether coexistence is possible.

Priority Living Areas

In Section 9 the Bill defines priority living areas. It is recommended that the wording be revised to make specific reference to *human health* as follows:

A priority living area is an area that

(a) Is shown on a map in a regional plan as a priority living area

(b) Is sufficiently buffered from mining-related impacts, including dust, gases, odours, vibration and noise, to be non-threatening to the physical and mental health of inhabitants

(c) Includes the existing settled area of a city, town or other community and other areas necessary or desirable

(i) for the future growth of the existing settled area;

and

(ii) as a buffer between the existing or a future settled area and resource activities.

Several Darling Downs towns have been omitted from the list of priority living areas and should be added to the Darling Downs Regional Plan to make it complete. The towns within the Toowoomba Local Government Area currently omitted are Nobby, Leyburn, Mt Tyson, Brookstead, Bowenville and Jondaryan. All of these towns have a population of more than 200 people and are growing, thereby complying with criteria already announced by the Government. These towns also have schools, giving rise to concentrations of children. Planning must give priority to protecting the health and wellbeing of these children. One could argue that buffer zones should be set around *all schools* irrespective of their location in relation to PLAs (e.g. Vale View, Ramsay, Back Plains, Ryeford, Biddeston). Several of the towns currently missing from the list of 'living areas' are also substantially bigger than some of those listed for protection; continued omission could cause residents to suspect that a mining project is planned for their backyard.

Strategic Environmental Areas

The purpose of the Bill is to provide a framework for the implementation of the Regional Plans. It is very grand to declare that resource activities will be regulated in areas with strategic environmental value; these would seem to be hollow words when the Darling Downs Regional Plan has just three short pages addressing environment and heritage, and no maps at all detailing "strategic environmental areas". The riparian areas associated with the Condamine Alluvium are an obvious strategic environmental area as they support ecological processes, natural systems and habitats in the area, yet they are not recognised within the Darling Downs Regional Plan and so therefore would not be offered protection by this Bill.

Exemptions

Sections 22-25 details various mining activities that would be exempted from the need to obtain a regional interest authority (in order to enter and operate).

The exemption in Section 22, proposed for mining projects with the agreement of the landholder, is a loophole that would allow a mining company to simply buy off one or more landholders. It is not uncommon for directly affected landholders to be 'willing sellers', especially when 'significantly higher than market value prices' and other incentives are offered for their land. This subjects surrounding landholders to the externalities of the proposed development, with no grounds for appeal. As the purpose of this Bill is to protect farmland for the greater good (and not the financial interests of individuals) Section 22 should be deleted.

Section 24 gives exemption based on pre-existing resource activity. Given that most of Queensland is already covered by Authority to Prospect (ATP) permits under the Petroleum and/or Gas Acts, the effect of the stated exemptions would be a green light for virtually the entire coal seam gas industry. This is a bit like putting a speed limit on a highway and then granting exemptions to all vehicles with four wheels. Coal seam gas activities should be subject to the same principles and outcomes applied by the Bill to other mining activities. More specifically, CSG mining should be prohibited on strategic cropping land. This is due to (i) the impacts CSG infrastructure will have on the suitability of the land to be used for its priority land use and (ii) the impacts dewatering will have on critical underground water resources (which underpin both agricultural productivity and ecological processes); two key aspects of the definition of a Priority Agricultural Area specified in Section 8 (2) (a), (b) & (c).

While it is sensible to grant exemptions for existing mining leases, exemptions proposed for Mineral Development Licences should be removed. One such permit, MDL 304, covers 13,000ha of top class black soil running along the Condamine River from Felton, half way to Brookstead. To exempt such a large area of highly productive farmland, (land that would definitely have been classified as Strategic Cropping Land) and land which is also associated with the Condamine Alluvium—a critical groundwater resource for both agriculture and ecological processes—from the provisions of this Bill would be ludicrous.

Ministerial directions

Section 43 proposes that the Minister be granted power to intervene in decisions where appropriate. Given the extreme difficulty of designing legislation to handle every situation, according to the principles

underlying the legislation, we have some sympathy with a modicum of 'ministerial discretion'. However, revelations of corruption exposed by the recent ICAC enquiry in New South Wales should serve as a warning against putting too much authority (to issue mining rights) in the hands of one person. In this case, it might be prudent to amend section 43 so that it requires the Cabinet to approve all such interventions. This would at least make the processes 'transparent and accountable' as required by the Bill itself.

Appeals

Under the current legislation, there are very limited grounds to appeal a decision. Section 69 indicates that the right to appeal against a regional interests decision is restricted to
(a) the applicant;
(b) if the applicant is not the owner of the land—the owner of the land;
(c) an affected land owner.

And even then, Section 22 (3) states that an affected landowner can only appeal if the proposed activity has an impact on the suitability of the land to be used for [its] priority agricultural land use. There is, therefore, no capacity for a person nearby to a proposed development to appeal if they feel they personally would be affected (either physically or mentally) by the activity. The intent of the Bill was to protect people, yet a person living outside of a PLA has no opportunity for protection, unless it is as a by-product of their land potentially being impacted.

To extend this further, the very limited appeals process is highly inequitable. It removes the opportunity for peak bodies, natural resource groups or community groups to have any say in a decision made under this Bill in which they have a core interest. How could it be that Agforce could not have a say on a matter that affected agricultural production? Or a local Landcare Group on a matter that affected a Strategic Environmental Area? Once again the balance of power shifts to the wealthy resource company, as few individuals are likely to be able to afford to take a decision to the Land Court.

Final comment

Designing legislation that will satisfactorily grapple with all the real-world complexity surrounding the interface between agriculture and mining is, of course, difficult. We therefore appreciate the need for the Bill to incorporate a degree of flexibility.

It is very challenging however to understand how the Bill will be practically implemented when so much information (e.g. coexistence criteria, complete and comprehensive maps of PLAs and SEAs within regional plans) is at this stage unavailable. Further community consultation when the details of the regulation are available would seem necessary.

Thankyou for the opportunity to comment on the Bill and we would welcome the opportunity to attend a Regional Public Hearing.

Queries can be emailed to Mrs Vicki Green, President, Friends of Felton
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