

14 August 2014

Submission No. 15

11.1.24

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The Research Director
State Development, Infrastructure and Industry Committee
Parliament House
George Street
BRISBANE QLD 4000
By email: sdiic@parliament.qld.gov.au

Dear Sir/Madam

Regional Planning Interests Regulation 2014

Yancoal Australia Limited (**Yancoal**) thanks the State Development, Infrastructure and Industry Committee (**Committee**) for the opportunity to comment on the *Regional Planning Interests Regulation 2014 (RPI Regulation)*. This submission should be read together with Yancoal's submission to the Committee on the *Regional Planning Interests Bill 2013 (Qld)*, now *Regional Planning Interests Act 2014 (Qld) (RPI Act)*, dated 17 January 2014.

Background

Yancoal is an ASX-listed public company and one of the largest export miners in Australia. Yancoal (through its subsidiaries, and on behalf of its ultimate parent company Yanzhou Coal Mining Company Limited) owns and operates coal exploration and production tenure in Queensland's Bowen and Surat basins, including the Yarrabee open cut coal mine (located approximately 40 kilometres northeast of Blackwater, in the Bowen basin) and the Cameby Downs open cut coal mine (located approximately 15 kilometres northeast of Miles, in the Surat basin). Yancoal is currently proposing to expand its operations at the Cameby Downs mine.

Executive summary

In Yancoal's view there are a number of aspects of the RPI Regulation that may need further consideration by the Queensland government, in order to assist with the coexistence of resources activities and agriculture. Our concerns include:

- the regional planning regime does not include adequate transitional provision for projects that were, as at the commencement of the RPI Act, already part way through the approval process;
- the regional planning regime restricts advanced mining activities in many areas, even where co-existence is possible;
- the mapping of areas of regional interest is difficult to change, even if it is inaccurate;
- the regulation of impacts on 'regionally significant water sources' duplicates existing State and Commonwealth regulation of impacts to water sources; and
- firmer timeframes are needed for approval processes.

Yancoal considers that these issues can be addressed in the RPI Regulation in a manner consistent with the government's intent for the RPI Act. Yancoal's proposed solutions to the issues are outlined in more detail below.

Detailed comments

1. No transitional provision for projects part way through the approval process

Issue

Currently, the regional planning legislation contains no transitional provisions for projects that were, as at the commencement of the RPI Act, already part way through the tenure approval process (eg through the making of mining lease and environmental authority applications, and/or the commencement of an EIS process).

Yancoal's proposed expansion of the Cameby Downs mine is an example of a project like this. Even though Yancoal is well advanced in obtaining all necessary approvals, Yancoal is now required to obtain additional regional interests development approvals (**RIDA**) under the RPI Act for the Cameby Downs mine expansion. The imposition of this new approval requirement has the potential to add costs and delay for the proposed expansion.

Solution

A transitional regulation should be included in the RPI Regulation to provide an exemption from the RPI Act for projects that were already part way through the tenure approval process, at the commencement of the RPI Act. Section 97A of the RPI Act specifically authorises a transitional regulation to be made.

2. Assessment criteria may restrict advanced mining activities

Issue

The RPI Act does contain some exemptions for resources activities, but the section 22 'landowner agreement' exemption under the RPI Act is difficult for proponents of advanced mining activities to satisfy. This is because advanced mining activity will almost always have a 'significant impact' on underlying land, and an 'impact on land owned by a person other than the land owner', so section 22 cannot be satisfied.

There are many criteria to be satisfied. A RIDA applicant whose activity has a 'regional' impact within a PAA is required to satisfy both 'regional level' criteria (as a whole) and 'property level' criteria (in respect of each individual property on which the activity the subject of the RIDA is to be carried out).

Schedule 2 of the RPI Regulation sets out strict criteria that an assessing agency and the chief executive must consider when assessing an application for a RIDA under the RPI Act. For example, on a literal interpretation, prescribed solution 3(3)(b) for priority agricultural areas (**PAA**) ('the activity can not be carried out on other land that is not used for a priority agricultural land use (**PALU**)') may be difficult for any applicant for an advanced mining activity in the area of a PALU to achieve.

Solution

A concept of 'reasonableness' or materiality should be inserted into the assessment criteria in schedule 2 of the RPI Regulation. For example, prescribed solution 3(3)(b) for PAA could be amended to read '*the activity can not reasonably be carried out on other land that is not used for a PALU*'.

In addition, sections 5(5) and 5(6) of schedule 2 of the Regulation could also be amended so that proponents are not required to satisfy both 'regional level' and 'property level' criteria in respect of the same RIDA application.

3. Mapping difficult to change and challenge

Issue

Many 'areas of regional interest' under the RPI Act are identified through maps in regional plans. The identification of areas under the Act in this way means that amendment of those areas may not easily occur in the inevitable event that an error in the mapping of the area is found.

In addition, there is no method set out under the regional planning legislation for stakeholders (proponents or landholders) to challenge the validity of mapping of areas of regional interest, and initiate amendment of errors in the mapping.

Solution

The RPI Regulation should provide for identification of all areas of regional interest through reference to electronic maps held on a Queensland government website (as was the case under the repealed *Strategic Cropping Act 2011 (Qld) (SCL Act)*).

In addition, the RPI Regulation (or guidelines) should provide stakeholders with a process to challenge the validity of mapping of areas of regional interest, and initiate amendment of errors in the mapping. This process could be based on the similar process for 'SCL validation' that was provided under the SCL Act.

4. Duplication of water regulation

Issue

The regulation of impacts on the Condamine Alluvium under the regional planning regime duplicates existing State and Commonwealth regulation of impacts to water sources. Proponents are already heavily conditioned under their environmental authority (under the *Environmental Protection Act 1994 (Qld) (EP Act)*), their water licence (under the *Water Act 2000 (Qld)*) and/or their federal environmental approval (under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*) to avoid, monitor and mitigate impacts to both surface and groundwater sources (including the Condamine Alluvium).

Solution

The inclusion of the Condamine Alluvium as a 'regionally significant water source' in the RPI Regulation should be removed, and references in the assessment criteria to impacts on regionally significant water sources (including the 'net replenishment' criterion) should be deleted.

5. Open-ended approval process and timeframes

Issue

At crucial points in the RIDA assessment process, schedule 5 of the RPI Regulation provides that the chief executive may unilaterally extend the usual timeframe for the decision. There is no limit imposed on the duration of the extension or the number of times an extension may occur.

Solution

The timeframes in schedule 5 of the RPI Regulation which allow unilateral and unlimited extension by the chief executive should be amended to provide for a firm end date. Other legislation contains firm timeframes for a decision on an application, and may be used as a guide (see section 168 of the EP Act, for example).

Concluding comments

Yancoal thanks the Committee for its consideration of Yancoal's comments on the RPI Regulation.

If the Committee has any queries in relation to this submission, please contact Mr Mark Jacobs by [REDACTED]

[REDACTED].

Yours faithfully



Mark Jacobs

General Manager for Environment, Approvals and Community Relations

Yancoal Australia Ltd