Mining Amendment (Safeguarding Agricultural Land and Water) Bill 2009

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MINING AMENDMENT (SAFEGUARDING AGRICULTURAL LAND AND WATER) BILL 2009

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Bill introduced, and read a first time and ordered to be printed on motion by Ms Lee Rhiannon.

Second Reading

Ms LEE RHIANNON [3.49 p.m.]: I move:

That this bill be now read a second time.

I am very proud to introduce the Mining Amendment (Safeguarding Agricultural Land and Water) Bill 2009 on behalf of the Greens. The bill relies on three simple premises: first, that the world is facing the prospect of increasing food insecurity—a chorus of climate change scientists have predicted diminishing average harvests around the world due to higher temperatures, longer and deeper droughts, more intense bushfires, reduced water availability and more extreme weather events; second, that high-quality farming land is a finite, limited and precious resource; and, third, that mining is increasingly encroaching upon and threatening the most productive food-producing land in New South Wales.

Farmers like Wendy Bowman, whose family has farmed the Hunter Valley for generations, tell the story behind this bill. Coalmines have encroached on her family's properties and she has been successively moved on. Her crops have failed because of high salinity levels in nearby creeks and pollution from mine subsidence. When open-cut mining increased, her property Ashton became bathed in dust. The cows refused to eat and Ashton went from being one of the best-watered properties in the Hunter to having its milk rejected by the dairy company because it was contaminated with mine dust.

The New South Wales Government should do all it can to safeguard prime agricultural producers like the Bowmans. This means not allowing our most productive agricultural land to be overridden by mining. It means protecting the water sources that feed this most productive land. However, the New South Wales Government has been captured by the short-term financial gain of mining exploration activities. BHP Billiton paid $99 million for an exploration licence at Caroona while China Shenhua paid $300 million to operate at the neighbouring watermark. Laws in New South Wales are not sufficient to rein in the mining industry, and the current Labor Government clearly does not have the political will to do so.

We have inadequate planning laws, with no strategic planning for future food production. There is no assessment of the cumulative impact of mining expansion on the health and ecology of rivers and underground water sources. This bill amends the Mining Act to protect from mining operations and mining exploration prime agricultural land and water sources that feed prime agricultural land. Specifically, the bill inserts new section 11B into the Mining Act. Under this new section an exploration licence, assessment lease or mining lease cannot be granted over prime agricultural land.

This bill applies to all mining operations regulated by the Mining Act, which includes most minerals that are mined, including coal, gold, base metals and gemstones, except petroleum and uranium. The Greens believe it is important to extend the application of this bill to exploration licences. First, an application to explore leads clearly in one direction: an application to mine. Secondly, farmers have told me that the exploration process is no delicate stroll through the pasture—it often involves drilling multiple holes and wells over good farming land. Thirdly, new subsections (3) and (4) provide respectively that an authority cannot be granted over protected land and that planning approval cannot be granted for a mining operation over or beneath the surface of protected land. "Protected land" is defined as prime agricultural land and land on which, or within one kilometre of which, is situated a river or aquifer that feeds prime agricultural land.

Agricultural land is of high value generally because of two factors—the soil type and access to water.

Accordingly, it is integral that a bill to protect prime agricultural lands also extends protection to the rivers and aquifers that feed that land. Scientists and environment groups have consistently called for a one-kilometre buffer zone to adequately protect rivers and aquifers from damage due to mining. A dispute mechanism is contained in new section 11B. Specifically, any party, presumably either a landholder or a mining company, to a dispute may apply to the Land and Environment Court for a determination of the matter, including whether the land in question is properly defined as class 1 or class 2 and, therefore, worthy of protection.

The relevant definitions in the bill are set out in new section 11B (1). Most importantly, the bill defines prime agricultural land in accordance with the land classification system used by the New South Wales Department of Primary Industries. This system ranks land on its suitability for agricultural production, with class 1 being the most fertile and class 5 being land unsuitable for agriculture. I understand that when classifying land, the Department of Primary Industries takes into account biophysical factors such as topography, soil chemistry and climate, as well as social and economic factors.

This definitions section of the bill defines prime agricultural land as class 1 and class 2 land. Class 1 is arable land suitable for intensive cultivation where constraints for sustained high levels of agricultural production are minor or absent. According to the Department of Primary Industries, they are "elite, of limited extent and considered to be of significance to the State". Class 1 is arable land suitable for regular cultivation for crops, but not suited to continuous cultivation. According to the Department of Primary Industries they are "also of superior quality and of limited extent". It has a moderate to high suitability for agriculture but soil factors or environmental constraints reduce the overall level of production and may limit the cropping phase to a rotation with sown pastures. I refer members to the Department of Primary Industries document Agfact AC 2.5 Agricultural Land Classification, which sets out the characteristics of class 1 and class 2 land in more detail.

In preparing this bill it became evident that Department of Primary Industries land classification maps are very hard to come by, despite the fact that the Department of Primary Industries clearly states that it produces land classification maps on a local government area basis. The Greens believe there is no reason why this information is not a matter of public record. We have consulted with the New South Wales Farmers Association on this bill and it has expressed similar frustrations at the secrecy of these maps.

To rectify this and to ensure certainty for mining companies and farmers alike, proposed section 11B (7) states that the Director General of the Department of Primary Industries must maintain an inventory of protected land, including maps, to enable protected land to be identified. This section also states that the information should be publicly available on a government website. I note that class 1 and class 2 lands are a finite and limited resource in New South Wales. The Greens do not seek to lock up large swaths of land with this bill. The bill sharply targets the most fertile, highly productive food-producing land in New South Wales.

The Centre for Global Food notes that food is produced on just 11 per cent of the earth's land. In New South Wales, the Australian Bureau of Statistics New South Wales agricultural profile for 2006-07 states that only 8 per cent of New South Wales, or 6.7 million hectares, was used for cropping in 2006-07. Those figures clearly underline the need for this bill. At the international level, only 11 per cent of land is available for agriculture; the figure drops to 8 per cent in New South Wales. A much smaller fraction of this 8 per cent would be situated on top of viable mineral deposits. Clearly this bill does not cover a large amount of land.

The ongoing viability of our prime agricultural land is dependent on maintaining clean and ongoing water supplies and a healthy environment. Approving mining developments on our most productive food-producing land risks contamination by dust and toxic pollutants of surrounding food crops, groundwater or aquifers, creeks and rivers. It also risks increased salinity and subsidence damage, draining swamps, watercourses and aquifers, as documented with longwall coalmining in the southern coalfields.

Other risks caused by such mining include heavy metals and toxins stored in tailings ponds leaching into groundwater or evaporating and entering the water cycle. Then there is the significant water use for processing and dust suppression. Other toxic pollutants that impact on food quality and human health—for example, coal processing chemicals, diesel, explosives, and even dust from uncovered coal trucks—also pose a risk to our most productive food-producing land.

Given the widely acknowledged impacts that mining operations can have on water supplies and the environment, it beggars belief that this Government does not already have a stringent regime in place to protect our most productive food-producing land. The existing laws are like a toothless tiger: they are insufficient to protect prime agricultural land from mining. The Greens acknowledge that individual landholders are entitled to some compensation under part 13 of the Mining Act for certain losses that may be suffered, such as damage to the surface of the land, deprivation of the use of the surface of the land, or damage to stock and crops. And we acknowledge that there are some provisions for individual landholders to object on the basis that the land is agricultural. But these provisions are not enough. The bill is not about protecting the interests of individual landholders but about recognising that the best food-producing land in New South Wales is a public good that governments should protect so it remains viable into the future.

Current compensation does not include any long-term damage to agriculture, and the right to object does not

apply to exploration licences—indeed it does not apply to any of the mines that communities are gravely worried about. Those problems also highlight the need for this legislation. When it comes to coalmines and large mineral mines, concerns of local communities and landholders are largely marginalised. Since 2005 development consent for all coal and large mineral mines has come under part 3A of the Environmental Planning and Assessment Act—the notorious piece of the planning legislation that has got such a bad name for itself, and quite understandably. Proposed section 11B (6) provides that approvals under the Act, including approvals under part 3A, cannot override the protections granted in this bill to prime agricultural land.

The New South Wales Government is currently overseeing a massive expansion in mining approvals across the State. According to the Department of Primary Industries, more than 30 coal and 20 metallic and industrial mineral projects and mine extensions are proposed for the coming decade. Over the past five years coal exports have surged 17 per cent nationally to 240 million tonnes a year and are worth $23 billion to the national economy. In 2008 the New South Wales Government approved an additional 32 million tonnes of coal production spread across 12 separate coalmine projects—more than that approved in 2007 and almost double that approved in 2006.

The conflict between agriculture and mining is most stark on the Liverpool Plains, where the local community has maintained a blockade for almost a year to stop BHP Billiton from entering local farms to exercise its coal exploration licence. I congratulate the farmers and the rest of the Liverpool Plains community on their action; their stand not only protects their immediate area but also highlights the need for the Government to change its approach to mining in fertile areas that are important for our food security. The Liverpool Plains boasts reliable rainfall throughout the year, fertile volcanic soils, and high-output fragile aquifers. I have stood with local farmer Tim Duddy, whose property is located at the centre of the blockade I referred to, and other locals looking over the rich farming country that makes up the Caroona and Watermark coal exploration zones. I have had the opportunity to travel around the area together with the farmers. The high levels of productivity of the area are clearly evident.

The New South Wales Department of Primary Industries' 16-year average data shows consistent drought-proof crop production for this region. It is an impressive list. The department's data reveals the following crop production over the 16-year period: 183,488 tonnes of wheat, 233,175 tonnes of sorghum, 5,438 tonnes of oats, 2,126 tonnes of soybeans, 63,709 tonnes of barley, 29,018 tonnes of corn, and 19,829 tonnes of sunflowers. The Caroona Coal Action Group states that this translates into 365 million loaves of bread, 62.5 million packets of pasta, 58 million boxes of cornflakes, and 8 million litres of sunflower oil. Other produce from the area includes chickpeas, mung beans, canola, olives, turkey, pigs, lamb and wool. It will be difficult to maintain this level of food production alongside massive coalmines, while ensuring that the gentle floodplain slopes are not permanently destroyed by subsidence and that the generous-flowing aquifers are not contaminated.

> **Reverend the Hon. Dr Gordon Moyes:** Hear! Hear!

Ms LEE RHIANNON: I acknowledge the interjection. This issue is easily solvable. We simply need to put the protections in place for our agricultural land. Indeed, we have a global responsibility to do that as food security becomes more critical. Last year, many food price riots highlighted the problems, particularly in low-income countries. Over increasing periods of time, large sections of the populations of these countries are not able to afford to buy basic food staples. Tim Duddy's family has been farming on the Liverpool Plains for six generations. A number of the other farmers I have met are members of families that for many generations have farmed this area. On the ABC's *7.30 Report* last year Tim Duddy said:

> If this mine goes ahead, someone in 20 years time will look at what has happened here and they will think that it's the greatest travesty that's ever happened in Australian agricultural history.

I could not agree more with those sentiments. When one considers that farming has taken place in this area for hundreds of years, how could any government allow this land to be abused? How could any government allow a mining company that is already well cashed up—BHP Billiton has profit rates of billions of dollars, not millions of dollars—to destroy an area in just over a couple of decades? Nothing will return that land to its high levels of productivity if longwall coalmining is allowed to proceed. Similar dynamics can also be seen in the Gloucester Valley, where the local community is fighting back against coal expansion. Gloucester has similar alluvial flats and soil profile to the highly productive lands in the Liverpool Plains. Gloucester Resources holds coal exploration licences that surround the town on the east, south and west. This is prime agricultural land and dairy country.

Gloucester Residents In Partnership [GRIP] recently organised a meeting at which 950 residents voted to back Gloucester Shire Council's decision not to renew the current exploration permits. As the Mayor of Gloucester Shire Council, Julie Lyford, said recently in an interview, "The exploration areas sit over prime alluvial flats and it's a food bowl area and it's madness to even think about it in this current climate." I understand that Gloucester Resources has recently bought five properties on the outskirts of Gloucester. This bill would circumvent companies buying up prime agricultural land to pave the way for mining.

The bill is a first step to reining in the mining industry and ensuring that our most fertile and productive land does not come off second-best to mining. That is urgently needed, for the reasons I have outlined in terms of food security. But we must remember that food security is absolutely linked to water management in these areas, and that water management is also damaged permanently when longwall coalmining is allowed. This was clearly highlighted by Maude Barlow, a Canadian water expert and the United Nations senior adviser on water issues, when she was in Australia recently. She attended the Australian Water Summit in Sydney on 1 April this year. At the summit Ms Barlow stated that in New South Wales at least 16 river systems have been permanently damaged as a result of careless mining practices. Sixteen river systems? Surely the Government should be learning some lessons by now. You cannot allow river systems to be damaged like that. You cannot go out there with your grout and fix up the cracks. The damage is done: it is permanent. Miss Barlow stated:

> The devastation caused by long-wall and open-cut mining operations is as horrifying as it is widespread. The destruction of aquifers and heavy metal pollution of ground and surface water is a disgrace.

That comes from a United Nations adviser who has had decades of experience working on water issues. It is shameful that government operational policies in Australia attract such critical comment. The Intergovernmental Panel on Climate Change has warned that:

> If temperatures rise by more than two degrees centigrade, global food production potential is expected to contract severely and yields of major crops may fall.

In the context of climate change, government leaders need to take a proactive approach to protecting valuable agricultural land by safeguarding our future food security against the short-term profits of greedy multinational mining companies. That approach is radically different from the business-as-usual approach of the Rees Government.

This bill is put forward by the Greens with the hope of achieving bipartisanship support for a sensible balance between agriculture and mining—between food and mineral resources. The bill has been drawn up to bring those two major aspects of the New South Wales economy back into balance. Successive Federal, Coalition and Labor governments have favoured the mineral industry to the detriment of agriculture. The bill is not an ambit claim. It does not apply retrospectively. It does not seek a blanket ban and it does not signal an end to mining in New South Wales. I urge members, when they have the opportunity, to debate the merits of the bill, not to conduct a scare campaign. If that is the intent of members, they will reveal that their hands are still in the pockets of the mining companies and that they are still delivering for the mining companies. This is not about wiping out the mining industry; it is about protecting our rich agricultural land. How could anyone argue against the restoration of that balance in this State?

I repeat, the bill does not signal an end to mining in New South Wales. It applies to a finite and limited amount of highly productive farming land in New South Wales that should be considered a public good, and not threatened by or sacrificed to mining. As Geoff Hewitt, a third-generation farmer from Queensland, said earlier this year at the launch of the Queensland group FutureFood:

> It defies logic that a farm capable of producing premium food for thousands of years into the future would be permanently destroyed to allow for 20 years of coalmining.

That is a very sobering statement. We are talking about the potential of much of our farming land being irreparably damaged for thousands of years by a couple of decades of coalmining. That is really worth contemplating. I urge members to support the bill. I would like to thank Tim Duddy and members of the Caroona Coal Action Group, members of the Gloucester-Stroud-Barrington Preservation Alliance, and other groups in the Gloucester area, the New South Wales coal communities network, New South Wales Farmers, and the New South Wales Environmental Defenders Office for their advice and support on this bill. I commend the bill to the House.

Debate adjourned on motion by the Hon. Michael Veitch and set down as an order of the day for a future day.

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