




Speech by

Hon. Jeff Seeney

MEMBER FOR CALLIDE

Hansard Thursday, 1 November 2012

SURAT BASIN RAIL (INFRASTRUCTURE DEVELOPMENT AND MANAGEMENT) BILL

 **Hon. JW SEENEY** (Callide—LNP) (Deputy Premier and Minister for State Development, Infrastructure and Planning) (7.31 pm): I move—

That the bill now be read a second time.

The Surat Basin Rail project is a private proposal to construct a 214-kilometre railway between Wandoan and Banana to enable large scale mining and export of thermal coal from the Surat Basin via the Port of Gladstone. The state has granted an exclusive mandate to SBR Joint Venture to progress the project through to financial close. That exclusive mandate was granted by the former government. Under the terms of that mandate, the SBR must be developed at no cost or risk to the state as an open-access multiuser rail freight corridor with a capacity to meet demand from all potential users.

The exclusive mandate places two key obligations on the state: the state must secure the rail corridor at the joint venture's cost and, if the project achieves financial close, grant the Surat Basin Rail Joint Venture appropriate tenure rights to enable construction and operation of the Surat Basin Rail. The state must also negotiate with the Surat Basin Rail Joint Venture the terms of the concession of agreements to govern the construction and operation of the Surat Basin Rail. The suite of concession agreements will include a development agreement including the construction licence, an independent verifier deed, an agreement to lease, an operating agreement lease and side deeds with the financiers and the construction contractor.

The overarching objective of the bill before the House tonight is to create a specific legislative framework for the private Surat Basin railway, which complements existing legislation that applies to railways in Queensland and ensures that the state can protect its interest under the concession agreements that will govern the construction and long-term operation of the Surat Basin railway. The bill aims to achieve this objective by enabling the lease to be exempt from section 121 and part 8, division 3 of the Property Law Act and section 67(3)(a) of the Land Title Act. The bill also provides for relevant provisions of the Transport Infrastructure Act 1994, with appropriate amendments to apply to the Surat Basin Rail and the rail corridor.

The bill also enables the Coordinator-General to grant certain persons access to land adjacent to the rail corridor for the purpose of railway works and investigations, when and if it is required. It also enables the designation of common areas where the rail corridor crosses non-tidal boundary watercourses and the construction, operation and maintenance of watercourse crossings on that common area. The bill also enables the designation of the land surrounding the rail corridor as a transport noise corridor under the Building Act 1975, if it is so required, and the bill enables the lessee to grant easements across the rail corridor to adjoining landholders for the term of the lease. Finally, the bill enables severance of the rail assets from the land for taxation purposes for the term of the concession period, if required.

The Surat Basin Rail (Long-term Lease) Bill 2011—the SBR bill 2011—was introduced into parliament on 24 October 2011 by the previous government. It was the first attempt at a piece of legislation

connected with the Surat Basin railway. That Surat Basin Rail bill 2011 proposed the enactment of legislative provisions that would give certainty to the legal framework for the Surat Basin railway by exempting the proposed lease over the rail corridor from those sections of the Property Law Act and the Land Title Act. After introduction the Surat Basin Rail bill 2011 was referred to the former Industry, Education, Training and Industrial Relations Committee. A private committee briefing on the SBR bill 2011 was held in November 2011 and the public submission period was completed in January 2012. However, the inquiry lapsed when the parliament was dissolved earlier this year.

After the election, as the Coordinator-General advanced the program to secure the Surat Basin Rail corridor and negotiations with the Surat Basin Rail Joint Venture on the concession agreements during 2012, it became evident that a broader range of enabling legislation was required than was contemplated in the Surat Basin Rail bill 2011. It also became very apparent to me that the rights of the landholders that were going to be impacted by this project were not adequately addressed in the Surat Basin Rail bill 2011, introduced by the previous government.

As the Surat Basin railway is the first private rail development in Queensland in which the proponent is an investor rather than a railway manager, there is uncertainty about whether that existing legislation would regulate the construction and operation of the Surat Basin railway. There was a clear need for more comprehensive legislation that addressed all of the relevant issues, those identified by the Coordinator-General and those that I was concerned about, rather than simply reintroducing the Surat Basin Rail bill 2011 to the new parliament.

The bill before the House tonight retains the provisions of the Surat Basin Rail bill 2011 and incorporates a range of new provisions relating to the regulation of the corridor and the surrounding land, statutory powers to access land, tenure over roads and non-tidal boundary watercourses, severance of assets for taxation purposes and administration of the bill by the Coordinator-General. It addresses a range of issues that would have affected landholders that were not properly addressed in the former bill.

The primary entity that will be affected by the bill before the House tonight will be the Surat Basin Rail Joint Venture, comprising ATEC (Dawson Valley Railway) Pty Ltd, which is a subsidiary of ATEC Rail Group; QR Surat Basin Rail Pty Ltd, which is a subsidiary of QR National Ltd; and Xstrata Coal Surat Basin Rail Pty Ltd, which is a subsidiary of Xstrata Coal Queensland Pty Ltd. The Surat Basin Rail Joint Venture supports the state objectives in preparing special legislation. Consideration will be given to the implications of the bill in the state's negotiations with the Surat Basin Rail Joint Venture on concession agreements.

However, the bill before the House will also have implications for landholders whose properties are affected by the Surat Basin Rail corridor. Hopefully, the impacts will be no greater than those already applying under existing legislation relevant to the railways. It builds on the existing legislation by incorporating new procedures and protections for the benefit of landholders which provide for the interests of private landholders to be considered when the Coordinator-General makes decisions under the bill, provisions that minimise inconvenience to landholders when certain powers such as statutory access are exercised by the Coordinator-General or authorised persons, and provisions that provide additional rights for compensation to be claimed when a landholder suffers loss as a result of powers being exercised, such as the closure of a private railway crossing by a railway manager. In part, these new protections reflect higher expectations for procedural fairness and natural justice and for adequate and fair compensation in contemporary legislative drafting relating to legislation that affects landholders' rights. However, the bill also reflects the government's intent that the interests of private rail proponents must be balanced with those of the private landholders and local councils with whom they come in contact.

There are no broader ramifications for the community arising from the bill. However, the environmental and social impacts of the Surat Basin Rail project were considered in detail by the Coordinator-General when the environmental impact statement for the Surat Basin railway was assessed.

Community consultation has also been undertaken by the state in relation to the Coordinator-General's assessment of the environmental impact statement for the Surat Basin Rail project under part 4 of the State Development and Public Works Organisation Act 1971, with the report on the EIS released in December 2010. The proposal to declare the Surat Basin infrastructure corridor state development area under section 77 of the State Development and Public Works Organisation Act was made in May-June 2010.

Surat Basin Rail will be the first private rail development in Queensland in which the proponent is an investor rather than a railway manager. Normally railways in Queensland are owned and operated by the railway manager. The Surat Basin Rail Joint Venture has advised that it intends to own the railway and contract other entities to perform the role of railway manager during the construction and operation of the Surat Basin railway. The railway manager appointed by the Surat Basin Rail Joint Venture will manage the corridor, rail infrastructure and dealings with service providers. The Surat Basin Rail Joint Venture does not intend at this stage to own or operate any rolling stock as its customers will enter into their own arrangements with rail service operators.

This Surat Basin railway proposal differs from previous railway proponents which have employed a vertically integrated model in which the railway owner, railway manager and railway operator are related entities. In particular, the separation of the roles of railway owner holding tenure over the corridor and railway manager with responsibility for the control of the corridor is unique and presents a number of challenges and a number of concerns for landholders.

As the Surat Basin Rail Joint Venture's intended model of private rail development is unprecedented, there is uncertainty about whether the existing legislation, in particular the Transport Infrastructure Act 1994, could regulate the construction and operation of the Surat Basin railway. This bill provides comprehensive legislation to ensure relevant provisions which regulate railways within existing legislation will apply to the Surat Basin railway and adapts those provisions to address the separation of the roles of the owner and the railway manager.

There have been concerns raised in the time since this bill was introduced into this House with regard to the purpose of the provisions allowing third parties to do works in the Surat Basin railway corridor. They have been raised by Surat Basin Rail Joint Venture. But the bill provides for third parties to seek the Coordinator-General's approval to conduct works within the Surat Basin rail corridor, including construction of roads by local councils and development proposals by proponents. Proponents can also apply to the railway manager for approval to carry out works on the Surat Basin railway corridor, but if the Coordinator-General approves the development the Coordinator-General's approval will prevail.

The purpose of these provisions is to ensure works in the corridor can proceed if they are considered necessary by local councils or considered important by the Coordinator-General as the state entity responsible for the coordination and facilitation of strategic development projects. It is particularly important that these powers exist given the number of local council roads and local landholder access roads that will cross the Surat Basin railway corridor.

There have also been a number of concerns raised by landholders who are impacted by the corridor with regard to what protections will be afforded to them as landholders who will be subject to the statutory access powers. The bill will provide a statutory access regime to enable the Coordinator-General and persons authorised by the Coordinator-General to enter private land and to carry out certain activities for the Surat Basin railway. This statutory access regime will enable the effective and efficient construction and operation of the Surat Basin railway. These provisions do not relate to potential customers seeking access to rail services on the Surat Basin railway.

There are two types of statutory access powers given to the Coordinator-General. One is the power to enter the Surat Basin railway corridor and adjacent land to carry out railway works. The other is the power to enter any land to investigate the potential suitability of the land for an expansion or realignment of the Surat Basin railway corridor. These powers are similar to the existing powers of the Coordinator-General under the State Development and Public Works Organisation Act and the chief executive of the Department of Transport and Main Roads under the Transport Infrastructure Act.

The powers have been included in the bill due to the private nature of the Surat Basin railway and the objective to create a stand-alone legislative framework for the railway. Only the Surat Basin Rail Joint Venture, as the railway licensee or the railway lessee or the railway manager for Surat Basin Rail, will be able to apply to the Coordinator-General for an authority to exercise the Coordinator-General's statutory access powers.

There are some key features of this process which include: the applicants must consult with the landholder prior to applying; the Coordinator-General may consider anything relevant; the Coordinator-General may make inquiries and request additional information when considering the application; and the Coordinator-General may selectively decide which powers will be granted and impose conditions considered appropriate in relation to the access. The Coordinator-General must only grant an authority for land to be accessed which is considered to be reasonably necessary to carry out the works or the investigations. Time limitations will apply—three years for railway works and one year for investigations—to ensure activities are carried out within a reasonable time and limit inconvenience to landholders. Failure to comply with a condition of an authority is an offence. The Coordinator-General may cancel an authority if the authorised person has not complied with the conditions of the bill or the imposed conditions of the authority.

The bill declares that the grant of an authority to the Surat Basin Rail Joint Venture or the railway manager is not a commitment or approval of the state and does not commit the state to acquiring any land. A person is not an employee or agent of the state because the person has been granted an authority.

Protections for landholders affected by the statutory access regime include: that persons entering properties must give seven days prior written notice containing the prescribed information as set out in the bill or gain landholder consent prior to entering the land; identification relating to the authority must be produced to the landholder if requested and persons exercising the powers under this bill must take as much care as is practical to minimise damage to the land or inconvenience to the landholder; and

landholders may claim compensation or require restitution works to be carried out for loss or damage or the taking of materials.

Just as landholders have expressed concern about some of the issues surrounding the Surat Basin rail corridor so local councils have been quick to identify issues that affect them. The bill replicates the rights available to local councils under the Transport Infrastructure Act to seek approval to construct new roads or change the management of existing roads across the Surat Basin rail corridor. The bill also provides for local councils to continue to construct, operate and maintain roads within declared common areas as provided for in the Transport Infrastructure Act. Notably, the bill also imposes obligations on local councils with respect to transport noise corridors should any be designated under clause 55 of the bill and chapter 8B of the Building Act 1975 which applies to rail corridors under the Transport Infrastructure Act and to supply information to the Coordinator-General regarding the Coordinator-General's functions under the bill or the local government's functions under the Sustainable Planning Act 2009.

There are also provisions in the bill to allow for the variation of leased boundaries. That has caused concern amongst adjoining landholders. However, the details of the bill should provide some comfort to adjoining landholders with regard to the effect that those provisions will have. The exemption of lease from the LTA will only impact on the parties to the lease—namely, the Coordinator-General and the Surat Basin Rail Joint Venture. This act prohibits alterations to leased boundaries and would mean that the parties would have to negotiate a new lease any time a change in the lease boundaries is necessary or desirable for operational or other reasons over the long-term life of the project.

An example of a scenario in which the boundaries might change is for the expansion or realignment of the railway. Under clause 8 of this bill, the minister may declare a railway lease to be an exempt lease which will result in the lease being exempt from this section of the LTA. The aim of this exemption is purely administrative and will benefit the state by reducing the cost of administering the lease arrangements once any change to the boundaries have been made. The exemption will not impact on the rights of the adjoining landholders or the acquisition powers available to the Coordinator-General to acquire land under the State Development and Public Works Organisation Act. The exemption will not oblige the Coordinator-General to acquire additional land or to exempt any future acquisition process from being administered in accordance with the Acquisition of Land Act. Any acquisition process to acquire further land for the rail corridor will need to follow the usual statutory process.

In particular, the issue of crossings over and under the railway has caused considerable concern for landholders. The question of whether they will be provided for alternative access arrangements has been one that has been raised many times. The bill is based on section 169 of the Transport Infrastructure Act, which enables railway managers to temporarily close or regulate railway crossings if they are satisfied that it is necessary because of an immediate threat to the safety of the railway or the public who may use it. In order to afford additional protection to landholders and occupiers with a licence or easement for a private railway crossing, the bill includes abilities for these people to claim compensation if they suffer direct loss as a result of the closure and to seek review of the railway manager's decision to close or to regulate the crossing. These provisions do not exist in the Transport Infrastructure Act but they have been incorporated into this bill to reflect the policy objectives that the interests of the private rail owner ought to be balanced with those of private landholders.

There have also been questions raised about the capacity for the railway lessee to grant easements over the Surat Basin rail corridor and how that might diminish the rights of landholders. The bill will enable the Surat Basin Rail Joint Venture, as the railway lessee, to grant and register easements across the Surat Basin rail corridor to adjoining landholders for the term of the Surat Basin rail lease. Under section 23 of the LTA, the only person who can grant an easement over land to be burdened is the registered owner. In this case this will be the Coordinator-General, as the owner of the Surat Basin rail corridor.

In order to enable the safe and efficient operation of the Surat Basin Rail, it is considered appropriate that the joint venturer, as lessee and party to the concession agreements, should be able to grant and administer easements over the Surat Basin railway corridor to adjoining landholders for the term of the lease. This approach is consistent with the powers available to railway managers. It will not prevent the Coordinator-General from granting or registering an easement that burdens the corridor. Notably, the bill provides the capacity for the Surat Basin Rail Joint Venture to grant easements to adjoining landholders. However, the easements will only be able to be created and registered if signed by the relevant landholders, and it is expected that the easement terms will be managed by the joint venture's railway manager.

There has also been concern raised with me in regard to managing watercourses and how the powers in relation to managing watercourses in the bill may create a liability for landholders. In that respect, the bill replicates the Transport Infrastructure Act. These provisions of the Transport Infrastructure Act give the chief executive of the Department of Transport and Main Roads powers to manage the impacts of watercourses on railways, and that has existed for many years. Under the terms of the bill, the

Coordinator-General may give a railway manager approval to construct or divert a watercourse in carrying out railway works. An approval may be given with or without conditions.

The clauses of this bill provide the Coordinator-General with powers to manage water from a watercourse which is collected and obstructs, or is likely to collect and obstruct, traffic on the railway. Under these powers the Coordinator-General may require the owner of the land on which the watercourse is situated to take action that the Coordinator-General considers necessary or desirable to reduce or prevent the collection of water. Alternatively, the Coordinator-General may exercise statutory access powers to enter the land on which the watercourse is situated to take the necessary action.

These clauses have been included in this bill to give the Coordinator-General sufficient powers to regulate the Surat Basin railway in a manner consistent with other railways in Queensland. The powers in this bill have the potential to create a liability for landholders in relation to a watercourse on their land. However, it is considered that when exercising the powers the Coordinator-General will take into account whether the water has collected on the Surat Basin railway corridor as a result of the construction or the diversion of a watercourse by the railway manager or the actions of a landowner. The Coordinator-General may choose to regulate the impact of the railway manager's works by imposing conditions on that approval.

This bill does not address potential flooding of landholders' land as a result of the railway. These matters were considered during the environmental impact assessment process for the Surat Basin Rail project under the state development act during the period 2007 to 2010, and the Coordinator-General issued his evaluation report for the project in December 2010, recommending that the project proceed subject to the recommendations and the conditions contained in the report. The conditions contained in that report require the Surat Basin Rail Joint Venture to ensure that the impact of flooding on neighbouring land is taken into account during the engineering design of the railway.

I want to thank the State Development, Infrastructure and Industry Committee for its careful consideration of the Surat Basin Rail (Infrastructure Development and Management) Bill 2012. I note that the committee tabled its report on Monday, 29 October 2012. I now table a copy of the Queensland government's response to that report.

Tabled paper: Copy of a letter, dated 16 October 2012, from the Director-General, Department of State Development, Infrastructure and Planning to the Chair, State Development, Infrastructure and Industry Committee relating to the Surat Basin Rail (Infrastructure Development and Management) Bill 2012 [\[1502\]](#).

I propose to move amendments during consideration in detail which will give effect to the government's response. The committee's report made eight recommendations. I have carefully considered the committee's report and I will address the recommendations in detail.

The government accepts recommendations 3, 4, 5, 6 and 7 made by the committee, with one modification to recommendation 4. The second recommendation relates to the powers in part 3 of the bill to access land outside the railway corridor to carry out railway works and investigations. The committee has suggested that as the responsible minister I could facilitate the development of a memorandum of understanding between affected landholders and Surat Basin Rail Pty Ltd to address concerns arising from part 3. The government does not support this particular recommendation, but it agrees with the committee's intent and considers that the current drafting of the bill already offers a mechanism to achieve the desired outcome.

The government is conscious that landholders are presently negotiating agreements with the Surat Basin Rail Pty Ltd and with the railway manager about the interface between their properties and the railway. I am concerned that this recommendation may result in landholders feeling compelled to enter into further agreement regarding potential statutory access. It is not clear at this point how often these powers might be exercised, if at all. As an alternative, the bill provides for the Coordinator-General to impose conditions on a works authority or an investigation authority. If considered appropriate when making a decision under part 3, the Coordinator-General could set conditions about ongoing consultation with landholders and matters of particular concern to landholders. Failure to comply with such a condition would be an offence and would allow the Coordinator-General to cancel the authority. This approach has the advantage of the force of legislation which would not be available under the proposed memorandum of understanding.

In recommendation 4 the committee proposes that the bill include a statutory review of the proposed act within five years of its commencement. The government supports this recommendation with some modification. Given the size and significance of the task to build the railway, the government considers it would be more beneficial for the bill to be reviewed once construction has been completed and the railway is in its early years of operation. I am therefore happy to propose that the bill be amended to provide for a review to be conducted within 10 years of the bill's commencement.

Finally, the committee has recommended that the Transport Infrastructure Act 1994 be reviewed at the same time as the proposed act. The government does not consider that this is appropriate. The impact

of private involvement in the funding and delivery of the railway infrastructure on the Transport Infrastructure Act 1994 can be taken into account at the relevant time.

The government is committed to facilitating the Surat Basin Rail project and ensuring that the railway can be operated in a safe, efficient and effective way that takes due account of the rights of landholders who are affected by this project and properly compensates them for the impact that this project will have on their businesses and their lives. That is why the government and I as the minister have been willing to take into account the recommendations that have been made by the committee. I think this is probably the first bill that has been amended to this extent in this House after its consideration by a committee. I congratulate those members of the committee and all of those people who made submissions to the committee in their deliberations.

The committee system in this parliament is still relatively new, and I spoke about the intent with which it was introduced earlier in this House today. Another important part of the intent with which the committee system was introduced was to allow legislation such as this to be properly scrutinised by the people it will affect the most—that is, the landholders, the communities and in this case the private operator of the railway. It is gratifying to me and I believe to other members who were part of designing that committee system that in this case the committee system has worked. The members of the committee have done the job. They have provided the opportunities for the inputs, and I as minister have been prepared to accept their recommendations and I will be moving amendments to give those recommendations effect during the passage of this bill. I commend the bill to the House.