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State Development, Infrastructure and Industry Committee
Queensland Parliament
George Street
Brisbane, QLD, 4000

By post and email: sdiic@parliament.qld.gov.au

Dear Committee Members

RE: Supplementary submission to the Inquiry into the *Regional Planning Interests Bill 2013*

Thank you for the opportunity to provide a supplementary submission on the *Regional Planning Interests Bill 2013* (the Bill).

QCoal has followed the progress of the Inquiry closely and has studied the public hearing in which the Department experts gave evidence to your Committee. QCoal representatives personally witnessed the public hearings in Toowoomba and in Brisbane. Further, as a member of the QRC, QCoal has been fortunate enough to partake in the information sessions given by representatives from the Department about the Bill. QCoal representatives have closely analysed the impacts the Bill might have on the company and the resource industry as a whole.

QCoal remains concerned that the Bill does not protect the interests of the resource industry in Queensland. In fact, the results of QCoal analysis suggest that the bill places onerous bureaucratic requirements on mining proponents in an unwieldy, ineffective and uneconomical fashion. QCoal believes the Bill erodes the stability of coal mining in Queensland.

QCoal maintains the view that the Bill be scrapped in its entirety and all desired processes brought under the EIS process. Failing that, QCoal advocates refining the Bill in such a way that resource companies are not so greatly disadvantaged that there is a flight risk of capital and tremendous uncertainty for the industry in Queensland. Currently, there are no winners with this Bill. Agriculture and mining interests are caught up in a system that will prove to be unworkable and unproductive.

In this supplementary submission, QCoal will outline the absolutely critical changes or guarantees that need to be made under the Bill. Further, the submission will discuss existing concerns and provide examples to demonstrate why the Bill is flawed and suggest solutions that may be adopted.

If it would assist the committee, QCoal would be willing to supply further information as required.

Yours sincerely,

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Sylvia Bhatia

General Manager
Stakeholder Relations

Contents

Summary of original submission

QCoal's original submission on the *Regional Planning Interests Bill 2013* (the Bill) of 14 January 2014 covered a number of topics divided into three parts, being:

- Strategic Cropping Land And Trigger Maps
- Designated Areas Of Regional Interest
- Regional Interest Authorities

The submission made a number of recommendations and evaluations. Subsequent to the submission, QCoal has attended the public hearings in both Toowoomba and Brisbane and believe a number of the points raised in the original submission will be addressed by the anticipated regulations.

Saying that, however, QCoal maintains its level of concern with regards to a number of inclusions in the Bill. Further, the series of public hearings has brought to light further points of concern. The three most critical points are discussed in this supplementary submission.

Title	**Transitioning: strategic cropping land validation decisions and applications.**
Contention	The Bill transitions strategic cropping land protection decisions and applications but does not transition strategic cropping land validation decisions and applications for validation decisions.
Background information	QCoal's original submission went to great depth to explain the impact that the bill has with regards to strategic cropping. While the bill repeals the *Strategic Cropping Land Act 2011*, it adopts the flawed trigger maps that accompany the 2011 legislation. Under the *Strategic Cropping Land Act 2011*, there were two ways to change strategic cropping land[1]. An SCL protection decision is used to provide mitigation for impacts to strategic cropping land. The second is a validation application decision which would change, when successful, the designation of land to "decided non-SCL". The effect of either a validation decision or a protection decision under the *Strategic Cropping Land Act 2011* was to essentially update the underlying maps to reflect the decision. The drafting of the current Bill results in protection decisions being transitioned with the maps while validation decisions are not. That means that the maps that were proven to be flawed would be transitioned without the corrections for validation decisions that had subsequently been made. Sections 91 and 92 of the Bill[2] cover the transition of strategic cropping protection decisions and applications for SCL protection decisions.
For consideration	In point 5 of his letter[3] of 3 February 2014, David Edwards, the Director-General of the Department of State Development, Infrastructure And Planning said, *"The strategic cropping land trigger map will be updated to reflect validation decisions made prior to commencement of the regional planning interests and will continue to be maintained by the Department of Natural Resources And Mines."* This commitment should be enshrined in legislation to ensure the intention is not lost in the future.
Example	In November 2012 a landholder with irrigated cropping land on her property realised for some reason her cropping land was not included on the trigger map for strategic cropping land in Queensland. She made an application to the Department of Natural Resources and Mines to have that land designated as SCL. That application was called a 'strategic cropping land protection application'. Once the Department investigated her application, it decided that the land should be declared as strategic cropping land.

	As a result, the trigger map for strategic cropping land in Queensland was changed to indicate that the land in question was SCL. Under the Bill, this change to the map ***is*** transitioned. Also in November 2012, a mining company realised that some of the land on its exploration permit for coal was designated SCL. The land in question was steep, rocky and removed from water infrastructure. It was obvious that the land in question was not good cropping land, let alone premium cropping land. The mining company put in an application, called a 'strategic cropping land validation application', to the Department of Natural Resources and Mines to have the land declared "not SCL". After an investigation the Department decided that the land certainly was not strategic cropping land so it made a 'strategic cropping land validation decision' to say the land was "decided non—SCL". In turn, the trigger map for strategic cropping was adjusted to reflect that decision. Under the Bill, that strategic cropping land validation decision and all the others ***are not*** transitioned.
Solution	Include in Sections 91 and 92 of the Bill references to strategic cropping land validation decisions and applications for strategic cropping land decisions.
References	1. *Strategic Cropping Land Act 2011,* sections 69-72 2. *Regional Planning Interests Bill*, sections 91 and 92 3. Government Response (State Development, Infrastructure and Industry Committee) to submissions received. http://www.parliament.qld.gov.au/documents/committees/SDIIC/2013/14-RegPlanInterests/depresp-subs.pdf (point 5)

Title	**Exemption: pre-existing resource activity**
Contention	Exemptions must be given to pre-existing resource activities that have valid environmental impact statements and/or environmental authorities.
Background information	The bill provides for an exemption for pre-existing resource activities for an area of regional interest if an activity is in accordance with a resource activity workplan or a plan of operations. On Friday, 13 December 2013, DSDIP Executive Director, Ms Kylie Williams, stated at the committee's public hearing: *"And the reason we have had to do that is that* [restrict pre-existing resource activities to those with plans of operations], *when we look at the regional interests and what we are trying to address and protect in relation to those regional interests, we really need to know* ***where the activities are actually being undertaken on the site at a specific property level. In most instances the resource proponent will not know that until they get towards their program for the next couple of years. So the EIS and the EA are done at a very high level.*** *They do not have that detail to say, 'In relation to lot 1 on RP375, what is actually the activity I am going to conduct there? Where am I going to locate things on that property?' That is why it is linked to the plan of operation at this stage."*[1] QCoal disputes Ms Williams' assertion based on the following: • Environmental impact statements (EIS) for coal mining projects are required to satisfy an extensive and comprehensive Terms of Reference which draws on a number of referral agencies. • In Queensland, an EIS for a coal project: o Can take over 3 years and $3-million to complete; o Take into account every single action on the site; o Are calculated down to 'Lot' and 'Plan' on a mine site (as small as an inner-city house block and maybe smaller); o Plan for the entire life (30+ years) of the mine. • An EIS and an EA certainly do have the detail to say *In relation to lot 1 on RP375, what is actually the activity I am going to conduct there? Where am I going to locate things on that property?"* In fact, an EIS for a coal mining project can detail where things as small as phone boxes might go – 30 years in advance.

	• For large mines (where an EIS is required), the Environmental Authority (EA) is given upon approval of the EIS, by the Department of Environment and Heritage Protection. • The EA: o Is valid for the life of the mine (30+ years) providing no material changes are made; o Details exactly what and when activities will occur over the life of the mine; o Providing the project proponent carries out operations as planned, the EA details exactly what will occur. The plan of operations simply states what will happen in the next few (up to five) years. The plan of operations does not introduce any information that is not already captured in the EIS and the EA.
For consideration	At the public hearing in Brisbane on Wednesday, 12 December 2014, the Deputy-Premier made it quite clear that his intention was for the plan of operations to remain as the preferred instrument for pre-existing resource activity exemptions.[3] QCoal contends that either the EA or an EIS are a more effective and accurate way to measure and control a pre-existing resource activity. Further, the *Environmental Protection Act 1994* makes no provision for a plan of operation to be approved before work may be carried out; a plan of operations must only be 'given to the administering authority'[4]. In effect, that means the plan of operations is not 'authorised' by the government and is used simply as a notice from the resource proponent to the government. The EP Act does, however state that an "Environmental authority overrides plan (of operations)".[5] There is significant flight risk of capital for investment if an amendment is not made[6]. Why would capital be invested into developing mines in Queensland when the maximum tenure of mining operations is 5 years before further permits are required? Note: permission may not be granted for mining to continue, despite the mining company previously having satisfied all environmental and other legal requirements before having a mining lease granted.
Example	An 25-year-old coal mine exists in the Bowen Basin in central Queensland. The mine has been producing coking and thermal coal with proper government approval for generations. The resource activity has, as required by law, an environmental impact statement (EIS) and an environmental authority (EA).

	The mine has approximately 25 more years of productive coal mining before end of life. If the proponent makes no significant changes to its plans, the existing EA and EIS would be sufficient for the company between now and end of life of the mine. The mining lease was obtained legally and all social, environmental and other legal requirements have been met. The environmental authority details exactly where the company will position its coal pit, where the overburden will be placed, water run-off, catchment areas, etc. All details of the mine are captured in the EIS and the EA. The mining company also has a plan of operations which is due to expire in 26 months. Plans of operations last from between 12 months to 5 years. Where an environmental authority details *what* will happen at the mine, the plan of operations describes *how* it will happen. There is no detail in the plan of operations that is not included in the EA. The plan of operations simply details where activity will be in the future. Considering the owner of the mine has satisfied all legal requirements, it is unreasonable to expect the resource proponent to only be exempt for the remaining 26 months of the plan of operations. After that time the mining company in this example would be required under the Bill to seek further permission to continue operating the mine. Most mines in Queensland may not have the length of tenure as this example, but the principle is the same.
Solution	Amend section 24(1)(a)(ii) of the Bill: delete "*in accordance with a resource activity work plan*" and insert "*in accordance with an environmental impact statement*".
References	1. Transcript of public briefing by Department of State Development, Infrastructure and Planning held on Friday 13 December 2013 in Brisbane. http://www.parliament.qld.gov.au/documents/committees/SDIIC/2013/14-RegPlanInterests/14-trns-pb13Dec13.pdf (page 8) 2. *Regional Planning Interests Bill*, section 24(1)(a)(ii) 3. Transcript of public hearing held in Brisbane on 12 February 2014: http://www.parliament.qld.gov.au/documents/committees/SDIIC/2013/14-RegPlanInterests/prftrns-12Feb2014.pdf (page 50) 4. *Environmental Protection Act 1994*, section 287 (a) 5. *Environmental Protection Act 1994*, section 291 6. Opportunity at risk: regaining our competitive edge in minerals resources. Report by Minerals Council of Australia: http://www.minerals.org.au/file_upload/files/presentations/ mca_opportunity_at_risk_FINAL.pdf

Title	**Inclusion of grazing in PAAs**
Contention	Grazing land may be included in priority agricultural areas.
Background information	On Friday, 13 December 2013, DSDIP Executive Director, Ms Kylie Williams, stated: *"**grazing is not protected**, because the government's direction was that in those instances agriculture and mining have the capacity to work together to resolve how they exist in the landscape."*[1] Further representations at public hearings[2], specifically by agricultural groups, call for the Bill to be amended so that grazing would be included in PAAs. Much of Queensland is suitable for grazing and many landholders would be desirous of protecting their grazing interests from resource activities. Experience has shown, however, that grazing and resource activities can certainly (and do) coexist in Queensland successfully.
For consideration	At a meeting held by the Queensland Resources Council, Kylie Williams implied that grazing could not categorically be ruled out of priority agricultural areas. QCoal contends that experience over many decades has shown that grazing and resource activities coexist successfully. QCoal calls for grazing to be specifically excluded from priority agricultural areas in the Bill. Given the number of competing interests at play with regards to the Bill, QCoal understands the pressure on the committee from different interest groups and stakeholders. However, QCoal urges the committee to ensure that due consideration is given to successful cooperation models where coal mines can coexist with grazing interests. To lock away grazing land in a PAA would be severely detrimental to the resource industry in Queensland.
Example	In the late 2000s, a mining company reached a conduct and compensation agreement with a grazier. The mining company had an exploration permit for coal for the property and had hopes to open a coal mine after all the appropriate applications and permits had been granted. The grazier continued to run stock on the land before the mine opened. Once the mining lease was granted, and work begun on the operation of the mine, the stock was moved to a separate section of the property. Considering the mining covered less than 4% of the property, grazing activities were able to continue and successfully coexist with mining activities. Both the grazier and the mining company enjoyed a positive relationship. The mining

	company conducted its business, and the grazier conducted her business. Further, the grazier received pecuniary compensation for the impacts of the resource activity on her property.
Solution	Amend Section 8 to read: 8 ***Priority agricultural area*** (1) A ***priority agricultural area*** is an area – a) Shown on a map in a regional plan as a priority agricultural area; or b) Prescribed under regulation and *c) Not primarily used for grazing*
References	1. Transcript of public briefing by Department of State Development, Infrastructure and Planning held on Friday 13 December 2013 in Brisbane. http://www.parliament.qld.gov.au/documents/committees/SDIIC/2013/14-RegPlanInterests/14-trns-pb13Dec13.pdf 2. Transcript of public hearing held in Toowoomba on Thursday 30 January 2014: http://www.parliament.qld.gov.au/documents/committees/SDIIC/2014/14-RegPlanInterests/prftrans.pdf (pages 14, 24, 28,)

Recap of initial submission

QCoal covered a large number of points in the original submission. The more important ones are revisited below.

Appeal rights

QCoal acknowledges that there were many representations with regards to appeal rights. Reviewing the testimonies from the public hearings[1] shows that opinion was evenly split between supporting the existing narrow framework and expanding the appeal rights to those people who were not directly affected by the proposed activity.

The Environmental Defenders Office[2], for example, suggested that the Bill should contain provision for public interest appeal rights.

QCoal rejects the proposition to expand appeal rights. The Bill places a third layout of bureaucracy on the establishment of a coal mine in Queensland. Public interest rights are dealt with significantly through the process of the environmental impact statement and the mining lease application. Under the current system, any public interest group (including those not immediately affected by the proposed activity) is able to make a submission with regards to a proposed mine in Queensland[3]. Further, under the current legislation, the mining proponent is required by law to address all validly made submissions, irrespective of origin.

Given the existing infrastructure and instruments available for public interest groups to protest or make representations with regards to propose new mining activities, QCoal supports maintaining the existing appeal right to the applicant, the owner of the land and any affected land owner.

Court jurisdiction

Like the topic of appeal rights, there has been much input into the Inquiry[4] with regards to which court should have jurisdiction of the Bill.

Some parties, such as the Deputy-Premier[5], support court action being handled by the planning and environment court.

QCoal contends that the land court is a better venue to have jurisdiction over such appeals. The land court has members experienced in conduct and compensation agreements, coexistence principles, land access, land use conflicts, mining leases, land disputes and so on. Regardless of the fact that

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[1] Transcript of public hearing held in Toowoomba on Thursday 30 January 2014: http://www.parliament.qld.gov.au/documents/committees/SDIIC/2014/14-RegPlanInterests/prftrans.pdf (pages 5, 10, 13, etc)
[2] Environmental Defenders Office submission to the inquiry: http://www.parliament.qld.gov.au/documents/committees/SDIIC/2013/14-RegPlanInterests/submissions/057.pdf
[3] Department of State Development, Infrastructure and Planning: evaluation of an EIS http://www.dsdip.qld.gov.au/assessments-and-approvals/evaluation-of-eis.html
[4] Transcript of public briefing by Department of State Development, Infrastructure and Planning held on Friday 13 December 2013 in Brisbane. http://www.parliament.qld.gov.au/documents/committees/SDIIC/2013/14-RegPlanInterests/14-trns-pb13Dec13.pdf
[5] Transcript of public briefing by Department of State Development, Infrastructure and Planning held on Friday 13 December 2013 in Brisbane. http://www.parliament.qld.gov.au/documents/committees/SDIIC/2013/14-RegPlanInterests/14-trns-pb13Dec13.pdf (page 52)

the Bill is proposed to be administered by the Department of State Development, Infrastructure and Industry, the land court is the most experienced jurisdiction over the proposed legislation.

Landholders and coexistence

Although the Bill was originally designed to allow for the co-existence of mining and agricultural interests, it has progressed to be heavily weighted to agriculture. In fact, the introduction of the Bill states that the intention is to "manage the impact of resource activities"[6]. Given that intention, it is unlikely that true co-existence can occur without the government being in a position to facilitate it.

As discussed in the original submission, QCoal believes using the term 'co-existence' is misleading: this Bill is essentially designed to preserve agricultural land wherever possible and permit mining only where agriculture can't be justified. Co-existence does not exist in a best practice form and there is no facility for mining to ever be prioritised over agriculture.

Some land in Queensland is better used for mining. A practical process for assessing the benefits of various land uses and of determining co-existence requirements must be included in the Bill.

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[6] Regional Planning Interests Bill 2013, page 7