

Submission No. 039

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The Research Director
State Development, Infrastructure and Industry Committee
Parliament House
George Street
BRISBANE QLD 4002

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Dear Director

Submission about the Regional Planning Interests Bill 2013

Thank you for inviting the Queensland Environmental Law Association (**QELA**) to make a submission about the Regional Planning Interests Bill 2013 (**RPI Bill**) to the State Development, Infrastructure and Industry Committee.

QELA is a non-profit, multi disciplinary organisation. Its members include lawyers, town planners and a broad range of consultants who represent and advise a miscellany of participants in the development industry.

At the outset, QELA notes that the RPI Bill introduces an additional separate approval process for some resource and other projects in Queensland. The creation of this separate process has potential to cause delay, additional cost and complication for project proponents. It is not immediately apparent why regional planning interests cannot be considered as part of existing assessment processes.

This submission focuses more specifically on the following aspects of the RPI Bill:

- (a) assessment and public notification processes for assessment applications, including:
 - (i) the process for determining a minor amendment to an assessment application;
 - (ii) the public notification process; and
 - (iii) the assessment process;
- (b) appeals and enforcement, including:
 - (i) appeal rights;
 - (ii) the appropriate jurisdiction to hear appeals;
 - (iii) the penalties that are proposed for offences against the RPI Bill; and
 - (iv) the offence proceedings; and

- (c) administrative matters, including:
 - (i) the lack of a regulatory impact statement;
 - (ii) the matters are to be covered by the regulation; and
 - (iii) the mapping that has yet to be put on public display.

Assessment and public notification processes for assessment applications

Amendments to the assessment application

1. According to clause 32 of the RPI Bill, an applicant may amend an assessment application if it is a permitted amendment. One type of permitted amendment is a 'minor amendment', which is not defined by the Bill.
2. In contrast, the *Sustainable Planning Act 2009* (Qld) (**SPA**) provides for a similar process for making minor changes to development applications. Helpfully, section 350 of the SPA includes a definition of 'minor change' which identifies changes considered to be minor. These include administrative matters such as correcting contact details and spelling and grammatical mistakes. The definition also identifies that a change is a minor change if it does not result in 'substantially different development'.
3. In that regard, Statutory Guideline 06/09 'Substantially different development and changing applications and approvals' was issued pursuant to section 759 of the SPA. Provision of a definition of 'minor amendment', a counterpart to section 759 of the SPA, and a relevant guideline should be considered.
4. It would also appear that clause 32(1)(a) and (b) should clarify that two alternatives are allowed.

Public notification

5. QELA supports the inclusion of clause 34(3) of the RPI Bill.
6. However, it would be useful to include a suitable time frame requiring the chief executive to respond to a written request made pursuant to clause 34(3) to ensure that an applicant is not required to start the public notification period before a response has been received about whether they are exempt from doing so.
7. To complement this clause, a similar provision could be included in the *Environmental Protection Act 1994* (Qld) (**EP Act**) to cover the scenario where an assessment application for a regional interests authority is made before an application that requires public notification under the EP Act is made for the same project.
8. The nature and extent of public notification has yet to be prescribed by regulation, however, it would seem appropriate for the complete assessment application to be available to ensure informed and meaningful submissions are made.

Assessing the assessment application

9. The RPI Bill does not contain any timeframes for the chief executive to:
 - a) refer an assessment application to an assessing agency (see clause 41 of the RPI Bill);
or
 - b) make a decision about the assessment application (see clause 47 of the RPI Bill).
10. It is important that reasonable timeframes are imposed on these actions to provide the applicants with certainty about the process.
11. In relation to clause 53(1) of the RPI Bill, publication of each decision notice on the Department of State Development and Infrastructure Planning's website, and also in a local newspaper would allow an affected land owner to monitor either medium.

Appeals and enforcement

Appeal rights

12. Clause 69 of the Bill states that the right of appeal against a regional interests decision is limited to the applicant, the owner of the subject land (if the applicant is not the owner of the land) or an "affected land owner" (who may or may not have made a submission if the regional interests authority application was notifiable).
13. "Affected land owner" is defined in the RPI Bill as follows:

"Affected land owner" for a regional interests decision means a person who owns land (affected land) that may be adversely affected by the resource activity or regulated activity because of –

 - (a) the proximity of the affected land to the land the subject of the decision;*
and
 - (b) the impact the activity may have on an area of regional interest."*
14. The definition of "affected land owner" affords appeal rights only to owners and does not recognise other long term, binding, interests in land that may be affected.
15. "Proximity" and "impact" do not afford certainty to those affected.
16. Practically, the definition of "affected land owner" as currently framed is likely to result in preliminary disputes as to standing and require input from specialised experts. This is likely to be costly and time consuming and result in delay.
17. The uncertainty surrounding standing could be resolved by adopting a similar approach to the SPA, that is, by removing the definition of "affected land owner" and giving appeal rights to persons who make a submission about an assessment application for a regional interests authority. As is outlined in further detail below, because the costs of the proceedings will be at the discretion of the Planning and Environment Court (**P & E Court**), submitters are not likely to commence proceedings that do not have merit.
18. An additional criterion could be included to confine the appeal right to those with a legal interest in land within or adjacent to the area of regional interest. That is, the appeal right could be limited to a person who makes a submission about an assessment application for a

regional interest authority provided that person has with a legal interest in land within or a specified distance from the area of regional interest. It is anticipated this location criteria would be readily determinable once the mapping is made available.

Planning and Environment Court

19. An appeal about a regional interests decision is made to the P & E Court. The Bill gives the P & E Court jurisdiction in addition to the matters it is already empowered to hear under Chapter 7 of the SPA.
20. The RPI Bill is not clear about whether all of the provisions of Chapter 7 of the SPA are to apply, including for example the cost provisions contained in section 457 of the SPA.
21. The Bill does not specify which party will have the onus of proof in relation to a regional interests decision appeal (compare section 493 of the SPA).
22. The Bill does not specify whether the P & E Court's declaratory power in section 456 of the SPA will apply to matters done or to be done under the RPI Bill, or to the construction of the Bill.
23. As resource proponents will usually be required to undergo separate approval processes under the RPI Bill and the EP Act for a regional interests authority, it is possible that appeals relating to the same project will be running concurrently in both the P & E Court and the Land Court.
24. To avoid the potential for this, QELA suggests that consideration be given to transferring the jurisdiction of the Land Court (relating to environmental authority and tenement appeals) to the P & E Court.

Penalties

25. Clauses 18 and 19 of the RPI Bill identify maximum penalties where a regional interests authority has not been obtained or a condition of a regional interests authority is breached.
26. The maximum penalty for a wilful breach of these provisions is proposed to be 6,250 penalty units and 4,500 penalty units for a non-wilful breach. As a majority of these types of activities are carried out by corporations, the maximum penalties will be \$3,437,500 for a wilful breach and \$2,475,000 for a non-wilful breach.
27. It may be noted that the equivalent offence provision under section 430 of the EP Act attracts a maximum of 2,000 penalty units (\$1,100,000 for a corporation) for a wilful breach and 1,665 penalty units (\$915,750 for a corporation) for a non-wilful breach.

Offence proceedings

28. If a person is convicted of an offence under the RPI Bill the Court only has the power to order only that the person pay a fine and do not include, for example, the power to order the unlawful activity cease or order remediation.
29. This may be contrasted with the power conferred under section 599 of the SPA which authorises, for example, stop work, demolition, removal and restoration orders or orders to make a development application.

Administrative matters

Lack of regulatory impact statement

30. QELA notes that a regulatory impact statement was not prepared for the RPI Bill.

Public consultation of the regulation

31. Important matters such as the scope of a regulated activity, the public notification process and the criteria that will be applied by the chief executive to assess regional interests assessment applications will be included in the regulation to the RPI Bill. These matters should be the subject of further public consultation.

Mapping

32. Mapping of the areas of regional interest should represent a consolidated and connected approach to land use mapping in Queensland, and should be the subject of further public consultation.

Ongoing Consultation

In light of the matters referred to, QELA anticipates that various aspects of the RPI Bill may require amendment and clarification and looks forward to further opportunities to provide feedback particularly once the regulatory impact statement, regulations and mapping are made available.

We thank you for the opportunity to make a submission about this Bill. Representatives of QELA would welcome the opportunity to discuss this submission in further detail as required.

Yours faithfully



Troy Webb

President

Queensland Environmental Law Association