Tenure Matters

A column by Sue Slater, Senior Advisor Petroleum, RLMS

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Welcome back. This month the topic is - Overlapping tenures – is this the regime we had to have?

In 2004 when the coal seam gas regime was introduced in advance of the commencement of the *Petroleum & Gas (Production & Safety) Act 2004*; no-one could have reasonably foreseen the growth in the CSG sector and the development of CSG to LNG projects. At the time there was some domestic production from the Bowen and Surat Basins. The aim of the regime, and the subsequent legislation, was to maximise the utilisation of the coal resource, and wherever possible the royalties to the State, with the extraction of coal seam gas in advance of the coal mining.

Whilst it can and has worked at least somewhat in the manner envisaged for some projects, by and large as the CSG industry has grown, and hence the increased areas subject to overlap has grown, the failure of the "preference decision" component assumed increasingly alarming proportions. Grants of mining leases and petroleum leases were delayed in the hope that companies would reach a co-ordination agreement.

In January 2011, the Government released a consultation draft of the *Mines and Petroleum Legislation Amendment Bill 2011*, which both coal and petroleum sectors found untenable, although probably in different ways. The purpose of the draft Bill was to ensure the overlapping framework supported the development of the CSG to LNG projects in the State, but industry found that the timeframes proposed were too long to achieve project security, especially with a preference decision process still occurring. Additionally, proposed amendments would erode the necessary tenure security to underpin large unconventional gas resources, which rely on large areas needing to come into production across the life of a project (i.e. not all within 2 years of grant). The draft was also seen to have missed opportunities to harmonise safety provisions and deal effectively with processes that would allow better utilisation of incidental coal seam gas.

The two industries took it upon themselves to try to formulate a process that did not rely on a 'preference decision' by the Minister; and dealt with the timing issues and tenure security issues that they identified in the draft Bill. An industry working group was formed in 2011. More on this

can be read in the May 2012 QRC document: "*Maximising utilisation of Coal and Coal Seam Gas Resources – A new approach to overlapping tenure in Queensland*"[1]. This White Paper left some areas open for further consideration, and a number of technical working groups were formed, which submitted reports to the Government in June 2013. A further draft bill was released for consultation in April 2014. The industry proposal was complex, introducing concepts such as an Initial Mining Area, Rolling Mining Area, Future Mining Area and Simultaneous Operations Zone; and industry generally felt that not all the principles in the White Paper were adequately reflected in the new draft, outlined in the industry submission in May 2014. Again more can be read in the document *"Industry Submission on Overlapping Tenure Consultation 9 May 2014"*[2]

Currently new overlapping provisions are sitting within Chapter 4 of the *Mineral and Energy Resources (Common Provisions) Act 2014,* but have not yet commenced.

However, from the beginning, the unequal treatment of the two sectors, coal and gas, has made the ideal of maximising the resource utilisation seem a little unfair. The introduction of a competitive bidding regime for all land under the petroleum legislation, whilst maintaining the over-the-counter approach for coal and minerals, resulted in some situations that should not have occurred. The 2008 land release for petroleum in the Galilee Basin, for example, was over land that was almost devoid of any coal EPCs or applications. Within a remarkably short time of the land release blocks being advertised, almost the entire basin was covered with EPC applications (refer to Figure 1). This was at the height of the underground coal gasification (UCG) debate as well, and many of these application areas were obviously targeting coal for UCG – which is completely incompatible with the CSG industry. Suddenly the petroleum applicants had to deal with overlapping applications; which courtesy of an expedited native title procedure and a more streamlined environmental authority (EA) process had a high probability of being granted before the applications for petroleum tender areas were assessed, preferred tenderers identified, the successful bidder getting an EA (at the time typically taking up to 12 months to negotiate even for exploration) and getting through a native title procedure where required, without the benefit of any expedited procedure. (Most of the Galilee Basin ATPs were granted in 2010, 2 years or more after the land release).

Late in 2008, Liberty resources made a number of announcements about shallow coal identified in the Rodney Creek area within ATP 529, named the Koburra Project. Assessment of the potential resource utilised data from open-file well completion reports for the Rodney Creek wells drilled on ATP 529 as well as water bore information. All petroleum exploration data is open-file within 2 years. In contrast, while ever tenure remains continuous, none of the exploration data on an EPC becomes open-file. This gives the coal applicants another advantage over petroleum in the overlapping tenure space. Liberty EPC applications covered a total area of 11,270km^2, some of which proceeded to grant in a comparatively short time frame. They also lodged a Mineral Development Licence application over the Rodney Creek area, all without drilling a borehole themselves.

[1] https://www.dnrm.qld.gov.au/our-department/policies-initiatives/mining-resources/legislative-reforms/mqra/overlapping-tenures-coal-coal-seam-gas

[2] https://www.qrc.org.au/_dbase_upl/QRC%20-%20Industry%20Submission%20Overlapping%20Tenures%20(9%20May%202014).pdf

This disparity in the mechanics of the tenure regime between resources has disadvantaged petroleum since the overlapping regime began. Coal finally came under a tender process for EPC areas in March 2013, thereby slightly addressing the balance – but we still have a situation which coal is more able to move quickly from exploration application to grant than petroleum.

Could a different approach have been taken? Rather than individually managing these competing resources under two Acts, with differing rules that mean the playing field is never level, what could have been done?

Although obviously way too late now, years ago I thought of an approach which may have changed these dynamics in a positive way. What if all carbon-based resources where dealt with under a single Act; and when land was made available for tender it could equally be applied for the purpose of coal, oil shale, shale gas, coal seam gas, underground coal gasification, conventional petroleum etc. depending of course on the geological setting and government policy position of the day. The government then assesses the applications and makes it decision based on criteria that might include likelihood of success, earliest commercialisation, maximising the resource utilisation, public interest and so on.

Equally companies could form consortiums to bid which may comprise, for example, a coal company and a CSG company. In this way the companies are effectively moving the coordination arrangement to the start of exploration, rather than where it is placed now, near the start of production. This means that more efficient and effective exploration can be undertaken, maximising the exploration dollar for each company. Instead of two companies individually investing dollars in an area, and then potentially not realising their investment, combined decision making could result in better outcomes for each resource. Projects are not delayed at critical decision points whilst coordination agreements are reached; and the State is not put under pressure to make those difficult decisions they seem to struggle with. Additionally landowners can deal with a single entity, instead of a number of resource companies each representing its own interests.

Transitional arrangements would of course have been a bitch, but aren't they always? Other jurisdictions should take note; Queensland's overlapping regime may not be the only answer.

I am happy to hear suggestions about topics you would like covered. Feel free to email me at sue.slater@rlms.com.au with the subject heading Tenure Matters.

In the meantime, remember "Tenures make the Project; the Project doesn't make the Tenures".

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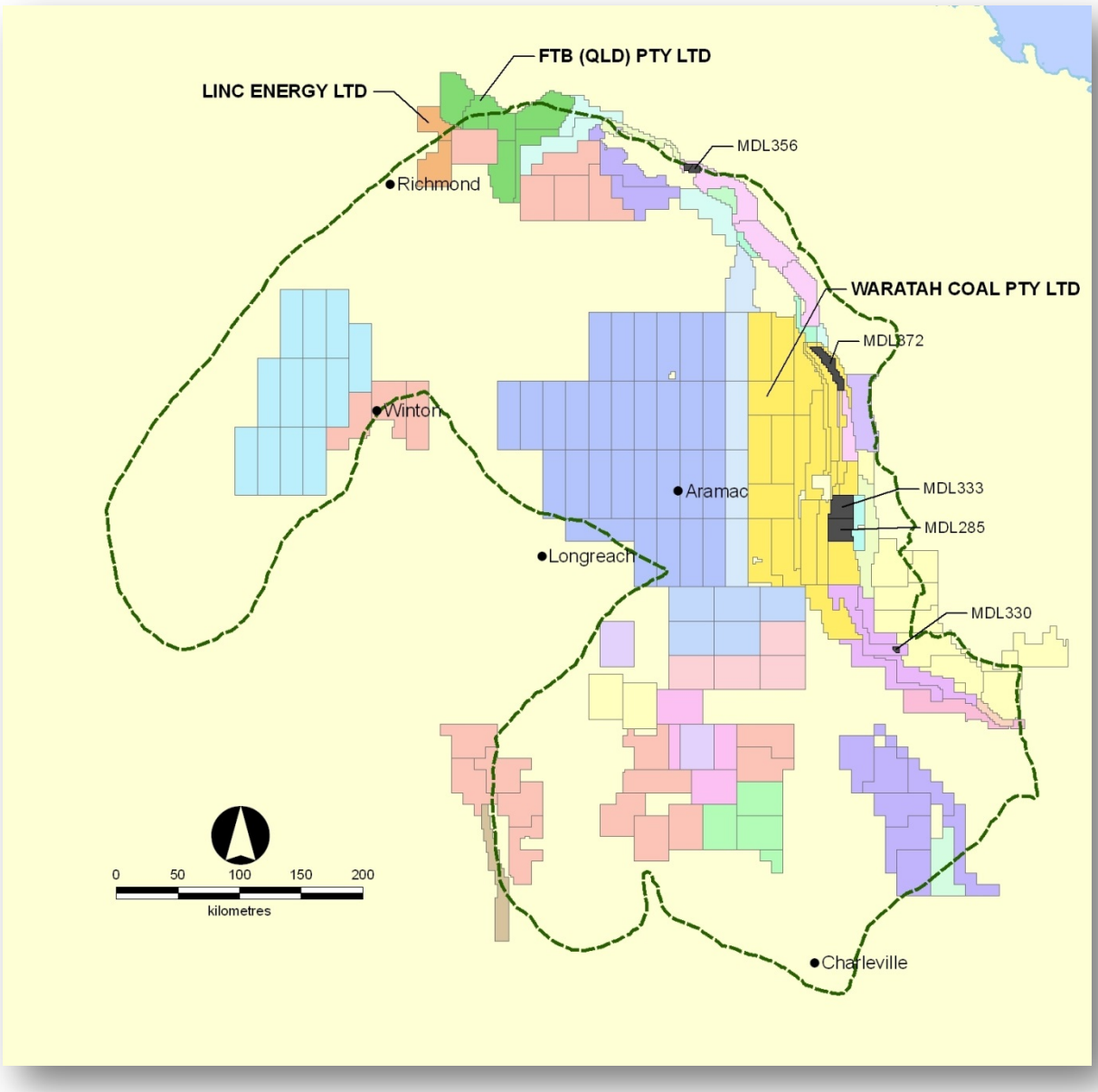
Figure 1 Snapshot of Galilee Basin coal tenure situation, circa late2008/early20009



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