TOOWOOMBA REGIONAL COUNCIL

Our Reference: DM 5802835
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The Research Director
State Development, Infrastructure and Industry Committee
Parliament House
George Street
BRISBANE QLD 4000

24 January 2014

Dear Sir or Madam,

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

Toowoomba Regional Council (Council) welcomes the opportunity to provide a submission to the State Development, Infrastructure and Industry Parliamentary Committee on the Regional Planning Interests Bill 2013 (the Bill) introduced to Parliament on 20 November 2013.

On 20 September 2013, Council provided to the Queensland Government through the Department of State Development, Infrastructure and Planning a detailed submission on the then draft Darling Downs Regional Plan. It is noted that many of the issues raised by Council in this original submission have not been addressed in the final version of Darling Downs Regional Plan which took effect on 18 October 2013.

This Bill will give effect to the policy intent of the Darling Downs Regional Plan (among other Regional Plans). Consequently, it is important that our original comments are re-iterated in the context of the Bill. For the benefit of the Parliamentary Committee a copy of our submission on the draft Regional Plan is appended to this letter.

In addition, Council also has specific comments on the Bill as currently drafted (please refer to Attachment A to this submission). These comments are provided across four themes; namely,

1. Implications for Local Governance;
2. Implications for Toowoomba Region's land use and settlement patterns;
3. Implications for Industry as it relates to activity within the Toowoomba Region; and
4. The substantive effect of the legislation in protecting the economic and environmental resources of the Toowoomba Region and its communities.

A key issue for Council that affects all four of the above themes is the extent of uncertainty created by heavy reliance on regulations to provide clarity and detail on key elements of the legislation. While the placement of such detail within subordinate legislation is not necessarily a concern, the decision to release the Bill for consultation and comment without the accompanying regulations creates uncertainty about obligations on local government under the proposed Bill.

Specific concerns for Council with this Bill include:

1. The lack of information about the extent of Council decision-making obligations and powers;
2. The type and content of any additional assessment criteria expected to be required at the local level to assess resource activities, as well as professional/administrative resourcing required to assess applications against these criteria;
3. The lack of information about the extent to which Council will be required to amend its Sustainable Planning Act 2009-compliant planning scheme to align with the requirements of this proposed legislation, and the timing of such amendments to avoid inconsistencies during assessment of applications; and
4. The extent to which the Bill and sub-ordinate legislation will protect areas of "regional interest" as well as those areas/values which may warrant protection but are not currently designated as such under the terms used in the Bill.

Council therefore requests that a draft of the proposed regulation(s) be made available for it to consider and comment upon before the Bill is passed into legislation. The opportunity to speak with the Parliamentary Committee on the proposed legislation and regulations is also welcomed.

Once again, thank you for providing Council with the opportunity to provide comment on this important draft legislation.

Yours Sincerely

Stewart Somers
General Manager Planning and Development Group

ATTACHMENT A – DETAILED COMMENTS FROM TOOWOOMBA REGIONAL COUNCIL ON REGIONAL PLANNING INTERESTS BILL 2013

Implications for Local Governance

1. Extent of Council decision-making

    a. We understand that the LGAQ have been briefed in relation to key aspects of the legislation. Representatives from LGAQ have requested regular informational briefings as the coexistence and assessment criteria are developed for inclusion in the Regional Planning Interests Regulation. No provision has been made for specific consultation with local government in the development of these criteria, which includes criteria that local government may have to apply. Consultation with local government to develop the assessment criteria is required to ensure that local government's interest, expertise and concerns have been identified and addressed.

    b. There does not appear to be the specific requirement to refer an application made to the Chief Executive (of the agency charged with administering the Bill) to the relevant local government for assessment of locally relevant matters. Section 40 notes that *an assessing agency has, for assessing and responding to the part of the application giving rise to the referral, the functions prescribed under a regulation*, however there is no guidance as to whether local government would be included as an 'assessing agency' with the exception of a reference to the local government's recommendations in Section 50(2) (see below). It is expected that this would be clarified in subsequent regulations, however this is not known as yet. Given the comments of DSDIP officers at the Public Briefing (page 5 of transcript), it would appear that local government will be afforded the opportunity to act in a 'referral' or 'assessing' capacity for resource applications sought within a Priority Living Area (PLA). However, direct clarification is sought.

    c. There is also no clarity on the intended extent of a local government's assessment function relative to other 'assessing agencies' as described in Section 40. It is assumed that this will be prescribed by a future regulation given the content of Section 40, however given its role is not prescribed in the legislation local government has no certainty in relation to the matters it may be responsible for administering in the assessment process. It is assumed the local government would undertake an assessment of the proposal against the relevant provisions of the planning scheme to provide advice to the Chief Executive on how the proposal supports (or otherwise) local planning objectives, however this is not clear. A non-statutory editor's note in the Darling Downs Regional Plan (page 17) notes that Regional Policies 1 and 2 are implemented by (among other instruments) *local planning instruments incorporating planning and development provisions that reflect Regional Policy 1: protecting PALUs [Priority Agricultural Land Uses] within PAAs [Priority Agricultural Areas]*.

    d. A lack of clarity exists in a local government's ability to contribute effectively to or influence the outcome of the assessment process due to the ambiguity in the wording of Section 50(2) *If the local government has given its response to the application (other than just advice), the chief executive must give effect to any recommendations in the response*. The reference to 'advice' in Section 50(2) also suggests that the expectation exists that a local government response would include formal ('recommendations') and informal matters (advice'). Therefore, there is presently no clarity on whether an issue raised by a local government should be provided as a 'recommendation' or as 'advice', and then to what extent the Chief Executive must action the recommendation. For example, if a local government recommended an application be refused, it would be assumed the manner in which the Chief Executive would 'give effect to' that recommendation would be to refuse the application. However given the wording used, ('must give effect to') the possibility exists that the Chief Executive may make a decision that does not fully represent the views of the local government. This is of concern to Council and should be reviewed given there does

not appear to be recourse in the Bill (such as the ability of a local government to appeal a decision made under this Bill) where Council does not agree with the decision of the Chief Executive. It is also unclear who would enforce these decisions. Council seeks clarification on what further information or support will be made available to local governments by the state government to assist with these matters.

2. Application of Bill to large-scale agricultural projects
    a. Without viewing the proposed regulation(s) to the Bill, it is difficult to identify what might be considered a 'regulated activity' and whether significant agricultural projects may be inadvertently caught up in an assessment process – for example, would an intensive feedlot located within a PAA that overlaps a Strategic Cropping Area (SCA) be required to go through the process given its location in an SCA, notwithstanding it may be a project encouraged within the PAA and supporting that regional interest?

3. Relationship to other Acts such as the State Development and Public Works Organisation Act
    a. It is clear that this Bill sets up what is effectively a co-existence assessment process for activities authorised under a resource Act, however some projects proposed under this legislation may also trigger assessment under the SDPWOA which has its own existing assessment process. It is not clear how a local government is intended to provide input to each of these similar processes, given the criteria for local assessment (such as an assessment under the planning scheme) are likely to be the same for both processes. Guidance on the relationship between this Bill and the SDPWOA would be of benefit.
    b. It is also unclear how public notification under this Bill versus the SDPWOA would occur without notifying for the same project multiple times (with the public only being able to comment on issues pertaining to the issues under consideration in each assessment process – i.e. 'co-existence' and protection of regional interests under this Bill, versus a wider, more detailed assessment under the SDPWOA).

4. Public Notification, decision-making and appeals
    a. Section 36(2) notes that in the event an applicant has not complied with their public notification obligations under Section 35, the chief executive may, if the chief executive considers there is enough information about the relevant matters for the application- decide the application on the basis of that information. This would appear to give the Chief Executive the power to approve (but also refuse) an application that has not been publicly notified. Therefore, there is little incentive for an applicant to undertake public notification particularly where the applicant may be comfortable the information submitted is sufficient for the Chief Executive to approve the application. From the perspective of local residents, the inability to be made aware of a proposed activity before it is approved is inappropriate, as this would also appear to extinguish the ability for public submission and also for submitter appeals to the approval of the application (unless that person qualifies as an 'affected land owner' – which in itself is a term that requires clarification). This is of significant concern to Council and should be reviewed. Related to this, Section 34(2) identifies when an assessment application is "notifiable" which includes if it is prescribed under a regulation (S.34(2)(a)). As the referenced regulation has not yet been developed Council cannot make comment on the types of applications which it considers would warrant public notification. Council seeks to be consulted on the draft regulation relating this section to ensure that the communities interests are considered through the public notification processes that this Bill establishes.
    b. Section 69 of the Bill identifies parties able to make an appeal against a regional interests decision to the Court are limited to the applicant, the land owner (where different to the applicant), and an 'affected land owner'. As noted in Point 2b above, there does not appear

to be recourse available to local government where a regional interests decision is made that is contrary to the intent of recommendations made by local government where it was involved in the application. Clarification is sought on how this would scenario would be addressed to maintain confidence in the decision-making process.

Implications for Toowoomba Region's Land Use and Settlement Patterns

1. Effect and application of Co-existence Criteria & other assessment criteria

    a. Without the benefit of reviewing the co-existence criteria cited in the Darling Downs Regional Plan, Council is uncertain what might constitute a local relevant matter that should be the domain of local government to assess rather than DSDIP or other such agency as the primary assessor. This is particularly relevant given the expectation of assessing both 'co-existence' of resource and agricultural activities within PAAs and the 'compatibility' of resource activities with urban development within the PLAs.

    b. However, no clarity is provided in either document what assessment criteria local government would actually assess resource activities against, either within PAAs or within Priority Living Areas (PLAs). Comments made by DSDIP officers at the Public Briefing (page 6 of transcript) note that best-practice guidelines that will assist local governments in undertaking assessments of resource applications within the PLAs will be forthcoming. Council requests that it be involved in the development of these guidelines so that it may gain a proper understanding of the local dimensions of these assessment requirements.

2. Relationship of Priority Areas to Council's Planning Scheme

    a. Council's *Sustainable Planning Act 2009*-compliant planning scheme already contains overlays depicting Good Quality Agricultural Land (GQAL) consistent with the requirements of the previous *State Planning Policy 1/92: Development and the Conservation of Agricultural Land*, and a code that requires assessment for applications triggered by the overlay. While Council has not yet undertaken an assessment of the differences in mapping between the areas of GQAL and Strategic Cropping Areas (SCAs) given effect by this Bill, it is anticipated that maintaining the two land types for different assessment could create confusion both in terms of the areas triggered (where they differ) but also in the assessment requirements for each area. This is particularly the case where, as suggested by the Editor's Note on page 17 of the Darling Downs Regional Plan, assessment of resource activities within the PLA would include against the local planning instrument (i.e. the Council Planning Scheme). Without amendments to Council's Planning Scheme, it would appear a resource application proposed within a PLA but also within an SCA and GQAL area (such as occurs around multiple towns in the Toowoomba Region, like Cambooya) would require assessment against SCA matters but also against the relevant components of the planning scheme which may include the Good Quality Agricultural Land Overlay Code. The potential for duplication of assessment in such circumstances is therefore significant.

    b. How a Priority Area (for example, a PLA or a PAA) is amended is unclear from the legislation, given it does not appear that there is a legislative mechanism for this to occur in the Bill, nor an avenue for regional plans (where areas like PLAs and PAAs would be identified) to be amended except via the process for amending State Planning Instruments in the *Sustainable Planning Act 2009* (SPA). This matter is complicated via the impending repeal of SPA for the upcoming *Planning for Queensland's Development Act*. To have the mechanism that identifies regional interests in one Act and the process for amending them in another would appear to be cumbersome. In addition, it would appear that there are potentially three places where a Priority Area like a PLA would be identified – in the

relevant Regional Plan, by regulation, and within the local government's planning scheme, all of which would require amendment processes with concurrent timing in order to avoid inconsistencies. The role and/or powers of Council in the amendment process is also not defined through the Bill. Given the lack of clarity over the amendment process for Priority Areas, Council seeks confirmation from DSDIP on the practical process for amending Priority Areas and for planning scheme amendments now that the Darling Downs Regional Plan is in force.

c. Council has already identified its forward land supply needs (expressed as urban and future urban areas) within the strategic framework of its planning scheme. Comment is sought from DSDIP on whether the required inclusion of PLAs as well as the areas identified as urban or future urban within this local planning instrument could provide a planning argument that a local government has formed the view that land within the PLA is intended (at some time) for urban use, thereby eroding the planning intent expressed through the balance of the strategic framework.

d. The Bill does not define any SEAs for the Council area (given this would be expressed through subsequent regulation). Additionally, the Darling Downs Regional Plan also does not identify or prescribe any SEAs for the Council area. However, the Regional Plan does refer to Matters of National Environmental Significance (MNES), protected under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999, and Matters of State Environmental Significance (MSES), protected under a range of state legislation. It is not clear whether an SEA (or multiple SEAs) will be prescribed by regulation for the Council area to account for the MNES and MSES identified in the Darling Downs Regional Plan. If the regulation does not contain any strategic environmental areas for the Council area then it would appear that important environmental areas will be afforded no protection or consideration from mining or agriculture activities than through the EIS process. Clarification is sought on the intention of the state government to incorporate these MNES/MSES into any SEA for the Council area.

3. Need for consequential amendments to Planning Scheme

    a. It would appear that there will be a requirement upon Council to proactively amend its planning scheme to remove the potential for duplication and inconsistency arising out of this additional assessment system proposed by the Bill, rather than making amendments at set review cycles as envisaged by the *Sustainable Planning Act 2009*. This additional workload and resourcing has not been quantified by Council.

    b. It is suggested that guidelines would be required to assist local governments to identify those points of conflict between the requirements of the Bill/Regional Plan and Council's planning scheme in order to address the issues identified in Point 2 above.

Implications for Industry

1. There is a concern that the Bill is focused on allowing resource activities over other regional interests, including agriculture activities and urban expansion areas (PLA's). There are several mechanisms in the Bill which can be used to allow a resource proposal to occur on agricultural land or other areas of regional interest, for example, exemptions provided under Sections 22 and 25 and the assessment against co-location criteria which have yet to be made available for review. The Toowoomba region is a significant agricultural area, identified as the number one agricultural producing Local Government Area in Queensland and the second highest in Australia. The agriculture industry provides a strong multiplier effect for the economy, with associated agricultural businesses and industry to services and facilities used by people employed in agriculture. Agriculture contributes 16% to the Darling Downs economy while mining comparatively contributes 12% (National Institute of Economic Industry Research, 2013).The region contains highly productive soils which are used for extensive cropping and much of this area coincides with known

resource deposits. There are also several towns that have been identified as PLA's in the Darling Downs Regional Plan which are also on and/or adjacent to resource deposits. The Bill does not provide assurance that these important economic and social values and other regional interests will be adequately protected.

2. Guidance for resource applications currently under process

    a. A large coal seam gas (CSG) project is currently under application within the Council area. The proposal covers all areas of CSG within the Council area, and therefore additional resource applications in the Council area are likely to be limited. The Bill appears to be silent on its applicability to proposals that have pending applications which have not yet been approved. Inclusion of advice (perhaps via the inclusion of transitional provisions) on how pending applications will be treated under the Bill is needed to understand how the Bill will affect these projects. This point was also raised in Council comments on the draft Darling Downs Regional Plan.

    b. DSDIP officers provided some clarification of this matter during the *Public Briefing – Inquiry into the Regional Planning Interests Bill 2013* (the Public Briefing) that suggests undecided applications would be subject to this new legislation, however direct clarification is sought.

3. Potential for additional, rather than streamlined, process/information requirements

    a. The extent and type of information required to be submitted (either initially or via additional request) with an application versus that required for subsequent environmental authorities through other legislation is not clear. There may be risk of duplicating assessment requirements over time either between agencies through the same resource interest authority process, or across the multiple assessment tracks under various legislation (such as the *Environmental Protection Act 1994*, the *State Development and Public Works Organisation Act 1971*, and potentially the *Sustainable Planning Act 2009*) that may be required for the resource activity. This is particularly relevant given the EIS process is not proposed to be changed/amended as a result of this Bill – therefore the requirement for an applicant to secure a resource authority and environmental authority (as well as the new regional interests authority required under this Bill) remain, with duplicating process (across different assessing agencies) for application making, public notification and decision making.

4. Proposed repeal of the *Strategic Cropping Land Act 2011*

    a. The Bill includes most provisions of the *Strategic Cropping Land Act 2011* (SCL) which is intended to be repealed, but not all of them. DSDIP officers responded to a question on notice from the Public Briefing which provided a comparison of the key elements of the SCL Act and the relevant corresponding mechanisms in the Bill. However, little detail was provided in relation to the changes to appeal rights sought in the Bill over those existing in the SCL Act, notwithstanding this was a key element of the Question on Notice. Clear advice is sought on how the SCL provisions will be transitioned, particularly in relation to the role of Council, assessment requirements and appeal rights.

Additional Specific Comments

1. Part 2, Division 2, Section 22: 'Significant impact' is not well defined nor is criteria provided regarding how this would be assessed. This is important to clearly and transparently define as it is a key term used to identify exempt resource activities in a priority agricultural area (e.g. the activity is exempt if 'the activity is not likely to have a significant impact on the priority agricultural area'). While 'Impact' is defined, this definition omits the word significant and could be interpreted that the term 'significant impact' is different to the term 'impact'.

2. Part 2, Division 2, Section 23: Activities that will be carried out for less than 1 year are also exempt under the Act if they can be restored with the 12 month exemption period. No detail or

definition is provided to identify to what condition the area needs to be ‘restored’ to. This should be stated. It is suggest that the land must be restored to its original condition and agricultural use.

3. Part 2, Division 2, Section 25: Small scale mining activities (as per the meaning in the Environmental Protection Act) are exempt activities. These types of activities can still have a significant impact on PLA and PAA is consideration is not given to their location.
4. Part 9: The Environmental Protection Act will be amended to align with this new Act in that if an environmental authority for a resource activity or regulated activity from the EP Act is inconsistent with a regional interests authority for the activity under this new Act, the administering authority may amend the environmental authority to be consistent with the regional interests authority. No explanation is provided in the Act or Explanatory Notes about what circumstances might this occur or the impact on the environment if this is to be enforced (intermittently or regularly).