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Invitation to make a submission to an inquiry into the Regional Planning Interests Bill 2013

The **objective of the Bill** is to provide the ability to manage the impacts of resource activities and regulated activities in areas of regional interest that contribute, or are likely to contribute, to Queensland's economic, social and environmental prosperity.

With reference to your letter of 27th November 2013 inviting Mackay Conservation Group to make a submission on the Regional Planning Interests Bill.

I have read through the Bill and have the following comments.

1. Our main concern is the lack of a comprehensive definition for the terms associated with Areas of Regional Interest.

Area of regional interest

Each of the following is an *area of regional interest*—

- (a) a priority agricultural area;
- (b) a priority living area;
- (c) a strategic cropping area;
- (d) a **strategic environmental area**.

In particular it is unclear exactly what is encompassed by a *strategic environmental area*.

The only definition provided is in Section 9 of the Environmental Protection Act:

Environmental Protection Act

9 Environmental value

Environmental value is—

- (a) a quality or physical characteristic of the environment that is conducive to ecological health or public amenity or safety; or
- (b) another quality of the environment identified and declared to be an environmental value under an environmental protection policy or regulation.

This is insufficient. It only refers to environmental values whereas the term applies to areas.

It could be interpreted very broadly or very narrowly for an area.

It could mean as limited a coverage as National Parks.

Does it include all areas within the national Protected Area System including Nature Refuges, for example? Legislation should provide clear definitions of what is meant especially as this is a new term and from the research I have done, actually has little meaning at present. This is very serious as anything of environmental value outside of strategic environmental areas would have no protection from development or mining projects? What kind of protection would be afforded corridors of connectivity among strategic environmental areas? The lack of information makes us wonder about the due diligence put into the preparation of this Bill.

It is not possible to comment properly if you are not provided with sufficient information on which to make a judgement.

The Regional Plans for the State currently do not show strategic environmental areas on their maps. And areas mapped as of state significance or endangered or of concern regional ecosystems available to the public do not show flora or fauna connectivity corridors.

Our other point is that not all of the state has been mapped for its biodiversity. Mining especially is being planned in Central and Northern Queensland where in many places little to no biodiversity surveys have been done. If this Bill was passed project assessments would only have to have regard to avoid strategic environmental areas which are known and mapped. Good quality baseline monitoring needs to inform the creation and mapping of strategic environmental areas, and where this has not been done such areas should be off limits to development. In semi-arid areas such monitoring is defined as ten years of seasonal monitoring to address the high rainfall variability of these regions.

The Queensland government provides little protection for the habitats of migratory species. This Bill would do nothing to provide such protection. Coal mines are built within flood plains because that is where most of the coal is found. Riparian areas of high ecological significance are often cleared or lost to river and creek diversions for mining. These are usually the highways for migratory species at certain times of the year and need to be protected in river basins where there are many mines such as the Fitzroy and Burdekin and in future the rivers of the Gulf.

2. There is no available clear criteria to address what can happen in strategic environmental areas. Criteria to be used are left to regulations so we are being asked to approve what engineers call “a black box”. I have noted this approach is being used

more often with new legislation and its interpretation in regulations. It is not in the public interest to have such vague legislation.

3. A **priority agricultural area** is an area—
 - (a) shown on a map in a regional plan as a priority agricultural area; or
 - (b) prescribed under a regulation.

(2) However, an area (the **proposed area**) may only be shown as, or prescribed to be, a priority agricultural area if it includes any 1 or more of the following—

 - (a) an area used for a **priority agricultural land use**;
 - (b) 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 priority agricultural land use**;
 - (c) an area, **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 mentioned in paragraph (b).**

Again has all the state been mapped for “priority agricultural areas”? And what protection from adverse development or mining projects is there for areas where agriculture is possible and profitable?

Why isn’t consideration given here to protection of water supplies for areas of environmental significance?

4. Priority living area

A **priority living area** is an area—

- (a) shown on a map in a regional plan as a priority living area; and
- (b) that includes the existing settled area of a city, town or other community and other areas necessary or desirable—
 - (i) for the future growth of the existing settled area;
 - and
 - (ii) as a buffer between the existing or a future settled area and resource activities.

How wide will such buffer zones be? How will communities be protected from hazardous dust and other contaminant pollution especially air pollution? Current dust air quality regulations are insufficient to protect the public from hazardous coal dust pollution for example¹. There is no known safe level for exposure to coal dust. The Precautionary Principle which underpins the Environmental Protection Act would deem that living areas be far away from human sources of dust contaminant sources.

5. 23 Exemption: activity carried out for less than 1 year

- (1) A resource activity is an **exempt resource activity** for a priority agricultural area or a strategic cropping area if—
 - (a) the activity is being carried out during the 12-month exemption period for the resource authority;
 - and
 - (b) any impact of the activity on the area is restored within the 12-month exemption period; and
 - (c) the activity is not likely to have an impact on the area after the 12-month exemption period; and
 - (d) for a strategic cropping area—the activity is being carried out in compliance with the management practices prescribed under a regulation.

¹ The recommendations for changes to the Australian National Environment Pollution (air quality) Measures have yet to implement in a national Air Quality Plan promoted by COAG.

These activities sound like exploration and surveying. Clive Palmer's Waratah Coal company did not properly close its coal exploration wells years ago and they still remain unsealed. It was left to the affected property owners to file formal complaints with authorities, and still extension permits for proper sealing are being given to the company. Such an exemption clause is only going to exacerbate this problem. Guildford Coal near Pentland has a similar situation we are told with exploration wells improperly sealed and nothing done to date to reseal them properly.

Many exploration wells on an agricultural operation can interrupt that operation. The legislation would have to be written so that any exploration or survey work does not interrupt current business or environmental concerns.

6. 30 Requirements for making assessment application

An assessment application must be—

- (a) made to the chief executive in the approved form; and
- (b) accompanied by a report—
 - (i) **assessing the resource activity or regulated activity's impact on the area of regional interest;**

Will such reports be made available to the public other than via RTI requests?

and

- (ii) **identifying any constraints on the configuration or operation of the activity;**

Will such reports be made available to the public other than via RTI requests?

7. Division 4 Public notification of particular applications

34 Application of div 4

- (1) This division applies to a notifiable assessment application.
- (2) An assessment application is *notifiable* if—
 - (a) a regulation prescribes it as notifiable; and
 - (b) **it has not been granted an exemption by the chief executive** under subsection (3).
- (3) The chief executive may, on the written request of the applicant, grant an **exemption from notification for an assessment application** if satisfied **there has been sufficient notification under another Act or law of the resource activity to the public.**

Of concern because the public would be expecting the usual form of notification and could miss alternative forms.

8. 43 Ministerial directions to assessing agency

- (1) The Minister may, by notice, give a direction to an assessing agency for an assessment application—
 - (a) if the Minister is satisfied its **response is not within its functions—to reissue its response in a stated way** and within a stated period to ensure the response is within the functions; or
 - (b) if the Minister is satisfied the assessing agency has not assessed the application under this Act—to issue or reissue its response in a stated way and within a stated period to **ensure the assessing agency has assessed the application under this Act.**
- (2) The Minister may give the direction even if the agency's assessment period for the assessment application has ended under section 42(3).
- (3) **The direction must state the reasons for the decision** to give it.
- (4) The Minister must give the applicant a copy of the direction.
- (5) **The assessing agency must comply with the direction.**

This gives the Minister great powers for political interference in bureaucracy decisions. What powers does the public have to oversee the Minister's over-ruling of such departmental decisions, other than the ballot box?

9. 46 Additional advice or comment about assessment application

The chief executive or an assessing agency may ask any person for advice or comment about an assessment application.

Example—

The chief executive may appoint a panel of experts to provide advice to the chief executive about an assessment application or a particular matter relevant to the application.

Opportunity for public to ask the CEO to appoint a panel of experts?

10. Division 8 Steps after deciding application

53 Public notification of decision

(1) The chief executive must, within 5 business days after deciding an assessment application, publish a notice about the decision—

- (a) on the department's website; or
- (b) in a newspaper circulating generally in the area of the land.

Not all stakeholders would catch this. Those who have put in submissions should especially be personally notified via email or letter.

11. 70 Appeal period

(1) An appeal may be started only within 20 business days after—

- (a) **for a person who received a decision notice**, or a copy of a decision notice, for the decision—the notice was received; or
- (b) for an affected land owner for a regional interests decision—notice of the decision was published under section 53.

Does this mean only land owners or persons who received a decision notice have the right of appeal? What about rights for the environmental sector or other stakeholders such as a local regional Council when matters of high environmental significance are affected?

12. Part 4 Mitigation

59 What is mitigation

(1) *Mitigation*, for mitigated SCL land, means that either of the following, or a combination of the following, has taken place for the land's mitigation value—

- (a) a payment to the mitigation fund;
- (b) the entering into of a mitigation deed.

(2) The *mitigation value* of mitigated SCL land is the amount prescribed under a regulation.

This allows the destruction of Strategic Cropping Land for Mining. This was supposed to be off limits to mining.

How is an appropriate payment for mitigation worked out, as the land is likely to be left sterile after mining so its current assessed value as agricultural land would be way below its actual value which would be permanent?

13. 60 What are mitigation measures

(1) *Mitigation measures* are the carrying out of **activities to address the loss of the productive capacity of mitigated SCL land.**

(2) Also, for a **mitigation deed**, mitigation measures may include a combination of activities mentioned in subsection (1) and **a payment to the mitigation fund.**

The COAG productivity commission warned payments could be abused i.e. as a way to raise funds for other activities rather than raise taxes.. This approach also reinforces the Queensland government's approach that SCL can be mined.

How would the "mitigation fund" be used?

How accountable to the public would it be? How is no net loss of good quality agricultural lands to be achieved especially where there is intensive coal and gas mining?

14. 62 What are the *mitigation criteria*

(1) The *mitigation criteria* are that mitigation measures (under a **mitigation deed** or under a **payment from the mitigation fund**) must—

(a) **aim to increase the productivity of cropping in the State;**

How? Reads like the government's draft Offsets policy and parts of that do not meet COAG's Productivity Commission's recommendations.

and

(b) provide a public, rather than a private, benefit; and

(c) aim to provide an enduring effect; and

(d) be quantifiable and able to be independently valued; and

(e) benefit the largest possible number of **cropping agribusinesses**; and

Why is the reference only to "cropping agribusinesses" and not "farmers"?

15. 62. (f) if a cropping activity or cropping system existed for mitigated SCL land to which the measures relate—**provide a benefit to that type of activity or system in the relevant local area.**

How? Provide examples!

15. Division 2 Mitigation fund

63 Mitigation fund continued

The **strategic cropping land mitigation fund** (the *mitigation fund*) established under the repealed *Strategic Cropping Land Act 2011* is continued in existence under this Act.

How is money in this fund being spent? Who benefits? Are reports being done and made available to the public?

16. 64 Purpose and administration

(1) The mitigation fund's purpose is to **record amounts received** under a mitigation condition and to **pay amounts from it** under this part.

(2) Accounts for the mitigation fund must be kept **as part of the department's departmental accounts** under the *Financial Accountability Act 2009*, section 69.

(3) However, amounts received for the mitigation fund may be deposited with other amounts of the department in its departmental financial institution account under the *Financial Accountability Act 2009*, section 83.

How is full accountability to the public of this money achieved?

17. 65 Payments from fund

(1) Amounts are payable from the mitigation fund only for—

(a) **mitigation measures**; or

(b) expenses incurred by the chief executive in performing functions under this part.

- (1) However, the chief executive may make a payment for mitigation measures only if the chief
- (2) executive is satisfied the **measures comply with the mitigation criteria.**

Examples of Mitigation Measures! Case Studies. How reported to the public?

18. 66 Reporting requirement for mitigation measures

A payment from the mitigation fund may be made only on the condition that its recipient must give the chief executive periodic reports about—

- (a) the progress of the mitigation measures funded; and
- (b) amounts spent on the measures

No public reporting is required!

19. Division 3 Miscellaneous provisions

67 Mitigation deed binds holder's successors

A **mitigation deed** binds each of **the successors in law of the holder of each regional interests authority who is a party to it**, including successors for the area of the authority.

Examples of successors in law—

a personal representative, successor in title, assign

For what duration does the mitigation deed persist?

Just who is getting these payments? What sectors and individuals and projects?

20. Part 5 Appeals

69 Appeal to Planning and Environment Court

The following may appeal (an *appeal*) against a regional interests decision to the court—

- (a) the applicant;
- (b) if the applicant is not the owner of the land—the owner of the land;
- (c) an affected land owner.

Nobody else? This needs explanation as to why this is so limited as there are other sectors with an interest such as the environmental sector or regional Councils which would at times want to appeal decisions. It is very likely that if the Bill passed in this format it could be successfully challenged because of this limitation.

Sincerely,



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