

9 November 2012

State Development, Infrastructure and Industry Committee
Parliament House
George Street
BRISBANE QLD 4000

RE: Economic Development Bill 2012

Dear Committee Secretary,

The Fitzroy Basin Association Inc (FBA) welcomes this opportunity to comment on the Economic Development Bill 2012. FBA is the leading community-based organisation for sustainable natural resource management in Central Queensland. We are committed to long term sustainable use of our natural resources, and we value healthy ecosystems, a strong regional economy and a prosperous community. Membership of FBA comprises a broad cross section of the community, including representatives from sectors of Landcare, conservation, education, research, industry and agriculture as well as representatives from Indigenous groups and local and Queensland Government agencies.

Given the extremely short comment period for this bill, we have focussed our submission on the following areas:

General Comments

- This Bill appears to have been developed and implemented with haste and has not allowed for full consultation or due consideration. We request that the Department undertakes full consultation with stakeholders and the community to allow comprehensive discussion of the Bill before its passage into legislation. Whilst extensive consultation for the proposed *Environmental Protection Act* amendments was undertaken with industry, resource and government bodies (i.e. Australian Industry Group; Chamber of Commerce & Industry Queensland; Queensland Resources Council (QRC); Australian Petroleum Production and Exploration Association; Waste Contractors & Recyclers Association of Queensland Inc; the Local Government Association of Queensland; and Queensland Government departments)

consultation with landholder bodies was restricted to the Queensland Farmers Federation, while no consultation has occurred within the natural resource and water management sector. The FBA is happy to assist the department to support such consultation in our region. FBA also queries whether the expert Professor Barry Hart, author of the report¹ commissioned by the Queensland Government in the aftermath of the Ensham mine inundation, has been consulted about the implications of the amendments contained in this Bill.

- Water Quality Objectives have been set for the Fitzroy Basin and the Queensland Government has developed these based on best available science. TELs should be granted with conditions that ensure these objectives are maintained. If Water Quality Objectives cannot be maintained then the default position of the administering authority should be to reject the application unless rigorous scientific evidence is provided to demonstrate environmental harm and downstream human use values are not impacted. One must question the validity of the Water Quality Objectives if the latter occurs more than three times in a season and if this is the case it should trigger a review of the Water Quality Objective. If WQOs are found to be deficient and in need of review, both the Queensland Government as the administering authority and the proponents requesting TELs (that do not comply with WQOs) have a dual responsibility to support the monitoring and associated science required to review and refine the WQOs.
- Given the quality of water in many coal mine pits and drawing from the evidence that the Ensham mine pit inundation provided, it is likely that environmental harm and human use impacts will occur to rivers not in flood. The Bill and associated legislation and approvals should not allow for releases into rivers and streams in ambient conditions, given this precedent. Ignoring the lessons of the past is unacceptable for both communities dependant on the water in the Fitzroy and the ecology it supports. The Government should clarify its position in relation to whether a release of mine water under the new amendments can occur prior to, during, or post a flow event.
- The Queensland Government is both the regulator and potential beneficiary of mining royalties. Given this, there is potential for a community perception of a compromised position. The Fitzroy

¹ Hart, B 2008, *Report to the Queensland Premier: review of the Fitzroy River water quality issues*, Water Science Pty Ltd and Water Studies Centre, Monash University, available at <<http://www.fitzroyriver.qld.gov.au/pdf/fitzroyriverwaterqualityreport.pdf>>.

Basin Association is a founding member of the Fitzroy Partnership for River Health, a formal governing body that is collaboratively developing and implementing integrated waterway monitoring and reporting for the Fitzroy Basin. Members of the Partnership comprise mining and resource companies, local and state government, research institutions, and agricultural and industry bodies. The Partnership was founded in response to water quality issues in the Fitzroy Basin, and the urgent need for an integrated monitoring and reporting program to track those issues and provide a coordinated response.

- The Fitzroy Partnership has a governance structure that incorporates an independent science panel in the development and endorsement of river health monitoring and reporting, while empowering all partners as stakeholders to participate in and support the process. The advent of this bill reinforces the need for such collaborative river health monitoring and reporting approaches with independent scientific rigour. Such approaches also provide evidence that review the effectiveness of management decisions and associated levers, such as this bill are maintaining healthy waterways whilst ensuring Queensland remains prosperous. Active Participation and support of the Fitzroy Partnership by the Queensland Government is viewed as a commitment to this goal. Additional monitoring data collected by the Queensland Government as a result of this Bill will also be of benefit to Partnership Goals.

Comments relating to sections of the Economic Development Bill:

1. Economic Development Bill Part 2, s357C Deciding Application – This section states that the administering authority must make a decision on a temporary emissions licence (TEL) within 24 hours of receiving an application. This time period subjects departmental staff to undue pressure to approve such applications given economic imperatives, whilst not allowing for the decision maker to gain a comprehensive understanding of the current environmental conditions and whether a TEL will cause environmental damage if approved. Although there is provision for a TEL to be revoked at any time if environmental impacts are detected, this directly contravenes the precautionary principle as the damage will already be done.

We would envisage that under this Bill a greater number of applications would be refused within this 24hr period when likelihood of environmental harm cannot be ascertained. Potential

applicants should be made aware of this fact. Departmental staff should also be reassured that a decision to refuse applications is not only acceptable, but also anticipated.

To ensure all of Fitzroy Basin's stakeholders are well informed, all applications should be made available publically in this same 24 hour period along with the rationale behind the associated decisions.

2. Economic Development Bill Part 2, s357D Criteria for Decision – This section lists criteria for the administering authority to consider when making a decision regarding a TEL application. The Bill lists the following consideration: *“the extent and impact of the emergent event, including the financial impacts on the applicant if the licence is not granted”*. It is the responsibility of the applicant (i.e. the company) to ensure that the environment is protected during the entirety of their operations by factoring in such costs during project feasibility and planning. If the administering authority is required to consider financial impacts of not granting the application, it gives grounds for companies with poor planning to temporarily pollute the environment based on economic grounds. This contravenes the objective of the Environmental Protection Act, which is to *“protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends (ecologically sustainable development).”*
3. Economic Development Bill Part 2, s357J Amendment, Cancellation or Suspension of Temporary Emissions Licence – This section allows for the immediate amendment, cancellation or suspension of a TEL. In the example given, it is argued that since the licence must be granted quickly (within 24 hours of application), this provision allows the administering authority to suspend, cancel or amend that licence if unexpected impacts are experienced, such as contamination of downstream drinking water. The Bill's Explanatory Notes (p8) also state that since a quick decision must be made where the full suite of information may not yet be available, no fault is attributed to the licence holder if the TEL is revoked, suspended or amended at a later time if environmental impacts are detected. FBA submits that 24 hours is too short a period for the administering authority to properly consider the current environmental conditions and the potential impact that a TEL will have, and that once impacts are detected that necessitate a change or cancellation of the TEL, it is already too late for remedial action as the damage has

occurred. In addition, the provision that removes fault from a licence holder if additional data shows that environmental pollution has occurred, removes responsibility of that licence holder to gather all the required information before submitting a TEL application.

4. Economic Development Bill Part 2, s292 Other Amendments – this section amends the Environmental Protection Act 1994 which sets out when the administering authority may add, change or cancel a condition of an environmental authority (mining activities). The Explanatory Notes state that *“the grant of a temporary emissions licence may demonstrate that the conditions of the environmental authority were not sufficient to plan for an emergent event of this nature. Consequently, the grant of the licence is a trigger for the administering authority to review the conditions of the environmental authority and to update those conditions where necessary or desirable. Ideally, the conditions would be amended so that future temporary emissions licences are not needed.”* These provisions allow for the watering down of environmental authority (EA) conditions if a TEL is granted. Instead of decreasing environmental protection by making EA conditions more lenient, the granting of a TEL should trigger a review of the mine company’s practices and ability to plan for natural events such as extreme rainfall. Ultimately, if a mine company cannot plan for and enact a contingency plan when threshold volumes of rainfall and runoff are experienced, they are failing in their obligations to abide by the EA conditions and ability to protect the environment. Consideration must also be given to the appropriate siting of mines in the landscape; if mines continue to violate their EA conditions (legally or otherwise) during rainfall events, the further building of mines on floodplains should be prohibited.

5. Economic Development Bill Part 6, s292 Amendment of s29 (Notice of Requirement for EIS and of Draft Terms of Reference) – this sections gives the Coordinator General discretion on whether to release the draft TOR for public comment or not, on projects of state significance (now ‘coordinated projects’). FBA objects to this change on the basis that draft TORs provide stakeholders with the opportunity to submit additional aspects for a proponent to consider in an Environmental Impact Statement (EIS). If such aspects are not included in the final TOR, the proponent is under no obligation to consider them in the EIS or any supplementary versions of that document. FBA submits that this amendment be removed from the Bill.

Recommendations:

To address such issues as described above, FBA submits that the following approach should be adopted:

- Current planning regulations are amended to prohibit the development of new mining in flood-prone areas such as floodplains;
- Ensure that best available science is used in the decision making process for TELs, and mining development approvals;
- Existing mining operations are required to adequately plan for, and enact measures, to remove the current dependency on water releases under a temporary emissions licence;
- Better water management and treatment is implemented to allow for the safe release of treated water prior to emergency situations occurring; and
- The public retains the right to comment on draft terms of reference for coordinated projects.

FBA thanks you for the opportunity to provide comment on the Economic Development Bill 2012. If you have any questions regarding our comments, please contact Cassandra Bouna, Senior Planning Officer, on 07 4999 2820 or Cassandra.Bouna@fba.org.au.

Yours sincerely,



Paul Birch
Chief Executive Officer