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17 January 2014

State Development, Infrastructure and Industry Parliamentary Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Sir / Madam,

Submission to State Development, Infrastructure and Industry Parliamentary Committee on the Regional Planning Interest Bill 2013

Thank you for the opportunity to review the *Regional Planning Interests Bill 2013*, which seeks to establish an Act to manage the impact of resource activities on those areas of the State that contributes or likely to contribute to Queensland's economic, social and environmental prosperity.

The exclusion of coal mining and coal seam gas industries in the Scenic Rim region represents a key policy outcome sought by Council and its community. It is an outcome that underpins Council's community and corporate policy documents and has been reiterated to the State government in previous submissions. Whilst it is noted that this Act is to apply to the whole of Queensland, Council is not supportive of the framework proposed under the Bill being applied to the Scenic Rim region. If applied to the Scenic Rim, it appears that the Act would permit applications for resource activities to be made; apply to only those activities proposed in an "area of regional interest"; and potentially allow a resource activity to co-exist with an "area of regional interest".

These potential outcomes are not consistent with those sought by Council and its community as expressed in previous representations to the State, which included its Anti-Coal Mining and CSG Submission dated December 2011. In summary, this submission sought to work with the State government to achieve the following:

- Develop amendments to the relevant legislation (i.e. *Mineral Resource Act 1989* and *Petroleum and Gas (Production and Safety) Act 2004*) to prohibit the grant of any form of exploration right or mining or petroleum tenement for coal mining and coal seam gas extraction within the Scenic Rim region; and
- Rescind all existing permits and applications granted under the above legislation to carry out these resource activities.

Council continues to be committed to work with the State government to achieve these outcomes and remains appreciative of the State government's ongoing commitment to prohibit inappropriate development such as coal mining and coal seam gas extraction from occurring in the Scenic Rim region. In light of the release of the Bill, it is considered timely to respectfully request confirmation on how the State government proposes to deliver upon its commitment to the Scenic Rim region as it appears that the framework outlined in the Bill falls short in delivering on this assurance.

Council offers the below points for consideration by the State Development, Infrastructure and Industry Parliamentary Committee into their inquiry of the *Regional Planning Interests Bill 2013*. Council would welcome the opportunity to discuss its submission if further information or explanation of its submission points is required.

1. Potential for resource activities to be carried out within the Scenic Rim region

Council appreciates that the *Regional Planning Interests Bill 2013* seeks to outline a strategy for the whole of Queensland on how the impacts of resource activities are to be managed on areas that contribute to the State's economic, social and environmental prosperity.

In summary, the Bill seeks to establish an application process to manage the impact of resource activities (and other regulated activities) on "areas of regional interest", and may allow for the co-existence of these activities where it can be demonstrated that the identified values of the area will not be impacted upon. It is understood that an "area of regional interest" may involve land having the below values, which will be defined either as a map in a regional plan or prescribed under a regulation.

- Priority agricultural area;
- Priority living area;
- Strategic cropping area; and
- Strategic environmental area.

The Bill proposes to require an Applicant to apply for a "regional interests authority" to carry out a resource activity in an "area of regional interest". After complying with the application process outlined in the Bill (which may involve referral's to assessing agencies and public notification), the Chief Executive is required to either approve all or part of the application (with or without conditions), or refuse the application. The criteria proposed to be considered in the Chief Executive's decision include:

- Extent of expected impact of the resource activity on the "area of regional interest";
- Any criteria for decision prescribed under a regulation;
- Any properly made submissions regarding the application (if notifiable);
- Any advice included in an assessing agency response; and
- Any other matters considered to be of relevance.

If applied to the Scenic Rim, the Bill may enable applications for a "regional interests authority" to be made in the region (it is noted that resource and environmental authorities will also be required to be obtained under the relevant resource and environmental legislation). This is considered contrary to the legislative protection sought by Council to prohibit the grant of any form of right for coal mining and coal seam gas extraction within the Scenic Rim, and prevent existing permit holders from proceeding to higher forms of tenure (i.e. extraction). Whilst it is acknowledged that the Bill contemplates local government having an assessing agency role in the application process, with the ability to direct the outcomes of certain applications in their referral responses, Council seeks a mechanism to prevent these applications from being made in the region in the first instance.

In a previous submission to the State government, Council outlined the legislative amendments required to the *Mineral Resource Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* to achieve this regulatory protection. Legislative control that prohibits applications from being made such as the Restricted Areas 384 of the *Mineral Resources Act 1989* relevant to coal mining continues to be sought. This type of policy instrument provides certainty for the community that the region will not be impacted on by resource activities. It is not considered that this same level of regulatory protection will be afforded by giving legislative effect to the relevant policy of the South East Queensland Regional Plan.

The Bill proposes a uniform approach to be applied across Queensland. Council has sought to demonstrate in previous submissions to the State government that the unique values of the Scenic Rim, being an amalgam of exceptional and contrasting landscapes, environments and land uses, would be threatened should coal mining and coal seam gas extraction occur in any part of the region. It is these unique values that garnered the commitment from the State government to afford protection to the Scenic Rim region. It does not appear that the Scenic Rim region has been afforded different consideration under the Bill.

The State government has committed to exclude inappropriate development within the Scenic Rim, with this commitment made in the context of coal mining and coal seam gas extraction. Council's understanding of this commitment was that coal mining and coal seam gas extraction in itself represented inappropriate development in the region and subsequently, measures to prohibit these activities from occurring would be implemented. The measures proposed under the Bill do not appear to provide the level of regulatory protection sought by Council and the community. Confirmation is therefore requested whether the framework outlined in the Bill is to apply to the Scenic Rim, or whether an alternative legislative mechanism is proposed that will prohibit coal mining and coal seam gas extraction from occurring in the region.

2. Carrying out of resource activities in areas of the Scenic Rim region not included in a regional interest area

The Bill appears to apply to resource activities proposed in an area defined as an "area of regional interest". There is the potential that parts of the Scenic Rim may not be mapped as a regional interest area, which may allow applications to be made under the relevant resource and environmental legislation if additional regulatory protection is not afforded to the region.

The Bill also provides for a number of "exempt resource activities" under certain circumstances, predominantly in a priority agricultural area or strategic cropping area.

As previously outlined in the submission, the above draft policy is inconsistent with the outcome sought by Council.

4. Role of local government as an assessing agency for certain resource activities

The Bill proposes to identify local government as an assessing agency for certain resource activities, which will be prescribed in regulation. The scope of local government's role as an assessing agency will similarly be defined in regulation. The Minister will have the ability to direct an assessing agency to reissue its response if it's considered to be outside the agency's jurisdiction.

In light of the detail to be included in regulation that will be of relevance to local government, Council would be appreciative of the opportunity to similarly review any proposed supporting regulation.

It is also noted that the role of local government as assessing agencies may have resource implications for councils, in particular regional councils. Depending on the type of assessment to be undertaken by local governments in their referral role, the skill set required to carry out these assessments may also present as an issue.

5. Potential for local government to be a co-respondent to an appeal to the Planning and Environment Court in response to a regional interests decision

The Bill proposes that where an appeal has been lodged to the Planning and Environment Court in response to a regional interests decision and the appeal relates to a response by local government in their role as an assessing agency, the local government will become a co-respondent for the appeal. The Bill provides that the Chief Executive may elect to withdraw from the appeal, if the appeal only relates to an assessing agency's response.

Council holds concerns regarding the appeal process contemplated under the Bill and the widening of appeal proceedings local government may be party to. It potentially exposes local government to significant costs in seeking to uphold the position it has taken on resource proposals deemed to be in conflict with either community values or aspirations for a region's future.

The appeal process also exposes local government to proceedings surrounding resource proposals, which it has not previously been involved. The potential for the Chief Executive to withdraw from appeals relating to an assessing agency's response also represents a concern for Council.

6. Parties to appeal proceedings

The Bill proposes that an applicant, owner or "Affected Land Owner" may appeal a regional interest's decision to the Planning and Environment Court:

An "Affected Land Owner" is proposed to be defined as follows:

"...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".*

Further information is sought on how a party demonstrates to the court that they are an "Affected Land Owner" and should be permitted to lodge or join an appeal (i.e. potential for costs associated with preparing material that demonstrates impact, potential challenges by an Applicant to refute recognition of an "Affected Land Owner" etc).

Should you have any queries in relation to the above submission, please do not hesitate to contact Scott Turner, Manager Planning or Lorna Scally, Coordinator Land Use Planning on (07) 5540 5149 who would be pleased to assist.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Tony Magner', written over a light blue circular stamp.

Tony Magner
DIRECTOR DEVELOPMENT SERVICES