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Mr David Gibson MP
Member for Gympie
Chair of the State Development, Infrastructure and Industry Committee
Parliament House
George Street
BRISBANE QLD 4000

By e-mail – sdiic@parliament.qld.gov.au

Dear Sir

***Regional Planning Interests Bill 2013* (Bill)**

I refer to the request for submissions regarding the Regional Planning Interests Bill 2013 (the Bill) and thank the Committee for providing Arrow Energy Pty Ltd (Arrow) with the opportunity to comment.

Arrow supports and adopts the Australian Petroleum Production and Exploration Association's (APPEA) submission on the Bill and takes this opportunity to submit additional comments to highlight our particular concerns.

Arrow is currently pre-Final Investment Decision and is therefore in a different position to other major coal seam gas (CSG) companies in Queensland. Uncertainty regarding access to tenure is the highest non-technical risk for Arrow's LNG project.

Our submission at Attachment A focuses on the key operational implications of the Bill on Arrow's project in terms of the:

- imposition of additional regulation and complexity in an already complex regulatory environment;
- deferral of critical elements of the framework to regulation, which is yet to be drafted;
- lack of clarity regarding the application of exemptions and transitional arrangements;
- lack of clarity regarding the application process;
- uncertainty posed by the appeals process; and
- ambiguity and lack of definitions for key terms.

Arrow is proud of the work it has undertaken in developing 12 Coexistence Commitments with land owners. This clearly demonstrates our commitment to ensuring that agriculture and CSG production can mutually exist on a sustainable basis. Our commitments are based on achieving win-win outcomes by incorporating elements of compromise, flexibility, innovation, technology and practicality. It is therefore disappointing to Arrow that the *Regional Planning Interests Bill 2013* does not acknowledge the coexistence history of the resource and agriculture sectors and their commitment and ability to continue to co-exist.

Given the number of Regional Interest Authority applications that Arrow estimates it will be required to submit (up to 1,500 applications), Arrow is concerned about the impact of the process in terms of cost and schedule.

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As Arrow's existing domestic activities and proposed LNG Project activities will be captured by the proposed legislation, we are of the view that the introduction of a system that allows companies and land owners to reach agreement against a set co-existence criteria would provide additional clarity, certainty and assessment efficiency for all parties involved.

As two of the four pillars of the Queensland economy, it is important that there is a considered and equitable approach to regulation which enables the resources and agriculture sectors to work together and achieve sustainable outcomes. In Arrow's view, changes will be required to be made to the *Regional Planning Interests Bill 2013* to allow this to occur.

Yours sincerely

Tony Knight
Vice President Exploration

Attachment A – Arrow Energy's submission on the *Regional Planning Interests Bill 2013*

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1. BACKGROUND

Arrow Energy Pty Ltd (Arrow) is ultimately owned by Royal Dutch Shell and PetroChina. The company is focused on the exploration, extraction and use of coal seam gas (CSG), a naturally occurring and comparatively clean burning gas commonly used to fuel electricity generation.

Arrow's activities range from exploration to production, transportation and electricity generation. It has been operating a strong domestic gas supply business since 2004, and is currently working to explore and develop the CSG resources in Queensland. This will underpin the creation of a new and highly valuable export market, based on the conversion of CSG to liquefied natural gas (LNG) via the proposed Arrow LNG plant in Gladstone.

Currently, the company produces gas from fields in the Surat Basin in south-east Queensland and the Bowen Basin in central Queensland. With about 1200 gas wells, Arrow is able to supply gas to the Townsville (235MW), Daandine (33MW) and Braemar 2 (450MW) power stations, as well as local and industrial users in Townsville, Moranbah and Brisbane.

Additionally, Arrow has a portfolio of exploration tenements that cover approximately 41,500km^2 across Queensland.

Arrow has recently been granted state and federal government approval for its LNG Plant on Curtis Island and its Surat Gas Project. The LNG Plant is underpinned by the expansion of our fields in the Surat and Bowen basins and the State Government approvals have already been granted for the pipelines from both basins.

2. EXECUTIVE SUMMARY

Arrow supports and adopts the submission provided by the Australian Petroleum Production and Exploration Association (APPEA) which highlights the gas industry's concerns with the Bill. The submission also proposes possible amendments which would provide a more effective and efficient administration of the proposed legislation. It is intended these amendments would be to the benefit of both the resource and agricultural industries.

In addition, Arrow has taken this opportunity to highlight its particular concerns regarding the application of the Bill to Arrow's current and future operations. In particular the:

- imposition of additional regulation and complexity in an already complex regulatory environment;

- deferral of critical elements of the framework to regulation, which is yet to be released;
- lack of clarity regarding the application of exemptions and transitional provisions;
- lack of clarity regarding the application process;
- uncertainty posed by the appeals process; and
- ambiguity and lack of definitions for key terms.

A robust case for a Final Investment Decision (FID) on Arrow's LNG project is currently being developed for our shareholders and project certainty is critical.

The increased level of uncertainty created by the Bill brings into question Arrow's right of access to its tenure and represents the highest non-technical risk for Arrow's LNG project.

Arrow strongly believes that it is able to coexist with agriculture for the benefit of land owners' and the State's interests.

3. KEY CONCERNS

3.1. Additional regulation and complexity

The Bill is contrary to the Government's red tape reduction initiative and increases uncertainty for Arrow's project.

Arrow operates within an already complex regulatory environment. While supportive of the Government's desire to promote co-existence between Queensland's agricultural and resource industries, the Bill adds more complexity.

Arrow also notes that the matters proposed to be assessed under the Bill are also governed by the following existing legislation:

- the *Environmental Protection Act 1994* (Qld) (EP Act) - the Environmental Impact Statement (EIS) and Environmental Authority (EAs) application processes;
- the *Environmental Protection and Biodiversity and Conservation Act 1999* (Cth);
- the *Petroleum and Gas (Production and Safety) Act 2004* (Qld) (P&G Act) – land access requirements and the Land Access Code; and
- the *Water Act 2003* (Qld) – underground water management obligations.

Arrow is concerned that there has been a lack of consideration given to streamlining the Regional Interest Authority (RIA) application and assessment process by leveraging off assessments performed under other legislation for which significant time and cost is spent.

Arrow continues to support the principles of the Land Access Code, which provides the foundation for landholders and tenement holders to operate in long term partnerships on properties that function with both complex agricultural operations and CSG activities. The Land Access Code provides that both parties seek a mutual understanding about their respective industries and operations and in turn capture aspects of these operations in an agreement on matters of conduct and compensation. Adding additional approval pathways and regulation is likely to undermine the spirit of the Land Access Code and its intent to facilitate agreements for co-existence objectives and land access.

It is unclear as to how the provisions of the Bill will practically operate in the context of existing legislation. For example, how does the Bill interact with the P&G Act's land access requirements? Is it the intent that Arrow seeks to enter into a Conduct and Compensation Agreement (CCA) before applying for a RIA? To be in a position to assess the impact of a resource activity on an area of regional interest and submit a property based RIA application, Arrow would have to be able to specify with a degree of certainty the location of its infrastructure and the nature of its activities. Arrow would be unable to do this if agreement was not reached with the land owner prior to submitting a RIA.

The Chief Executive's RIA conditions imposed under section 51 could effectively mean that the RIA's requirements for the location of infrastructure and the nature of activities are different to those Arrow agreed with the land owner prior to submitting the RIA application. If this were the case, Arrow would then have to re-negotiate a CCA with the land owner to cater for the Chief Executive's conditions. This results in further delays to, and uncertainty for, Arrow's access to tenure.

3.2. Deferral of critical elements of the framework to regulation

Of significant concern is the Bill's extensive reference to regulations which are yet to be released. While Arrow acknowledges and appreciates the level of consultation undertaken to date with industry, in the absence of the regulations, Arrow is unable to determine the full extent of the Bill's implications on current and future operations.

Therefore, Arrow is constrained in its ability to provide a comprehensive submission on the Bill given that critical elements of the framework have been deferred to regulation. For instance, under section 49 the Chief Executive is to consider "*any criteria for the decision prescribed under a regulation*" in deciding a RIA application. Access to these criteria is critical to understanding the full implications of the Bill. Therefore, Arrow may comment further on the Bill once the regulations are released.

3.3. Exemptions and Transitional Arrangements

The application of the Bill's exemptions is uncertain because of the lack of defined key terms and the deferral of critical elements to regulation.

3.3.1 Agreement of land owner exemption

Section 22 provides an exemption for activities which are subject to an agreement with a land owner. This exemption will have very limited application as it is restricted to circumstances where "*the activity is not likely to have a significant impact on the priority agricultural area*" (PAA) and "*the activity is not likely to have an impact on land owned by a person other than the land owner*".

The Bill does not define "*significant impact*". This is subjective and is open to legal challenge if undefined. If defining this term is left up to land owners and resource authority holders, it is unlikely that both will hold the same view as to what resource activities constitute a "*significant impact*". This reduces the likelihood of the parties reaching an agreement for the purposes of the land owner agreement exemption. Further, a broad interpretation of "*significant impact*" could mean that all petroleum activities are caught by this term and therefore Arrow would rarely rely on this exemption.

The requirement under section 22(2)(c) that "*the activity is not likely to have an impact on land owned by a person other than the land owner*" is broad and creates uncertainty for Arrow because there is no guidance as to how close the land owned by another person has to be to the land on which activities will take place. How is Arrow to identify these land owners and gain access to information about their land use and contribution to the PAA?

Further, section 22(3) states that other land will be impacted if the resource activity impacts on the suitability of the land for a priority agricultural land use (PALU). The term "*suitability*" is ambiguous and can capture land that is not currently being used for a PALU but may be in the future. This is broader than the definition of a PAA which states that one of the characteristics is an area used for PALU (see section 8(2)(a)).

3.3.2 Pre-existing resource authority exemption

Arrow notes that the exemption under section 24 relating to pre-existing resource activities does not apply if the activities are being carried out:

- in an area that contains a source of water or water supply infrastructure necessary for PALU, or an area where a resource activity is being conducted that is likely to have a negative impact on a water source or water supply infrastructure necessary for PALU; and
- under a Cumulative Management Area (CMA) tenure prescribed under a regulation.

All of Arrow's Surat Basin tenements are within the Surat CMA and Arrow has been conducting activities in the Surat Basin since 2004. It is currently unknown whether all or only part of the Surat CMA will be prescribed by regulation. This is of significant concern to Arrow as declaring the Surat CMA tenure in regulation will result in Arrow having to cease its existing resource activities in the Surat Basin until a RIA is obtained. This will result in significant time, cost and contractual implications for Arrow. For example, Arrow is currently expanding its existing Daandine Expansion Field Development (DxP) which will produce gas over three phases from 2015 through to 2020 and deliver gas in accordance with contractual arrangements that have been put in place. The DXP is already covered by an approved EA. In the absence of further clarity on the location of the areas of regional interest, the DxP may occur in a PAA and CMA tenure under section 24(2). This carve out from the pre-existing resource authority exemption and the current uncertainty regarding its application poses a significant risk to the continued operation of the DxP. Having to cease the DxP activities will result in significant delays and costs which could range in the millions.

Arrow also submits that there is an inconsistency between the explanatory notes and section 24(1)(a). The explanatory notes refer to an activity that is "*or will be carried out, in accordance with a resource activity work plan that had already taken effect when the land was included in an area of regional interest*". However, the Bill only refers to an activity "*being carried out*".

3.3.3 Transitional arrangements

Arrow believes that the exemptions and the transitional provisions for Strategic Cropping Land (SCL) do not provide adequate protection for existing projects and investment as they have very limited application. The implications of uncertainty and the risk of having to cease existing activities is demonstrated in the DxP example under section 3.3.2 above.

To provide certainty on the protection of existing projects, Arrow submits that 'grandfathering' provisions be included in the Bill to protect:

- projects which have completed the EIS process;
- existing projects for which resource authorities are due for renewal;
- new activities carried out under existing tenure where no overall additional impact will occur; and
- existing projects from subsequent declaration of new areas of regional interest.

3.4 The application process

3.4.1 Timeframes

The lack of specified timeframes in the Bill creates a high level of uncertainty for Arrow's project in terms of schedule and cost. In particular the Bill:

- does not prescribe timeframes for key steps. For example, there is no timeframe by which the Chief Executive is to make a Regional Interest Decision (RID), there is no timeframe for the Chief Executive to decide whether an applicant is exempt from notifying an application, and there is no timeframe by which an assessor can issue a requirement notice under section 44(1) for notification of a RIA application or for the submission of an independent report;
- defers the setting of timeframes to regulation, e.g. timeframes for notification under section 35;
- states that timeframes may be extended under the Bill meaning that any prescribed timeframes in the Bill are effectively open ended. For example, under section 42(3) the Chief Executive may decide a period longer than the prescribed 20 business days for an assessing agency to provide a response on the RIA application; and
- prescribes ambiguous timeframes. For example, under section 54 the Chief Executive is to issue a RIA as soon as practicable after deciding to grant a RIA. It is uncertain as to what is meant by "*as soon as practicable*".

Certainty on the time it will take to obtain a RIA is critical to enabling Arrow to properly account for this approval process in the project economics for FID.

3.4.2 The number of RIA applications

The underpinning principle of the regional planning process has been to manage the impacts of resource activities on a regional basis. However, Arrow understands that it is intended that property-scale assessments will be conducted under the Bill. On this basis, Arrow estimates having to submit up to 1,500 RIA applications over the life of its project. This will result in significant cost and delays.

Arrow is also concerned about the level of government resourcing that will be required to undertake the timely assessment of the significant number of applications.

3.4.3 RIA application requirements

The RIA application requirements under section 30 are very broad and present uncertainty for the project in terms of cost and schedule.

The Bill provides no guidance on:

- what would constitute an adequate RIA application and the level of information required to enable the Chief Executive to make his/her RID; and
- how an applicant is to properly assess how the resource or regulated activities will impact an area of regional interest without further guidance from the Government as to the relevant attributes of such areas.

It is unclear as to how the Chief Executive will conduct a regional assessment of property-scale RIA applications in the absence of information about other activities being conducted or proposed to be conducted in the same area of regional interest. In the case of Arrow's project, it is unlikely that all of Arrow's RIA applications across an area of regional interest will be submitted at the same time given the varying timeframes for landholder discussions. It is therefore difficult to understand how an effective and appropriate regional assessment will be made in a timely manner. It is also uncertain as to how the Chief Executive will translate regional planning objectives into property-scale RIA conditions.

3.5 The appeals process

The Bill's appeal process does not provide certainty for resource companies or land owners.

3.5.1 Potential appellants

Arrow has particular concerns regarding the large pool of potential appellants for a RID. Under section 69(c), an affected land owner can appeal a RID. One of the limbs of the definition of an "*affected land owner*" in section 68(a) is the "*proximity of the affected land to the land subject to the decision*". When will a land owner be within the "*proximity*" of the land subject to the RID? "*Proximity*" does not necessarily mean that the land owner owns land adjoining the affected land – it can be broader than this. How is it to be determined that a land owner has rights to appeal?

The definition of "*affected land owner*" under section 68(b) also refers to *"a person who owns land (affected land) that <u>may</u> be adversely affected"* by the activity. This is a subjective test. The use of the word "*may*" also contributes to the broad and ambiguous drafting of this provision. This makes it difficult for Arrow to identify "*affected land owners*" to ensure that any issues are properly accounted for and resolved in the course of preparing a RIA application to mitigate the risk of appeals.

In this submission, Arrow has highlighted the uncertainty throughout the Bill which increases the issues that will need to be resolved between relevant parties. In seeking to resolve these issues and gain certainty, parties will ultimately seek the assistance of the Courts. Therefore, the uncertainty created by the Bill and the large pool of appellants increases the likelihood of RID appeals and litigation.

3.5.2 Stay on operation of the RID

Arrow is also concerned with the stay on operation of the RID under section 72. Appeals can feasibly take a significant time to resolve and therefore pose significant schedule and cost risks for Arrow's project and existing operations.

3.5.3 The Planning and Environment Court

The Bill states that appeals are to be made to the Planning and Environment Court as opposed to the Land Court which currently has jurisdiction over land access disputes under the P&G Act and decisions related to EISs and EAs under the EP Act. Arrow queries why two different Courts are given jurisdiction over matters relating to access to tenure. This may result in a circumstance where contradictory decisions are handed down by both courts on issues of tenure access.

3.6 Ambiguous or undefined key terms

There are key terms within the Bill that are ambiguous or undefined. This makes it difficult for Arrow to assess the full extent of the impact of the Bill. In addition to those already outlined above, the following sets out Arrow's comments in relation to other key terms:

"Impact" – the term "*impact*" is referenced throughout the Bill and it underpins the Bill's application to activities.

Under section 28(a), an activity impacts an area of regional interest if the impact "*affects a feature, quality, characteristic or other attribute of the area*" or "*the suitability of land to be used for a particular purpose*".

"*Affects*" is broad and can refer to positive and negative, direct and indirect impacts. There is no materiality threshold.

The "*features, qualities and characteristics*" are not defined. The explanatory notes refer to maps of areas identified in a regional plan but the plans gazetted to date do not necessarily set out the features, qualities and characteristics of the area.

The references to "*suitability*" and "*used for a particular purpose*" are broad and subjective. What "*particular purpose*" is section 28(a)(ii) referring to?

The uncertainty as to what constitutes an impact will make it difficult to prepare a RIA application and creates uncertainty as to the Chief Executive's assessment and imposition of conditions.

Conditions – under section 51, the Chief Executive has broad conditioning powers which include "*anything else the chief executive considers is necessary or desirable to achieve the Act's purposes*". This, coupled with the fact that the criteria for the Chief Executive's RID is currently unknown and the purpose of the Bill is broad and subjective (see comments directly below), creates significant uncertainty for Arrow's activities.

Arrow also notes that under section 50(2), "*If the local government has given its response to the application (other than just advice), the chief executive must give effect to any recommendations in the response*". Arrow interprets this to mean that if the local government recommends conditions for an activity within a priority living area, the Chief Executive must include such conditions in the RIA. What happens if a condition recommended by the local government conflicts with a condition that the Chief Executive considers "*necessary or desirable to achieve the Act's purposes*"?

"Economic, social and environmental prosperity" – the purpose of the Bill hinges on a broad and subjective concept of "*identifying areas of Queensland that are of regional interest because they contribute, or are likely to contribute to, Queensland's economic, social and environmental prosperity*" (section 3(1)(a)). "*Prosperity*" is undefined. This raises uncertainty as to how the Government identifies these areas, the assessment of impacts that resource activities may have on such areas; the manner in which the Chief Executive conditions activities; and how changes to the attributes of these areas impact on any RIDs.