GLENCORE

Supplementary submission No. 97
26 February 2014
11.1.14

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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 thanks the Committee for providing it with an opportunity to submit supplementary comments on the Regional Planning Interests Bill 2013 (the Bill).

Since its primary submission on the Bill, provided to the Committee on 17 January 2014, Glencore has been following the public hearings with interest. In relation to requests to provide specific examples on the impact the Bill may have on its operations, Glencore has set out in its supplementary submission four key issues:

1. The transitional protection afforded the Rolleston Expansion Project under the Strategic Cropping Land Act has not been carried forward into this Bill.

2. The landholder agreement exemption for resource activities needs to be broadened to allow it to operate in accordance with the intention expressed at the Committee hearing.

3. The pre-existing resource activity exemption also requires further amendments in order to avoid behaving as a moratorium simply delaying retrospective application of the Bill.

4. The jurisdiction for appeals under the Bill needs to be given to the Land Court and not the Planning and Environment Court.

In making both submissions to the Committee, Glencore has sought to be constructive; and while identifying potential impacts has also sought to provide workable solutions. While Glencore supports the objectives of the proposed legislation, it considers that the intent has not been carried through into the provisions within the current Bill.

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Yours sincerely

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SUMMARY

Glencore appreciates the Committee allowing a supplementary submission period for further comments on the Regional Planning Interests Bill 2013 (Qld) (**Bill**).

This supplementary submission seeks to highlight a number of key issues contained in the Bill which we believe require further clarification.

As indicated in our previous submission, Glencore supports in-principle the policy objectives of the Bill and understands that it is not intended to negatively impact on existing developments nor hinder future development. In its current form we do not believe that the Bill has succeeded in reflecting the government's policy objectives.

This submission outlines Glencore's current understanding or interpretation of the Bill against one of the case studies offered in Glencore's original submission, to highlight the anticipated impacts of the Bill on a real life project. To this end we have included commentary in this submission on how we believe the current Bill will impact our Rolleston Expansion Project.

We have also sought to provide constructive feedback as to how the Bill should be amended in order to achieve the Government's stated policy objectives.

Following our previous submission, and not intending to downplay the issues raised in it, there are four key outstanding issues Glencore would like to raise in relation to the Bill in this supplementary submission:

1. We do not believe the transitional protection afforded under the SCL Act has been adequately carried forward or reflected in the drafting of this Bill. This has the potential to retrospectively impact a number of previously protected operations.

2. The landholder agreement exemption for resource activities should be broadened to cover all situations where a regional interests authority would otherwise be required.

3. The pre-existing resource activity exemption also requires amendment in order to avoid behaving retrospectively and acting as a moratorium on new approval requirements being imposed.

4. Avoid potential for multiple legal actions in different Court jurisdictions based on the same set of facts. Glencore would urge Government to vest appeals under the Bill in the Land Court with all issues associated with a single project to be heard together.

Glencore has included a number of recommendations for the Government to consider in relation to the Bill which would address the issues above.

PROJECT BACKGROUND

The Rolleston Coal Open Cut Mine (**Mine**) is located 275 kilometres west of Gladstone in the Bowen Basin and 16 kilometres from the town of Rolleston in the Central Highlands Regional

Council area. The Mine commenced operations in September 2005, producing over one million tonnes of coal in its first four months. In July 2013, the Mine completed a capital investment of over $200 million to expand production.

On 17 December 2013, Rolleston Coal lodged an Environmental Impact Statement (**EIS**) for the Rolleston Coal Expansion Project (**Project**) with the Department of Environment and Heritage Protection (**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 to 19 million tonnes of coal per annum. The additional mining areas contain in the order of 174 million tonnes of coal. The Mine presently employs 835 people and, if approved, the Project will create an estimated additional 175 jobs during construction and 175 jobs during operation.

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

The Mine and the Project are almost wholly contained within the Priority Agricultural Area (**PAA**) mapped for the Central Queensland Regional Plan and the Central Protection Area under the *Strategic Cropping Land Act 2011* (Qld) (**SCL Act**). Potential strategic cropping land (**SCL**) overlaps parts of the Project area, as well as surrounding exploration tenements held by Glencore.

Accordingly, both the existing approved Mine and the advanced Project stand to be heavily impacted by the Bill if the **transitional provisions**, **exemptions** and **procedural issues** are not appropriately addressed before it is passed.

TRANSITIONALS AND EXEMPTIONS

SCL Act transitional provisions

1. **Key Issue:** The SCL Act transitional protection does not appear to be carried forward in the current draft of the Bill.

    - The Rolleston Project, like many other well advanced expansion projects, is protected by the transitional provisions included in the existing SCL Act. In particular, the Project was not subject to a permanent impact restriction because the mining lease applications to which the Project relates are contiguous with an existing mining lease held by Glencore, and the certificate of application for the leases was issued before 23 August 2012 (see section 288(1) of the SCL Act).

    - The Bill does not carry forward the transitional protection afforded under the SCL Act. Responses to questions on notice provided to the Committee by the Department on 20 December 2013 indicate an intention to retain the concepts

of permanent impacts and exceptional circumstances under the Regulations for the Bill.

- Assessment work conducted for the purposes of the EIS has been carried out considering the avoidance, mitigation and management measures required to comply with the other provisions of the SCL Act. However, that work has proceeded for over two years on the basis of the statutory protection from the permanent impact restriction.

2. **Project impact:** Without continuing transitional protection, the Project would be the subject of a new regime restricting permanent impacts on strategic cropping areas and would be unlikely / no longer able to proceed.

    - In the absence of draft Regulations (not currently available) or any indication as to additional transitional relief, the current indications are that the Project would be the subject of a new regime restricting permanent impacts on Strategic Cropping Areas (**SCAs**).

    - This may effectively render previous assessment work completed in cooperation with the State government and investment for the Project meaningless or irrelevant without the benefit of transitional relief.

    - If the current version of the Bill is passed, we believe the practical implementation of the new legislation will ultimately prohibit the Project. The State will also lose the benefit of the future investment and royalties associated with the vast reserve identified.

3. **Recommendation:** SCL Act transitional protection must be carried forward under the Bill.

    - We believe this is a fundamental issue with the Bill. Proponents who have been afforded transitional protection, and made investment decisions on that basis, have every right to expect the protection to be retained.

LANDHOLDER AGREEMENT

1. **Key Issue:** Glencore understands that the intent of Section 22 of the Bill is to include an exemption from the requirement to obtain a regional interest authority for projects where proponents obtain the 'agreement of land owner'. We do not believe that the current drafting of the Bill achieves this objective.

    - Glencore's interpretation of section 22 of the Bill (as currently drafted), is as follows;

        i. the section does **not** apply where the proponent for the resource activity is the owner of the land.

        ii. the exemption does **not** apply unless the proposal is unlikely to impact on both:

- the suitability of the land to be used for a priority agricultural land use (PALU); and

- any land owned by someone other than the land owner.

iii. the section **only** provides an exemption for a resource activity in a PAA. It does not exempt resource activities in SCAs, Strategic Environmental Areas (SEAs) or Priority Living Areas (PLAs) even with landholder agreement. Prescribed activities will not be subject to a landholder agreement exemption at all.

- The purchase of directly impacted land under mutual agreement between the landholder and the resource company is one of the options available to the parties when a mining project is proposed. Understandably, this is in fact often the landowner's preference. This is particularly the case with coal mines, whose impacts are often relatively localised and long-term when compared with coal seam gas activities. Glencore considers its land ownership should not in any way prejudice its position under the exemption.

- Glencore, in planning and preparing for the Project over the last several years, has through transparent landowner negotiations become the owner of much of the land to which the Project relates. Accordingly, Glencore would largely be excluded from the benefit of this exemption.

- Even where Glencore does not own land proposed to be the subject of the Project, all open cut coal proponents would effectively be excluded from the benefit of the exemption, given that open cut coal mining methods by their very nature are highly likely to impact on suitability of the subject land (eg for cropping purposes) regardless of any compensatory provisions and subsequent rehabilitation.

- In view of the regularity of overlaps between PAAs (and PALUs) and SCAs, Glencore can see no reason to limit the application of this exemption to PAAs.

2. **Project impact:** In addition to the Mine and Project at Rolleston, Glencore holds a number of surrounding exploration tenements. We believe that up to 66% of the identified resource potential of the Rolleston Exploration Permits for Coal would be essentially sterilised if the Bill is not amended to clarify the issue of landholder agreement exemptions, in particular, the retention of the permanent impact restriction provisions. Where resource deposits have been confirmed, the intention is that, as existing deposits are exhausted and the land rehabilitated the exploration tenements will be converted to production rights to ensure continuity of capacity and the ongoing use of existing infrastructure.

   As a result of the narrow drafting of section 22, we do not believe landowner agreement will be enough to avoid the need for a regional interests authority as the Bill is currently drafted.

3. **Recommendation**: We support the government's intent for landowner agreements to avoid regional interests authority requirements. To give effect to this, Glencore suggests that section 22 of the Bill to be amended to read:

> ***22 Exemption: agreement of land owner***
>
> *A resource activity is an **exempt resource activity** if:*
>
> *(a) the authority holder for the resource activity is the owner of the land; or*
>
> *(b) the owner of the land has voluntarily entered into a written agreement with the authority holder and the carrying out of the activity is consistent with the agreement.*

Amending the landholder agreement exemption provision would also provide greater certainty of productive capacity and operational continuity for existing projects.

PRE-EXISTING RESOURCE ACTIVITY

1. **Key Issue:** There is a risk that linking the pre-existing resource activity exemption to a plan of operations may negatively impact on all existing authorised production projects in Queensland and from a regulatory perspective will act retrospectively.
   - Glencore does not believe that a plan of operations is an appropriate mechanism for applying an exemption to existing activities. Plans of operations are intended to set out the location and nature of activities undertaken towards compliance with the relevant environmental authority.
   - A plan of operations is not an approval, nor does it bestow any legal rights. A plan of operations is a compliance and monitoring tool. The plan is prepared by the person who is already authorised to carry out activities under an environmental authority. The plan is not approved by DEHP, it is merely submitted to allow DEHP to satisfy itself the activities are being conducted in fashion which is consistent with the approval which grants legal rights.
   - Flexibility and regular updates are a natural part of mining operations and are essential to achieving the best possible environmental performance. Linking a pre-existing resource activity to an existing plan of operations disregards this necessary flexibility and undermines its usefulness as a tool under the Environmental Protection Act 1994. However unintentional, the exemption as currently proposed in the Bill is clearly retrospective, operating more as a moratorium than an exemption from the impacts of new legislation.
2. **Project impact:** It is likely that activities at Rolleston would need to cease activities before the next plan of operations takes effect and until a regional interests authority can be obtained.
   - The existing Rolleston mining operation has been in operation for eight and half years. During this time, Glencore has submitted thirteen (13) plans of operations for the Mine. As mining operations continue, it is accepted industry practice that the Mine will be required to continue to replace its current plan of operations at least annually.

- In practice - If the Bill is enacted in its present form before that time, then Glencore's Rolleston Mine would be operating in non-compliance if it continued to operate without a regional interests authority before its next plan of operations takes effect.
- In practice - To comply with multiple layers of legislation, Glencore would effectively be required to cease its operations for an undefined period of time after submitting its new plan of operations while a regional interests authority application is processed. Ceasing production in this way is simply untenable for ongoing coal mining operations, and undermines the ongoing economic viability of the asset.
- As the Bill is currently drafted, Glencore is offered no certainty that a regional interests authority will be granted at the end of its current plan of operations period, particularly given its location and impacts.
- If not addressed in the Bill, Glenore believes this approach is likely to create a level of uncertainty for a major investment which has already been through rigorous impact assessment, landholder negotiations and wider community investment.

3. **Recommendation:** Glencore would urge the Government to consider amending the current Bill so that an exemption applies to existing operations and those activities the impacts of which are at an advanced stage of assessment under existing legislation (for example an EIS under the Environmental Protection Act 1994).

- The appropriate mechanism for linking the existing resource activities exemption we believe is the environmental authority, which also considers property level detail. Under the existing resources legislation, a mining lease and environmental authority cannot in fact be granted until property level impacts have been sufficiently identified and considered.
- We note that by the time an environmental authority is granted, the following steps have already been carried out:
    i. all landholders have been engaged and compensation has been determined under the Mineral Resources Act 1989 (MRA);
    ii. an application for a variation or site specific environmental authority has included:
        - an assessment of the likely impact of each relevant activity on the environmental values; and
        - details of any site management plan that relates to the land the subject of the application;
    - separately from the compensation process, landholders have been given all the material relevant to the proposed resource tenement and environmental authority, with a right to have any matters of concern heard by the Land Court.

LAND COURT JURISDICTION

1. **Key Issues**: There is a risk that if a separate appeal right to the Planning and Environment Court is created with the passage of the current Bill, it will inevitably lead to multiple legal hearings from different jurisdictions covering the same factual matters (i.e. the impacts of a resource proposal).

- This can only lead to increased Court time and Court costs for proponents, the State and landholders. It will also lead to unnecessary duplication in expenditure of Court time and resources.
- It is important to clarify that the Land Court carries broad jurisdiction to hear all objections to the grants of mining leases, environmental authorities and water licences.
- The vast majority of such objections are completely removed from issues of compensation. The objections referred to the Land Court more usually deal with issues such as land use conflict, impacts on productive viability of land, other environmental impacts such as air quality and noise and issues arising from the proposed use of local water sources in conjunction with mining operations.
- The Land Court is also the Court given jurisdiction to hear appeals about decisions relating to resource activities under the SCL Act.

2. **Project impact:** Unnecessarily cumbersome approval processes; multiple hearings on same issues.
   - If the transitional provisions and exemptions outlined above are not addressed and the Bill is ultimately passed in its present form, then the Mine and the Project will both, in the relatively near future, be subjected to a need to obtain an additional approval (the regional interests authority) dealing with matters already assessed or in an advanced stage of assessment.
   - The timing to obtain the approval is uncertain and is likely to be significantly delayed, as is the timing for the assessment procedure.
   - There is no guarantee that proceedings initiated in the Land Court under the MRA and Planning and Environment Court under the Regional Planning Interests legislation would run concurrently, significantly prolonging the project approvals time frame.
   - The need to obtain this further additional approval would also expose Glencore to a potential court appeal in respect of matters which have already been addressed.
3. **Recommendation:** Glencore supports the Land Court as the most appropriate Court to determine matters relating to approvals for resource activities.
   - To avoid increased Court costs for all involved, and to reduce the risk of obsolete secondary legal challenges simply designed to delay project delivery, we support a single hearing on any one proposal should be held, dealing with all matters raised by stakeholders including arising in response to regional planning interests.