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20 January 2014
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**SUBMISSION TO STATE DEVELOPMENT
INFRASTRUCTURE AND INDUSTRY COMMITTEE –
REGIONAL PLANNING INTERESTS BILL 2013**

17 JANUARY 2014

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

Dear Sir,

Thank you for the opportunity to provide a submission on the Regional Planning Interests Bill 2013 (the RPI Bill).

Queensland Farmers' Federation (QFF) is the peak body representing and uniting 16 of Queensland's rural industry organisations who work on behalf of primary producers across the state. QFF's mission is to secure a sustainable future for Queensland primary producers within a favourable social, economic and political environment by representing the common interests of its member organisations'. QFF's core business centres on resource security; water resources; environment and natural resources; industry development; economics; quarantine and trade.

Our goal is to secure a sustainable and profitable future for our members, as a core growth sector of the economy. Our members include:

- CANEGROWERS,
- Cotton Australia,
- Growcom,
- Nursery and Garden Industry Queensland,
- Queensland Aquaculture Industries Federation,
- Queensland Chicken Growers Association,
- Queensland Dairyfarmers' Organisation,
- Queensland Chicken Meat Council,
- Queensland United Egg Producers,
- Flower Association of Queensland Inc.,
- Pork Queensland Inc.,
- Australian Organic
- Fitzroy Food and Fibre Association,
- Pioneer Valley Water Co-operative Limited,
- Central Downs Irrigators Limited, and
- Burdekin River Irrigators Area Committee

General Comments

QFF recognises that the RPI Bill is broad-ranging legislation that is intended to facilitate the regulation of a potential wide range of activities and their impact on areas of regional interest. While the focus of the existing regional plans is on managing the impact of resource activities on agricultural and living areas, the Bill provides government with the power to declare as a regulated activity any activity 'likely to have an impact on an area of regional interest'. QFF believes the Bill and the explanatory notes do not provide a sufficient account

of the intent of these provisions or an indication of what may be declared a regulated activity in the future.

The Bill is still in the process of finalisation and the available material does not include the Regulations to the Bill. It should be noted that the absence of the Regulations has made it difficult to evaluate the potential effectiveness of the Bill on protecting the regional interests from resource activities and other regulated activities and to provide informed comment on the Bill.

QFF and other agricultural organisations made a submission to the Queensland Government in December 2012, proposing a framework for implementation of the objectives regarding conflict between resource and agricultural industries in the Darling Downs (DD) and Central Queensland (CQ) Regional Plans as well as identifying objectives regarding the protection of Strategic Cropping Land (SCL). A copy of this proposed framework (the Framework) is attached to this submission and provides the context for the following comments on the RPI Bill.

The proposed attached Framework appears to be broadly consistent with the RPI Bill. The key elements of the Framework align with the RPI Bill as follows:

- The exemption for resource activities impacting less than 12 months would be consistent with Section 23 of the RPI Bill
- The exemption for resource activities carried out in accordance with an agreement with the landholder would be consistent with Section 22 of the RPI Bill, subject to additional safeguards outlined in Points 4 and 5 below.
- The decision process as outlined in the Framework (the alternative outcome) could be considered to be aligned with the consideration and granting of a *Regional Interests Authority* as proposed in Part 3 of the RPI Bill
- The independent panel proposed in the Framework could potentially be considered as an assessing agency in accordance with Division 5 of the RPI Bill and referral to the panel could be prescribed in the Regulation
- Priority agricultural areas (PAA) and strategic cropping areas (SCA) would define the areas (Protected Land) in which the Framework would apply. However QFF suggests consolidation of these regional interests to avoid confusion.
- Criteria for the identification of Protected Land as well as co-existence criteria for guidance and use by the independent panel and the decision maker could be prescribed in the Regulation attached to the RPI Bill.
- The process of appeal and the staying of a *Regional Interests Authority* decision in Section 72 of the RPI Bill seems consistent with that proposed in the Framework. (see point 9 regarding the relevant court).

Specific comments

There are however some potential inconsistencies or areas in the RPI Bill that will require clarification to ensure provisions in the RPI Bill are consistent with the Framework.

Part 1 Division 3 Sections 7-11

1. It is unclear if the identification of an *area of regional interest* for a *priority agricultural area* and a *strategic cropping area* in the RPI Bill would adequately identify Protected Land and whether it could result in an unnecessary level of duplication/overlap.
 - a. The Framework attached to this submission is intended to apply to land that is identified as Protected Land. This includes land being used for a PALU within a PAA and all areas of SCL.
 - b. To have multiple, overlapping areas to achieve this outcome would appear undesirable and unnecessarily complicated.
 - c. To provide consistent protection to areas of PAA and SCA, these two areas should coincide. In this matter, there should be only one regional interest.
 - d. It is recommended that to avoid duplication and confusion, the regional interest should be the Strategic Cropping Area (SCA) and should cover all existing and potential areas on the current SCL trigger map and any additional areas referred to in Section 8 (2) (b) and (c) of the RPI Bill. Therefore we suggest that the definition of PAA should be amended to be an amalgamation of SCA and PAA areas.
 - e. It is recommended that the assessment of proposed resource activities (and other regulated activities) on SCA should be as follows:
 - i. Permanent impact on SCA should not be permitted unless there are exceptional circumstances such as those defined in the current SCL Act;
 - ii. Temporary impact that cannot be rehabilitated within a 12 month period on PALU within the SCA regional interest should be subject to coexistence criteria as set out in the attached Framework.
 - iii. Temporary impact that cannot be rehabilitated within a 12 month outside PALU within the SCA regional interest should be subject to a lower level of coexistence criteria that would need to be developed.

Part 1 Division 3 Section 8

2. It is unclear in the RPI Bill how regional assets essential to the conduct of PALUs (such as the Condamine Alluviums and Sunwater Channels) will be protected.
 - a. The Bill identifies that a PAA could be prescribed if it contains "*an area that contains a source of water, or infrastructure for supplying water, necessary for the ongoing use of land in the proposed area for a PALU*". Also, a PAA could be prescribed if "*... the carrying out of a resource activity or regulated activity in the area is likely to have a negative impact on a water source*" that is identified as per the previous sentence.
 - b. QFF strongly supports the identification of regional assets such as the Condamine Alluviums and Sunwater Irrigation Channels as Protected Land. However it is not clear in the RPI Bill how they would be protected. As per the Framework, it is considered that protection at a property scale would not be sufficient for these assets and an addition to the Framework based on management of the entire asset would be required.

Part 1 Division 3 Section 10

3. It is unclear in the RPI Bill how Strategic Cropping Areas (SCA) will be protected.
 - a. The existing SCL Act provides the mechanism for the protection from permanent impact on all (existing and potential) SCL in the Protection Area. Protection of SCL in the Management Area is currently restricted to land used for cropping, however the SCL review has recommended that the cropping history test be removed from consideration in the Management Area.
 - b. To carry the same level of protection of SCL to the SCA regional interest in the RPI Bill means that both current and potential SCA must be protected to support future expanded agricultural production, regardless of cropping history.
 - c. It is proposed that the coexistence criteria intended to support the Bill will not allow permanent impacts from resource activities on Protected Land. The inclusion of mitigation provisions in the RPI Bill (Part 4) implies that permanent impacts will be allowed.
 - d. It is not clear whether the RPI Bill will allow permanent impact to regional interests subject to an exceptional circumstances test.
 - e. The RPI Bill should include a provision that permanent impact on Protected Land will not be permitted unless there are exceptional circumstances.

Part 2 Division 2 Section 22

4. The exemption for resource activities if agreement is reached with the land owner (Section 22 (2) (a)) includes either a conduct and compensation agreement (CCA) (non-court directed) or other voluntary agreement. However this section does not impose any restrictions upon the agreements as proposed in the Framework.
 - a. The Framework proposes that limits on negotiations (such as no permanent impacts to Protected Land and an impacted area of less than 2.5% of Protected Land on a property) are required.
 - b. To avoid unacceptable cumulative regional impacts, there may also need to be a maximum cumulative impacted area to be included in the Regulation.
 - c. An unqualified exemption for activities subject to a CCA or other agreement would not seem to allow for these restrictions to be considered. It may be necessary to restrict exemptions to those agreements that include the required limitations. Such an agreement could occur concurrently with a CCA and could be relatively simple (e.g. a single additional page to be inserted into CCA's).
 - d. The exemption of activities that are conducted with the agreement of the land owner should be restricted to those agreements that meet certain criteria such as a limit to the area of Protected Land that is impacted by the activity. These criteria would need to be included in the Regulation to achieve compliance with the Bill.
 - e. To avoid undue pressure on landowners to sign agreements, the Bill or supporting regulations should include a cut-off date of 20 November 2013 for signed written agreements to gain exemption.
 - f. The RPI Bill should include clear definitions of the terms 'significant impact' and 'impact' used to allow exemptions in this section of the Bill.

5. For resource projects that exist at the time the RPI Bill is enabled, it is unclear as to whether additional resource activities that are proposed on a property and may require amendment to an existing CCA or other agreement would be exempt activities in the RPI Bill.
 - a. While the exemption for resource activities if a CCA has been agreed and signed between the land owner and the authority holder seems reasonable (subject to certain restrictions suggested above), the Framework proposes that any additional resource activities or infrastructure that were not originally agreed to (and hence requiring an amendment to the existing CCA or other agreement) would not be exempt.
 - b. It is unclear as to whether this is allowed for in the RPI Bill
 - c. Using the CCA or other written agreement as a tool for applying transitional provisions in relation to the Framework may not be ideal and would require further consultation before finalising.

Part 2 Division 2 Section 23

6. The exemption provided for under this provision S.23(1)(b)- must stipulate that restoration is carried out up to pre-application production capacity.

Part 2 Division 2 Section 24

7. The exemption for a *pre-existing resource activity* is unclear in terms of scope and applicability in Section 24 of the RPI Bill
 - a. It is understood that this exemption does not apply to water resources (such as the Condamine Alluviums) if they are also within a Cumulative Management Area as defined in the *Water Act 2000* but it does seem to be an exemption that applies to the broader protection of SCA or PALUs within a protected area
 - b. It is unclear if the exemption applies to any existing tenure holder who has submitted a work program, plan of operations or statement of activities under the relevant act regardless of whether they have commenced activities on a property or not prior to the RPI Bill being tabled.
 - c. It would seem that a commencement date of 20 November 2013, the date of introduction of the RPI Bill, for this exemption is appropriate.

Part 3 Division 2 Section 36

8. The powers provided under Section 36 could allow the Chief executive to decide an application without notification requirements being met if he/she believes there is enough information about the relevant matters of the application. QFF submits that these sections be removed (s.36 (2)(A)) on the basis as it denies the public the opportunity to participate in the process. It is also a concern that the Chief Executive may overlook relevant matters from an industry or community perspective.

Part 3 Division 2 Section 45

9. In a similar way section 45 could allow the Chief Executive to decide an application without the applicant meeting requirements for additional information set by the assessor. QFF would submit that Section 45 (2) (a), (3) should be deleted.

Part 3 Division 3 Section 30

10. It is not clear in the RPI Bill whether an *assessment application* would need to include a demonstration that reasonable efforts have been made to negotiate an agreement with the affected landholder/s
- d. The approved form should include a requirement to demonstrate that, if a written agreement has not been reached, the applicant has made reasonable efforts to reach an agreement with the land holder including the points of agreement and disagreement.

Part 3 Division 4

11. It is unclear whether landholder's views (i.e. submissions) would be accepted or considered in circumstances where an assessment application was not notifiable.
- e. It is considered essential that landholder's submissions are considered in all circumstances.

Part 3 Division 8 Section 53

12. QFF submits that the public notification requirements (S.53) should also be extended to affected landholders

Part 5 Section 68

13. The appeal court identified in the RPI Bill is the Planning and Environment Court. The Framework proposes that in order to ensure consistency with the land access framework where CCAs are negotiated and disputes are determined, the use of the Land Court may be more appropriate.

Part 6 Section 83

14. QFF notes the provision for the Chief Executive to make guidelines and take advice. QFF believes we should be consulted on the development of prescribed criteria guidelines for deciding assessment applications.

We would welcome any further opportunities to assist the Committee with its consideration of the Regional Planning Interests Bill particularly at the time additional information, such as the supporting regulations, are released.

Yours sincerely



Dan Galligan
Chief Executive Officer



ATTACHMENT 1 to QFF submission on Regional Planning Interests Bill

Proposed Framework for Implementation of SCL and Regional Planning Objectives

DISCLAIMER

This document represents the considered thoughts of the cross-agricultural group that commissioned it. It has been provided as a recommended way forward, but prior to incorporation into legislation/regulation it should be subject to a full public consultation process.

This proposed framework is largely at a principle level, and it is recognised that much more work needs to be done to develop mechanisms for implementation and administration.

PURPOSE OF REPORT

The purpose of this report is to present a potential framework for implementation of the objectives of the Darling Downs (DD) and Central Queensland (CQ) Regional Plans as well as identified objectives regarding the protection of Strategic Cropping Land (SCL).

KEY PRINCIPLES ESSENTIAL TO THE PROPOSED FRAMEWORK

The framework proposed in this report relies on adherence to the key principles outlined below. If any of these principles are changed or modified then the proposed framework would need to be reconsidered by those involved in its preparation to ensure it still achieves the required objectives. The proposed framework should not be considered in its current form if any of the principles are modified or removed.

- It is the absolute intention of all those involved in preparing this document that the adoption of the proposed implementation framework cannot lead to any loss of existing landholder rights.
- No permanent impacts to SCL or PALU's within a PAA are allowed
- Landholders should have an equal say in decisions regarding how activities proceed on PALU or SCL on their land and reasonable attempts must always be made to negotiate with landholders in the first instance.

- The proposed framework recognises that for effective co-existence there should be negotiations between landholders and resource companies regarding the amount of SCL or land used for PALU's that can be temporarily impacted by a resource activity.

IDENTIFICATION OF LAND THAT IS TO BE PROTECTED

The proposed framework applies to any land that is either a Priority Agricultural Land Use (PALU) on a property that is located within a Priority Agricultural Area (PAA) or Strategic Cropping Land (SCL) both within or outside a PAA.

It is anticipated that definitions/criteria that allow for the identification and determination of PALU & SCL would require development. It is proposed that no distinction is made in the protection afforded to either PALU within a PAA or SCL that is either within or outside a PAA. That is, both SCL (wherever it occurs) and PALUs (within a PAA) would be considered to be 'Protected Land' and no further differentiation between the two would be necessary. Protected Land would include any areas of SCL, PALUs within a PAA and any land on a property integral to the operation of a PALU.

It is proposed that trigger maps of Protected Land would be developed and used for the purposes of implementing the proposed framework. The process for modifying the trigger maps to either include or exclude land could be based upon a similar process to that which exists for SCL.

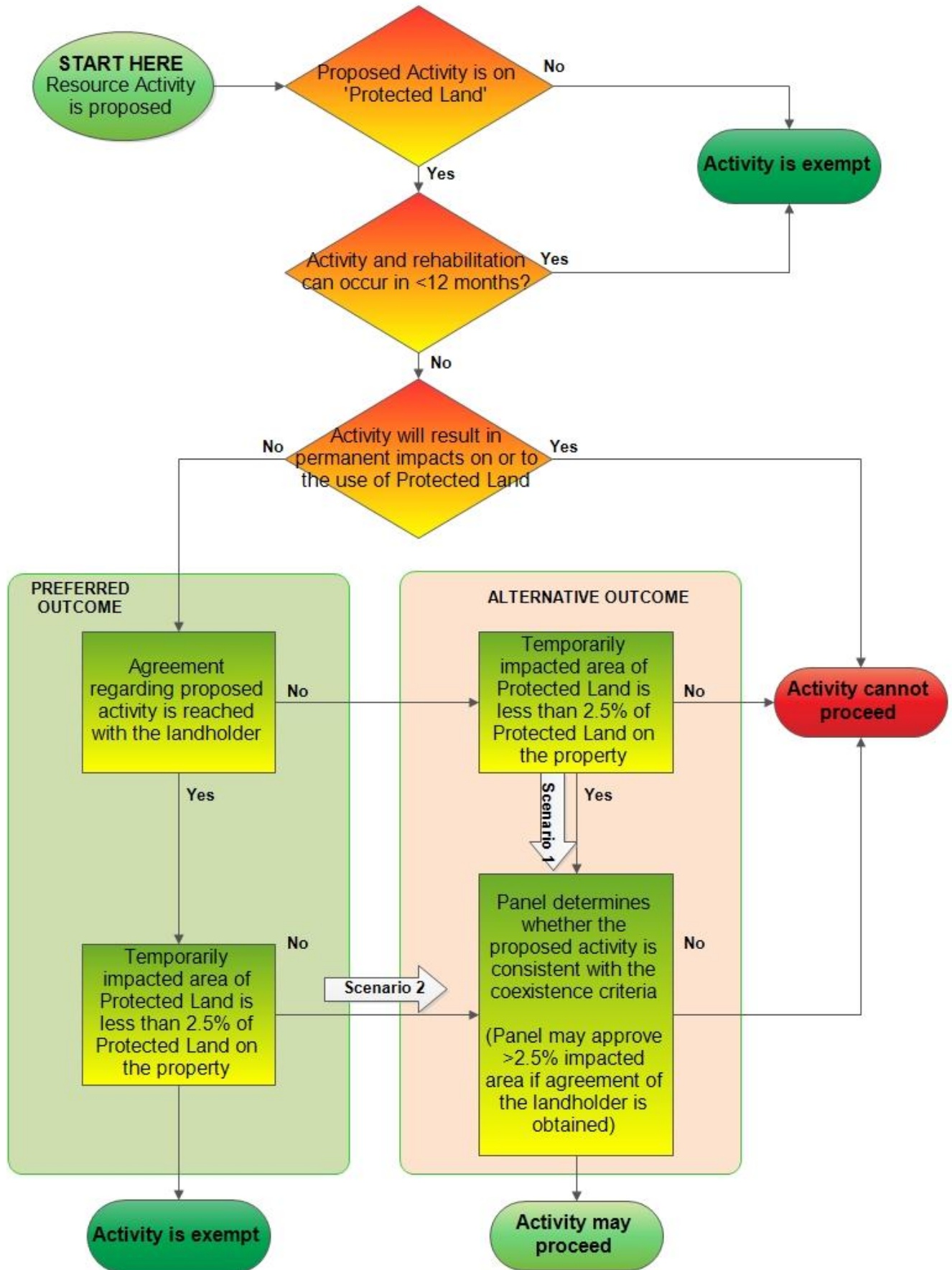
PROPOSED FRAMEWORK

The framework in this report focusses on encouraging landholders and resource companies to reach agreement in relation to any proposed resource development on Protected Land which has a temporary impact of less than 2.5%¹. If agreement cannot be reached, then application for a Regional Interests Authority could be made to the State government for referral onto an independent panel of suitably qualified² people to assess whether the proposed resource development was consistent with a set of co-existence criteria. Further detail is provided in the following flowchart and sections.

¹ This percentage is based on work done on the SCL Standard Conditions Code.

² Composition and operation of the panel requires further development in consultation with relevant stakeholder groups, but must be in accordance with principles of equity of representation, and transparency in appointment and decision making.

FLOWCHART FOR CONSIDERATION OF RESOURCE ACTIVITIES UNDER PROPOSED FRAMEWORK



Preferred Outcome – Negotiated Agreement

Landholders and resource companies should be allowed to reach agreement regarding proposed resource developments on Protected Land on a landholder's property where the temporary impact on Protected Land is less than 2.5%. If agreement is reached regarding the proposed resource activities (as well as the extent and placement of any associated infrastructure) then no further action is required and the resource activity can progress in line with the agreement and any existing legislative requirements.

Similar to the land access framework, there should be compulsory mediation required if negotiations to reach an agreement are not successful. It would be mandatory that mediation occurs prior to consideration of the alternative outcome as described in the following section.

Under this preferred outcome, it is considered absolutely essential that a negotiated agreement is in place prior to any resource activity occurring on the property. The form of this agreement would need to be determined and may require further consultation.

It is proposed that no 'permanent impacts' would be allowed on or to the use of Protected Land. Adherence to this principle would be considered a mandatory requirement and would need to apply to any negotiations and subsequent agreements between resource companies and landholders that may occur in accordance with the proposed framework.

If the landholder and resource company were willing to agree to temporary impact greater than 2.5%, then an application would be required in accordance with the alternative outcome described in the next section.

Alternative Outcome – Application to an Independent Panel for a Regional Interests Authority

It is proposed that this outcome would only be available under the following scenarios:

- **Scenario 1:** If negotiations between a landholder and resource company had failed to reach an agreement (including following any mandatory mediation) and the proposed resource activity would result in an 'impacted area' of less than 2.5% of existing Protected Land on the property
- **Scenario 2:** If a resource company and landholder were able to otherwise reach an agreement but the agreement related to a proposed development that exceeded the maximum limit of 2.5% 'impacted area' as described in the previous section

Copies of any application would need to be provided to affected landholders and the independent panel would be required to consider any submissions that may be received from these landholders.

The panel would consider whether reasonable efforts had been made to reach agreement with the landholder and whether the proposed development was consistent with the established co-existence criteria and any other relevant considerations. The proposed resource activity would not be allowed to commence until a decision allowing it to do so had been made by the panel.

Parties would retain the right to appeal the decision of the panel through existing legal channels. In line with the *Regional Planning Interests Bill 2013* it is proposed that the decision of the panel is stayed while an appeal is being considered. It is proposed that the Land Court be the appropriate court of appeal to ensure consistency with the existing land access framework.

Co-existence Criteria/Principles

Co-existence criteria are proposed to inform negotiations between landholders and resource companies and to be used for assessing applications made to the independent panel. A summary of proposed co-existence criteria is as follows:

REQUIRED OUTCOME	Co-existence Criteria/Principles
No material loss of Protected Land	<ul style="list-style-type: none"> • No permanent impacts on or to the use of Protected Land are allowed; and • All planned impacts to Protected Land are able to be rehabilitated to restore the land to the productive capability (or greater) for the Protected Land that existed prior to the resource activity occurring; and • The resource activity is designed and carried out in a way that ensures the total and cumulative areas of protected land impacted by the resource activity are minimised'; and • The landholder agrees with the size and extent of the temporarily 'impacted area' that will result from the proposed resource development; or <ul style="list-style-type: none"> ○ The temporary 'impacted area' of Protected Land does not exceed 2.5% of existing Protected Land on the property
No material impact on continuation of a PALU	<ul style="list-style-type: none"> • The landholder agrees with the proposed level of temporary impact of less than 2.5% on the continuation of the PALU, and the resource activity will not result in a level of subsidence that would have a material impact on the continuation of the PALU • or: <ul style="list-style-type: none"> ○ The resource activity must not cause permanent impacts to a PALU that is occurring on Protected Land within a PAA. ○ Where temporary impacts on a PALU are unavoidable, the resource activity must utilise existing infrastructure corridors within the area of PALU where possible; and ○ The resource activity must not unreasonably interrupt or diminish the landholders use of infrastructure corridors; and ○ The resource activity should be located in such a manner as to have the least impact upon the PALU and existing farming systems necessary to conduct the PALU; and ○ The resource activity must not unreasonably impede the adoption of necessary and predictable technology changes supporting the PALU (e.g. adoption of lateral move irrigators); and ○ The placement and use of infrastructure on land within a PAA that is not Protected Land must not unreasonably impact upon the continuation of a PALU; and ○ The resource activity must not result in a level of subsidence that would have a material impact on the continuation of the PALU ○ Other relevant considerations
No material impact on the overland flow of water	<ul style="list-style-type: none"> • Material alterations to existing overland flow patterns are avoided, including effects on neighbouring or 'downstream' landholders • All reasonable actions are taken to ensure no material disturbance to the overland flow of water or its harvesting for a PALU, including minimising and avoiding the location of infrastructure on flood plains wherever reasonably possible • Linear infrastructure should be buried and the surface reinstated so as not to interfere with overland flow; or the linear infrastructure should be constructed parallel to existing overland flow lines

To assist in application of the co-existence criteria, definitions or guiding material will be required for terms such as 'material', 'reasonable', 'un-reasonable', 'permanent impact' and 'impacted area'. Guidance material will also be required regarding what is required to demonstrate and/or assess that "the resource activity is designed and carried out in a way that ensures the total and cumulative areas of protected land impacted by the resource activity are minimised". Development of these definitions/guidelines would need to occur in consultation with the relevant stakeholders and the agricultural groups involved in this submission.

EXEMPT ACTIVITIES

- Resource activities that do not occur on Protected Land
- Resource activities that will have an impact of less than 12 months on or to the use of Protected Land
- Existing resource activities that may be considered exempt through application of transitional provisions at the time of implementation of the framework (see next section)

APPLICATION TO EXISTING PROJECTS (TRANSITIONAL PROVISIONS)

It is recognised that transitional provisions for existing resource projects would need to be developed and this would need to occur in consultation with all affected stakeholders. As a starting point it is considered that the date of tabling of the draft *Regional Planning Interests Bill 2013* would be a logical point from which to consider the application of transitional provisions.

It is considered essential that regardless of the transitional provisions adopted, any increase in proposed activity or amendments that are required to any existing agreements or approvals would be subject to the framework proposed in this submission.

ASSETS OF REGIONAL SIGNIFICANCE

It is proposed that important regional sources of water, or infrastructure for supplying water, necessary for the conducting of PALU's on Protected Land within a PAA are able to be identified as regional assets requiring additional levels of protection.

For example, it is considered that the Condamine Alluviums and relevant Sunwater irrigation channels would be identified as regional assets under this proposal.

It is considered that any regulatory regime that ensures protection of the Condamine Alluviums (or other identified aquifers) would be separate to the framework proposed in this report but may include the following:

- Legislated/conditioned requirement to undertake re-injection or substitution to net out the expected volumetric impacts (plus a factor of safety) over the life of the impacts on the Condamine Alluvium as a result of a proponent's activities.
- Reference to the Surat CMA (or other relevant) UWIR in relation to the volumes required to be substituted/injected into the Alluviums over the anticipated life of the project. (i.e. OGIA would identify the volume required to be netted out over the life of the project and this volume could be stipulated in the UWIR)
- The need to submit a plan to an assessing authority demonstrating how the conditions above are going to be achieved.
- The requirement to update the plan every three years or as otherwise required by the Chief Executive to ensure it is updated in accordance with revisions of the Surat CMA UWIR. (This would allow for revision of the volume required to be substituted/injected as the predictions from the model improve over time)

- The need to have an approved plan in place within a specified timeframe or prior to authorised activities occurring on any land within the PAA.

For Sunwater irrigation channels and other regional supporting irrigation infrastructure, it is anticipated that specific conditions or criteria could be mandated at a project or regional level to ensure protection of these regional assets.