

**Submission
No 27**

INQUIRY INTO COAL SEAM GAS

Name: Cr Bevan O'Regan

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General Purpose Study Committee No 5

`` No.5 Into Coal Seam Gas Inquiry``

``Reference to Section 2(e) --- Planning Infrastructure & Local Government Planning Mechanisms``

Dear Sir/ Madam,

Thank you very much for this opportunity to explain my views on the problems of CSG and to further express the simple answers and the necessary steps property owners must take to maintain their privacy with the benefits of legal property rights..

Instead of exploring the problems of this new industry I will focus all my energy of why CSG has highlighted the desperate need for landowners to fully understand they have been given constitutional rights which has blessed them with the ``estate in fee simple``. All laws subsequent to Magna Carta, guarantees the landowners rights because of this fee simple protection.

Reading from Butterworths Legal Dictionary 1997 edition , `` fee simple is the estate in land which is the most extensive in quantum , the most absolute in respect to the rights it confers on all estates known to law , and for all practical puposes of ownership , it differs from the absolute diminution of a chattel in nothing except the physical indestructibility of its subject . (Commonwealth v New South Wales 1923 .33 CLR 1. Originated in feudal times as an estate capable of inheritance (a fee) which could descend to any heirs whatsoever of the original grantee ``.

Sir, rather than mention the danger to the Great Artesian Basin ,or the obvious contamination of the shallow water aquifers , or the discomfort of the gas lights at night , or the noise of pumps and generators at night as close as 200 meters from my house or the teams of strangers around my farm , or the hundreds of truck movements at 24hour shifts , that many people will submit in their submissions, I want to focus singularly and directly on property rights and land ``use`` of the registered owners of freehold land.

I have said that the title of freehold land is guaranteed by the 800 year old fee simple protection that automatically comes into play the moment the deeds of your land are legally placed in your keeping via the necessary Conveyancing Acts.

In 1923 as I mentioned there was the Isaac laac`s case and in 1991 there was Mabo and in 1997 there was Fejo v the Northern Territory. These simply support freehold property rights at the High Court Level . This means a landowner can say`` no``to anyone who may want to enter their land. It is called exersising your rights using the Act of` Trespass.``

What is more pertinant in LG circles is the ``use`` of ones land and who directs that ``use``.

The`` use`` is legislated within the Local Government Act in an instrument called the Local Environmental Plan or what is very commonly known as the Council`s LEP.

Within this plan there are sections that are arrived at by each Council setting aside zones to accommodate industry housing, recreation , public use and in rural shires the major use is agriculture. Of all the zones, agriculture is the only ``use`` that does not , and I emphasise clearly , does not need developmet consent.

Extensive agriculture is a primary ``use`` that can be practiced in any rural zoning at any time and of any diversity either as farming or grazing without consent from any one or any council`s planning department.

Not so industry or public housing or in this case for my demonstration , any form of mining.

If mining needs Council's consent it will need firstly an owners permission to activate a mine , and secondly if the owner does say yes then the Council may grant a Development Approval (DA) either in the owners name or the mining companies name.

Alternatly , if the owner does not want to mine then he or she calls on their `` fee simple `` freehold rights and the mining venture does not and cannot constitutionally proceed .

If the owner however wishes to participate in a mining venture and the Council believes there is a risk factor to the environment then the venture does not proceed. This is what Council says is the right to observe caution and is commonly known as the ``precautionary principle``.

Where you may ask is this LEP control factor documented ?

The LEP is housed in each Council's planning department.

It must stand the test of being a democratic document for the people. It is also a living document that can be altered at any time by the people through the council . But certainly not subject to alteration by the State .

This LEP is a requirement of the 1979 Environmental Planning &Assessment Act.

The LEP is the ultimate authority in the Local Government world.

Preparing an LEP is critically important.

Section 53 of the 1979 EP&AAct is the Definition.

Section 54 is the decision to prepare the LEP.

Section 55 is a direction or permission from the minister to prepare a LEP .

Section 57 is to prepare an environmental study.

Section 61 Council's responsibility in preparing a draft LEP.

Section 62 Consultation.

Section 63 Information from public authorities .

Section 64 Submission of draft LEP to the Dept OF LG.

Section 65 Council receives a certificate from the Director General.

Section 66 Public exhibition of draft LEP to the people of the Shire.

Section 67 The people make their submissions .A democratic exercise).

Section 68 The elected councillors consider the peoples submissions.

Section 69 The Director General reports on the peoples submissions .

Section 70 The LEP is made .

This last section (70) tells where the plan is made which is a perfect demonstration of how democratic and powerful this LEP is and how the minister agrees only to sign off to this document when he is prepared to accept the peoples wishes .

Section 70 (8) explains the power of and meaning of peoples power.

Section 70 (8) says, `` A minister may make a LEP with such alterations as the Minister thinks fit , being alterations that do not affect the substance of the provisions of the plan as submitted by the Council``.----- It is the people`s plan , not the States plan.

This demonstration as to the democracy within each council`s LEP is explained where the minister can only alter the plan providing it fits the council`s submission.

Now , back to the fear of the mechanism of access by force of a mining company if the owner says ``no``.

Under the terms of each Council`s LEP ,the owner has the right to say only agriculture is allowed on my land without permission . Mining will need a D .A. and mining is a ``use`` that needs consent . My Council has prepared an LEP that supports my claim. If you do not support my wishes then I will see you in the High Court where there are plenty of precedences to support my claim that fee simple exists in favour of a freehold land owner.

The High Court is supported by the Commonwealth Constitution , the Constitution supports the States , (Section 106 , to Section 120) , and in 1,902 Section 51 of the NSW Constitution said, `` there shall be a system of Local Government.``

In turn , the Local Government Act (Section 52) acknowledges the part played by the 1979 Environmental Planning and Assessment Act and Section 28 of the this EP&AAct says , it empowers environmental planning to the extent to enable development to be carried out . In other words , Section 52 prevents the EP&AAct from removing any Federated constitutional protection.

Fee simple began with LG and still constitutionally remains with LG.

The critical point here is , LG was created in 1842 for the express purpose of managing , subdividing , and registering land for the purpose of identifying the fee simple principles included in primary commercial ventures demanded at that time by prospective property owners. Until 1842 there was no guarantee of secure property tenure. Secure property tenure came with fee simple granted to property owners when their freehold land was alienated from Australia's Crown wasteland.

This also means that at the point of time when the Federation took place , Local Government became not part of the State but a recognisable federated separate institution that gave landowners the fee simple advantages by way of their constitutional involvement and constitutional support.

This allows land owners now who have property within each Local Government area the right to say ``no``. I will not be intimidated by a mining company with commercial interests . How dare a company with commercial interests force me to open up my land to a grid of mining wells and in the process violate Council`s LEP which is a democratic instrument orchestrated in my favour. (The people`s LEP).

I believe after landowners flex their muscles and realise that the LEP within their local council`s area is their personal document that automatically gives them protection from greedy state politicians who are supporting commercial CSG mining , more credibility will be given to local government as a democratic instrument in favour of individual property owners.

Councillor Bevan O`Regan

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