



14 August 2014



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

Dear Sir or Madam

MMG Century Limited – submission on the *Regional Planning Interests Regulation 2014 (Qld)*

Please find **enclosed** MMG Century Limited's submission to the State Development, Infrastructure and Industry Committee's inquiry into the *Regional Planning Interests Regulation 2014 (Qld)*.

If you require any further information, or wish to discuss this letter further, please contact the undersigned.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Mark Adams'.

Mark Adams
General Manager Queensland Operations
MMG Ltd





MMG Century Limited

*Inquiry into the Regional Planning
Interests Regulation 2014 (Qld)*

Submission to the State
Development, Infrastructure and
Industry Committee

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1. INTRODUCTION

1.1 Background to the Century Mine

MMG Century Limited (**MMG Century**) owns and operates the Century Mine, Australia's largest zinc mine, in north west Queensland.

Located approximately 250km North-West of Mount Isa, the Century Mine commenced operations in 1999. During its life, the mine has generated considerable benefits for a number of regional centres (Townsville, Cairns, Mt Isa), Gulf communities (Normanton, Doomadgee, Karumba, Burketown, Mornington Island) as well as for the State as a whole.

The contributions of the Century Mine include the following:

- (a) **960 people employed**, with indigenous Australians making up approximately 20% of the workforce;
- (b) **\$173 million** in total tax contributions between June 2009 and September 2013 (including royalties, income tax and payroll taxes);
- (c) **\$138 million** spent on supplies and consumables in 2013, including \$15 million spent with local suppliers in the Townsville, Cairns and Gulf communities;
- (d) **\$94 million** paid in wages and salaries in 2013, with an additional \$80 million spent on contractors and external services; and
- (e) **\$6.5 million** in community support in 2013, through traineeships and apprenticeships, and direct support.

MMG Century's activities in these remote areas generate considerable local involvement, employment, training and other opportunities which would otherwise not be available due to geographic isolation.

1.2 Century Mine's next phase

End of open pit zinc production at the Century Mine is currently scheduled for July 2015, and MMG Century has commenced the transition from operations to active closure (rehabilitation works, demobilisation of equipment and materials, etc).

However, the Century Mine site includes significant fixed supporting infrastructure which has an estimated current replacement value of more than \$2.5 billion and approximately 15 years of operational life remaining. Concurrently with its closure plans, MMG Century is undertaking a number of studies to utilise the remaining life of the Century Mine assets (including a number of exploration targets outlined in red on the map provided at **Appendix A**) as well as activities intended to improve the final environmental outcomes.

These projects have the potential to generate further employment opportunities and create broader economic benefits for Queensland. These opportunities are in alignment with the Queensland Government's *North West Queensland Strategic Development Study*, released by the Premier on 17 June 2014.

1.3 Impact of the *Regional Planning Interests Regulation 2014 (Qld)*

The *Regional Planning Interests Regulation 2014 (Qld)* (**Regulation**) defines strategic environmental areas (**SEAs**), one of the areas of regional interest regulated by the regional planning interests framework. It also prescribes the mandatory criteria for an assessor deciding an application for a regional interests development approval (**RIDA**).

MMG Century has grave concerns regarding the impact of the Regulation on its future activities, particularly its future growth projects, as well as the ongoing economic and social development of the region. The framework set up by the Regulation has the potential to sterilise large areas of resources, make it very difficult for MMG Century to proceed with its growth projects, and hinder MMG Century's ability to operate in a way that achieves better social, economic and environmental outcomes.

MMG Century plays a central role in its local and regional community, in addition to the contributions it makes to the State. The closure of the Century Mine – and in particular, an inability to pursue projects that would extend the mine's life – will see these benefits fall away as early as 2015. MMG Century submits to the Committee that it is important that the Regulation adequately balances future economic development opportunities and activities with environmental concerns, through a long established approach of managing environmental impacts.

2. SUBMISSIONS ON THE REGULATION

2.1 Mandatory criteria

Submission 1: the mandatory criteria prescribed by the Regulation set up an inflexible framework that will substantially impact current and future development opportunities in the Gulf Rivers SEA.

Section 14 of the Regulation prescribes the criteria for an assessor's assessment or decision on an assessment application for a RIDA. It states that:

- (a) the assessor must be satisfied the activity meets the applicable **required outcome** stated in schedule 2 for the area of regional interest to which the application relates;¹ and
- (b) the activity meets a required outcome for the area of regional interests only if the application demonstrates the matters listed in a **prescribed solution** stated in schedule 2 for the required outcome.²

The Century Mine and its associated exploration tenements fall within the Gulf Rivers SEA.³ The **required outcome** for activities in an SEA is:⁴

The activity will not result in a widespread or irreversible impact on an environmental attribute of a strategic environmental area.

Relevantly for the Gulf Rivers SEA, the **prescribed solution** requires the application to demonstrate:⁵

- (a) that the activity will not, and is not likely to, have a direct or indirect impact on an environmental attribute of the SEA; or
- (b) all of the following:
 - (i) if carried out in a designated precinct, the activity is not an "unacceptable use" (noting an unacceptable use includes open cut mining); and

¹ Section 14(2).

² Section 14(3).

³ Pursuant to section 4 of the Regulation and the associated mapping.

⁴ Schedule 2, Part 5, item 14.

⁵ Schedule 2, Part 5, item 15.

- (ii) the construction and operation footprint of the activity has been minimised "to the greatest extent possible"; and
- (iii) the activity does not compromise the preservation of the environmental attribute in the SEA.

This framework set up by the Regulation means that a RIDA can only be granted for activities in an SEA where one of the two prescribed solutions is satisfied in its entirety. The key concern for MMG Century is that there is no scope for an assessor to consider alternative solutions, alternative management measures, or any other options that fall outside of those prescribed solutions.

Proponents of new development opportunities involving surface impacts, such as mining, will face substantial difficulty and expense in demonstrating a prescribed solution can be met. By way of example, it would be very difficult to demonstrate that an open cut mine outside a designated precinct:

- (a) will not, and is not likely to, have a direct or indirect impact on an environmental attribute of the Gulf Rivers SEA; or
- (b) satisfies all of the components of the second prescribed solution, in particular, that it does not "compromise the preservation" of relevant environmental attributes.

This is particularly the case when the environmental attributes are as far reaching as natural hydrologic processes (including flow paths of water), natural geomorphic processes (erosion and the transport of sediment) and water quality.⁶ On a strict application of the mandatory criteria, the Government has created a significantly higher bar for resource projects to be approved and therefore a risk that some of those projects which would have been approved under the previous regime would no longer be possible, due to the new regulatory measures.

MMG Century does not consider a strict application of the mandatory criteria to be unlikely. Ms Anna Nottingham of the Department of State Development, Infrastructure and Planning (**DSDIP**) stated during the public briefing on the Regulation (in respect of the component of the prescribed solution relating to "unacceptable uses" in designated precincts):⁷

...It is a yes or no answer. If a proposal were to be considered in that area and it was for one of those uses, as soon as you got to that part of the criteria that said if the activity is being carried out in a designated precinct in the strategic environmental area, is it or is it not unacceptable. So in that sense it is very clear-cut that, as soon as you came to do this assessment, it would not pass that part of the criteria.

Even a "relaxed" application of the criteria would be of concern to MMG Century. If, for example, an assessor elected to take an approach that saw the granting of a RIDA even though a prescribed solution could not be demonstrated, such an administrative decision would be flawed and vulnerable to legal challenge, leaving proponents unfairly exposed to associated risks.

The risks to MMG Century as a result of the Regulation are very well illustrated at **Appendix A**, which shows MMG Century's current exploration targets (outlined in red). Unfortunately, the framework imposed by the Regulation means that much of MMG Century's investment into exploration could potentially be wasted, given obtaining approval for development of these resources is made more difficult under the Regulation.

⁶ Regulation section 9.

⁷ *Public briefing – Inquiry into the Regional Planning Interests Regulation 2014 – Transcript of Proceedings* (3 July 2014), page 9.

This is particularly (but not only) the case in designated precincts, where open-cut mining is prohibited.

In other areas, satisfying the criteria under the existing regulatory framework will be very difficult, costly (in terms of the technical work required to underpin applications) and uncertain. Even activities proposed for the purposes of improved environmental outcomes, such as creek diversions designed to achieve better long term rehabilitation results, require a RIDA and will face the associated challenge of demonstrating the prescribed solutions can be achieved.

2.2 Similarity to previous regime

Submission 2: the Gulf Rivers SEA imposes a significantly more onerous regime than existed under the former Gregory Wild River Declaration. There is no red-tape or green-tape reduction – rather, an additional regulatory layer has been applied to development.

During the public briefing, representatives of DSDIP stated that in respect of the Gulf Rivers SEA, "the intention was to carry over the existing policy effect of those existing wild river declarations into the Regional Planning Interests Act framework".⁸ Unfortunately, the Gulf Rivers SEA actually imposes a significantly more onerous regime than existed under the former *Gregory Wild River Declaration 2007 (Gregory Declaration)*.

For proposed activities in the Gregory wild river area, the Gregory Declaration:

- (a) required an EIS be prepared in certain circumstances, and prescribed additional matters for the terms of reference; and
- (b) prescribed a number of additional considerations for the decision-maker to take account of, and additional matters to have regard to, in deciding the application for approval of the proposed activity.

Importantly, the Gregory Declaration and the associated framework (being the application and amendment processes in the *Environmental Protection Act 1994 (Qld) (EP Act)*) did not impose an outright prohibition on activities in the area, nor did it impose a rigid framework that only permitted activities which satisfy specific criteria. While a number of considerations had to be taken into account, there was significant flexibility in the way a proponent could demonstrate that the proposed activities were appropriate in light of those considerations. Further, key parts of the assessment involved considering whether impacts could be "minimised" or "managed".

In contrast, the new Regulation means that:

- (a) a RIDA can only be granted for activities in an SEA where one of the two prescribed solutions is satisfied in its entirety. There is no scope for an assessor to consider alternative solutions, to find that impacts can be appropriately "minimised" or "managed", or to otherwise consider any factors outside those prescribed in the Regulation; and
- (b) the separate assessment and approval process under the EP Act, including a potential EIS, still applies in addition to the RIDA process.

This creates a significantly more onerous framework that has serious implications for MMG Century's future activities and other development opportunities in the Gulf. It also gives

⁸ *Public briefing – Inquiry into the Regional Planning Interests Regulation 2014 – Transcript of Proceedings (3 July 2014), page 3, per Mr James Ross. See also similar comments on page 2.*

rise to a new regulatory layer, inconsistent with the State government's policy approach of red-tape and green-tape reduction.

2.3 SEA mapping

Submission 3: the Regulation does not contain any formal process for amending SEA mapping, nor any obligation to notify proponents of a change to the mapping.

An area of Queensland can only be an SEA where it contains one or more environmental attributes, and is either shown on a map in a regional plan as an SEA, or is prescribed under a regulation.⁹ The Regulation relevantly defines the Gulf Rivers SEA as "the part of the Gulf Country identified on the SEA map for the area",¹⁰ while the "SEA map" for the area is "the map identifying the area, that is held by the department and published on its website".¹¹

Although an SEA is required to have certain attributes, the Regulation does not contain any formal process for amending the mapping that is held by DSDIP if, for example, it is actually the case that the areas mapped do not possess any of those attributes and should not properly be included in an SEA. Representatives of DSDIP acknowledged this during the public briefing. According to those representatives, the only available process for amendment is by submission directly to DSDIP¹² which appears an informal and, in the context of MMG Century's current development plans and the economic development of the region, an inadequate process.

In addition, while DSDIP acknowledges that "all mapping under legislation is ambulatory" and "can and necessarily will change over time",¹³ the Regulation contains no formal process for notifying relevant stakeholders of changes to the mapping.

It is a serious concern to MMG Century that:

- (a) the only process available to amend the mapping is an informal process, somehow administered at the discretion of DSDIP employees, that is not subject to any accountable statutory process or public scrutiny; and
- (b) changes could be made to the mapping without key stakeholders being first consulted nor subsequently informed once changes are effected.

2.4 Consultation

Submission 4: failure to carry out consultation in respect of the Gulf Rivers SEA was a flaw in the delivery of this legislation and led to poor outcomes.

During the public briefing, representatives of DSDIP acknowledged that no formal consultation was undertaken by its officers in respect of the Gulf Rivers, Hinchinbrook and Fraser SEAs because it was intended that the SEAs "carry over the policy effect" of the

⁹ *Regional Planning Interests Act 2014 (Qld)*, section 11.

¹⁰ Section 4(1)(d).

¹¹ Section 4(2).

¹² *Public briefing – Inquiry into the Regional Planning Interests Regulation 2014 – Transcript of Proceedings* (3 July 2014), pages 10-12.

¹³ *Public briefing – Inquiry into the Regional Planning Interests Regulation 2014 – Transcript of Proceedings* (3 July 2014), page 6 per Mr James Coultts.

existing wild river declarations.¹⁴ According to MMG Century's legal analysis, this was not the ultimate outcome.

Failure to conduct consultation in respect of the Gulf Rivers SEA – particularly in light of the significant consultation conducted for the Channel Country and Cape York SEAs – is a serious flaw in the delivery of this legislation, and ultimately led to poor outcomes. Had consultation been conducted prior to the Regulation being finalised, the concerns outlined above could have been addressed and future development opportunities would not be facing the very serious level of uncertainty and risk they now face.

Given the very serious impact the Regulation will have on the future activities of MMG Century and the region's future economic development prospects, the lack of consultation with MMG Century regarding this legislative development is of concern.

Premier Newman's launch of the *North West Queensland Strategic Development Study (NWQ Strategic Development Study)* on 17 June 2014 is noted. The NWQ Strategic Development Study identifies – as its first priority – new mine exploration and development in the north west, including in respect of areas falling within the Gulf Rivers SEA. The NWQ Strategic Development Study and Premier Newman's associated media statement identify the north west as having some of the strongest unrealised economic potential in Australia. It seems at odds to on one hand promote and encourage development opportunities in this region while on the other hand introduce an additional layer of regulatory burden on those opportunities without consultation.

The Committee's Inquiry provides an opportunity to better align the Government approach to the Gulf Rivers SEA closer to its priorities as set out in the NWQ Strategic Development Study.

3. PROPOSED SOLUTIONS

3.1 Suggested amendments

MMG Century submits that minor amendments could address many of the concerns outlined above, by allowing for a clearer and more flexible assessment and approval framework. MMG Century recommends the Committee seek amendments to the required outcome and section 14 that adopt drafting already used in the *Environmental Protection Regulation 2009 (Qld) (EP Regulation)*.

The EP Regulation requires a decision-maker to conduct an "environmental objective assessment" when making an environmental management decision (which includes the grant or amendment of an environmental authority).¹⁵ The environmental objective assessment involves deciding whether the application achieves relevant environmental objectives. However, if the assessor is not satisfied the application achieves a performance outcome for the relevant environmental objective, "the assessor may still decide the application achieves the relevant environmental objective if the application includes alternative measures for the activity the subject of the application to achieve the environmental objective".¹⁶

This drafting allows an assessor to consider and apply the relevant environmental objectives and performance outcomes, while also providing the flexibility to consider alternative measures not prescribed by the EP Regulation. Ultimately, this creates a more reasonable and adaptable framework.

¹⁴ *Public briefing – Inquiry into the Regional Planning Interests Regulation 2014 – Transcript of Proceedings* (3 July 2014), page 2 per Mr James Coultts and Mr James Ross and page 3 per Mr James Ross.

¹⁵ Section 51(1)(a).

¹⁶ Schedule 5, Part 2, item (5).

In light of the above, MMG Century suggests:

- (a) amending the required outcome (in Schedule 5, Part 5, section 14) by replacing it with the following:

The activity will be carried out in a way that protects the environmental attributes of a strategic environmental area.

- (b) also amending section 14(4) of the Regulation as follows (new text is underlined):

(4) However:

(i) even if the application does not demonstrate the matters listed in a prescribed solution, the assessor may still decide the application meets the applicable required outcome if the application includes alternative measures for the activity the subject of the application to achieve the required outcome; and

(ii) if an activity is proposed to be carried out on land used for a priority agricultural land use...

MMG Century would be pleased to discuss this amendment – or alternative amendments that would achieve similar results – with the Committee and/or DSDIP.

3.2 Other proposed adjustments

MMG Century also submits that the "unacceptable uses" specified in Schedule 2, Part 5 of the Regulation – in particular, "open cut mining" and "water storage (dam)" – should be defined, so that the meaning and scope of the activities contemplated by these phrases is very clear. In their present undefined form, the phrases are ambiguous and uncertain, and could give rise to any number of different interpretations.

3.3 Better defined SEA

In the view of MMG Century, an urgent process is required which would result in a better alignment of the Gulf Rivers SEA with the Government's strategic and economic development objectives in the North West Minerals Province. MMG Century would request an expedited process be undertaken which would redraw the SEA so that it more appropriately provides for more balanced social, cultural, environmental and economic development outcomes. A six month process would adequately provide for regional consultation process and the opportunity to unlock future economic development through MMG Century's continued presence in the region.

4. CONCLUSION

The framework set up by the Regulation has placed future activities at the Century Mine at significant risk. This in turn creates risks for local communities, the region and the State.

The Century Mine has played, and continues to play, a crucial role in the ongoing development of the Gulf region. Because of its on-the-ground presence and access to resources, MMG Century provides a range of valuable benefits to the region. Without MMG Century's contribution, it would be necessary for the Government to dedicate considerably more resources to support and develop local towns and their infrastructure. Even then, such contributions could not fully replicate the considerable benefits private business activity such as the Century Mine brings.

MMG Century is very conscious of its obligations to both the community and the environment. MMG Century's exploration and mining activities are conducted pursuant to comprehensive and detailed environmental conditions, and MMG Century is committed to the highest levels of environmental management.

MMG Century believes that the previous - and remaining - framework under the EP Act provides an appropriate balance between protection of areas of regional interest and the needs of industry. The new Regulation presents a significant departure from the previous framework and implements an overly onerous regime that has the potential to stifle growth in the region.

MMG Century seeks the Committee's and the Queensland Government's assistance in restoring an appropriate balance.

APPENDIX A –CURRENT EXPLORATION TARGETS

