GLENCORE

Submission No. 056
17 January 2014
11.1.14

SUBMISSION

REGIONAL PLANNING INTERESTS BILL 2013

January 2014

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

via email: *sdiic@parliament.qld.gov.au*

SUBMISSION: REGIONAL PLANNING INTERESTS BILL 2013

Dear Mr Gibson

Glencore welcomes the opportunity to comment on the Regional Planning Interests Bill 2013 (the Bill).

Glencore is one of the world's largest global diversified natural resource companies with a global network across 50 countries supporting over 150 mining and metallurgical sites, offshore oil production assets, farms and agricultural facilities employing approximately 190,000 people, including contractors.

In Australia, Glencore produces, stores, handles and transports coal, copper, nickel, zinc and a range of agricultural commodities such as wheat, canola and barley.

We play an active role in supporting the communities in which we operate. In 2012, our business employed over 20,800 people across the country and contributed over $14 billion dollars to the Australian economy through wages, tax, royalties, goods and services.

Glencore is very supportive of the Queensland Government's efforts in reducing the regulatory burden on business and streamlining the approvals process associated with major projects. We acknowledge that the Government has introduced significant changes to reduce "green tape" without compromising appropriate project assessment.

The Bill in its current form raises a number of issues of concern which need to be urgently addressed before the Bill is enacted. This submission provides an overview of the key issues and provides comment on the expected impact of the Bill on our operations.

Glencore is seeking to work cooperatively and constructively with Government on a workable version of the Bill that achieves the stated policy objectives of the Government for sustainable resources development, to this end we have made a number of recommendations for Government consideration.

We would welcome the opportunity to discuss our submission with you at your earliest convenience. If you have any queries please contact Mr David O'Brien, General Manager Environment and Community, Coal Assets Australia, Glencore at David.OBrien@glencore.com.au

Yours sincerely

Cassandra McCarthy
Corporate Affairs - Australia
Glencore
cass.mccarthy@glencore.com

Table of Contents

Executive Summary

Since March 2012, Glencore has supported the positive and continued efforts of the Queensland Government to reduce green tape. The resulting confidence in improved processes has allowed for planning and investment in expansion projects to continue, notwithstanding the challenging global economic climate.

The content of the Regional Planning Interests Bill 2013 (Bill) however threatens the current momentum behind the Government's green tape reduction initiatives.

Glencore considers the Bill if enacted will act in direct contradiction with the Government's stated intention to introduce policy that enables sustainable resources development in Queensland.

The regional planning concept was originally introduced as a means of encouraging coexistence of land uses but the Bill, as currently drafted, has become a means of simply restricting resources sector activities. We acknowledge that the Government has identified both agriculture and resources as key pillars of the Queensland economy with equal importance. Glencore has experience sucessfully working in cooperation with both communties and agribusiness located close to our operations. It is critical for local, regional and state economies that the right balance is struck when regulating for coexistence between these two important sectors.

Glencore expects that the Bill, if passed in its present form, would:

- decrease investor certainty;
- extend approval timeframes;
- make some projects uneconomic and put well advanced projects in jeopardy;
- increase delay, costs and uncertainty associated with both project operation and approvals;
- place additional unnecessary pressure on the resources industry; and
- undermine the efficiency gains and industry goodwill this government has established through green tape reduction to date.

Glencore currently produces annually around 27 million tonnes of managed saleable production coal from its existing Queensland operations, with the potential for significant expansion. The map below shows the spatial extent of Glencore's current tenement holdings in Queensland together with strategic cropping land trigger mapping and priority agricultural areas identified to date. Over half of Glencore coal's current Queensland holdings are likely to be impacted in some way by the Bill if passed.

Glencore's key concerns with the Bill are set out in this submission along with a number of case studies from across our business to illustrate particular issues.

We believe coexistence is possible between the agricultural and resources sector in Queensland. Glencore supports in principle a regional planning approach to encourage coexistence of land uses however in its current form we do not believe the Bill achieves this policy objective.

Glencore is not seeking to lower the environmental standards imposed on its existing or future operations. This submission is directed towards highlighting and addressing practical issues with the **process** rather than the **policy** objective set out in the Bill.

Glencore urges the Government to consider the recommendations in this submission and undertake a process of genuine industry consultation before the Bill is enacted.

GLENCORE'S KEY RECOMMENDATIONS

PRIORITY AGRICULTURAL AREAS AND LAND USES AND STRATEGIC CROPPING AREAS

1. Incorporate adequate transitional provisions.
2. Develop more detailed trigger mapping based on a more comprehensive analysis and detailed data.
3. Include an efficient, more cost-effective validation process.
4. Apply controls based on the agricultural value of the land, rather than labels of 'Priority Agricultural Area' (**PAA**) or 'Strategic Cropping Area' (**SCA**).
5. Consult with industry to develop realistic coexistence criteria for open cut and underground mining, potentially including offsets, rehabilitation and landowner compensation, where practicable and feasible.

PRIORITY LIVING AREAS

6. Maintain flexibility in implementing Priority Living Areas (**PLAs**) to help realise the real value of resources projects to their communities.
7. Implement PLAs through the Common Resources Act process.
8. Retain decision-making powers at the State level as local government is not the appropriate assessment agency to make binding recommendations for State interests.

STRATEGIC ENVIRONMENTAL AREAS

9. Remove the Strategic Environmental Area (**SEA**) concept from the Bill as it is duplicative and unnecessary.
10. If the concept of SEAs is to remain as part of the Bill:
    a. Provide clarity as to the values the Bill is seeking to protect and why the Bill is necessary in addition to existing environmental protection legislation.
    b. Provide certainty that the creation of a new SEA will not retrospectively sterilise existing resource projects or resource authority applications.

IMPLEMENTATION AND TRANSITIONAL PROVISIONS

11. Carry out a regulatory impact statement process, in accordance with best parliamentary practice.
12. Remove the need for the duplicative and unnecessary 'Regional Interests Authority'. Instead, the Bill should be amended to set out the considerations relevant to the grant of an environmental authority under the proven *Environmental Protection Act 1994* processes in circumstances where values protected by the Bill are impacted by a resources activity proposal.

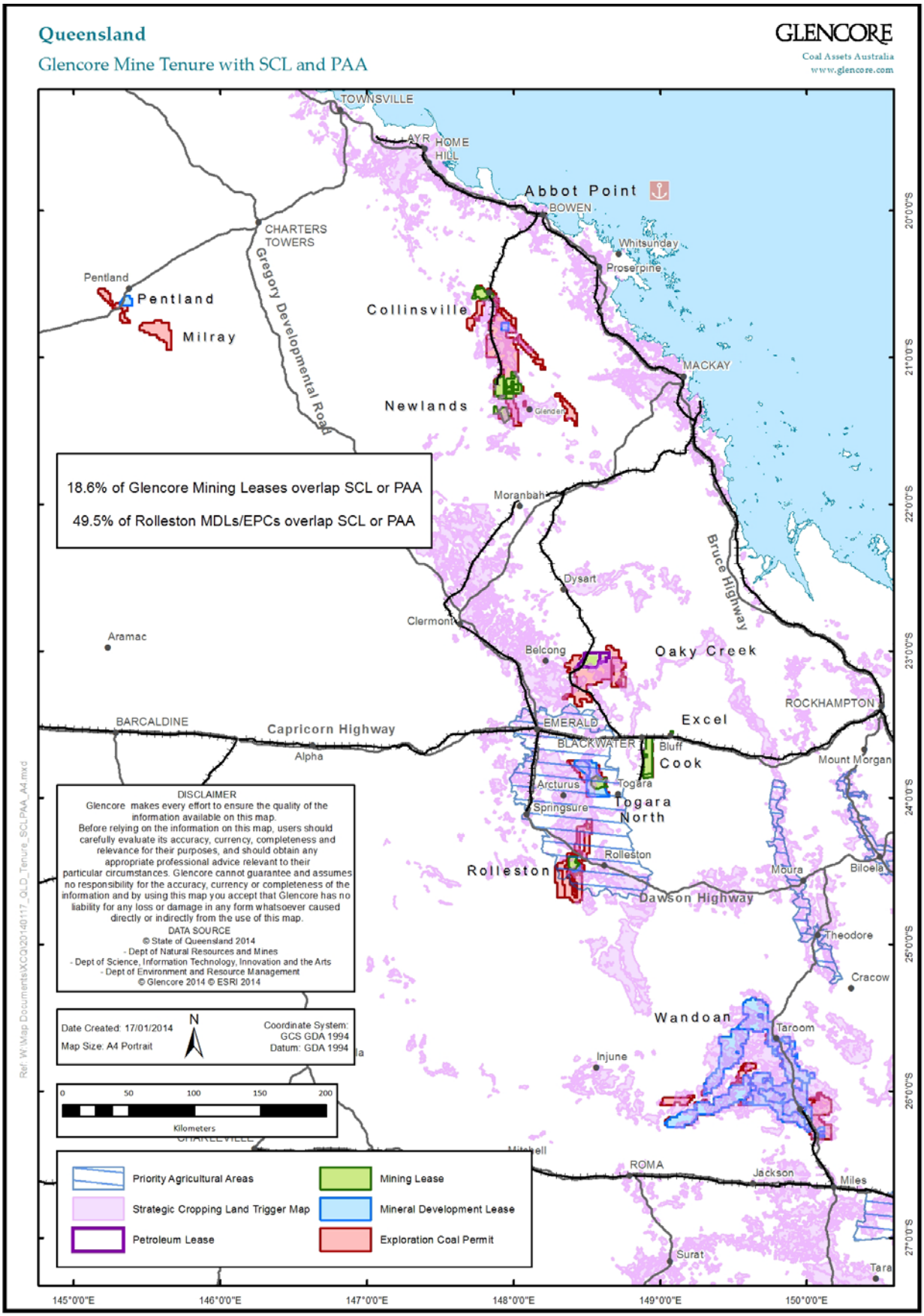
    Specifically, as noted above:

    a. PLAs should be rolled into the Common Resources Act process, and

b. SEAs are duplicative and should be removed.

13. Afford appropriate protection to existing projects and those in an advanced state of assessment.
14. Deliver consistency of approach across all resources activities with respect to landowner involvement.
15. Ensure the streamlining of public notification processes under all relevant pieces of legislation. To do otherwise raises the time and cost involved for all parties, including those making submissions.
16. Vest jurisdiction for resources approvals in one Court, preferably the Land Court, not two.
17. Include all key provisions in the Bill itself rather than incorporating substantive detail via subordinate legislation.
18. Offer genuine industry consultation on the preparation of the regulations to underpin the Bill.
19. Review drafting and technical deficiencies with the Bill.

Map 1 – Glencore's Queensland tenements and potential impacts of the Bill



Context

While Glencore is generally supportive of some of the policy initiatives behind the Bill, there will be significant adverse procedural implications if the Bill is implemented in its current form.

As proposed, the Bill will lead to increased costs, delay and uncertainty for resource industry operators without necessarily achieving any environmental benefit or increased land use certainty.

In this submission, Glencore seeks to highlight the ways in which the core objectives of the Bill may be met without introducing unnecessary layers of green tape to the thorough process already in place. The existing approvals regime is sophisticated enough, with minor amendments, to deal with the introduction of new considerations and parameters in project impact assessment.

Sustainable economic growth was expressed as a driver behind the regional plans in their early stages. Glencore wholeheartedly supports this approach. However, Glencore does not consider that the appropriate balance has been struck in the drafting of the Bill. The focus now appears to be to curtail resources activities, at a time when industry can least afford additional unnecessary layers of approval risk and regulatory duplication.

Glencore's Australian and Queensland operations are shown on the maps below. Our Queensland business includes coal, copper and zinc operations that employ over 10,500 people (including contractors), contribute around $500M in royalties and taxes to the economy and invest over $2.6 billion in goods and suppliers.

Investor uncertainty and long term policy stability continues to be an issue for Australia which impacts on the perceived levels of sovereign risk for future investment.

In the most recent Fraser Institute global survey of mining companies, Queensland was ranked:

- **49th** (out of 96 jurisdictions) in terms of uncertainty concerning the administration, interpretation and enforcement of existing regulations – behind South Australia, Western Australia, New Zealand and New South Wales;
- **62nd** in terms of uncertainty concerning environmental regulations (including future) – falling well behind other Australian states, and behind other countries such as Kazakhstan and Madagascar; and
- **53rd** in terms of regulatory duplication and inconsistencies – only beating Tasmania out of the Australian jurisdictions.

'Across Australia, political and regulatory panic is seriously impacting the quality and timeliness of decisions, and certainty about access to land is very concerning.'

-- An exploration company president in response to the Fraser Institute 2012/13 Survey of Mining Companies

Investors almost universally welcomed pre- and post-election announcements from the Queensland Government heralding a more sensible approach to environmental regulation. Following its election in 2011, the Newman government announced its 'mandate to cut regulation and red tape by 20 per cent' and promised to grow the pillars of the Queensland economy, including resources.

Industry has observed some steps in the right direction. While there are still improvements which could be made, the current Government has certainly started delivering on its promises, including in terms of:

- reduced approval requirements;
- streamlined administrative processes;
- an improved EIS procedure; and
- adherence to statutory timeframes for approvals processes.

However, the passage of this Bill in its present form would signal a reversal in momentum and a significant step backwards in achieving the mandate. Without seeing the further detail presently proposed to be included in the Regulations, Glencore has estimated that:

- around 19% of its currently approved mining area (granted mining leases); and
- 50% of its future potential mining area (granted exploration tenure),

in Queensland would be affected by the Bill without, in our view, any commesurate changes in land use certainty or improvements in environmental outcomes.

Any constraint on Glencore's development of its exploration acreage is a real concern. Glencore needs to continue to explore in these areas to maintain and grow its operations in Queensland and its contribution to the economy.

GREENTAPE REDUCTION INITIATIVES

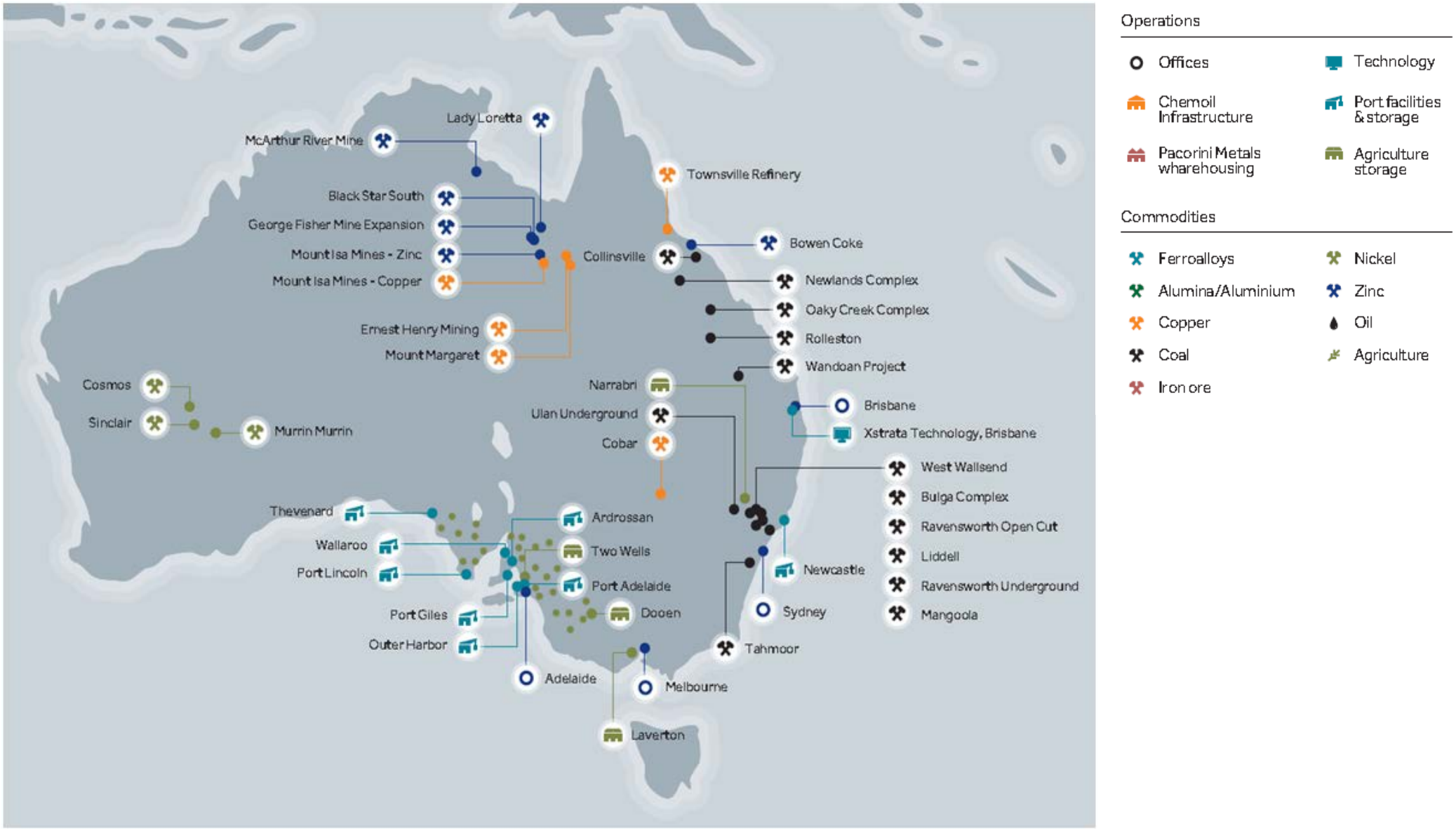
In May 2012, the Bill that became the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* (Qld) (**Greentape Act**) was introduced to parliament. Key drivers for implementing the Greentape Act policy included:

- that businesses need certainty to invest and flexibility to allow for growth;
- the desirability of streamlining administrative processes, without reducing environmental standards; and
- that reducing processing times frees up resources within the government to carry out other work.

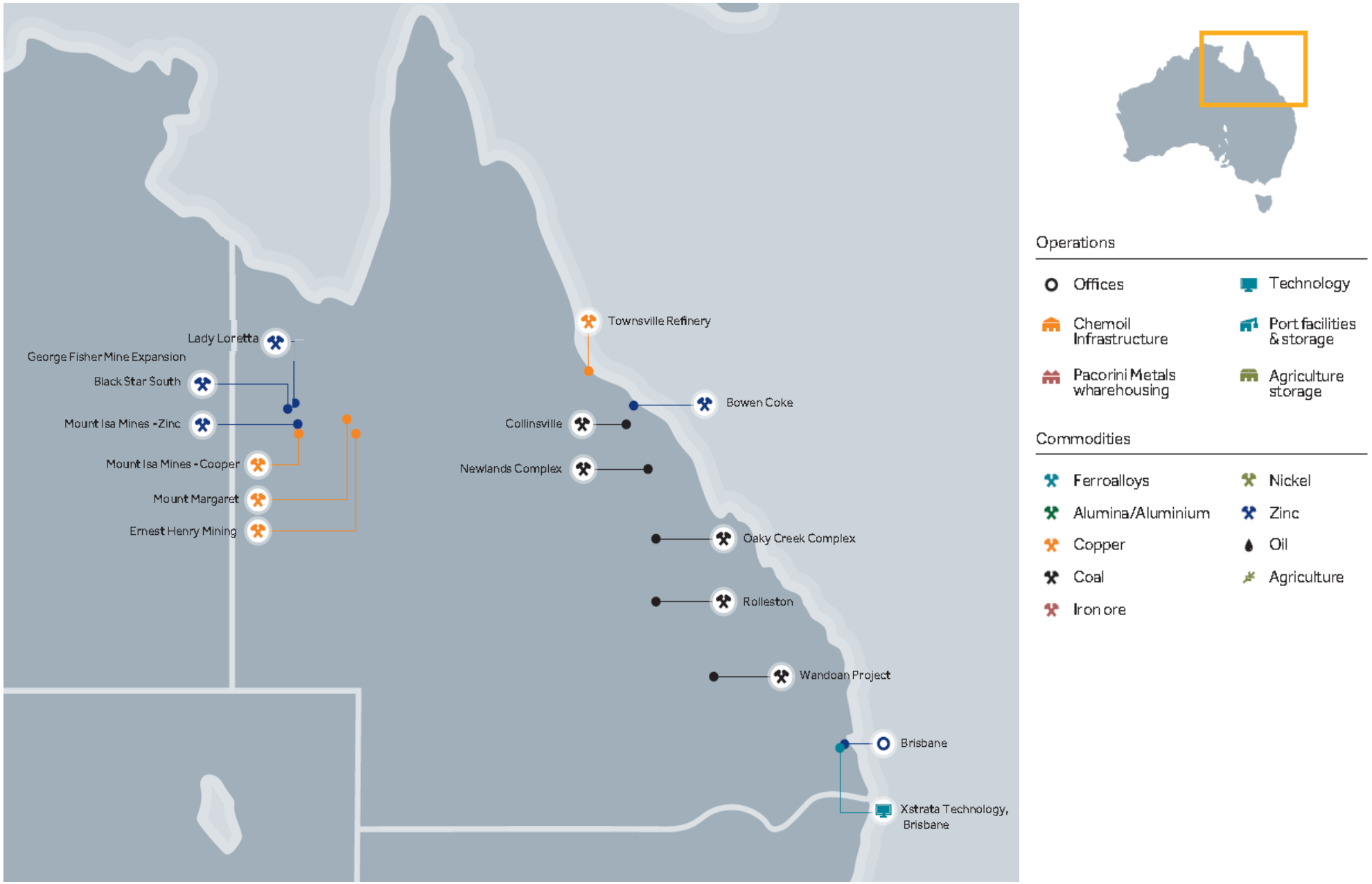
The government publicly committed to focussing on outcomes rather than unnecessary administration. The Queensland Government also established a committee to examine and evaluate the regulation of the resources industry in terms of economic efficiency. The government acknowledged that Queensland simply could not afford, economically, to load industry up with numerous layers of regulation.

The Queensland government also opened discussions with the federal government about process duplication, and the associated costs and delays of multiple approvals, which it observed can put proposed projects in jeopardy. The focus of regulation and administration shifted from unnecessary red and green tape, which had been tying up both industry and government, to more flexible arrangements which allow for the management of matters of environmental significance to high environmental standards.

Map 2 – Glencore's Australian operations



Map 3 – Glencore's Queensland operations



Priority Agricultural Areas and Land Uses and Strategic Cropping Areas

Key recommendations

1. Incorporate adequate transitional provisions.
2. Develop more detailed trigger mapping based on a more comprehensive analysis and detailed data.
3. Include an efficient, more cost-effective validation process.
4. Apply controls based on the agricultural value of the land, rather than labels of 'PAA' or 'SCA'.
5. Consult with industry to develop realistic coexistence criteria for open cut and underground mining, potentially including offsets, rehabilitation and landowner compensation, where practicable and feasible.

Under the Bill, Priority Agricultural Areas (**PAAs**), Priority Agricultural Land Uses (**PALUs**) and Strategic Cropping Areas (**SCAs**) would each place restrictions on resources activities. The detail of these restrictions is not yet known, as the regulations to underpin the Bill have not been released for review.

The regulations are set to identify, for example, the criteria against which land will be categorised as a PAA. Substantive provisions should not be left to subordinate legislation and Glencore requests that it be included in appropriate and thorough consultation on the regulations, as they will be critical to the viability of projects in affected areas. Glencore also considers that significant further work should be done on developing appropriate transitional provisions, preferably in consultation with affected operators, as discussed further below. It is Glencore's understanding that the Bill as presently drafted only preserves existing decisions made under the *Strategic Cropping Land Act 2011* (Qld) (**SCL Act**), rather than continuing the transitional protection that was afforded to existing projects when the SCL Act commenced.

Better science

Critically, more thorough and comprehensive scientific data is needed to properly underpin the mapping of both PAAs and SCAs. As it stands, the mapping is based on out-dated data with very limited ground-truthing. To impose sweeping restrictions on the resources industry over areas of land which may or may not constitute PAAs or SCAs is not the right approach. Glencore notes that DNRM will review the current SCL mapping before finalising a new trigger map to be applied under the Bill. However, the extent and methodology of the review has not been detailed.

One key issue for the resources industry arising from the implementation of the current SCL regime is the considerable costs incurred by proponents to disprove what in effect are mapping inaccuracies or uncertainties. The current SCL regime has revealed numerous

instances of land being included in trigger mapping which would never have met the relevant critera under the SCL Act. Better science, and improvements in the quality and detail of mapping, will deliver greater certainty and confidence in controls placed on activities in affected areas to both the resources and agricultural sectors.

Validation process

As presently drafted, the Bill makes no provision for a validation process to occur where a proposed project falls within the trigger mapping. Site specific validation of the values of land underlying a proposed project should remain a matter for the project proponent. A streamlined, efficient and cost-effective validation process should be incorporated into the Bill, and not left to regulation.

This would both minimise government expenditure in terms of getting the mapping right and allow project proponents greater certainty in relation to access to land at an early stage of project planning. Where highly valuable agricultural land is identified and mitigation measures are impracticable, it may still be possible to redesign proposals to avoid and minimise impacts, as opposed to outright rejection of any resource development.

Consistent controls

Glencore submits that one regime should be applied to PAAs and SCAs. The concept of a single project being made subject to different controls in the possible permutations of overlaps between PAAs, PALUs and SCAs is unreasonable and counter to the Government's attempts at reducing duplicative and unnecessary processes.

See, for example, map 1 above. This shows the overlap between Glencore's various tenements (ML, MLAs, MDL and EPCs) with PAAs (identified to date) and SCL trigger mapping. The map gives a clear indication of the difficulties that would be faced in obtaining approvals that could arise for a single project from the various permutations and combinations of overlap with regional interests as proposed.

Glencore submits that the Bill should be amended such that it incorporates into existing relevant environmental assessment processes any additional consultation, assessment and considerations for a project likely to interfere with a PAA, PALU or SCA.

One set of conditions should result, and they should be based on the post-mitigation impact on priority agricultural values identified through the impact assessment process via a single set of comprehensive assessment criteria.

This could be done, for example, by way of a 'roll-in' as that concept was introduced under the former Integrated Planning Act, whereby the criteria for considering these concepts forms a type of 'code' for the assessment of any applications falling within the relevant areas.

Coexistence criteria

Impact mitigation options, offset requirements and landowner compensation should each feed into the development of coexistence criteria sensible to each industry sector.

Further consultation is drastically needed in the development of the coexistence criteria. Early drafts are clearly coal seam gas (CSG)-focused, and have no relevance to opencut or underground mining activities.

Mining has long been a fundamental pillar of the Queensland economy. Coexistence has become an industry-wide issue, with the focus sharpened since the CSG debate heightened tensions between the resources sector and agricultural producers.

Glencore submits that offsets, rehabilitation, and landowner compensation all need to factor into determining appropriate coexistence criteria in the mining industry, where practicable and feasible. Failure to incorporate these matters as relevant considerations in the coexistence criteria for mining will create uncertainty or, at worst, spell the end of new development, including mining expansions, in affected areas.

Again, the regulatory response should be project type specific. Many of the impact mitigation measures prescribed in the draft coexistence criteria to date are CSG specific, in that they are simply not feasible for implementation in, for example, opencut mining. Alternative mitigation or offsetting measures should be considered for other types of resource activities.

Where a proposal involves opencut mining, any criteria should be designed such that offsetting of agricultural land values can be considered where it is practical and feasible to do so. Since the concept was formally introduced, offsetting has already shown to be an effective alternative for the overall maintenance and enhancement of other environmental values, such as biodiversity.

Glencore considers that there is potential for offsetting to also be used to similar effect for agricultural values of land. For example, where the proponent for an opencut mining project proposes to mine land with priority agricultural value, it may be possible to secure and enhance land elsewhere in the region to a similar productive standard as the land impacted by the mining operation.

Priority Living Areas

Key recommendations

6. Maintain flexibility in implementing PLAs to help realise the real value of resources projects to their communities.

7. Implement PLAs through the Common Resources Act process.

8. Retain decision-making powers at the State level as local government is not the appropriate assessment agency to make binding recommendations for State interests.

Sustainability is integral to how Glencore does business. Glencore recognises that its work can impact on communities, and it constantly strives to support the development and well-being of the communities in which it works.

When operating near a township, it is Glencore's practice to:

- consult extensively with affected communities before, during and after any EIS process for a proposed project or expansion
- establish, where appropriate, a Community Reference Group to collaboratively resolve any issues arising as part of the project, and
- identify management measures to reduce the impacts on the environment and local communities.

Glencore supports the policy behind PLAs, as per the example noted below.

Wandoan Coal Project – High Management

In planning, developing and assessing the Wandoan Coal Project, a proposed major coal mining project in South Western Queensland, Glencore engaged in multiple iterative rounds of consultation with landholders of the nearby township and its local government. The primary concerns raised by these groups about the project were noise, dust and vibration issues.

Glencore commissioned its technical experts to prepare scientifically robust modelling which looked at each of these aspects from the mine as proposed at various locations throughout the township. Following several revisions and further discussions, Glencore was ultimately able to arrive at a revised mine plan under which noise, dust and vibration are not predicted to be noticeable at any of the township's residential properties.

Importantly, restrictions on the location of mining activities were not arbitrary, but were developed through iterative technical analyses, as were mitigation and management controls.

In 2011, the local government and town representatives entered into a voluntary agreement with Glencore to formalise these boundaries.

However, it sees potential strain on local government resources arising as a result. This strain may materialise in prescriptive 'one size fits all' conditions or requirements on projects which in Glencore's submission would potentially devalue the contribution resources companies may otherwise make to a community close to its area of work.

Further, Glencore is concerned that local governments may lack the resources and expertise necessary to make timely assessments required under the Bill in relation to projects which might affect PLAs. The local government mandate is to focus on local infrastructure requirements and local social issues (including housing availability). Notwithstanding advice from agencies such as local government, the regulation of the State's resources should, in Glencore's submission, remain a matter entirely with the State.

Glencore can see inherent tension arising for local governments when it comes to weighing up infrastructure provision in their local government area with region-wide land use planning outcomes and State interests.

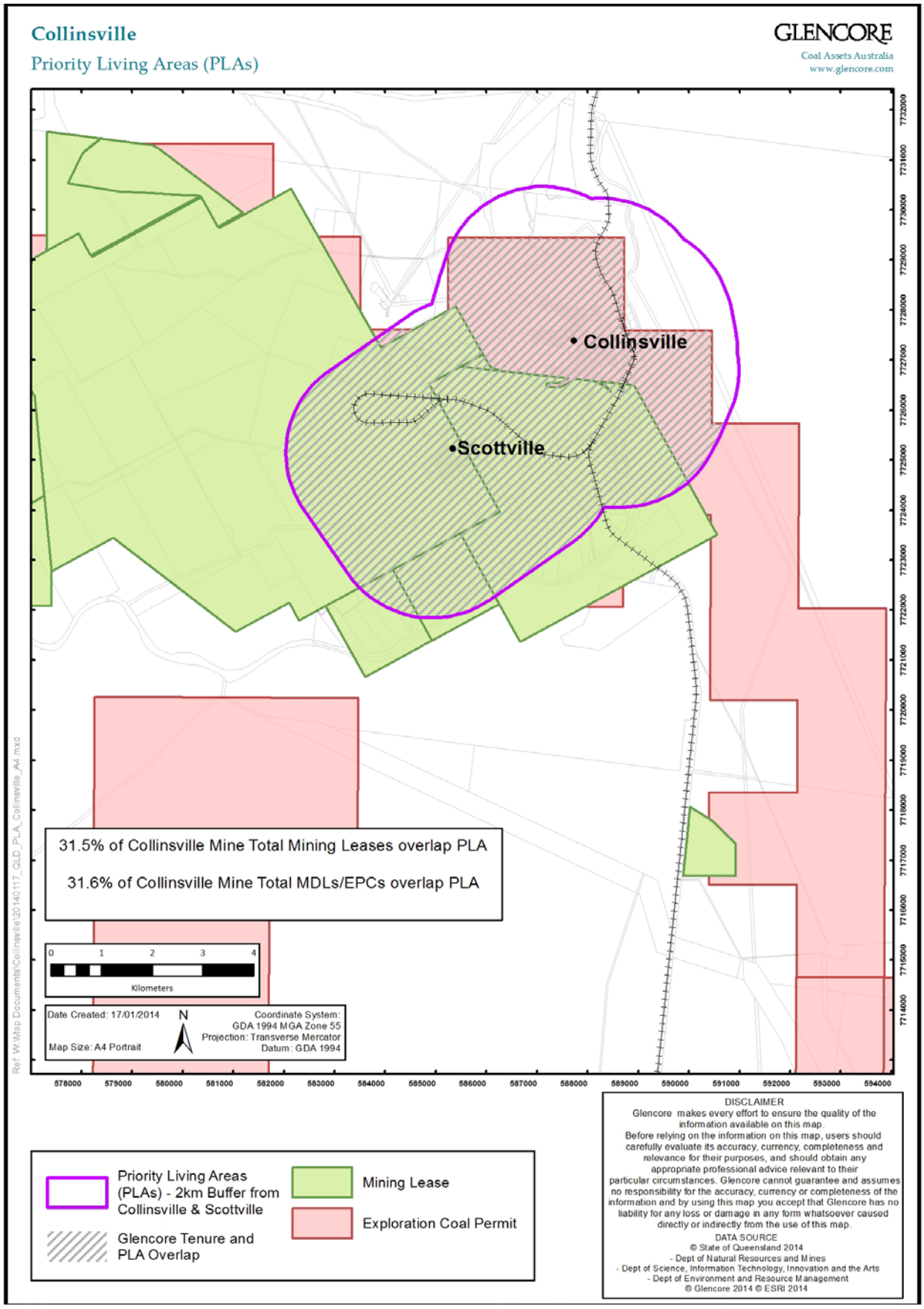
Particularly with respect to significant projects, the economic impacts and benefits need to be considered at the State level of interest, beyond a single local government area. Clause 50 of the Bill would effectively give each local government a right of 'veto' for any projects falling with an arbitrary distance of their area, notwithstanding any broader State-wide interests that might exist.

Glencore submits that the regulations behind the PLA provisions should remain flexible, allowing communities to work with resources companies on a site-specific basis to realise the true value resources projects can offer their communities. A blanket, State-wide prescriptive buffer zone is not appropriate and does not allow flexibility for considering local conditions such as weather patterns or topographical features. Glencore has existing operations at its Collinsville mine in close proximity to the towns of both Collinsville and Scottville. While these towns are outside existing Regional Plan areas, the extent of impact of, for example, a prescribed 2 kilometre buffer zone on these operations is indicated in the figure below (Map 4). Glencore has calculated that 31.5% of its existing mining leases at Collinsville would be the subject of PLA mapping as well as, more critically (without adequate transitional protection) 31.6% of its exploration tenements which have been marked for future development.

PLAs would essentially place controls on the carrying out of resources activities in certain areas, subject to stakeholder consultation. Prima facie, Glencore has no objection to that. However, restrictions – if any - should be developed on a site by site basis. Also, the relevant resources legislation may be considered the best vehicle to deal with the introduction of PLAs. Noting that the Government is undergoing consultation on an overhaul of resources legislation in Queensland to incorporate common provisions into a central Act, that process may be best placed to deal with the introduction of the legislative amendments required to give effect to the PLA policy.

The below case study highlights the approach taken by Glencore to work with the community to manage the impacts of our Bulga Complex and demonstrates the need to assess projects on a case by case basis rather than imposing blanket exclusion zones.

Map 4 – Collinsville tenements with indicative exclusion zone



NSW example Bulga Optimisation Project

Bulga Open Cut mine has been operating for over 30 years and is located in the Hunter Valley region of NSW within the Singleton local government area. It is located approximately 12 kilometres south-west of Singleton and four kilometres to the south-east of Bulga village and north of Broke village.

The surrounding land use is varied. The area to the north is used by another company to conduct mining operations, a Commonwealth Military base flanks the eastern boundary and the land to the south and west is used for a combination of agricultural pursuits including grazing and viticulture. As outlined in the figure below, there are a significant number of rural properties between the villages of Broke, Bulga and Milbrodale, most with private residences.

The Bulga Complex is currently approved to produce 20 million tonnes of coal per year. The mine is currently seeking to extend the life of approval from 2025 to 2035.

To assist with developing a project that would co-exist with the local community, Glencore implemented a comprehensive stakeholder engagement program, with the following aims:

- Inform and involve stakeholders during the development of the project design;
- Identify key issues of interest or concern; and
- Work with stakeholders to mitigate or address the issues raised.

The three phase program aligned with the key phases of project development and the environmental assessment process. The engagement processes were developed following detailed analysis and methods were tailored to achieve the most effective outcome. The methods varied based on the complexity of the issue and the level of interest from the stakeholders, and included:

- Regular newsletters to update the broader community;
- BBQs and dinners with groups of stakeholders;
- One on one meetings with individuals or groups;
- Focus groups with community members to discuss the management of issues such as visual amenity, final landform and noise management; and
- Regular meetings through existing mechanisms such as council briefings, Community Consultative Committees and regular government briefings.

The consultation strategy was supplemented by a comprehensive Social Impact and Opportunities Assessment conducted by an external consultant.

The top five stakeholder issues and project aspects were: Air Quality; Noise; Visual Amenity; Mine life and land use; and Community Sustainability. Management measures were developed through the consultation program to manage these impacts.

Some of the key initiatives developed were:

- The maintenance of continuous air quality and noise monitors, supported by a predictive air quality system and 24 hour control room;
- The reinforcement of the commitment to use noise attenuated fleet at the site;
- The development of a noise and visual bund in the early years of the project;
- Targeted, proactive rehabilitation to minimise the area of disturbed land;
- The revision of the mine plan to minimise the impacts on the community; and
- Key recommendations from the Social Impact and Opportunities Assessment adopted to improve Community Sustainability.

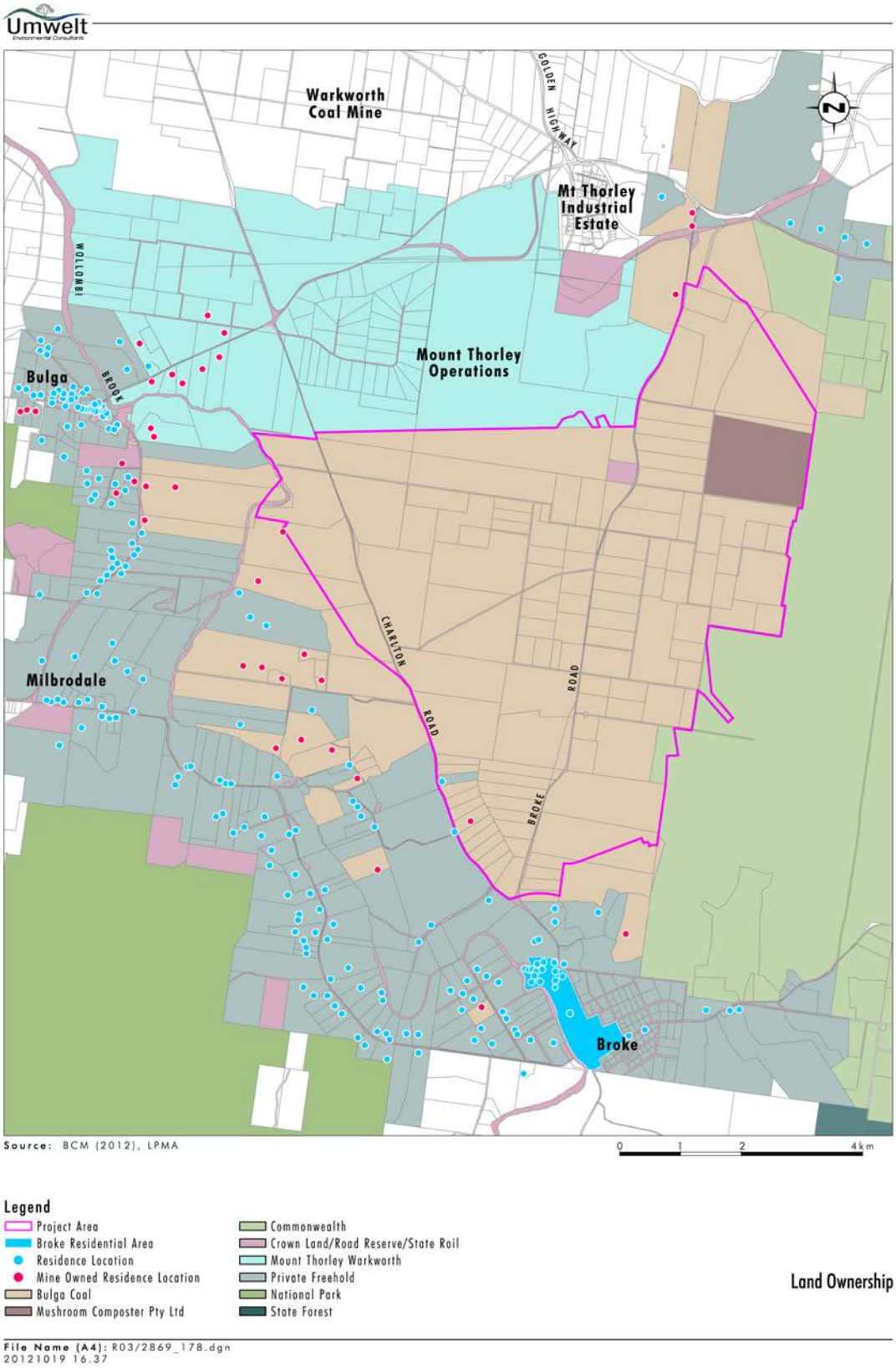
Following the formal submission phase of the approvals process, a number of additional changes were made to the project to address specific stakeholder concerns. These included:

- A commitment to not realigning a local public road as originally proposed;
- Redesigning the noise and visual bund to avoid impact on an endangered ecological community deemed important to the community;
- An increase in the size of the biodiversity offsets package;
- A reduction in the size of the Mine infrastructure construction area; and
- The alteration of an out of pit overburden emplacement dump to avoid disturbing a private property.

While the project is still progressing through the approval process, very positive feedback has been received from the majority of stakeholders on the genuine manner in which Glencore has worked with the community to develop and manage the environmental impacts of the project.

In our view this demonstrates that each project should be assessed on its merits and proponents provided with the opportunity to work with its stakeholders to develop innovative methods through which to manage the impacts from development.

Map 5 – Bulga Optimisation Project



Strategic Environmental Areas

Key recommendations

9. Remove the SEA concept from the Bill as it is duplicative and unnecessary.

10. If the concept of SEAs is to remain as part of the Bill:

    a. Provide clarity as to the values the Bill is seeking to protect and why the Bill is necessary in addition to existing environmental protection legislation.

    b. Provide certainty that the creation of a new SEA will not retrospectively sterilise existing resource projects or resource authority applications.

The *Environmental Protection Act 1994* (Qld) (**EP Act**) is aimed at protecting Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends. It does so by establishing mechanisms to protect environmental values in Queensland in four phases:

- phase 1—establishing the state of the environment and defining environmental objectives
- phase 2—developing effective environmental strategies
- phase 3—implementing environmental strategies and integrating them into efficient resource management, and
- phase 4—ensuring accountability of environmental strategies.

A central aspect of the EP Act is the environmental authority application process, designed to assess the impacts on environmental values of **any** resources activity proposed in Queensland, to facilitate a decision on whether the activity should proceed and on what conditions.

The Bill as proposed expressly seeks to protect **the same** environmental values already protected under the EP Act.[1]

It does so by requiring an applicant for a resource authority to seek a regional interests authority in certain circumstances, including where the proposed activities would affect the relevant environmental value.

The EP Act processes have been developed over time and are robust and sophisticated in their assessment of environmental impacts. In most cases where an environmental value may be significantly impacted, the process involves public consultation and third party objections are heard by the Land Court.

[1] Section 11(2) Regional Planning Interests Bill 2013.

There is no doubt that the EP Act process provides for the identification of resource activity impacts on any aspect of the environment likely to constitute an SEA. It goes on to require that those impacts be thoroughly assessed, and where appropriate reviewed by third parties and the Land Court before the Minister for Environment and Heritage Protection is required to decide whether to grant, and how to condition, an environmental authority for the relevant resources activity.

The SEA process proposed under the Bill clearly duplicates the EP Act processes.

This unecessary layer of bureaucracy would constitute the introduction of a new and clear example of unnecessary greentape, which the Queensland Government has been striving to eliminate.

There is no criteria around what may constitute an SEA. There is also no clarity around the potential retrospectivity of such a declaration. This needs to be addressed for existing projects, including minor or already planned expansions, minor operational amendments and the transition from advanced exploration to production.

Glencore considers that the current environmental impact assessment processes more than adequately protect environmental values as defined under the EP Act. Project definition is an iterative process, carried out throughout the environmental impact assessment process. Environmental constraints are routinely built into project descriptions as environmental values are identified. This inherently reduces the ultimate impact on environmental values in almost all cases, and in any event, the final decision to give a project the green light and on what conditions rests with the Minister, having been thoroughly briefed on environmental impacts, heard from third parties and in many cases received a recommendation from the Land Court.

Implementation

Key recommendations

11. Carry out a regulatory impact statement process, in accordance with best parliamentary practice.

12. Remove the need for the duplicative and unnecessary 'Regional Interests Authority'. Instead, the Bill should be amended to set out the considerations relevant to the grant of an environmental authority under the proven EP Act processes in circumstances where values protected by the Bill are to be impacted by a resources activity proposal.

    Specifically, as noted above:

    a. PLAs should be rolled into the Common Resources Act process, and

    b. SEAs are duplicative and should be removed.

13. Afford appropriate protection to existing projects and those in an advanced state of assessment.

14. Deliver consistency of approach across all resources activities with respect to landowner involvement.

15. Ensure the streamlining of public notification processes under all relevant pieces of legislation. To do otherwise raises the time and cost involved for all parties, including those making submissions.

16. Vest jurisdiction for resources approvals in one Court, preferably the Land Court, not two.

17. Include all key provisions in the Bill itself rather than incorporating substantive detail via subordinate legislation.

18. Offer genuine industry consultation on the preparation of the regulations to underpin the Bill.

19. Review drafting and technical deficiencies with the Bill.

LACK OF REGULATORY IMPACT STATEMENT

The Bill has been prepared and introduced without the preparation of a Regulatory Impact Statement (**RIS**).

Under COAG Principles of Best Practice Regulation, a RIS is required where the government proposes regulation (including principal legislation) to address an identified problem. The practice is essential in order to 'eliminate and prevent unnecessary and excessive regulatory impacts' and to ensure that new legislation achieves policy objectives without imposing unnecessary burdens on stakeholders.[2]

The COAG Principles have not been met.

The Parliamentary Committee reporting on the Bill specifically asked during the public hearing held on 13 December 2013 whether this Bill, or the regulations yet to be prepared and released for the Bill (which will contain most of the relevant detail), is classified as significant legislation which would be accompanied by an RIS. Representatives of the DSDIP did not answer the question when put to them.

Given the significant economic, social and environmental impacts the Bill will have if implemented, the concerns raised in this submission should not be dismissed without the Government preparing an RIS.

As the Office of Best Practice Regulation has specifically identified mining and environmental approvals as a priority fast track area for immediate review, the duplication proposed under the Bill combined with the lack of an RIS raises significant concerns.

DUPLICATION & GREENTAPE

The Bill proposes to introduce an additional approval requirement to the already complicated and rigorous assessment process carried out for all resource projects.

The proposal is in direct contradiction to the repeated Government commitment to reduce green tape and the regulatory blocks to investment in Queensland.

At the Parliamentary Committee public briefing about the Bill on 13 December 2013, Departmental officers specifically referred to a deliberate decision to avoid duplication of red tape for off-tenement activities required to be assessed against the new generation Regional Plans.

No explanation has been provided as to why it is considered acceptable to duplicate procedural requirements and increase red tape for on-tenement activities particularly given assessment against the regional plans could be facilitated through existing processes, i.e. via a 'roll in'.

The Explanatory Notes to the Bill state that the assessment proposed could have been implemented via amendments to the EP Act. However, no explanation has been given for why this was not done, rather than introducing an additional and separate approvals process to be administered by a different government department.

[2] Office of Best Practice Regulation, *Information Report – Key Features of the Regulatory Impact Statement System*, October 2012.

TRANSITIONAL PROTECTIONS

The 'transitional' and 'exemption' provisions proposed in the draft Bill are inadequate.

SCL Act transitionals

Firstly, existing protection afforded when the SCL Act took effect must be retained and incorporated into the Bill before it can be passed. The transitional arrangements presently proposed associated with the repeal of the SCL Act do not do this.

It is understood from discussions with government that existing decisions under the SCL Act are intended to be 'transitioned' into regional planning interests authorities under the Bill (once enacted). It has not yet been confirmed that the transitional protection afforded certain projects on the introduction of the SCL Act will be carried through in enacting the Bill. This is clearly a minimum transitional requirement. It surely is not Parliament's intent to renege on transitional protection afforded to projects which were already at specified stages of assessment on commencement of the SCL Act.

It has also been indicated that the 'protection area' and 'exceptional circumstances' concepts are to remain. The main utility of these concepts under the SCL Act is to give effect to the permanent impact restriction: a red light for certain projects.

Those projects which escaped that red light under SCL Act transitional provisions must continue to be protected (see sections 286 to 288 of the SCL Act). Failure to do so could, for example, place both the Rolleston expansion project and any future development at Togara North in serious jeopardy.

Future brownfield expansions

In recognition of adverse market conditions, and that brownfield expansions ordinarily present overall lesser additional impacts than greenfield projects, Glencore submits that future brownfield expansion projects over existing tenements, including exploration and development tenements which have been actively used, should also be protected.

Glencore's total identified coal resource in Queensland is 14.35 billion tonnes. Of this, 830 million tonnes is in reserve, that is, currently under a mine plan. The rest is anticipated to be in reserve at some point in the future. At the current rate of extraction, Glencore would exhaust its current reserves in Queensland in approximately 30 years. Without some investment certainty around possible future expansions, it becomes difficult to justify further significant investment.

Services and infrastructure

Critically, transitional protection should also be granted to infrastructure corridors needed to give effect to projects which are otherwise eligible for approval. Road (including relocations or realignments), conveyor, rail and train load-out facilities are highly susceptible to crossing trigger mapping, as they are linear and often in a fixed location (for example due to land ownership or other constraints).

Any assessment criteria which effectively prevents such infrastructure from being proposed (e.g. by incorporating concepts such as protection area mapping from the existing framework) could effectively stop otherwise advanced and feasible projects. Transport infrastructure development is a necessary component of Queensland's future growth story and economic development – and is required for agricultural and resource industry activities alike.

Plan of operations proposal

The use of a plan of operations as the mechanism which triggers an exemption for existing activities from the new assessment and approvals requirements proposed to be introduced under the Bill is fundamentally flawed. Plans of operations are often short-term (one year) and activity-specific.

ML and MDL protection

All previously assessed **impacts** in relation to an application for or granted mining lease or mineral development licence need to be protected. Industry should be afforded certainty – when embarking on an impact assessment approval process – that the process of the day will remain relevant. Amendments with retrospective application to existing processes are unfair on industry and generate significant uncertainty.

Transitional provisions similar in substance to the effect of the *Environmental Reform (Consequential Provisions) Act 1999* (Cth) may be considered. There, all actions the **impacts** of which had been previously assessed were preserved from the requirements of the (then new) *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Transitional protection should be afforded to impacts which are already under assessment from any new and additional requirements introduced by the Bill. It is simply not in the State's interest to impose new and additional requirements on the holders of advanced exploration tenements in the process of applying for production approvals. The preparation and finalisation of an EIS can cost a proponent $ 2-3 million or more. To impose further and additional requirements retrospectively, requiring this work to be re-done, is likely to lead to the abandonment of projects which would otherwise boost the State's economy.

Agreement of land owner

The Bill proposes to exempt resource activities from a requirement to obtain a Regional Interests Authority for activities within a PAA where:

- a conduct and compensation agreement has been reached as required or an agreement has voluntarily been entered into by the landowner with the operator; **and**
- the activity must not be likely to have a significant impact on the PAA; **and**
- the activity must not be likely to have a significant impact on land owned by someone else (in terms of its suitability for a PALU).

The exemption is flawed.

Conduct and compensation agreements are required with respect to only a limited number of resources tenements. They are not required, for example, for a mining lease. Different landholder agreement processes apply. It would seem to be an unintended consequence that mining leases would not be afforded equivalent protection to other types of tenements.

There are also entirely legitimate circumstances under the existing law where a court order may determine compensation payable for resources activities to proceed (i.e., where agreement may not be entered into voluntarily).

As a minimum, this first limb should be broadened to correctly reference the relevant agreements and processes under which compensation and access may be achieved, with respect to all resources tenures.

Glencore submits that the exemption should be available for any Regional Interests Authority – and not simply with respect to PAAs. Inconsistencies of this nature between the administration of PAAs and SCL must be eliminated. Failing to align these requirements would generate significant administrative burden on Government, industry and landowners.

ALIGN PUBLIC NOTIFICATION PROCESSES

At present, any resource project likely to have relatively significant environmental impacts is already required to go through at least two separate, although often aligned, public notification processes – for the environmental authority application and the resource tenure.

Each of these notification processes individually has the potential to give rise to third parties having the right to have the approval decision in question considered by a separate Court process, either in the Land Court or via a judicial review proceeding.

The benefits of having the environmental authority and resource tenure notification periods aligned is that, in the event the decisions are considered by the Land Court, the timing allows all public objections to be heard in a single proceeding. This, of course, saves time and money for proponents, submitters, the regulators and the Court.

The Bill proposes adding a further public notification process for these proposals. The Bill as drafted does not align notification of an assessment application to any of the other public notification processes. The Bill, and its explanatory notes, can also be read as suggesting that an assessment application would not be made until after an environmental authority is close to issue (i.e. after the environmental authority notification process).

Introducing a further, and potentially disconnected, public notification process into an already complicated assessment regime would only serve to increase the time and costs for all parties involved.

In addition, there is no reason to think that an additional round of consultation will increase public participation in the decision making process. To the contrary, it is suggested that it could lead to a feeling of consultation fatigue within the community die to repeated conversations.

Glencore also submits there is no need for landowners to receive a further separate notification under the Bill. Landholders are already made aware of resource activity proposals through several means – including via land access and compensation

agreements. Landholders have the right to object via these processes. Glencore can see no benefit arising from a separate process as proposed under the Bill.

SINGLE COURT JURISDICTION

Glencore notes that the appeal rights about decisions made under the Bill are proposed to be vested in the Planning and Environment Court. As noted above, currently merits proceedings relating to decisions about resource activity proposals are heard by the Land Court.

The Planning and Environment Court is not the jurisdiction best equipped or experienced to deal with matters relevant to what is, effectively, an authority for resource activities. Jurisdiction for all such approvals should be vested within a single Court jurisdiction, to save time and costs for proponents, landholders and regulators alike, as well as avoid unnecessary use of specialist Court time and resources.

The current Land Court process is carried out before approvals are granted. The Bill proposes that appeals to the Planning and Environment Court would be post approval. This means that an applicant could, foreseeably, having already gone through a lengthy Land Court process in order to obtain approval, be held up further by a Planning and Environment Court appeal. Glencore submits that the existing Land Court process is the appropriate forum in which any issues arising under the Bill to be heard.

INDUSTRY CONSULTATION

As noted above, Glencore is concerned that industry consultation – with all sectors of the resource industry – has not been adequately carried out to inform the drafting of the Bill. COAG Principle of Best Practice Regulation no. 7 requires regulators to consult effectively with affected stakeholders at all stages of the regulatory cycle.

The Explanatory Notes for the Bill state that 'confidential briefings with key stakeholder groups' were carried out. However industry has been surprised by much of the content of the Bill.

Further consultation is required.

In this regard, Glencore again notes the lack of detail contained in the Bill as drafted, which proposes the bulk of the effective provisions to be contained within regulation. Without commenting on whether this is appropriate or not, Glencore suggests that provision of further detail or a proposed draft regulation would assist the drafters to make the most of any consultation process. Glencore submits that all substantive provisions should be found in the Bill, rather than subordinate legislation.

The final case study in this submission provides an overview of the anticipated impacts of the Bill on the current Rolleston Coal Expansion Project in Queensland.

CASE STUDY – ROLLESTON EXPANSION PROJECT

Background

The Rolleston Coal Open Cut Mine ("the mine") is located 275 kilometres due west of Gladstone in the Bowen Basin and 16 kilometres from the town of Rolleston in the Central Highlands Regional Council area. Rolleston commenced operations in September 2005, producing over one million tonnes of coal in the first four months. In July 2013 the mine completed a capital investment of over $200 million to expand production from nine million tonnes per annum to 12 million tonnes per annum. The Mine presently employs 835 people and, if approved, the expansion project will create an estimated additional 175 jobs during construction and 175 jobs during operation.

On 17 December 2013, Rolleston Coal lodged an Environmental Impact Statement ("EIS") for the Rolleston Coal Expansion Project ("the Project") with DEHP. This EIS and the studies supporting it were developed over a four year period, commencing in early 2010. It is expected that the EIS will commence public notification in March 2014.

The Project seeks to expand the existing mine area with additional mining leases to the west and south, and increase production from the existing approved capacity of 14 to 19 million tonnes of coal per annum. The additional mining areas contain in the order of 174 million tonnes of coal.

Total capital spend associated with the project is in excess of $300 million, with over 50% of this to be invested over the period 2014 to 2015 and the remainder to be spent by 2018.

Impacts of the Bill – PAAs, PALUs, SCL and Implementation

The existing Rolleston Coal Mine and areas of the Rolleston Coal Expansion Project lie within the SCL Western Cropping Zone. In addition, certain of the Project areas lie within the Central Queensland Protection Area. A small area lies outside the Protection Area but none of the area outside the Protection Area is shown as SCL in current trigger mapping.

Trigger mapping identifies potential SCL in areas of the Project. While the Project falls under the transitional arrangements for SCL and is therefore not subject to the full provisions of the SCL Act, assessments have been carried out to comply with provisions of the SCL Act and appropriate avoidance, mitigation and management measures implemented or proposed. Losing these transitional arrangements would put the Project at significant risk.

Both the existing mine and Project are also wholly contained within a proposed Priority Agricultural Area ("PAA") under the Regional Planning Interest Bill ("the Bill").

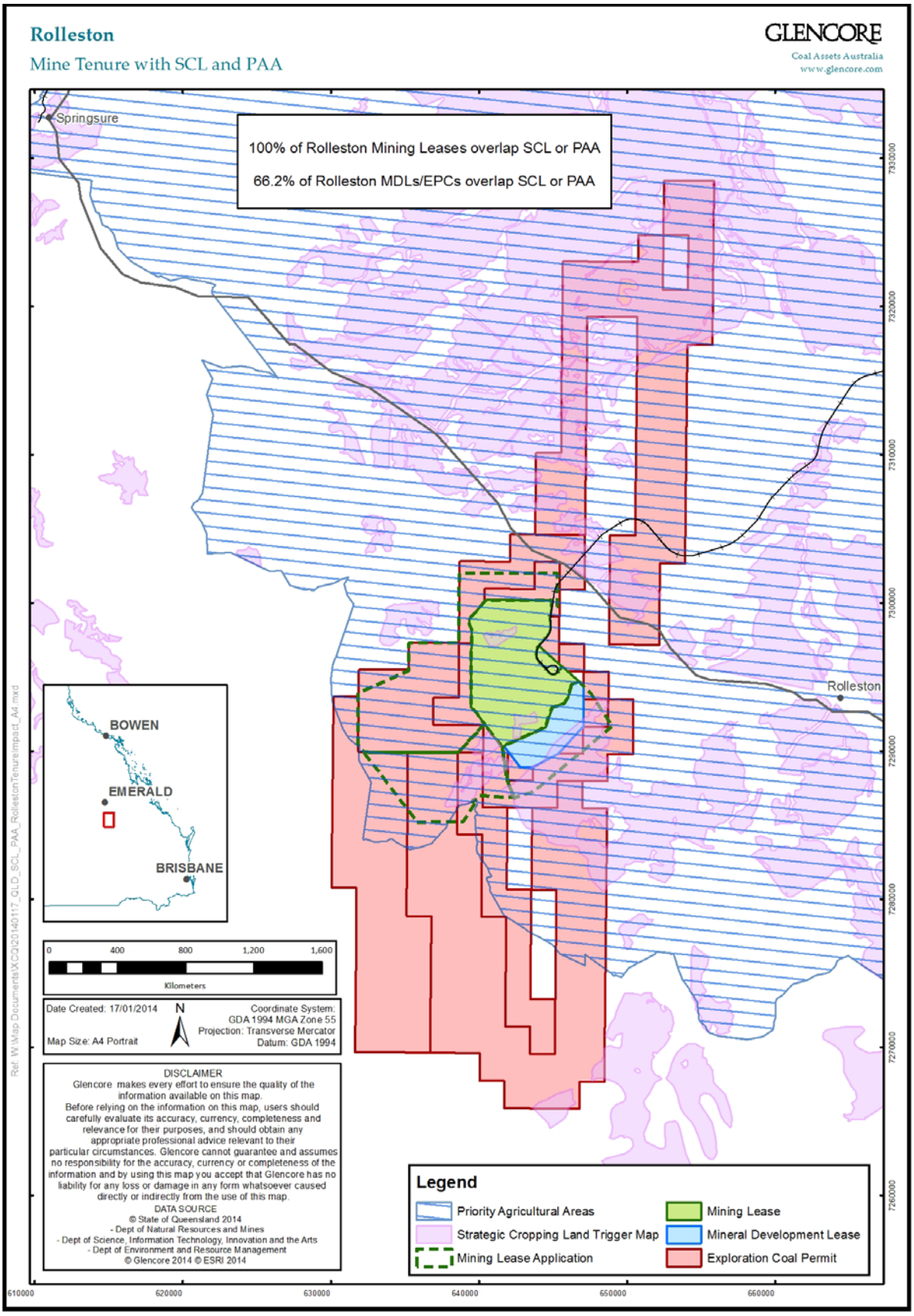
Failure of Plan of operations as an exemption tool

The mine has a pre-existing resource activity work plan which, under the Bill, would give rise to some limited transitional relief. However, the plan of operations for the mine has been designed to be a rolling plan which is updated (in consultation with DEHP) approximately every 12 months. Accordingly, under the Bill as proposed, this **existing** and **lawful** mining operation would trigger a further comprehensive assessment and approval requirement within 12 month of the Bill taking effect.

The impacts of this (without having seen the supporting detail proposed to be contained in Regulation) could lead to:

- early closure of the Rolleston Coal Open Cut Mine as soon as 2015, resulting in a direct job loss of 800+
- cancellation of the Rolleston Coal Expansion Project and associated investment
- potential sterilization of 825 million tonnes of the State's coal resources (and loss of associated revenue for the State)

Map 6 – Rolleston Coal JV area



Rolleston Coal expansion project

The Project EIS has been completed and lodged with DEHP, and is expected to commence public notification in March 2014. To date, Glencore has invested around $3.7 million in the preparation of the EIS, with a further $1 million likely to be required for completion of the EIS process.

Even if the transitional arrangements are amended to ensure the ongoing viability of the existing Rolleston Coal mine, the Bill if otherwise implemented as proposed would also have substantial impacts on the Project.

Currently, the future steps for the Project's approval involves:

- public notification of the EIS,
- Glencore responding to any submissions on the EIS,
- a potential further consultation round about the EIS,
- public notification and objection period of the MLAs,
- a submitter objection period about a draft EA, and
- potential Land Court referral(s) about the MLAs and draft EA,

before any conditions are finalised.

Based on the Bill and explanatory notes, the Bill as proposed would add further steps including:

- the making of a further application to a third State government department (and one with less experience and resourcing in mining approvals) notwithstanding that DSDIP will have an opportunity to provide comments on the EIS informing the earlier approvals
- further landholder notification
- potentially, a further round of public notification
- additional and different third party appeal rights,
- probable referral and assessment by other government agencies (again, agencies with the opportunity to comment during the EIS process), and
- potentially, a further Court process in a different Court (the Planning and Environment Court).

Existing Rolleston EPCs

Over 66% of the resource potential in the Rolleston Coal EPC areas are within a PAA and would be impacted by the proposed legislation. These areas are vital to the long term utilisation of existing infrastructure, maintenance of current production levels and ongoing viability of the operation as they provide options for resource replacement as current areas are depleted. Beyond the medium term, future investment decisions are inherently linked to the perceived risk of development – at times these decisions need to be made up to seven years in advance. The impacts of the Bill for the Rolleston EPCs could include:

- reduction in total mine output from as early as 2018
- potential sterilisation of up to 66% of the available future coal resources for the Rolleston JV(and loss of associated revenue for the State), and
- reduced likelihood of continued investment in the Project as a development priority.

PO Box R1543, Royal Exchange NSW 1225
Level 38, Gateway Building, 1 Macquarie Place, Sydney NSW 2000 Australia
T + 61 2 9253 6700 F + 61 2 9241 6898 www.glencore.com

Glencore Coal Pty Limited (ABN 18 082 271 930)