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

Via: mail and email (**sdiic@parliament.qld.gov.au**)

Dear Sir/Madam

RE: SUBMISSION TO THE REGIONAL PLANNING INTERESTS BILL 2013

We thank you for the opportunity to provide feedback on the *'Regional Planning Interests Bill 2013'* (the Bill).

RPS is an international consultancy actively involved in the energy, mining, infrastructure, urban growth and natural resource management sectors. Based upon our practical experience and technical knowledge, there are a range of matters within the draft Bill that we believe require further consideration and development for the bill to avoid duplication and achieve its intended objectives.

The following commentary highlights a number of key matters that we believe need to be considered by the committee as part of the ongoing review of the Bill.

We would request that an opportunity be provided for the Bill to be review in concert with the draft Regulations when they are available for comment. This will allow a more holistic review of the legislation.

1. Regulations

The Bill is heavily reliant upon its subordinate regulation for a range of key matters. However, interpretation of the impact of the Bill is limited by the absence of the regulation, more specifically:

- The scope and nature of a 'regulated activity' is unclear (s16). This is particularly significant given a 'regulated activity' is referenced in the purpose of the Bill.
- The location and extent of 'areas of regional interest' cannot be determined from the Bill as these areas are in part defined by regulation (for example s8(a) and s9(a)). This point is expanded upon further in points 3 and 4 below.
- The roles (s27), functions (s40) and assessment criteria (s41) of 'assessing agencies' (akin to referral agencies) are not specified and the scope of their assessment responsibilities, as well as the potential for duplication of regulatory assessment required under other Acts, is therefore not clear.

- The assessment criteria that must be considered by the Chief Executive (s49) when deciding an assessment application are of considerable importance. However, as they will be established under regulation and they could not inform this review.

- The criteria for (s34) and period of (s35) public notification is unknown as it is to be defined in the Regulation. The timing impact of public notification on projects is therefore unclear.

Without clarity on the above we are unable to provide meaningful comment on the implication the Bill will have on existing and proposed resource activities. We request the release of the proposed regulations in draft and a consequential extension to the Bill's public comment period.

2. Existing operations and transitional provisions

The current format of the Bill provides little clarity on the rights of existing petroleum activities and their exemptions status (see further point 3 in reference to s24), particularly those activities that occur outside of the priority agricultural area and Surat cumulative management area as outlined in the Central Queensland and Darling Downs regional plans.

Further the Bill states that a person must not wilfully carry out, or allow the carrying out of, a resource activity or regulated activity in an area of regional interest unless the person holds a 'Regional Interests Authority' (RIA) (s18). The level of risk, potential non-compliance or offence of those proponents carrying out petroleum activities in an area of regional interest without a RIA, after the Act is in effect, is unclear.

Additionally if a proponent applies for a RIA as soon as the act takes effect, there is uncertainty on the timing of approval and the extent that operations can continue without infringement. Clarification of transitional provisions is required to allow tenure holders to confidently carry out activities in compliance with existing approvals to avoid prosecution, project delays or interruptions to operations.

3. Exemptions and the extent of current activities

The proposed exemptions outlined in s24 of the Bill for pre-existing resource activities are particularly narrow. We raise specific concern with the proposed exemption for a pre-existing operation which is linked to the resource activity *Work Plan* or *Plan of Operations.*

Currently Plans of Operation (s24 (3)), which detail the resource activities being carried out are regularly updated for existing operations. The proposed exemption does not appear to contemplate revisions, thereby requiring the issue of a RIA for existing resource activities when such an update occurs. This raises concerns regarding the retrospective nature of the Bill with respect to resource activities, see also point 2 above. .

Further, the exemptions mentioned in point 1 above provide uncertainty over the criteria and triggers for "impact on land owned by a person other than a landholder' (s22 (2) (a), and the extent of the activity on the land (i.e. does this include subsurface activities (s24 (1) (a) (i)).

The limited exemption for existing resource activities is particularly concerning given the exclusion of compensation (s84).

For the above reasons, protection of existing resource activities should be linked to the granting of a *Resource Authority* (as defined by s13).It is understood that it is the department's intent to link existing use exemptions to the Plan of Operations or resource activity Work Plan to ensure exemptions do not extend beyond the area of actual impact. In this regard we make note that a mining lease, which is not based on cadastral extents, is usually an accurate representation of

the extent of impact over the life of the mine. This is distinct from the granting of an equivalent 'Resource Authority' under CSG-LNG projects where the area of impact can be far reduced from the extent of tenure. In this regard it is suggested that, if necessary, a distinction be made in the approach to exemptions for existing operations of open cut/underground mining and gas projects. Further we suggest that clarity is provided over the extent of impact for smaller scale activities, for example the small scale mining activity exemption (s25) and this scale in relation to petroleum exploration activities.

4. Mapping Duplication

Utilising the draft Cape York Regional Plan mapping as an example of regional interest mapping boundaries and methodology, RPS understands that Strategic Environmental Areas (SEAs) appear to be based off a number of mapping layers, in particular:

- Areas of State Environmental Significance; and
- Regional Nature Conservation Values (RNCV).

It is also understood that key datasets utilised as a basis for the Areas of State Environmental Significance include Regional Ecosystems, wetland mapping, protected areas, marine parks, and fish habitat areas, namely environmental values that are afforded protection under Queensland legislation. RNCV include the Biodiversity Assessment and Mapping, and Aquatic Biodiversity Mapping Assessments (BAMM and AQUABAMM) prepared by the Department of Environment and Heritage. While the Areas of State Environmental Significance layers appear to be based upon recent data releases, BAMM and AQUABAMM may not be based on current data releases.

The base information used to derive these maps already benefit from associated protection under existing legislation and policy. On this basis, consideration of these features under the Regional Planning Interests Bill will result in duplication of assessment, with no tangible benefit associated with the additional layer of regulatory burden.

5. Identifying and Validating SCL

Section 10 of the Bill defines a Strategic Cropping Area as being land that is Strategic Cropping Land (SCL) or Potential SCL on the SCL trigger map. The terminology would suggest that SCL is land that was previously validated as SCL under the *Strategic Cropping Land Act 2011* (SCL Act), however this is not clearly articulated in the Bill.

Potential SCL is described as land that is likely to be highly suitable for cropping (i.e. land which is likely to comply with the criteria prescribed under a regulation).

As currently presented the Bill is silent on a number of key issues regarding SCL identification and validation and the regulation referred to has not, as RPS understands, been prepared. We have identified that the following matters require further consideration and clarification:

- **SCL Criteria** – The criteria for Potential SCL were not available for review. It is therefore unclear as to whether the current will zones remain and will the biophysical zonal criteria remain unchanged as per the recommendations of DNRM's 'Review of the Strategic Cropping Land Framework Report'? (DNRM 2013).

- **Validation of Potential SCL** - The Bill does not include any provisions for SCL validation nor does it make any reference to this process. In the absence of the Regulation to review, it is unclear whether there is an intention for the Regulations to include provisions and guidelines for determining if Potential SCL complies with the criteria for land that is highly suitable for cropping.

6. Transitional Provisions for SCL

Part 8 of the Bill includes transitional provisions for repeal of the SCL Act; however these are limited to approvals relating to resource activities (i.e. protection decisions and compliance certificates).

It was noted that in the transcript from the public briefing of the Bill on 13 December 2013, Ms Kylie Williams (Executive Director, Regional Planning, Department of State Development, Infrastructure and Planning) advised that validation decisions made under the SCL Act will be transitional across and constitute a decision under this new legislation. However, the current Bill does not contain transitional provisions regarding SCL validation decisions.

RPS has identified that the following matters in relation to SCL transitional provisions which require further clarification:

- **Validated non-SCL** – It is assumed that land previously validated as non-SCL either through zonal criteria and/or cropping history assessment under the SCL Act will be exempt from this legislation as it will not be shown as SCL or Potential SCL on existing trigger mapping. However, will this matter be clearly articulated in the Act to confirm this assumption?

- **Current Validation Applications** – There are no provisions in the Bill for land that may be the subject of a zonal criteria and/or cropping history validation application that has not yet been decided. This is particularly relevant for cropping history based validation applications as DNRM's 'Review of the Strategic Cropping Land Framework Report' recommends removing the cropping history test as a means of SCL validation. It would appear that no transition provisions have been considered to cater for applications made under the SCL Act that are not decided at the time the new legislation is introduced.

7. Broad conditioning powers

The rules for conditions (s51) are extremely broad, in particular under s51(1) (d) where a condition may:

> *'require the applicant to do, or refrain from doing, anything else the chief executive considers is necessary or desirable to achieve this Act's purpose.'*

This broad conditioning power is not bound by the test that conditions must be 'relevant or reasonable' (s345 of SPA, and cross-referenced under s54C of SDPWOA under which the Coordinator-General imposes conditions).

The breadth of this conditioning power is of particular concern given the primacy of this legislation and that a condition under this Act prevails to the extent of any inconsistency with a condition under an Environmental Authority or Resource Authority.

8. Local Government recommendations are binding (where an 'Assessing Agency')

Section 50 states that the chief executive must give effect to any recommendation in a response by a Local Government.

Under Section 42 the Local Government's response must be 'within the limits of its functions' which is to be defined by regulation (outstanding). The breadth of Local Government's assessment functions is outlined under Section 41, where all of the following must be considered in assessing an application:

- The extent of expected impact on the area of regional interest; and
- Criteria prescribed under a regulation; and
- All properly made submissions; and
- Any criteria under the local government's Planning Scheme.

In the context of the above assessment jurisdiction it is considered there is scope for onerous conditions to be imposed without limitation. Without the ability for the State to balance the Local Government's recommended conditions against broader State wide policies and practises there potential for significant inter-regional disparities and inconsistencies where conditions may prioritise local or regional interests over the broader interests of the State.

A Ministerial Direction (s43) may be given to ensure a Local Government is not acting outside of its functions or the provisions of the Act. Due to the extensive assessment parameters (s41) it is considered that in practise a Local Government may have extremely broad powers to impose conditions and that a ministerial direction could only be provided in the most extreme of circumstances.

Given the above we recommend deletion of Section 50 and reliance on s49(1)(d) where the advice contained in an assessing agencies response must be considered in the chief executive's decision. That is, we consider the chief executive should be required to consider the recommendations of a Local Government, but not be bound to those recommendations.

9. Notification & 3rd Party Appeals

With respect to Public Notification, it is considered that projects considered under this Act will be likely to conduct public notification under another Act (e.g. public notification of the Environmental Impact Statement). The requirement for public notification (as prescribed by regulation) is not currently clear, however the unrestricted ability for an 'assessor' to require public notification to occur (s44 (1) (c)) is considered likely to result in a duplication of public notification on numerous projects. The duplication of Public Notification is considered to add unnecessary cost and delays to a project approval process whilst also being confusing to the public (e.g. same project being notified under multiple pieces of legislation).

With respect to appeal rights, the Bill introduces the concept of an 'affected land owner' with an associated broad definition of 'land that may be affected'. The application of third party appeal right is considered to add significant uncertainty where a project may be challenged independently under both the Land Court (under EIS approvals processes) and the Planning and Environment Court (as proposed under this Bill).

10. Timeframes

The timeframes currently outlined in the Bill are unclear. For example, public notification is required to commence within 20 business days of lodgement of the application (s36), however notification may only be required under a 'requirement notice' (s44), for which there is no timeframe. Circumstance may arise where a 'requirement notice' is issued after the initial 20 business days, evoking the 'consequence of failure to notify' under Section 36.

Similarly, the 20 business day period for an assessing agency's response appears to conflict with the broad powers to require additional information under s44. It is likely that a 'requirement notice' could not be issued, satisfied by the proponent and then considered by the assessor within this 20 day period.

Other assessment timeframes are unclear under the Bill. It is understood that the Regulation (outstanding) will prescribe certain timeframes. Despite this, the timeframes under the Bill are not restrictive, particularly on the chief executive. Further statutory timeframes are required to ensure that a regional interests authority is issued in a timely manner.

Summary

The Bill raises concerns of uncertainty, duplication and retrospectivity. A summary of key points raised in this submission is below:

Uncertainty results from the following key issues:

- The lack of proposed regulation alongside the Bill which is relied upon extensively to define 'regulated activities', assessment criteria and roles, and the designation of land. In the absence of this we are unable to understand the impacts of the proposed Bill.
- The binding of the department to Local Government recommendations (which are not limited in scope) may result in unreasonable and unpredictable conditions.
- The introduction of an additional layer of third party appeal rights.

Duplication of assessment processes will occur, particularly with respect of Strategic Environmental Areas where mitigation of environmental impacts is achieved through the Environmental Authority.

Retrospectivity results from the extremely limited protection of existing operations.

We trust the content of this submission will be fully considered as part of the ongoing review of the Bill. Should you require further details or wish to discuss these matters, please contact Simon Pollock (07 3606 6050), Tom Salmon (07 3124 9378), or Alex Hare (07 3606 6012).

Yours faithfully
RPS

Simon Pollock
Principal