Cape Alumina

Office Level 8, 300 Adelaide Street, Brisbane, Qld 4000
Postal PO Box 10955, Brisbane Adelaide Street, Qld 4000
Phone +61 7 3009 8000 Facsimile +61 7 3221 4811
Email info@capealumina.com.au Web www.capealumina.com.au

Friday, 17th January, 2014

Submission No. 12
17 January 2014
11.1.14

Mr David Gibson MP, Member for Gympie
Chair, State Development, Infrastructure and Industry Committee
Parliament House
George Street
BRISBANE QLD 4000
via email: sdiic@parliament.qld.gov.au

Dear Mr Gibson

Please see attached a copy of Cape Alumina Limited's submission regarding the Regional Planning Interests Bill 2013 (the Bill).

Cape Alumina has considered the proposed Bill, along with Government's existing and proposed Regional Plans and their commitment to incorporate Regional Planning requirements into legislation, and we support this approach. However, we believe Government should take this opportunity to streamline the development approval process, rather than add another layer of conflicting legislation. We believe there is a relatively simple way to significantly streamline this process while still achieving the Government's stated goals.

The Bill as it is proposed duplicates the entire application, public notification, assessment, appeal and conditioning process that is already included in the *Environment Protection Act 1994* (EP Act), *State Development and Public Works Organisation Act 1971* (SDPWO Act) and the *Sustainable Planning Act 2009* (SP Act), effectively doubling the time and cost for development applications, doubling bureaucratic assessment and approval requirements and introducing a second court system for resource projects i.e. the proposed Planning and Environment Court appeal process, when the Land Court process is already utilised and would still be required. All at a time when the Government is seeking to prove its commitment to green and red tape reduction.

Rather than trying to force a new piece of legislation on top of the existing system – with almost assured ongoing legal challenges, and the associated costs and time delays for project approval timeframes – Cape Alumina believes that the following changes to the existing legislation can achieve the Government's stated result, without the potentially serious negative repercussions to the State's economic development:

1. In Chapter 3 of the EP Act, rename the section as Environmental and Regional Planning Impact Statements
2. Include a new section in Chapter 3 of the EP Act defining the areas of Regional Interest that require assessment (as per Part 1, Division 3, Subdivision 2 of the Bill)

3. Once included in this section, the same provisions for assessment, TOR, public notification, approvals and conditional all apply – and can be incorporated into the one EIS and (new) RPIS process – one application process, one assessment process, one public notification process, one appeal process, one court process and one licence/conditioning process
4. A new 'Environmental Protection Policy – Regional Planning' can be developed to include the required detail that are still outstanding but referenced in the Bill for future regulations
5. This change to the EP Act will then automatically flow through to the SDPWO Act, under Part 4, Division 6 of the SDPWO Act
6. The same process detailed above for the EP Act can also be incorporated under Chapter 6 of the SP Act and the development of an associated regulation.
7. Any appeals under the relevant Acts would continue to go through the existing court process i.e. the Planning and Environment Court or the Land Court, as applicable.

As a secondary recommendation with the aim to simplify the existing process and terminology while still achieving the required outcomes, the current *Strategic Cropping Land Act 2011* could be repealed, and the single definition of Priority Agricultural Area and the associated maps (that already incorporates SCL) could be utilised.

While on paper we are recommending relatively simple changes, Cape Alumina understands they represent a significant change to the original intent of the existing legislation (particularly the EP Act), however we consider this a comparatively minor impact and preferable to the potentially significant repercussions to the State's future economic development that we contemplate with the Bill as it currently stands.

Utilising the existing legislation and approval process is a streamlined, logical approach that avoids the uncertainty and risk of new legislation. It provides the State with a cohesive approval process that is already known and followed by all parties, simply incorporating the new Regional Planning provisions.

In addition to the overarching comments above, a specific list of comments and recommendations for the Bill as it currently stands is included in our attached submission.

If you require any further clarification of this submission, please do not hesitate to contact either myself or Ms Colleen Fish, Manager Environment, Communities & Sustainability, Cape Alumina Limited.

Yours sincerely

Graeme Sherlock
Managing Director
Cape Alumina Limited

Cape Alumina
Office Suite 6/56 Peel Street, South Brisbane, Qld 4101 **Postal** PO Box 3732, South Brisbane, Qld 4101, Australia
Phone + 61 7 3844 9911 **Facsimile** + 61 7 3844 9919 **Email** info@capealumina.com.au **Web** www.capealumina.com.au

Submission to the Queensland Government on the Regional Planning Interests Bill 2013

Prepared by Cape Alumina Limited
17th January 2014

ABN 88 107 817 694

About Cape Alumina

Brisbane-based, Cape Alumina Limited was established in February 2004 and has become Australia's leading pure-play bauxite company. Cape Alumina is evaluating prospective projects on western Cape York, Queensland, one of Australia's largest undeveloped, export-quality bauxite provinces, for commercial development.

Cape Alumina's projects represent a significant opportunity for the economic development of Queensland and especially western Cape York and Far North Queensland.

Background to the Regional Planning Interests Bill (the Bill)

The LNP's *Can-Do Resources and Energy Strategy* (November 2011) described the intention of the Regional Planning process as:

> *'Implementing a better system of regional planning to provide improved security for miners, landholders and Queensland communities alike.'*

By the time the 2011 Strategy manifested as a Bill in late 2013, the focus on improving security for all stakeholders seems to have become more narrowly focussed on protecting agricultural, environmental and town planning land uses by allocating new zones of priority and strategic status to these specific areas, at the expense of all other land uses and potential developments. The full title of the Regional Planning Interests Bill highlights this change in emphasis:

> *'An Act to manage the impact of resource activities and other regulated activities on areas of the State that contribute, or are likely to contribute, to Queensland's economic, social and environmental prosperity.'*

The resource industry is already heavily regulated under numerous pieces of legislation that manage the impact of resource activities – there are complete processes already in place that cost the industry significant time and money to complete. The Environmental Impact Statement process not only includes details on managing impacts on the environment, but also the social and economic impacts as well. Apart from the obvious change in the LNP's original strategy to provide security for 'miners', the proposed Bill is complete and unnecessary duplication of the existing systems and processes.

If we proceed with the apparent assumption that agriculture, the environment and town planning are to be given a higher priority than mining, thereby significantly reducing the areas where mining can even be considered – regardless of the industry's ability to manage their impacts and the ongoing economic impact to the State – the Government needs to at least utilise the existing systems in place and not make the actual process any more convoluted. This is a double negative for the industry with no positive outcome at all. Not only will large areas of the

State be removed from any possible resource activity, the approval process in the Regional Interest's areas are twice as difficult, and areas not of Regional Interest still maintain the existing stringent requirements.

For a Government that was elected on a pro-development platform and that has actively advanced their red and green tape reduction strategies, the proposed introduction of this Bill as it currently stands seems to contradict all of their stated priorities.

Comments and Proposed Changes to the RPI Bill

As noted in our cover letter, Cape Alumina recommends the Government take this opportunity to streamline the development approval process, in accordance with their existing red and green tape reduction strategies, rather than add another layer of conflicting legislation.

The Bill as it is proposed duplicates the entire application, public notification, assessment, appeal and conditioning process that is already included in the Environment Protection Act 1994 (EP Act), State Development and Public Works Organisation Act 1971 (SDPWO Act) and the Sustainable Planning Act 2009 (SP Act), effectively doubling the time and cost for development applications, doubling bureaucratic assessment and approval requirements and introducing a second court system for resource projects i.e. the proposed Planning and Environment Court appeal process, when the Land Court process is already utilised and would still be required. All at a time when the Government is seeking to prove its commitment to green and red tape reduction.

Rather than trying to force a new piece of legislation on top of the existing system – with almost assured ongoing legal challenges, and the associated costs and time delays for project approval timeframes – Cape Alumina would like to suggest that the following changes to the existing legislation can achieve the Government's stated result, without the serious negative repercussions to the State's economic development:

1. In Chapter 3 of the EP Act, rename the section as Environmental and Regional Planning Impact Statements
2. Include a new section in Chapter 3 of the EP Act defining the areas of Regional Interest that require assessment (as per Part 1, Division 3, Subdivision 2 of the Bill)
3. Once included in this section, the same provisions for assessment, TOR, public notification, approvals and conditional all apply – and can be incorporated into the one EIS and (new) RPIS process – one application process, one assessment process, one public notification process, one appeal process, one court process and one licence/conditioning process

4. A new 'Environmental Protection Policy – Regional Planning' can be developed to include the required detail that are still outstanding but referenced in the Bill for future regulations
5. This change to the EP Act will then automatically flow through to the SDPWO Act, under Part 4, Division 6 of the SDPWO Act
6. The same process detailed above for the EP Act can also be incorporated under Chapter 6 of the SP Act and the development of an associated regulation.
7. Any appeals under the relevant Acts would continue to go through the existing court process i.e. the Planning and Environment Court or the Land Court, as applicable.

As a secondary recommendation with the aim to simplify the existing process and terminology while still achieving the required outcomes, the current Strategic Cropping Land Act 2011 could be repealed, and the single definition of Priority Agricultural Area and the associated maps (that already incorporates SCL) could be utilised.

Notwithstanding the primary recommendation above, Cape Alumina has made specific comments on the Bill, as it is currently proposed, below.

All comments and proposed changes to the Bill are referenced using the specific Page and Line numbers of the Bill.

1. Purpose of the Act: Page 8 – Lines 11-15

States the purpose of the Act is to identify areas of regional interest that contribute to Queensland's economic, social and environmental prosperity, yet completely ignores the positive contribution of the resource industry to all of these areas, particularly economic. The Act only considers the negative impacts of the resource industry, and only considers the positive impacts of the agricultural industry, environmental areas and local communities.

Proposed Change

If the Act is to remain as written, there needs to be another area of regional interest identified and included – Priority Resource Areas. The same process of determining where the Priority Resource Areas occur needs to be undertaken and identified in maps, with these areas protected for future resource activities.

If Priority Resource Areas or the positive impacts of resource activities are not going to be considered in this Act, the Purpose of the Act needs to be changed to read:

3 (1)(a) Identify areas of Qld that are of regional interest from an environmental, agricultural or town planning land use perspective, because they contribute or are likely to contribute to Qld's economic, social and environmental prosperity

2. 'Highly Productive Agricultural Activities': Page 9 – Lines 1-2

3 (1)(c)(ii) mentions the coexistence of regional interest areas with resource activities for example "*highly productive agricultural activities*". This is a core issue of the current allocation of PAA's and PALU's – where land that has limited real agricultural potential has been included in the PAA and PALU map areas and has potential to prevent legitimate resource projects that could benefit everyone.

Cape Alumina accepts that the best agricultural land needs to be protected – the problem is the definition of 'best agricultural land' has been expanded to include any couple of hectares that has ever been irrigated for a random forage crop, even if the crop failed. The requirement for a PALU only includes 'irrigated agriculture' – it doesn't say 'successful ongoing economically viable irrigated agriculture'.

Note: highly productive is mentioned numerous times, particularly on p11 (line 1) where again it is the requirement for the allocation of Priority Agricultural Land Uses, yet is not specifically defined.

Proposed Change

'Highly productive agricultural activities' needs to be clearly defined in measurable terms i.e. how does highly productive differ from typical or usual productivity? Is it an economic measure i.e. return on investment or return per hectare? A gross unit of production per unit of land area measure?

3. PALU Water Source or Infrastructure: Page 10 – Lines 21 – 24

Given the very open definition of what constitutes PALUs in PAAs, i.e. extremely small, non-profitable enterprises meet the definition as easily as larger ones, the extension of this to include any water source or infrastructure that is not in a PAA but is used for a PALU has the potential to mean that any small, temporary water pump and poly pipe system laid out across land that is not even a PAA could prevent a resource project from progressing – to the detriment of hundreds of jobs and the economic wellbeing of the State.

As with the majority of definitions in this Bill – it is not the concept that Cape Alumina disagrees with, but the lack of detail and logic in how the process will be applied. The potential for a 5ha hobby farmer who irrigates his few fruit trees in the back yard and sells them at the markets, or does an occasional forage crop for his 10 cows irrigated via a pump and poly pipe system from the local creek, should not be able to prevent a project that benefits the entire state. The original concept of protecting the State's best agricultural land has become a farce via the lack of detail and definitions.

Proposed Change
The definition for PALU's has to include some criteria that proves it is highly productive agricultural land (as previously noted), and the water source and/or infrastructure needs to be defined as being of a substantial and permanent nature.

4. Negative Impact on a Water Source: Page 10 – Lines 25 – 27

This is taking the above point and extending it even further. If a resource activity is likely to have a negative impact on a water source – even if the water source is miles away from any PAA and only supplies water to a 5ha hobby farm, again it has the potential to stop a resource activity that would provide significant benefits to the entire State.

This requirement is also completely unnecessary as any potential impacts to surface water or groundwater from resource activities are determined in the EIS and conditioned in the EA. This point puts the Bill in direct conflict with all of the existing environmental approval processes and conditions that a resource project has to go through, and has potential to put existing and/or proposed resource projects in court for years. How is a "likely negative impact to a water source" even defined and who makes that decision?

Proposed Change
Lines 25 – 27 on Page 10 need to be deleted from the Bill.

5. Singular mention of 'Resource Activities' but not other potential regulated activities: Page 11 – Line 16-17

The buffer suggested around PLA's only mentions resource activities, not any other kind of restricted activities.

Proposed Change
Either delete lines 16-17, or include reference to any other restricted activities that may be defined, to at least be consistent through the Bill.

6. Combine SCL into PAAs and PALUs: Page 11 – Lines 18-30 and Page 12 – Lines 1-11

The SCL areas are all contained within PAA and PALU areas and maps – there is actually no good reason to maintain separate classifications, given the PAAs and PALUs receive at least as much protection as afforded under SCL legislation.

Proposed Change
Identify that SCL is now incorporated into PAAs and PALUs – including relevant maps – and remove the need to differentiate between SCL and PAAs/PALUs.

7. Definition of Strategic Environmental Value: Page 11 – Lines 12 – 26

The definition of what constitutes a Strategic Environmental Value is not based on any scientific data, but simply any area shown on a Regional Plan, with no detail of what criteria needs to be met or how the plan needs to be developed. Submissions that will be made on the draft Cape York Regional Plan (the first to introduce SEA's) highlight that the proposed maps for that area are not necessarily based on any real science, but on the best guess of a range of conservation focussed individuals who have significantly extrapolated whatever actual data is available until it is almost unrecognisable.

Even the examples listed on Lines 19 – 23 includes the statement "*an area providing biophysical functions for sensitive plant and animal species*". What is a sensitive plant and animal species and how is that determined? Sensitive is not a classification at a State or Commonwealth level, and is not clearly defined. And just because an area provides biophysical functions for '*sensitive*' species, doesn't mean that a resource project would negatively impact those functions OR that the '*sensitive*' species wouldn't be just as happy in the area with the same biophysical function 10m outside the project boundary.

Surely the issue has to be about potential impact to a legitimately recognised threatened species. Which, coincidentally, is the process that an EIS goes through. And if the impacts can't be controlled, then that is grounds for further conditioning or even stopping the project, not just the fact that something is there.

This Bill makes very broad and vague statements, based on unclear and unproven criteria that have no strict scientific definition and are not recognised in any other piece of legislation. The potential for extremist minority groups to utilise this type of terminology and lock up resource projects for years can't be overstated.

Proposed Change

Strategic Environmental Values need to be clearly defined and then confirmed in mapping by real, field verified data. A clear list of criteria to determine SEAs needs to be developed, and not just by strictly conservation-focussed environmentalists – there are numerous and very experienced environmental specialists and ecologists that focus on ways to protect environmental values whilst allowing sustainable development to proceed, where possible. Some people of this nature need to be incorporated into any SEA determination process to provide a balanced outcome.

Cape Alumina supports the original aim of Regional Planning i.e. to identify and protect the BEST areas of environmental significance, while maximising coexistence opportunities for the benefit of everyone in the State. We do not support the current situation where vast areas of the State are locked up based on preservation-focussed environmentalists doing a desktop assessment and making often unsubstantiated marks on an aerial photo.

Setting of the Strategic Environmental Values needs to be an open and visible process and look at real opportunities for environmentally sustainable development.

8. Transitional Provisions: Page 15 – Lines 4 – 9

Transitional provisions within the Bill are almost non-existent and raise significant risk and uncertainty even for long-standing resource operations. The potential impact of imposing the Bill on fully approved and operating mines and other resource operations needs to be quantified and clarified. This new Bill should not have the power of stopping existing approved operations.

Proposed Change

On Page 15 – Line 7, point (a) should be modified to read 'a major amendment' only. Lines 8 and 9 should be deleted.

9. Introduction of complete new approval process for Resource Activities: Page 16 – Lines 14 – 27

The heading for Part 2 only references Resource Activities, not any other regulated activities that may be introduced.

As previously noted, it appears the entire purpose of this Bill is to put additional conditions on resource activities that are already heavily conditioned through the existing approval processes. There is no logical reason to introduce a completely new application, assessment, public notification, approval, appeal and conditioning process when there is already this exact process in place. All that needs to be done is to add the Regional Interests requirements and definitions into the existing process.

If the Government is determined to introduce this Bill, regardless of logic and with all the inherent issues that have been identified in this and other submissions, it should at least investigate the opportunity to integrate the existing EIS process with the proposed Regional Interests process.

Proposed Change

On line 23 – and for all references to a Regional Interests Authority in the Bill – change this reference to a combined Environmental and Regional Interests Authority, so that each operation only has 1 licence and 1 set of conditions that need to be complied with.

10. Why do exempt operations still need to notify?: Page 17 – Lines 21 – 26

If the resource activity has been exempt from the requirements of the Bill – and given the requirements to be classed as exempt, there will be few operations that meet these conditions anyway – why is there any notification process required?

Office Level 8, 300 Adelaide Street, Brisbane, Qld 4000 **Postal** PO Box 10955, Brisbane Adelaide Street, Qld 4000
Phone +61 7 3009 8000 **Facsimile** +61 7 3221 4811 **Email** info@capealumina.com.au **Web** www.capealumina.com.au

Proposed Change
If the resource activity is exempt under the provisions of the Bill, there should be no need to then notify the regional authority when that activity is being undertaken. The complete Section 20 (Lines 21 – 26) should be deleted.

11. Conduct and compensation agreement: Page 18 – Lines 27 – 28
If there is a conduct and compensation agreement for whatever reason – even if under the order of a court – than that activity should be classed as exempt. What does a court ordered agreement have less weighting than any other agreement?

Proposed Change
On lines 27 – 28, remove the words "other than because of the order of a court"

12. Impact to Land Suitability: Page 19 – Lines 7 - 11
Who determines if the resource activity is likely to have an impact on the suitability of the land? The EIS process already takes into account changes to land suitability. As with the potential impact to water resources, the Bill is introducing conflicting legislation that could see significant legal challenge. Also, there is no mention made if the suitability of the land is made better? Is this still a reason not to proceed with the resource project?

This is another example of a broad, undefined statement in this Bill that will cause significant conflict with existing legislation, confusion and legal challenges.

Proposed Change
The condition listed on lines 7-8 refer to land impacts. Land impacts are determined through the EIS process. There is no need to duplicate this process.

If the impact - as determined in the EIS – is that land suitability can be returned to the same land suitability rating after final mine rehabilitation has occurred, this should be taken as meaning there is no impact. If the suitability cannot be returned after final rehabilitation, than that should be taken as meaning there is an impact.

Reference to potential impact on land suitability should be removed from the Bill and referred back to the EIS process.

13. Resource Exploration Activities: Page 19 – Lines 12 – 29
There is no specific consideration given to exploration activities, which have significantly less impact on land use and are of a temporary nature. There needs to be a separate section added to the Exempt Resource Activities, specifically detailing exploration activities, or possibly these activities could be incorporated in an expanded Section 23.

Proposed Change
Include details within this section for the process of exploration activities that are classed as exempt activities so long as they follow the prescribed environmental guideline and any landholder agreements, and are completed – including rehabilitation works - within a 12 month timeframe.

However, this exemption should be carried over for each new 12 month timeframe for the same resource authority, and not be limited to one 12 month period ie resource company shouldn't have to apply for a new exploration authority every 12 months, just need to report on the previous 12 months as currently occurs for the tenure.

14. Exemption for Approved Existing Resource Operations: Page 20 – Lines 1 – 14
Existing, fully approved and operating resource activities need to be made fully exempt from this Bill, unless they apply for a major amendment to their operations that would see significant expansion onto areas of PAA that were not included in the original approval process.

Existing operations should not be opened up to the requirement of this Bill for any other reason i.e. not for minor or significant EA amendments (unless the amendment includes significant expansion into PAA areas) and not for renewing Plan of Operations. This is the only logical approach to take, as the only reason an existing, fully approved and licenced operation should be open to subsequent legislation is if they go beyond their existing area of approval i.e. beyond their approved Mining Lease area.

Proposed Change
Include new conditions under Section 24 that clearly state that all existing resource operations, that are operating under an approved EA and Plan of Operations, remain exempt even through revisions of EA's and Plan of Operations, and are only non-exempt if a major amendment extending significantly into new PAA land is applied for.

15. Resource Authority: Page 22 – Line 1
As previously noted, Cape Alumina considers there is no requirement to introduce a completely new authority to oversee resource activities, as the existing authorities are already in place and can simply be charged with considering regional interests as well as their existing interests.

Proposed Change
Delete Part 3 completely, and integrate the entire application and approval process into the existing EP Act, SDPWO Act and SP Act processes.

16. Hierarchy of legislation: Page 36 – Lines 20 – 26

Making the Regional Interests Authority superior to the existing Environmental Authorities does not seem to follow standard hierarchical procedure. EA's are developed based on meeting existing legislated State and Commonwealth requirements. The Bill is based on a Regional level assessment and – particularly for environmental considerations – the SEA's are allocated with significantly less environmental rigour than the legislated species and ecosystems under other existing legislation. By making the RIA superior, there is potential that conditions based on regional values, with no State or Commonwealth significance at all, override these legislated species that actually have been verified as having real environmental significance. Surely the hierarchy of significance is: Commonwealth, State, Regional?

Proposed Change

Given the standard hierarchical approach, RIA's based on regional considerations should not be given precedence over existing approvals from a State and Commonwealth level. Lines 21 – 24 should be changed to read: "*If there is any inconsistency between the conditions of a regional interests authority and a condition of the relevant authority, the conditions of the relevant authority prevail to the extent of the inconsistency.*"

17. Legal Appeals: Page 41 – Lines 1 – 7

The current appeal system for resource approvals is the Land Court. It is completely illogical for there to be two separate courts of appeal for a single resource application, therefore this section needs to be modified to allow the Land Court to hear resource appeals under this Bill.

Proposed Change

Modify this section to include appeals to the Land Court for resource applications that can be incorporated into any other Land Court appeals under the existing approval process.

18. General Comments and Changes

Specific comments on the Bill are detailed above, however there are some points that are currently silent in the Bill that Cape Alumina believes need to be incorporated, as listed below:

18.1 There is no current process to modify maps produced under the Regional Planning process and referenced in the Bill. Given that these maps – particularly the maps for Strategic Environmental Areas – have been acknowledged as not being fully verified by scientific data, there needs to be an avenue to change map boundaries if verified field studies are undertaken that prove the assumptions under which the maps were produced are incorrect.

18.2 As drafted, the Bill grants extensive powers to as-yet-unseen regulations. Cape Alumina does not agree with a process that will see new legislation implemented without even knowing what the full powers and conditions of the legislation will be. **We suggest that a comprehensive review of these regulations is undertaken in order to fully understand the consequences of the Bill.** A regulatory impact statement (RIS) that encompasses the Bill, regulations and codes would provide a good starting point for assessing the Bill's net effect. This process would also provide a good opportunity for public consultation on the many new proposals included in the Bill's drafting.

18.3 As drafted the Bill allows new areas of regional interest to be created with no set criteria, but simply by decree from public servants. Given the complexity of the Bill and the significant impacts this can have on the economic development of the State, Cape Alumina suggests that regulatory criteria are finalised (in close consultation with the resource industry) to describe how priority land uses are to be identified, defined and mapped as well as providing an objective system for managing coexistence outcomes.

Office Level 8, 300 Adelaide Street, Brisbane, Qld 4000 **Postal** PO Box 10955, Brisbane Adelaide Street, Qld 4000
Phone +61 7 3009 8000 **Facsimile** +61 7 3221 4811 **Email** info@capealumina.com.au **Web** www.capealumina.com.au