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The Research Director
State Development, Infrastructure and Industry Committee
Parliament House
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Dear Sir / Madam,

Regional Planning Interests Bill 2013

The Planning Institute of Australia (**PIA**) welcomes the opportunity to provide feedback regarding the '*Regional Planning Interests Bill 2013'* (**Bill**), and is most appreciative of the grant of extension of time to lodge this submission until today. As the peak body representing the planning profession, PIA supports legislative and administrative reform that will improve development outcomes, provide certainly and transparency, reduce regulatory burdens and promote a prosperous Queensland.

PIA supports the objective of the Bill, by providing a statutory regime for the coexistence of resource activities with the preservation of other important regional (economic, social and environmental) interests in an effective way. However, and we would like to state from the outset, that PIA does not understand why a new and separate Act is required to meet the objective of this Bill. There are both existing and proposed reforms underway that could adequately address and provide a statutory framework to implement and mandate the Bill's objectives. Introducing new regulation seems to contradict the Government's agenda to reduce red tape and regulatory burden.

PIA's comments in respect of the Bill are set out below.

Is a new Act essential?

The Bill introduces a new and additional layer of regulation on resource activities by the creation of a new Act.

In that regard:

(a) the significant role of regional plans, and a proposal that they be used as the primary instrument for identifying and protecting regional interests in our State is supported;

(b) PIA queries whether a new and additional authority, and a new and additional application and approvals process for obtaining that authority, is the most practical, effective and efficient way of achieving the objective and policy intent of the Bill with a long term view. Particularly when that seems at odds with the State's broader objective of removing unnecessary and inefficient regulation;

(c) it is noted that the additional 'layer' will not only apply to assessment and approval processes that apply to resource projects, but will also have knock on effects that create inefficiency and increase expense for the government, resource project proponents and potentially affected land owners. Those knock on effects are likely to include, for example:

(i) a requirement for up to four separate applications and approvals (resource, State environmental, Commonwealth environmental and regional interests) to be made and approved for a single project;

(ii) duplication of application fees and consultant costs of pursuing the approval of applications;

(iii) duplication of assessment of the same impacts and the potential for increased inconsistency between approval requirements; and

(iv) concurrent or duplicate legal proceedings (e.g. the Land Court and the Planning and Environment Court).

Whilst it is acknowledged that amendment of existing resources and environmental legislation may be a complex or lengthy exercise, it is suggested that undertaking such an exercise would far outweigh the negative long term effects that creating an additional layer of regulation will create and is a real and genuine alternative to the current proposal.

Other feedback

Regardless of 'how' these important new laws are implemented, PIA's feedback is set out below.

It is currently difficult to assess the 'on the ground' impacts of the Bill in the absence of the proposed Regulation, draft mapping for areas of regional interest and the level of detail that persons preparing and assessing applications for a regional interests authority will need to consider on a day to day basis. PIA therefore strongly requests that if the Bill is to progress (despite earlier comments) then the proposed Regulation needs to be made available for review and that the Bill should not pass parliament until such time as consultation has been carried out on the Regulation.

However, looking beyond that:

(a) the apparent need for the head of power to make and amend regional plans to remain in the *Sustainable Planning Act 2009*, instead of transitioning to the Bill is curious. It would therefore appear that if changes to any priority area (priority living area, priority agricultural area, strategic environmental area or strategic cropping area) are required, amendments to the Regional Plan in which the areas are identified (unless these are prescribed by a Regulation) would also be required. The statutory interface between these areas and the local planning instruments which may include similar or conflicting areas (e.g. SCL vs GQAL vs ALC) is also of concern, given any amendments to Regulation or Regional Plans would likely require consequential amendments to the affected planning

scheme(s). Such amendments would appear to be required without control or contribution from the local government actually administering the planning scheme. It would be assumed that local governments have not anticipated or accounted for the increase in administration required to maintain consistency across these instruments.

(b) the criteria for land that can be included in a priority agricultural area ought to be expanded to ensure that the productive capacity of land not currently the subject of the criteria can be included, for example, upon application by a land owner. Otherwise, there is a risk that significant agricultural land with productive capacity could be unintentionally excluded from the protections that the Bill intends to achieve;

(c) the Bill should confirm that the designation of a priority living area for the purpose of the Bill does not have any impact upon appropriate areas for urban development under a regional plan or within a local government planning scheme so an expectation that development can occur within the entire priority living area, irrespective of planning scheme requirements, vegetation, natural hazards, infrastructure servicing and good town planning principles does not arise;

(d) the Bill provides for the referral of applications for a regional interests authority to referral agencies (e.g. a local government). However, the circumstances of when a referral will be required, and the referral agencies jurisdiction or function and assessment criteria are presently unknown. In this regard, PIA suggests:

  (i) further consultation with relevant stakeholders (e.g. local governments) in relation to the scope of referral agency jurisdiction, function and assessment criteria; and

  (ii) including an ability for a referral agency to charge a fee for assessment, to cover its reasonable costs of the assessment;

(e) further to the above point, and given that the intent of the Bill is to assess the impacts of proposed resource activities on identified areas, PIA suggests that the words '*that apply to an area of regional interest in question*' or similar replace the words '*for assessing the application*' at the end of section 41(2)(d) of the Bill;

(f) the Bill provides that appeals may only be made by the applicant, the owner of the land the subject of the proposed resource activity or an affected land owner. In this regard:

  (i) the Bill does not provide rights of appeal to persons that do not own affected land (e.g. a tenant or person having some other interest in affected land) but who will be adversely affected by the proposed resource activity, and could be impacted to a greater extent than a land owner – it should be amended to do so;

  (ii) expensive legal arguments as to whether a land owner (or other person having an interest in the affected land, noting the above point) has standing to commence an appeal are likely to arise because:

    (A) the test of 'proximity' is uncertain and subjective;

(B) the impact of an activity on an area of regional interest may be difficult to demonstrate in the absence of technical and expert evidence that would be best left for a hearing of the merits of the decision; and

(iii) further, the test for standing should have specific regard to the impact on the affected land in respect of which the appellant has an interest;

(iv) the Bill does not provide an opportunity for an affected land owner to join an appeal commenced by an applicant, should they wish to do so, and promotes the duplication of legal proceedings in this respect;

(v) the current approach may result in interested parties being shut out of the process either through the highly restrictive definition or through a costly legal process to establish their 'standing'.

(vi) the Bill should be reviewed in light of the above;

(g) Part 8 of the Bill establishes transitional provisions with respect to the repeal of the Strategic *Cropping Land Act 2011* (**SCL Act**). However, these provisions do not appear to adequately address validation applications or validation decisions made under the SCL Act. Particularly, it should be confirmed whether:

(i) land that is decided non-SCL will be exempt from this legislation as it will not be shown as SCL or Potential SCL on an existing trigger map; and

(ii) validation applications that have been lodged under the SCL Act but not decided at the time the new legislation commences will continue to be assessed and decided as if the SCL Act had not been repealed, and the new SCL Trigger Map updated accordingly;

(h) the Bill provides for the SCL trigger mapping to be provided electronically by the chief executive (natural resources). It is important that this mapping is refined to be as accurate as possible to ensure appropriate areas are regulated.

The absence of the regulation and any guidelines proposed to be made under section 83 of the Bill means that the full impact of the Bill cannot be assessed at this stage. PIA would be happy to provide ongoing consultation in respect of the new legislation as the regulation and other documents in support of the Bill are developed.

If you would like any further information or wish to discuss any part of this submission in more detail, please do not hesitate to contact me.

Yours sincerely,

Kate Isles MPIA
Queensland President
Planning Institute of Australia