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20 January 2014
11.1.14

17 January 2014

Mr David Gibson MP, Member for Gympie
Chair, State Development, Infrastructure and Industry Committee
C/o Ms Erin Pasley
Research Director State Development, Infrastructure and Industry Committee
Parliament House
George Street
BRISBANE QLD 4000
By email to sdiic@parliament.qld.gov.au

Dear Mr Gibson and Members of the State Development, Infrastructure and Industry Committee,

RE: State Development, Infrastructure and Industry Committee consideration of *Regional Planning Interests Bill 2013*

We note that the Regional Planning Interests Bill 2013 (the Bill) is currently being considered by the Parliamentary Committee for State Development, Infrastructure and Industry (the Committee). We also note that the Committee has called for public submissions in relation to the proposed legislation and thank you for this opportunity to comment.

1 Executive Summary

The Bill, as currently drafted, creates a serious risk of inadvertently hamstringing the future viability of the resources sector in Queensland – one of the industries identified by the Government as an economic pillar of the State. The Bill requires considerably more thought regarding what (we hope) are unforeseen consequences for the resource industry.

As a Queensland-based resource company, we can only identify this Bill as being a backward step in making Queensland a desirable destination for resource investment.

2 Introduction

2.1 Background

From analysis of the Darling Downs and Central Queensland statutory regional plans, we are aware that a number of our existing resource authorities will be located within proposed areas of regional interest (see Figure 1 attached and Table 1 below).

Table 1: Guildford's Resource Authorities located within Areas of Regional Interest

Resource Authority	Overlapping Area of Regional Interest

EPC1674	PAA
EPC1822	PAA

As future regional plans are implemented across the State, we anticipate that the number of our resource authorities that are impacted by this proposed legislation will increase.

2.2 Core concern

Our primary point is that there needs to be more consultation, time and detail provided before the impacts of this Bill on our company specifically, and the resource sector generally, can be adequately evaluated.
With this is mind, we begin our submission with **a request for time, information and consultation to enable those interested in and affected by the Bill to properly assess the potentially far-reaching impacts of this legislative package.**

This request is made due to certain factors inhibiting the ability of interested persons to make comprehensive and informed submissions before the deadline of 5pm on Friday, 17 January 2014. These factors include:

- **Insufficient time** – The Bill was only tabled in Parliament on 20 November 2013. Given that most organisations shut down for 2-3 weeks between that date and the deadline for submissions, there has been insufficient time to properly consider the implications of the Bill (assuming a two week shutdown, only 32 business days have passed between the tabling and the deadline for submissions). As a point of comparison, for the Darling Downs and Central Queensland regional plans, a consultation period of approximately 60 business days was allowed and for the Cape York regional plan a period of approximately 80 business days. Given that the Bill creates the legislative framework that will implement these regional plans across the entire State it seems counterintuitive that such a short period of time would be allowed for submissions to be made. This is significant legislation and deserves more considered examination.
- **Lack of detailed information** – the Bill develops a framework under which regional planning within the State would operate, however, a significant amount of detail is missing from the legislation. The government has acknowledged this issue and flagged that this will be addressed in regulations, guidelines and other material. Without an understanding of these regulations and processes it is not possible to adequately understand and comment on the impacts of this Bill. The specific points on which further detail is required are set out below in **section 1.3**.

- **Lack of targeted consultation** – at the public briefing on 13 December 2013 Ms Kylie Williams, Executive Director, Regional Planning, Department of State Development, Infrastructure and Planning (DSDIP) identified that the Bill followed *"more than 18 months consultation with the agricultural sector, landholders, resource sector, local government, businesses and community groups as part of the process of preparing the Central Queensland and Darling Downs regional plans."*[1] We acknowledge that while this consultation has been valuable to the development in respect of the overarching regional planning framework, this consultation did not extend to discussions regarding the content of the legislative instruments that would be used to implement the regional plan. In fact, our understanding is that during the consultation for the regional plan, discussions about the legislative framework were deliberately omitted by the Government, with the assurance that this would be discussed further at a later date

  This framework will apply across the entire State and not simply within the regions currently subject to the regional plans. Our general impression from discussions had with our colleagues in the resource sector is that awareness surrounding the potential implications of this Bill is low. This speaks to a failure in the consultation process. While various parts of the resource sector have been involved in discussions about the plans for specific regions that have been developed, there has been little to no discussion about the 'nuts and bolts' features of the legislative framework that will overlay these plans that are present in the Bill. It is these features which will have the greatest impact on the resource sector, and which present the most concern.

We have had the opportunity to read the submission prepared by the Queensland Resources Council (QRC) and we endorse the points made in that submission. Particularly we would like to reiterate QRC's concerns about:

- The impact of the Bill on the resources impact in light of the significant economic contribution the industry makes to the State.
- The potential implications of this Bill are substantial and a regulatory impact statement should be prepared.
- The capacity and desire of Local Governments to take on the role of assessing applications relating to PLAs.
- The potential for vexatious delay created by appeal rights under the Bill.

[1] *Public Briefing—Inquiry into the Regional Planning Interests Bill 2013, Transcript of Proceedings Friday 13 December 2013, p. 2*

2.3 Lack of detailed information

As identified above, more detailed information on certain elements of the framework is required before an accurate assessment can be made of its potential implications. This concern was also voiced by Members of the Committee during the first public hearing in December 2013. We are particularly concerned about the lack of detail provided in relation to:

- The criteria to be applied during the assessment process for a regional interest authority e.g. co-existence criteria (Sections 41 and 49).
- The types of activities likely to be prescribed as a 'regulated activity' under regulations (s16(a)) – as a side note, the fact that these other regulated activities have not yet been identified means that interested parties from other industry sectors that are not yet aware that they may ultimately be regulated by this framework are being denied the opportunity to make submissions. For example during the public hearing Mr Hart, member for Burleigh, asked whether quarrying was a resource activity under the Bill.[2] As currently drafted there is nothing to prevent quarrying being listed as a regulated activity under the regulations and thus being subject to the requirement to obtain a regional interest authority. This leads to the question of how this framework can be properly considered while its scope and application remain uncertain.
- Any further areas of regional interest i.e. PAAs (Section 8(1)(b)) and strategic environmental areas (Section 11(1)(b)).
- Finalised SCL assessment criteria and management practices (Sections 10 and 23(1)(d)), and how these will differ from the current processes adopted under the *Strategic Cropping Land Act 2012*.
- Which departments or agencies will act as assessing agencies (Sections 27(1) and 39).
- The fees that will apply to assessment applications (Section 30 (c)).
- The types of assessment applications that will be notifiable (Section 34(2)(a)).
- Notification methods and periods that will be applicable (Section 35)

We are of the view that **until this information is made available it is not possible for the public, or even the committee, to accurately assess the impacts of the Bill.** Therefore, this information must be made publicly available to relieve concerns that the 'devil will be in the detail'.

Our ultimate preference is for further time, information and consultation to be provided. Ideally once these processes have run their course, interested persons would be able to make more meaningful and informed submissions on the Bill. In the event that our concerns are not heeded, we have included below an analysis of our key concerns with the Bill as it currently exists. These comments should not be construed as indicating we are otherwise satisfied with the proposed legislation, but rather are provided in the event that no further opportunity for input or consultation arises.

3 Overarching Policy Issues

The Government has been open in its efforts to develop a four pillar economy that balances tourism, agriculture, resources and construction, a fact reiterated in the Deputy Premier's foreword to both the approved regional plans.

However, from our reading of the Bill, a clear preference for the protection of agricultural land over the interests of the resources sector has been set out. This unequivocal priority for agricultural areas was clearly articulated in the initial public hearing:

[2] *Public Briefing—Inquiry into the Regional Planning Interests Bill 2013, Transcript of Proceedings Friday 13 December 2013, p. 2*

"While it is accepted that in many instances those activities can co-exist for the benefit of both parties, there will be instances—there could be instances—where they just cannot co-exist. In that case the priority would go to the preservation of that priority agricultural land use in that area."[3]

One of the Bill's stated purposes is to "identify areas of Queensland that are of regional interest because they contribute, or are likely to contribute, to Queensland's economic, social and environmental prosperity." Despite this statement the Bill does not acknowledge the role that the resource industry plays in the prosperity of Queensland.

The Government has also placed emphasis on cutting red and green tape to facilitate economic growth in Queensland. However this Bill shows a clear preference for one 'pillar' of the economy to the detriment of another 'pillar', and increases red tape by creating a new, and entirely separate, regulatory approval. In one action, **this makes Queensland a less appealing place for investment in resources, when other States and jurisdictions are actively trying to reduce the amount of regulation with which the industry must comply.**

4 Issues with the construction of the Bill

The Bill, as currently drafted, presents a number of issues when considering its practical application to resource operations in parts of the State where areas of regional interest exist.

4.1 General issues

Before considering the operational provisions it is worth pausing and considering the title of the Bill: the *Regional Interests Planning Bill 2013*. It is likely that this title has contributed to the limited awareness within the resource sector about this Bill. Unlike its nearest relative, the *Sustainable Planning Act 2009*, which manages the interaction between multiple land uses, this Bill intends to achieve its purpose by way of "a transparent and accountable process for the impact of proposed resource activities on areas of regional interests to be assessed and managed" (Section 3(2)). Given the Bill's sole focus is on managing the impact of a single sector on other land uses perhaps a title along the lines of the 'Regional Resource Activity Management Bill' would be more accurate.

The Bill oversimplifies the diverse range of resource authorities that exist in the State. The nature of our operations mean that we are particularly concerned about the treatment of exploration activities, although there are doubtlessly other examples of where this oversimplification creates substantial operational issues.
The Bill does not differentiate between an open pit mine that will produce 25 Mtpa of product and an explorer that is drilling three small exploration holes in an area of regional interest. Both would require a regional interest authority (RIA) unless they could be an exempt activity. We would logically assume that there would be differentiation in the regulations and assessment requirements but obviously this material is not yet available.

We would argue that the exploration phase of a resource project is not the correct time to assess the potential for co-existence of certain activities. As the Bill states in Section 3(1)(c)(ii), one of its purposes is to manage "the coexistence, areas of regional interest, of resource activities and other regulated activities with other activities, including, for example, highly productive agricultural activities." The purpose of undertaking exploration is to examine the potential for an area to contain valuable resources. Therefore, without amendment, it will be difficult for the legislation to assess and evaluate *competing* regional activities when the purpose of one of those activities is to develop an understanding of the resource value of a given area.

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[3] *Public Briefing—Inquiry into the Regional Planning Interests Bill 2013, Transcript of Proceedings Friday 13 December 2013, p. 9*

The circumstances where exploration activities will prevent or significantly impact the existence of another activity are extremely rare. Therefore the discussion and assessment of competing interests should be constrained to those resource activities which have this potential. **In short, exploration should not be assessable under this Bill.**

4.2 Definitions

4.2.1 Priority Agricultural Areas (Section 8)

Our primary concern with this definition is that the inclusion of water source considerations appears to be a duplication of the recent Commonwealth creation of a matter of national environmental significance that addresses the cumulative impacts of large coal mining and CSG developments on water sources.

Given that the Queensland Government has recently signed a Memorandum of Understanding with the Commonwealth to streamline environmental approvals, this inclusion would appear to be a step in the opposite direction. The stated purpose of the memorandum was to:

> *"...deliver a one stop shop for environmental approvals under the Environment Protection and Biodiversity Conservation Act, 1999 (EPBC Act)* ***removing duplication in assessment and approvals processes,*** *while maintaining environmental outcomes. [Emphasis added]"*

Water source considerations should be excluded to avoid the creation of duplication, at least until there is a finalised understanding of whether these particular issues are best addressed under the Commonwealth or State approvals.

4.2.2 Strategic Cropping Area (Section 10)

The definition adopted within the Bill ensures that Strategic Cropping Land (SCL) mapped on the existing SCL trigger maps becomes an area of regional interest under the new framework. The common understanding within industry was that PAAs would be replacing SCL as each region was mapped and that the maintenance of the SCL provisions was only necessary to protect those regional where 'new generation' plans had not yet been developed.

DSDIP has documented a formal response to a question posed by the Honourable Tim Mulherin about the continued operation of the *Strategic Cropping Land Act 2011* (Qld) at the initial public hearing in December 2013. However upon review of the information we are not satisfied that this action will suitable address the concerns about the SCL regime identified in the 'Review of the Strategic Cropping Land Framework' (DNRM 2013).

We would like to see further detail about how the SCL regime will continue to operate and particularly what the revised trigger map can be expected to look like.

It also seems to be counter-intuitive to have two separate areas of regional interest for PAAs and SCL areas. Both areas are designed to protect agricultural land from resource encroachment, and we can see no good reason to differentiate between the two, when no other distinction is included in the Bill (e.g., the same assessment process apparently applies to both).

4.2.3 Impact (Section 28)

Assessment of an impact is a notoriously difficult exercise as those who have experienced the Environmental Impact Statement (EIS) process can attest. The lack of detail and information about how this framework will assess an 'impact on an area of regional interest' is alarming. The detail (likely in the form of guidelines, criteria and process documentation) that has yet to be developed will ultimately determine the viability of this approach for managing resource impacts on identified regional values. Without this information it is not possible to comment on the likely effectiveness of this definition.

4.2.4 Strategic Environmental Areas

We would echo the concerns raised by QRC in relation to Strategic Environmental Areas, being that the role of these areas is not well defined. It cannot be emphasised enough that the duplication of environmental assessment that the inclusion of these areas in the Bill creates is burdensome. Like QRC we believe that any concerns not currently addressed by existing EIS processes under the *Environmental Protection Act 1994* (Qld) or *State Development and Public Works Organisation Act 1971* (Qld), should simply be incorporated into existing processes.

4.3 Exemptions

The exemptions provided under the Bill require clarification and refinement. As currently drafted these provisions are largely inoperable and provide little certainty for resource operators and land users alike.

4.3.1 Agreement of the land owner (Section 22):

Subclause 1 of this section unfairly disadvantages an authority holder who has purchased land within a PAA and would seek to undertake activities that would not impact on the PAA or an adjacent PALU. We would like to see this situation remedied so that an authority holder is not deprived of the opportunity to use this exemption because they have purchased the land underlying their authority.

From indications given at the public hearing we understand that this exemption requires a self-assessment by the resource operator that their activity is:

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

We believe that in order for a system of self-assessment to be workable in practice, comprehensive guidelines would need to be available that would enable the operator to be satisfied that their operations would not create unacceptable levels of impact.

Additionally we are concerned that the requirement to assess that the activity is 'not likely to have an impact on land owned by a person other than the land owners' is very broad. As currently drafted this clause does not stipulate that the impact needs to be negative, nor does it attempt to constrain the level of nexus required between the activity and the impact. It also fails to consider the scenario where the resource operator also has an agreement with the owner of adjacent land where the impact is occurring. These problems could potentially be solved by requiring that this impact need also be a 'significant impact' reducing the need for onerous examination of potentially minute impacts on other land, and should also allow for agreements to be relied on in any scenario where the impact will not be significant.

Additionally we would like clarification on why this exemption is not also applicable to SCL. Given the significant nexus between PAAs and SCL it is difficult to understand why these areas of regional interest would be treated differently.

4.3.2 Activity carried out for less than 1 year (Section 23)

As currently drafted this clause is unlikely to exempt many activities in practice. There are few activities that can comfortably be completed through to restoration within 12 months. The intent of this section appears to be that low impact activities, for example preliminary exploration, should not be unnecessarily impeded. If this is in fact the intent it would be far more effective to simply list he types of activities that would be exempt. Constraining this exemption to a timeframe is undesirable as it leaves no flexibility for the practical realities of the resource sector. For example the exercise of drilling for coal could, in ideal conditions, be completed (including restoration) within 12 months. However there are many potential impediments that could arise within those 12 months that would prevent the exercise being fully completed for example:

- Unfavourable weather conditions preventing access to the site under existing land access arrangements.

- Equipment failure - consider the scenario where a drill pad has been cleared, and hence the activity would have begun under the Bill, but the drill rig earmarked for that job is no longer available and with limited numbers of exploration equipment in the State, no replacement is available.
- Where seeding for the restoration of a drill pad does not take in the first year after the activity, and needs to be repeated.

These examples and other similar circumstances would mean that exploration companies could not operate under this exemption without exposure to substantial risk of failing to complete the activity within 12 months. The clause as currently drafted contains no latitude for reasonable delays.

We would also like clarification on why the term restore and not rehabilitate has been used for this exemption. In its current form this clause only allows an exemption within the first 12 months of an activity on a resource authority. We would suggest that this exemption be extended to cover any activity that can be completed and rehabilitated within 12 months and not constrained to activities within the first 12 months of an approved work program. If this change is not made then even resource authorities (like Exploration Permits for Coals) which are granted for the purposes of undertaking relatively low impact activities for their duration (typically 5 years) would be required to obtain an RIA once the 12 months window has elapsed from the commencement of their first activity.

4.3.3 Pre-existing resource activity (Section 24)

The requirement that the activity's plan of operations be in place before the area became an area of regional interest means that, at best, operations that covered by this exemption at the commencement of the Act will only be covered for a period of 5 years and in most cases less than 5 years. This would mean that a proponent that is 20 years into a 40 year production lease would be required to apply for a RIA when the time came to renew their plan of operations, a unfair imposition on the company and unnecessary administrative burden given the amount of disturbance that would already have occurred.

Finally the definition of 'resource activity work plan' does not indicate what the relevant plan would be for Exploration Permits for Coal and Exploration Permits for Minerals under the *Mineral Resources Act 1989*. This, we assume, was simply an oversight during the drafting process. If this is not the case then the reason for excluding these categories of resource authority from this exemption should be explained, given that they represent a lower extent of impact than activities under a mining lease.

4.3.4 Notice Requirement (Section 26)

Given that the resource sector is already subject to numerous requirements in regards to notification to landholders, another notice requirement appears to create an unnecessary burden for both operators and the Government. Particularly concerning is a requirement to produce a document for any activity which would have an impact for less than 12 months stating the details of that activity and any restoration. This requirement is potentially applicable to activities such as driving across land.

Given the duplication this provision would create this notification requirement should be removed or subject to considered exemptions.

4.4 Assessment Process

We have a number of concerns about the assessment process for a regional interest authority described in the Bill. Of most concern is the fact that this assessment process is additional to, separate from and superior to (where conflict exists) existing assessment processes for resource authorities in the State (i.e., the environmental authority and the mining tenement). Given the previously highlighted intent of the Government to reduce green tape and streamline approvals, the creation of another approval process for resource authorities is perplexing. Why is it necessary to create an additional process and involve a different Department to approve a project that is already being assessed by multiple Departments and processes? Why not integrate this assessment process into the existing approval framework?

Secondly, the lack of detail about assessment criteria, as discussed under **section 4.2.3**, makes it impossible to estimate the time and expense that will be required to assess an activity's impact. A significant amount of time and money is invested by resource companies in undertaking the impact assessments required to secure the current approvals for a mining project. As such the resource sector is justifiably cautious when an additional impact assessment process is presented without any detail as to what will be required.

Finally the open-ended nature of the assessment process and lack of time frames contained in the Bill is alarming for the resource industry as this is a sector that requires co-ordination of numerous elements to operate on the ground (e.g. equipment, weather, land access, Aboriginal cultural heritage). A lack of certainty around the timing of approvals makes future planning and securing investment extremely difficult.

There has been a demonstrated intent from the Government to reduce backlogs and expedite approvals to enable certainty for operators and investors. In a statement made by the Honourable Andrew Cripps, Minister for Natural Resources and Mines, in October 2013 it was emphasised that:

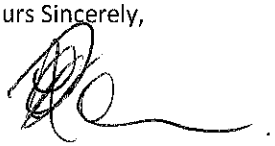
> *"Queensland has world-class resources, so it is important we continue to make the business and administration of mining simpler for the benefit of investors and future employees.*
>
> *...the Newman Government's reforms are already delivering faster and more efficient approval timeframes for the resources sector"*[4]

As the Bill is currently drafted there is large amount of discretion to request further information, require notification and require consideration of public submissions. None of these steps have any statutory timeframes which would limit the discretion of the assessor. All these features coupled with a lack of hard and fast timeframes pave a road that leads away from the progress Minister Cripps is highlighting above, and instead represents a return to the 'bad old days' where years would be required to secure approvals.

5 Portfolio Implications

If the Bill were to remain as it currently exists, particularly with the highlighted concerns surrounding the exemptions, once it was enacted we would have little option but to dramatically scale back or even cease field operations within the areas of regional interest underlying our resource authorities. In the absence of exemptions, the only remaining course of action would be to pursue a RIA. Given the large number of affected resource authorities and the inevitable growing pains associated with a new assessment process, we would anticipate that this would require at least 12months. During this time the inability to operate on areas of regional interest EA would mean that we would be at risk of failing to meet expenditure commitments made to the State to achieve the grant of tenure.

Yours Sincerely,



Peter Kane
Group Managing Director

[4] Hon. Andrew Cripps, *Exploration permit backlog cleared,* 24 October 2013
http://statements.qld.gov.au/Statement/2013/10/24/exploration-permit-backlog-cleared