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LOCK THE GATE ALLIANCE
AUSTRALIANS WORKING TOGETHER TO PROTECT OUR LAND, WATER, AND FUTURE

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17 January 2014

Submission: Inquiry into the *Regional Planning Interests Bill 2013*

Thank you for the opportunity to make a submission on this important piece of legislation.

The Lock the Gate Alliance is a network of hundreds of local groups and thousands of individual members that are working to protect land, water, bushland and communities from inappropriate mining activities. We have extensive experience of the impacts of coal and gas extraction on water resources and agricultural lands, and the impact of unchecked mining activities on community and the public interest in Queensland and around the country.

We believe this Bill is a dangerous move for Queensland, and that it will lead to the further loss and degradation of priority agricultural lands, water resources and environmentally sensitive areas to coal and gas mining. This Bill would repeal the *Strategic Cropping Land Act*, but fails to replace it with statutory provisions that provide protection for Priority Agricultural Areas and Priority Living Areas, which are the only two regional interests that are identified and defined in the Central Queensland and Darling Downs Regional Plans.

Purposes of the Bill include *managing* "the impact of resource activities and other regulated activities on areas of regional interest," but there is nothing in the purposes which empowers the Bill to protect and preserve matters and areas of regional priority. This clearly demonstrates the failure of this Bill to replace the *Strategic Cropping Land Act* and its policy: there is no provision to protect regional interests, and delineate areas that are off-limits to mining.

The Queensland Government has set an ambitious target of doubling Queensland's agriculture, fisheries and forestry by 2040, including doubling food production. But this Bill is not consistent with Queensland's agriculture strategy and will lead to the degradation and diminishment of agricultural lands in this state.

Prior to winning Government, Campbell Newman wrote to the Lock the Gate Alliance to assuage our concerns about the impact of coal and coal seam gas mining on agricultural land and high conservation value areas. In part, the Premier told Lock the Gate, "An LNP Government has made a

strong, clear commitment to protect strategic cropping land for the future. An LNP Government: **will ensure there will be no open cut mining on strategic cropping land**; and **won't allow underground mining, coal seam gas activity or other development on strategic cropping land if it is likely to have a significant, adverse impact on the productive capacity of that land to produce food and fibre in the future**." This Bill is a betrayal of that promise, and winds back the only protection currently afforded to any cropping land in this state from coal and gas mining, which is the Strategic Cropping Land Act.

The Regional Plans do nothing to resolve land conflict between mining and agriculture, and restore balance to ensure that Queensland can have secure food production and protected water supplies in the face of a mining onslaught. This Bill, too, does nothing but create a new type of paper approval needed by a mining company before going ahead with their plans, and removes the only legislative protection currently afforded to important cropping land in Queensland – albeit limited.

The "Priority Agricultural Areas," identified in the regional plans are limited in extent and there is no prohibition of coal mining and gas extraction from these most important agricultural areas in this Bill, or in the Regional Plans. There is no provisions for an agricultural impact assessment, as occurs in NSW, before the awarding of "regional planning interests" authorities under this bill, which will give coal and gas companies access to the most productive agricultural lands, irreplaceable water resources and to country towns. There is no clear prohibition on mining and gas extraction within 2km of residential areas and growth areas, or important agricultural lands and critical water resources. Without unequivocal statutory protection, we know what will be the result: more loss of agricultural lands, environmentally sensitive areas and critical water resources to mining activities.

There are only three "regional planning interests" that are actually identified, and one of these, "strategic environmental areas" are not outlined and defined in the regional plans. The Bill defined strategic environmental area as an area "shown on a map in a regional plan as a strategic environmental area" but no such maps exist in the Central Queensland and Darling Downs Regional Plans. Other values that are important to communities in central Queensland, like water resources, environmental values, heritage, tourism attractions, weed and pest control and hazards like acid sulphate soils are not included at all in this Bill or the regional plans, and don't have regional policies proposed to manage conflict with the resource industry.

In short, this Bill is ill-conceived, and will continue the irreparable sacrifice of matters that are profoundly important to Queensland's public interest to the short term private interests of mining companies, and we urge the Committee to strongly recommend its radical amendment or rejection by the parliament.

Our specific comments on aspects of this Bill are outlined below. We would appreciate the opportunity to present to a public hearing of the Committee's inquiry into this Bill.

Priority agricultural areas

As we have already noted, the Queensland Government has set an ambitious target of doubling Queensland's agriculture, fisheries and forestry by 2040, including doubling food production. Achieving this goal means restoring balance in regional Queensland, and ensuring that there are areas that are clearly designated as off-limits to mining, because of their strategic importance for food production and forestry. At the moment, there is no balance: mining companies can mine virtually anywhere, including Nature Refuges, mapped Strategic Cropping Land, Great Artesian Basin recharge areas, within regional aquifers that feed towns and agricultural districts. The Strategic Cropping Land Act has the important feature of clearly prohibiting open-cut coal mining (though not

gas extraction or underground mining) in confirmed strategic cropping land within Protection Areas, but even this minimal no-go provision will be removed if this Bill goes through and the Act is repealed.

Some priority agricultural areas are already created by mapping in the regional plans, but the new Bill includes this caveat that an area can only be a priority agricultural area if it has at least one of these qualities:

(a) an area used for a priority agricultural land use;

(b) an area that contains a source of water, or infrastructure for supplying water, necessary for the ongoing use of land in the proposed area for a priority agricultural land use;

(c) an area, if the carrying out of a resource activity or regulated activity in the area is likely to have a negative impact on a water source mentioned in paragraph (b).

This presumably captures important catchment areas for surface water and recharge zone for groundwater, yet this is not spelled out in the Bill. There is nothing in the Bill that provides guidance as to how the second two qualities can be triggered, and who determines if they are.

This Bill is not consistent with Queensland's agriculture strategy and will lead to the degradation and diminishment of agricultural lands in this state.

Loopholes

In addition to the core failure of the Bill to establish no-go areas for mining, there are numerous loopholes that render it useless. This Bill does not prevent mining activity in priority agricultural areas, priority living areas and strategic environmental areas. Rather, it makes it an offence to undertake mining activity in one of these areas without a "regional interests authority". This is an important distinction. Despite the Government's very prominent agenda to remove "green tape" and reckless legislative actions so far in pursuit of that agenda, this Bill is nothing more than an additional bureaucratic hurdle that mining companies will need to clear in order to mine wherever they like. And it is not a very onerous hurdle, at that.

Even this very poor proposal, that mining can occur in any area of regional interest with a regional planning authority, is subject to numerous loopholes that ensure that many, perhaps most, mining activities will not require an authority anyway.

For example, section 17 (3) makes clear that regional planning authorities need only be obtained by those seeking to amend existing environmental authorities if the amendment is "major" – though there is no indication about who determines what constitutes a "major" amendment. Essentially, this means that all existing mining operations will be able to make a case to avoid having to obtain a regional interests authority, even where they are expanding into strategic cropping land, priority living areas and environmentally sensitive areas.

More fundamentally, the core offences in sections 18 (1) and 18 (2) do not apply to "an exempt resource activity" thanks to section 18 (4). Exempt resource activities include any activity for which there is a conduct and compensation agreement in place that has not been breached, and which is not likely to have a "significant impact" on the priority agricultural area of another property, owned by another person. Section 10 (1) of Schedule 1 of the *Mineral Resources Act 1989* makes conduct and compensation agreements a mandatory requirement for any person seeking to enter private land in an exploration tenement area to carry out an advanced activity and section 500 of the *Petroleum and Gas (Production and Safety) Act 2004* makes the same provision for petroleum

authorities. Any company that is intending to enter property they do not own for the purposes of mining would have to undertake negotiations for one of these agreements, so it seems extraordinary that securing one of these agreements would then make them exempt from the need to obtain a regional interests authority. There is no explanation as to how obtaining an agreement with a single landholder for access and use of their land would have any bearing on the impact of mining activities on strategic environmental areas, priority agricultural areas or priority living areas. These are regional values. Individual landholders cannot be made responsible for protecting them via their conduct and compensation agreements, which are designed for an entirely different purpose. And yet, this is the effect of this provision: companies will seek to secure their conduct and compensation agreements as early as possible, thereby exempting themselves from the need to obtain approval to permanently destroy strategic cropping land, residential growth areas and sensitive environmental areas. In addition, there is no description for a process to determine "significant impact" on neighbouring properties, or identify and assess the other properties that are likely to be affected.

Section 23 creates a loophole for activities carried out within 12 months of the issue of a resource authority where the impact of that activity is restored within 12 months. There is no indication of the decision-making process for applying this exemption, who monitors the restoration to ensure that it has occurred, or what penalty there would be a for a resource activity authority holder that fails to comply with the 12 month deadline for restoration. The only provision to ensure this loophole is met is a notice requirement under section 26.

Section 24 creates a loophole for resource authority holders to damage priority agricultural areas if they are doing it "in accordance with a resource activity work plan" that took effect before the land in question was in an area of regional interest, though limits this so that it is not available for activities that damage water resources. These work plans include:

- a work program for activities under a prospecting authority under section 23 of the *Petroleum and Gas (Production and Safety) Act 2004*
- a work program for the activities under an authority to prospect under section 2 of the *Petroleum Act 1923*
- a plan of operations under s287 of the *Environmental Protection Act* given to someone with a mining lease under the Mineral Resources Act or a petroleum lease under the *Petroleum and Gas (Production and Safety) Act 2004*
- A work program under Schedule 2 for a holder of a mining claim *Mineral Resources Act 1989*
- for a mineral development licence under the *Mineral Resources Act 1989,* a statement about the activities to be carried out under the licence approved by the Minister under that Act, section 186(3)(b).

There is no justification for this. Water resources have always been important, and their protection in the public interest has long been a feature of Queensland law.

Small-scale mining, as defined by the *Environment Protection Act* is also made exempt under section 25.

The cumulative effect of all of these exemptions turns this Bill into swiss cheese. Not only does the core premise of the Bill fail to establish no-go areas for regional interests, the process will not be applied in many cases thanks to a raft of unjustified exemptions.

Assessment process

In effect, this Bill creates only another piece of paper that a mining company must obtain in order to carry out their plans.

We do not have any confidence that the minimalist assessment process outlined for obtaining a regional interests authority has the capacity to identify and protect important agricultural, environmental and living areas, or mitigate the impacts of mining activities on them. There is no general statutory protection for regional interests proposed in this Bill. Under section 18, a person must not carry out (wilfully or otherwise), or allow the carrying out of, a resource activity or regulated activity in an area of regional interest unless the person holds, or is acting under, a regional interests authority for the activity. As such, the assessment and decision-making processes for these authorities is the core mechanism proposed for protecting cropping land and other regional interests. And yet, there is very little guidance for the decision-maker about the process in this Bill, and no proper emphasis placed upon the valuable finite assets, land and water, that need to be safeguarded from the unrestrained impact of coal and gas mining.

The features listed in 8 (2) (b) and (c) that qualify land as a priority agricultural area on the basis of its importance for water resources are not captured by the definition of "impact" under section 28 (b). This means that a resource activity that related to land that hosts a water source that is used for agricultural purposes is not necessarily deemed to "have an impact" on a priority agricultural area.

The process is thin, and subject to the discretion of a single person, and does not include adequate consideration of matters of profound public interest, let alone outline clear prohibitions that give certainty to the farming community, and regional and rural towns and settlements. In essence, there are very few steps to follow to obtain this piece of paper:

- The proponent makes an application, accompanied by "a report" that assesses the resource activity or regulated activity's impact on the area of regional interest, and an application fee, to the CEO of the Department of State Development. There is no guidance as to the contents of this report.
- Within five days of applying, the proponent gives a copy of the application to owners of affected land, and in no particular time frame, publishes a notice about the application, asking for submissions and making clear that making submissions doesn't grant the right to appeal decisions about the application.
- Under section 34, the chief executive of the regional authority can cancel the need for the above notifications "if satisfied there has been sufficient notification under another Act or law of the resource activity to the public." It is not clear whether the "sufficient notification" particularly relates to regional priorities.
- Any submissions made under this process do not need to be made publicly available until five days *after* the decision is made (see section 38 (2)).
- If they fail to put out the public notice, the chief executive can decide the application anyway, under section 36 (2) (a), 20 business days after the application is made.
- If the application is deemed to be "referrable" (as prescribed by regulations not yet available), then it is sent to other agencies for comment, who have 20 business days to make comments or recommendations, and have to give their response to the applicant, but not to the land owner, or the public.
- Under section 43, the Minister for State Development can order other agencies to re-do their response if s/he deems the response they have given to be "not within the functions"

of the agency concerned or not consistent with the Regional Planning Interests Bill. Again, the applicant gets a copy of this order, but no one else does.

- There are only four matters that must be considered by the chief executive in deciding an application for a regional interests authority. The first limits the decision maker's consideration to "the extent of the expected impact" "on the area of regional interest," thereby localising the impact consideration, despite the Bill's supposed regional scope. It is crucial that broader regional interests be considered, including the public interest, and principles of ecologically sustainable development, and that cumulative a regional picture of the impacts of mining be brought into consideration.
- The Bill confers on local government, through section 50, the power to impose binding recommendations, including, presumably, the ability to recommend refusal. It does not give this power to any other agency, like the Department of Health, the Department of Environment and Heritage Protection, native title holders, land holders or the Department of Agriculture.
- Once the chief executive makes his/her decision about the application, they give notice of it to the applicant, the land holder, and any assessing agencies, and must publish the decision on the Department's website within five days of the decision.

Under section 69, appeals to decisions to grant these authorities may only be made by the applicant, the land owner or people who own land that may be adversely affected by the activity because of proximity and impact on a regional planning interest. These appeals must be made within 20 business days of the decision being notified.

This process fails the transparency test. It fails the corruption test, in that it puts too much discretionary power in the hands of a single bureaucrat, with little public scrutiny or statutory guidance, and no chance of appeal for people with an interest in the regional matters, land, water, environment, that are damaged by resource activities, unless they have a private interest in the impacts concerned. It fails the public interest test: it will result in land, water and environmentally sensitive areas being fatally compromised by resource activities because there is no provision in the Bill to understand, assess and protect those matters. Finally, it fails the political test: this Bill betrays the commitment made by the Premier to ensure there will be no open cut mining on strategic cropping land; and won't allow underground mining, coal seam gas activity or other development on strategic cropping land if it is likely to have a significant, adverse impact on the productive capacity of that land to produce food and fibre in the future."