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

via email: sdiic@parliament.qld.gov.au

Dear Mr Gibson

Regional Planning Interests Bill – Response to Draft Legislation

Origin Energy (Origin) is a participant in the Queensland petroleum industry in its own capacity and, through its wholly owned subsidiary Origin Energy Resources Ltd as the upstream operator for Australia Pacific LNG (APLNG).

Origin welcomes the opportunity to make a submission to the State Development, Infrastructure and Industry Committee on the *Regional Planning Interests Bill* (the Bill) which was introduced to Parliament on 20 November 2013. We confirm that that we support the submission made to the Committee by the Australian Petroleum Production and Exploration Association (APPEA), of which we are a member.

We would like to recognise the Queensland Government's agenda to deliver effective targeted regulation that ensures the viability of the agricultural industry, which, together with a transparent and accountable resource industry regulatory regime, allows both industries to co exist as equally important economic pillars.

We strongly support the principle of co-existence and we consider that many examples already exist where industry has worked with the landholders to achieve mutually beneficial regional outcomes. We therefore strongly encourage the government to ensure that the introduction of the Regional Planning Interest Bill fosters this co-operative approach and builds on the effective processes that have already been developed between the agriculture and gas industries.

Thank you for the opportunity to participate in the Regional Planning Interests Bill submission process.

If you wish to discuss any aspect of this submission, please contact Heidi Cooper, Government Relations Manager (Queensland) on heidi.cooper@originenergy.com.au.

Yours sincerely

David Baldwin
Chief Executive Officer
Origin Energy-LNG

Attachments:

1. Submission on the Regional Planning Interest Bill

Submission on the Regional Planning Interests Bill 2013

17 January 2014

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1. Executive summary

The *Regional Planning Interests Bill 2013* (Bill) has been introduced to "manage the impact of resource activities and other regulated activities on areas of the state that contribute, or are likely to contribute, to Queensland's economic, social and environmental prosperity". Fundamental to the Bill are the new generation regional plans which identify the specific economic, social and environmental attributes specific to the region that each plan is intended to cover.

Origin Energy Limited supports the Queensland Government in its stated intention to achieve an effective and efficient regulatory regime that delivers certainty to both the resource and agriculture industries. Outcomes based legislation and regulation is an imperative to both industry and the State.

We have undertaken considerable work to date to assess regional impacts such as our Environmental Impact Statement (EIS), which included a full state assessment against agricultural criteria, assessing cumulative impacts and having gained the Coordinator General's office approval and conditioning of this work.

We have undertaken an analysis of the Bill and consider that the following key provisions should be reviewed in order to put into effect the Government's stated intention:

- **Limited exemptions and transitional arrangements**, such as for petroleum pipeline licenses (PPL's) and petroleum facility licenses (PFL's) and non project authority to prospect(ATP's), to achieve the objective of a efficient and effective transition for existing facilities and approved projects;

- **Overlap of impact assessment processes** - The Bill provides a Regional Interest Assessment framework which duplicates both the current approved and conditioned EIS and Land Access processes and results in some contention and inefficient interpretations between legislative instruments. This appears inconsistent with Government intentions for the four pillars of the economy and its work in reducing red and green tape;

- **Landowner exemptions are limited** - resulting in uncertainty;

- **Undefined timeframes** – There is no succinct articulation of the time in which an Regional Interests decision must be determined; and

- **The Right of Appeal provisions** have the potential to have wide reaching consequence both in relation to the standing to appeal and the requirement for a stay of operations pending the Regional Interest Decision (RID).

Much of the detail required to implement the Bill is yet to be prescribed by regulation, including the substantive assessment criteria against which assessment applications would be assessed. We feel it is important to seek engagement with the industries on the proposed regulations in order to ensure their effective function

In developing this submission, we have undertaken analysis of the relevant Bill provision and outlined its perceived impact based on the proposed current drafting and suggested recommendations for consideration by the Committee. We acknowledge that strict interpretation of its written word may not be the intent of Government however believe it prudent to have reviewed the Bill in this context.

It is understood that further engagement between Queensland Government, industry and agricultural bodies will continue and we consider that this is important in order to remove ambiguity and to enact efficiently within the Government's regulatory framework.

2. Limited exemptions and transitional arrangements

We understand and support the intention of Government that existing approved activities are to be exempted from the Bill. It is imperative that the Bill be drafted adequately to enable this intent and that appropriate exemptions and transitional provisions be incorporated to allow the petroleum and gas industry to transition into the new regime without undue disruption.

2.1 As drafted, LNG/CSG developments are likely to be excluded from the exemption for pre-existing resource activities

(a) The Bill in its current form does not contain sufficiently broad transitional arrangements, to allow existing and approved development to continue.

In contrast to the current *Strategic Cropping Land Act 2011* (Qld) (SCL Act), the Bill does not contain a general exemption for activities authorised under an existing resource authority, an Environmental Authority (EA) or for coordinated projects for which the Coordinator-General has given an evaluation report under the *State Development and Public Works Organisation Act 1971* (Qld) (**SDPWO Act**).

(b) The exemption for pre-existing resource activities appears to have limited application.

The exemption contained in clause 24 of the Bill seems to only apply to activities carried out in accordance with a "resource activity work plan" such that:

(i) for a petroleum lease (**PL**), a plan of operations given to the administering authority under the *Environmental Protection Act 1994* (**EP Act**); or

(ii) for an authority to prospect (**ATP**), a work program under section 23 of the *Petroleum and Gas (Production and Safety) Act 2004* (**P&G Act**), or section 2 of the *Petroleum Act 1923*,

where that resource activity work plan took effect before the areas became an area of regional interest.

Gasfield development occurs iteratively, under rolling short term plans of operation the exemption creates duplication and uncertainty. The EP Act provisions relating to plans

of operation provide a maximum 5-year life-span. Under the Bill as it is currently drafted, the exemption would not apply once an existing plan of operations expires and a replacement is required, or if a plan of operations is amended in the interim.

(c) The exemptions contained in the Bill do not adequately cover PPLs and PFLs because:

(i) The exemption in clause 24 of the Bill for pre-existing resource activities only applies to PLs and ATPs.

(ii) The exemption in clause 23 of the Bill where the activity is carried out for less than one year requires the activity to be completed and the land restored within 12 months. This cannot practically be achieved by gas plants and would be very difficult to achieve in the case of construction of a pipeline.

(iii) The exemption in clause 22 of the Bill where there is agreement with the land owner is limited and uncertain because it is only applicable to an activity in a PAA that is:

- not likely to have a significant impact on the PAA; and
- not likely to have any impact on land owned by a person other than the land owner.

(d) The exemption would not apply to tenures in a cumulative management area which are prescribed under a yet to be released regulation.

Assessed Impact:

Petroleum activities, including the operation of a petroleum pipeline under a PPL or the operation of a gas plant under a PFL (as activities that must be authorised by a petroleum authority) in areas of regional interest (such as PAAs and strategic cropping areas) would be required to cease upon commencement of the legislation pending the issue of a regional interests authority.

It is considered that existing permitted facilities would require a Regional Interests Decision immediately upon the Bill becoming an Act.

By way of example, the Roma to Brisbane pipeline intersects the PAA that covers Dalby, and is a major piece of infrastructure servicing South East Queensland. Due to the current limited PPL exemptions, this pipeline would require an approved Regional Interest Decision to continue to operate.

Recommendation:

We consider that the most appropriate way to deliver appropriate exemptions is to except activities authorised under an existing resource authority, PFL's, PPL's, work plans, plans of operation or EA. This is similar to the transitional arrangement under the SCL Act. This would be more appropriate than the resource activity work plan as required by the clause 24 exemption.

Additionally the exemptions in the Bill should also encompass the transitional provisions that industry is currently relying upon under the SCL Act.[1]

[1] SCL Act, s.283.

We recommend deleting the stay of operations provision from the Bill during the Regional Interest Decision process.

2.2 Land owner exemptions are limited resulting in uncertainty

The qualifications to the land owner exemption create uncertainty about when it would apply. An agreement with a landowner should represent a Regional Interests Decision exemption, we consider that further engagement with industry and agriculture is required to successfully achieve this objective.

The exemption in clause 22 of the Bill where there is agreement with the land owner is limited and uncertain because it is only applicable to a resource activity in a PAA (where the resource authority holder is not the owner of the land) that is:

(a) not likely to have a significant impact on the PAA; and

(b) not likely to have any impact on land owned by a person other than the land owner.

Where there is any impact on the suitability of other land to be used for a PALU, the exemption would not apply, even where the land owner agrees. This does not improve land owners' ability to influence development on their land.

The term "impact" is too broadly defined, such that the exemption creates a subjective test of what is an impact that will be difficult to apply in practice. For example an activity that has an impact on land that is remote from the petroleum activity and regardless of the size or type of impact, for example, any groundwater drawdown, may be captured.

Assessed Impact:

The lack of defined clear exemption for landholder agreement would mean that all future activities would need to be assessed under the full Regional Interest Assessment framework.

Recommendations:

The exemption in clause 22 should apply to all areas of regional interest. Clause 22(2)(b) should not apply where the landowner agrees to the significant impact.

We recommend that the exemption in clause 22 of the Bill be more clearly defined to enable and empower land owners to determine what activities may be undertaken on their land. We recommend a complete exemption where agreement is reached with the land owner and the scope is extended to also include activities that are within a Strategic Cropping Area.

3. Enacting under the Bill

3.1 There is no succinct articulation of timeframes for obtaining a regional interest decision

There is currently no timeframe within which an assessment application must be decided by the chief executive. Also, the process for assessment of an application may be extended in a number of different circumstances, such as by a requirement for public notification of the application or a requirement notice given to the applicant.

A statutory timeframe for the making of a regional interest decision will be critical for establishing investment certainty.

Assessed Impact:

As drafted, the application process would result in substantial delays. This would have significant consequences for petroleum development given that existing authorised activities may be required to cease pending the issue of a regional interest decision.

Recommendation:

The Act should specify a reasonable timeframe (not the regulations) within which the chief executive must decide an assessment application. We consider that a decision period of 20 business days would be a reasonable timeframe. This would be consistent with the decision period generally applicable under the EP Act for an application for an EA.

There should be a shorter assessment for applications for low impact activities made under a standard conditions code.

We recommend the removal of the stay of operations provisions in the Bill during the Regional Interest Decision process.

3.2 Right to appeal regional interest decision is too broad

A regional interest decision made by the chief executive may be appealed by the owner of the land or an "affected land owner".

An affected land owner includes anyone who owns land that may be adversely affected by the resource activity because of:

(a) the proximity of the affected land to the land that is the subject of the decision; and

(b) the impact the activity may have on an area of regional interest.

Whilst we do not believe this effect was intended, the result has wide reaching impacts. If an appeal is lodged, this would stay the decision until the appeal is decided, withdrawn or dismissed (unless the court decides otherwise). This blanket stay of a regional interests decision is neither warranted nor equitable.

Assessed Impact:

As a result, the appeals process has the opportunity to be utilised for vexatious claims by a broad range of potential litigants, resulting in substantial delays and increased resourcing efforts by both industry and Government. This could have significant consequences for petroleum development given that existing authorised activities would be required to cease pending the issue of a regional interest decision.

Recommendations:

Clause 69(c) should be deleted. Appeal rights should be limited to the applicant and the owner of the land, based on definitive criteria that must be able to demonstrate, for example, a change in the land's viability or use. The stay of operations provision should be deleted from the Bill.

Notwithstanding this recommendation, we consider that, if at all, a stay of a regional interest decision should only be invoked where decided by the court based on statutory criteria, for example where the potential impact of the resource activity is significant.

3.3 Lack of certainty around assessing agency and clarity of assessment criteria (including potential for conflicting conditioning arrangements)

It is not yet known which agencies will be prescribed as assessing agencies by regulation, but it appears that local governments are intended to be prescribed as assessing agencies, at least in relation to Priority Living Areas.

Clause 50 of the Bill provides that conditions recommended by a local government as an assessing agency must be given effect by the chief executive. Also, conditions of a regional interest authority will prevail to the extent of any inconsistency with conditions of an EA. It would therefore be possible for a local government to override EA conditions including those stated in the Coordinator-General's report for a project EIS or make recommendations contrary to the states interest.

Assessed Impact:

The outcome of this current drafting would be that there is considerable uncertainty for industry and its ability to achieve financial investment decisions on projects where fundamental operating conditions can be overridden by regional interest decisions.

Recommendation:

It is recommended that the Bill clarify the assessing agency, assessment criteria and the relationship to the SDPWO Act.

Clauses 49 and 50 of the Bill should be amended so that recommendations made by an assessing agency, including a local government, need only be considered by the chief executive.

3.4 The Bill does not distinguish low impact resource activities

Unlike the current regime under the SCL Act, the Bill does not provide a process for the streamlined assessment of low impact resource activities.

Under the SCL Act, this low impact development is covered under a code approach (the Strategic Cropping Land Standard Conditions for Resource Activities) in order to streamline the assessment.

For information, over 92% of APLNG's development within areas of a regional interest would qualify under the current Strategic Cropping Land Code as being low impact activities due to their small footprint (based on modelling for PAA's and SCA's).

Assessed Impact:

The Bill's impact in this regard is such that low impact petroleum activities (such as the construction and operation of coal seam gas wells) would be assessed using the same processes applicable to the development of Australia's largest coal mine.

We consider that the application of the Bill to low impact resource activities would result in an unnecessary approvals process that could be more efficiently addressed by a standard conditions code. This would be more consistent with a risk-based approach and the Government's policy position on reducing unnecessary red tape.

Recommendations:

Consistent with a risk-based approach and the Government's policy position to reduce unnecessary red tape, where a regional interests authority is required for a low impact resource activity (for example, an activity listed in the Strategic cropping land standard conditions code for resource activities), the Bill should provide for assessment to be conducted against a standard conditions code.

It is recommended that the streamlined, simplified assessment process applicable to applications made under the code <u>not</u> provide for:

- *public notification of an assessment application (i.e. no submissions may be made by the public, although submissions from the land owner should be allowed); or*
- *referral of an assessment application to an assessing agency;or*
- *appeal of a decision.*

Under the streamlined, simplified assessment process, the chief executive should be required to decide an assessment application made under the code within a definite period.

3.5 Definition of Priority Agricultural Area (PAA) extends beyond land required to support Priority Agricultural use.

The definition of PAA is broader than required as, under current proposed clauses 8(2)(b) and (c) of the Bill, an area may be mapped as a PAA even if is not used for a Priority Agricultural Land Use (PALU). The scope of a PAA under this definition extends well beyond land required to support a PALU and potentially includes water infrastructure, thus encompassing any pipeline or dam.

Furthermore the Bill defines the PAA as the regional interest rather than the PALU which is contradictory to the regional plans.

We note that the Water Act and the Underground Water Impact Report for the Surat Cumulative Management Area are both very robust in protecting existing users, that is, each set clear responsibilities, clear targets and clear actions. The monitoring network being established resulting from those pieces of legislation provide the ability to monitor aquifer impacts, including the Condamine Alluvium, allowing for mitigation ('make good') to be negotiated, agreed, planned for and implemented before material impacts are experienced by users. The Underground Water Impacts Report (UWIR)

shows that the Condamine Alluvium is predicted to have a very limited impact resulting from CSG activities – i.e. <1.2m at most.

As drafted, the Bill is unclear as to whether an assessment application is to be made at either the tenure level or on a property-by-property basis.

It is fundamental for the industry's viability that there be certainty as to the extent and scope of areas of regional interests.

Assessed Impact:

We believe that PAA definition could overlap with the definitions under other regulatory instruments such as a Cumulative Management Area (CMA) under the Water Act. Based on this there exists in the Bill the potential for significant confusion to be created especially when two regional interests (as defined by the current drafting) exist, for example, a PLA in a CMA, or SCA in a CMA.

Additionally the wording is contradictory to CSG Water Management policy and would negatively impact schemes such as our Water to Landholders programme, which seeks to increase agricultural production.

The Bill's drafting attempts to overlay additional acquifer assessment, monitoring, make good and reporting requirements that impact onerously on both industry and Government and which would duplicate obligations under the Water Act.

Recommendation:

It is our recommendation is that all water matters be solely dealt with in the Water Act and UWIR.

Clause 7(a) should be amended to read "land used for a PALU within a priority agricultural area". In other words, the area of regional interest to be protected by the Bill should be land used for a PALU within a mapped PAA, not the entire area of a PAA. The Queensland Government could publish mapping of defined PALUs with the PAAs mapped in regional plans or prescribed under regulation.

Clauses 8(2)(b) and (c) should be deleted so that only areas used for a PALU may be prescribed as a PAA.

3.6 Assessment criteria must be certain

The Government has not yet identified the decision criteria that would be applicable for assessment of an application by an assessing agency (where applicable) or by the chief executive when making a regional interests decision. Draft co-existence criteria for PAAs have been released with the draft regional plans for the Darling Downs and Central Queensland but were not included in the final versions of those plans. No draft criteria have been identified for strategic cropping areas. Until these decision criteria are known, it is difficult to assess the regulatory and business impacts of the legislation.

This risk is significant, given that the chief executive's decision could be to refuse the application (which would prevent existing or new activities) or impose conditions that limit or restrict the carrying out of those activities. Likewise, an assessing agency has very broad powers to recommend refusal of an application, or condition the regional interests authority. In the case of local government, those recommendations must be given effect by the chief executive under clause 50 of the Bill.

We have some very good examples of coexistence schemes e.g. supplying water for irrigators on Condabri/Talinga and demonstrated flexibility in agreeing placement of infrastructure on landowners' properties and scheduling of activities.

Assessed Impact:

Without an understanding of the criteria to be employed when assessing an application for regional interests authority, it is difficult to assess with any level of certainty what is likely to be impacted, what activities will be allowed, or what will need to be provided to demonstrate co-existence in any report supporting a Regional Interests Authority.

Understanding the criteria is fundamental to any understanding the functions of the Bill.

Recommendation:

We recommend that the Bill reflect the intent of the regional planning process where co-existence is provided for through clearly expressed, outcomes-based co-existence criteria. This will ensure that assessment processes under the Bill are conducted efficiently and will provide certainty for the resources sector and a pathway for land owners to influence development on their land

The further development of co-existence criteria with the agriculture industry should be undertaken as a matter of priority and presented to Government for endorsement.

3.7 Appeals to Planning and Environment Court will be inappropriate and will result in overlap of court processes

Under the Bill, a regional interest decision made by the chief executive may be appealed to the Planning and Environment Court.

We consider that the Planning and Environment Court is not the appropriate jurisdiction to hear appeals in relation to a regional interest decisions.

Land Court processes are generally more efficient for these matters ast is familiar with matters concerning impacts on agricultural land because of its jurisdiction to hear appeals related to resource activity conditions and determine CCA disputes.

Assessed Impact:

This:

(a) would result in overlap of court processes, as matters made in relation to resource authorities and land access are heard in the Land Court;

(b) could lead to inconsistent decision making where conditions of an EA are approved by one court and overridden by another (given conditions of a regional interests authority will prevail to the extent of any inconsistency under clause 56 of the Bill;

(c) would prevent one decision maker (i.e. the Land Court) from determining on balance all the relevant issues for a resource tenure; and

(d) would be inefficient, as court processes in two separate courts potentially lengthy and resource consuming, with timetables that do not necessarily coincide with different parties.

Recommendation:

An appeal of a Regional Interests Decision should be made to the Land Court, rather than the Planning and Environment Court.

That the requirement for a stay of operations during any potential appeal process be removed from the Bill.

4. Other comments and recommendations

We make the following additional comments and recommendations for improvements to the Bill:

4.1 There is currently some overlap between PAAs and strategic cropping areas. It is not clear whether strategic cropping areas within PAAs are intended to be excised. If not, there is the potential for duplicative or inconsistent assessment/decision criteria in areas that are both PLA, PAA and strategic cropping area.

4.2 For the exemption in clause 24 of the Bill, there needs to be clarity that an area of regional interest shown in a regional plan takes effect when the Act commences or on a later date (not when the regional plan was gazetted).

4.3 Penalties under the Bill are not consistent with those under other Queensland legislation applicable to the resource sector, such as the Environmental Protection Act.

4.4 The Bill does not provide a process to validate areas of regional interest identified in a regional plan or prescribed under regulation. The Bill should provide a process to validate both land used for PALUs within PAAs (consistent with our recommendation above) and strategic cropping areas on-ground, in a similar way to making a validation application under the current SCL Act. Such amendment would allow resource companies to confirm that land is not, in fact, used for a PALU, and is therefore not an area of regional interest.