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The Research Director
State Development, Infrastructure and Industry Committee
Parliament House
George Street
Brisbane QLD 4000

BY EMAIL sdiic@parliament.qld.gov.au

Dear Sir/Madam

Regional Planning Interests Bill 2013 – Supplementary submission

The Australian Petroleum Production & Exploration Association (**APPEA**) welcomes the opportunity to provide a supplementary submission to the Queensland Parliament's State Development, Infrastructure and Industry Committee (**Committee**) on the *Regional Planning Interests Bill 2013* (Qld) (**Bill**).

The Committee's consideration of the Bill to date has been detailed, and the Committee's consultation with stakeholders has been undertaken in a spirit of forthrightness and honesty. APPEA wishes to thank the Committee for this.

The issues raised in this supplementary submission are the issues that remain to be addressed in the Bill from APPEA's perspective. Following consultation on the Bill with the Queensland government and other stakeholders APPEA is satisfied that there will be appropriate resolution of these.

APPEA looks forward to working with the Committee and the government in the final stages of consultation on the Bill. If you would like to discuss any of the matters raised in this letter please contact Mr Matthew Paull on mpaull@appea.com.au or (07)3231-0502.

Yours sincerely

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REGIONAL PLANNING INTERESTS BILL 2013 (QLD) – SUPPLEMENTARY SUBMISSION

25 February 2014

SUMMARY

This supplementary submission details our remaining issues with the *Regional Planning Interests Bill 2013* (**Bill**), as currently drafted. These issues relate to areas where APPEA considers the effect of the Bill may be at odds with the Queensland government's stated policy intent for the Bill.

These areas are:

1. Existing operations may require re-approval under the Bill to continue operation.
2. Existing exemptions under the *Strategic Cropping Land Act 2011* (**SCL Act**) may not work within the framework of the Bill and therefore may not be effective.
3. Appeal rights for neighbouring landowners under the Bill are broader than our understanding of government's intent.
4. The Bill specifies few timeframes for the approval process. We believe including clear timeframes would increase certainty for all stakeholders without compromising intent and would be highly valued by industry.

In addition to these four key issues, this supplementary submission also details three further areas where APPEA believes the operation of the Bill could be enhanced. These are:

1. Providing for internal review of decisions made under the Bill prior to court action.
2. Retaining the State government's existing powers to overrule local government decisions where it is in the State's interests to do so.
3. Inserting a transitional regulation making power similar to clause 95 of the *Environmental Offsets Bill 2014.*

APPEA acknowledges that the government has recognised the concerns outlined above and that appropriate refinement of the Bill as proposed by the government would resolve these issues. If it would assist, we would be happy to propose specific solutions to each of the issues we have set out below.

KEY ISSUES

KEY ISSUE 1: EXISTING OPERATIONS MAY REQUIRE RE-APPROVAL

There are a number of significant gas industry assets that do not appear to qualify for an exemption under the Bill. This outcome may occur where:

1. Gas infrastructure has been concentrated on company owned land.

2. Activities take place within the Surat Cumulative Management Area (**CMA**) or within a Priority Living Area (**PLA**) or Strategic Environmental Area (**SEA**).

3. The activity is being lawfully undertaken without a work plan (eg. a pipeline or a gas processing facility).

What the Bill says

As existing gas operations are ineligible for the exemptions provided for small scale mining (s25) and for activities carried out for less than one year (s23), the key transitional provisions for gas operations are found at s22 and s24:

1. s22 provides an exemption in respect of PAAs, where:

   (a) land is not owned by the authority holder; and

   (b) the landowner and authority holder are parties to an agreement other than by order of a court; and

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

   (d) the activity is not likely to have an impact on land owned by a person other than the land owner.

2. s24 provides an exemption for pre-existing resource activities in respect of all areas of regional interest, where:

   (a) the activity is being carried out in accordance with a resource activity work plan; and

   (b) the land on which the activity is being carried out was not in an area of regional interest when the work plan took effect; and

   (c) the activity is not being carried out under a CMA tenure prescribed by regulation.

Why these provisions are a problem

1. The s22 exemption would be difficult for operators to obtain, for the following reasons:

   (a) The exemption is apparently only available in respect of PAAs, and is therefore unavailable in respect of any activities on PLAs, SCAs or SEAs.

   (b) In a number of instances, operators have purchased land within areas now mapped as PAAs for the purpose of concentrating infrastructure such as gas and water processing plants. In these instances, the s22 exemption may be unavailable, as the operator is the 'owner' of the relevant land.

   (c) The exemption is cumulative and is only available when all four criteria are established.

2. The s24 exemption is also difficult for operators to obtain for the following reasons:

   (a) The exemption is only available in respect of activities being carried out in accordance with a 'resource activity work plan'. The definition of this term in s24(3) does not appear to encompass any instrument for pipeline licences (**PPLs**), petroleum facility licences (**PFLs**) or any authority under the *Petroleum Act 1923*.

   (b) The exemption does not appear to be available for any activities being carried out on a CMA tenure prescribed under a regulation.

   (c) The drafting of s24 makes it unclear whether a resource activity which is being carried out in accordance with a work plan when the relevant land becomes an area of regional interest is always an exempt resource activity, or whether it ceases to be an exempt resource activity when the work plan expires or is replaced, even though the activity in question continues.

3. Finally, APPEA notes that work plans typically do not specify the exact location of infrastructure. We seek clarification that this is not required for the purpose of the Bill's transitional provisions.

KEY ISSUE 2: STRATEGIC CROPPING LAND EXEMPTIONS NOT FULLY CARRIED OVER

The Bill regulates SCAs (that is, areas outside of PAAs that are mapped as SCL) but the transitional provisions provided for activities in these areas appear to be more limited than those contained in the SCL Act. Therefore, gas industry activities that have been exempt from approval requirements for their impacts on SCL may be required to gain approval under the Bill for their impacts on SCA.

What the Bill says

Part 8 of the Bill contains limited transitional provisions for the SCL Act. These provisions transition resource activities carried out under a SCL Protection Decision or Compliance Decision. In addition, s23 of the Bill provides an exemption for activities carried out in less than one year.

The SCL Act transitional provisions contained in the Bill do not appear to extend to transitioning of activities on SCL/SCAs that are currently exempt under the SCL Act.

Why these provisions are a problem

Certain resource activities, including ones that obtained a project approval prior to the commencement of the SCL Act, are currently exempt from the operation of that Act. Because of this exemption, these activities do not have an associated Protection Decision or Compliance Decision. These activities typically last longer than 12 months and are therefore likely to be ineligible for the exemption under s23 of the Bill.

The Bill may therefore shift such activities from 'exempt' status under the SCL Act to 'not exempt' status under the Bill.

APPEA submits that as a minimum the Bill should provide for equivalent treatment as under the SCL Act in the areas where the SCL regime will continue: continuing activities that were exempt under the SCL Act should be exempt under the Bill, and where there is an existing obligation to obtain an approval under the SCL Act the same requirement should carry through to the Bill.

KEY ISSUE 3: BROAD APPEAL RIGHTS FOR 'AFFECTED LANDOWNERS'

We acknowledge government's intent to give a say to landowners who are genuinely affected by developments in neighbouring properties but are concerned that the Bill would enable vexatious legal challenges.

What the Bill says

1. s69 provides that an 'affected landowner' may appeal a regional interests decision to the Planning and Environment Court.

2. s72 provides that, if an appeal has been lodged, the operation of the regional interests decision is stayed until the Court decides otherwise or until the appeal is decided, withdrawn, or dismissed.

3. s68 defines 'affected landowner' as a person owning land that may be adversely affected because of:

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

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

Why these provisions are a problem

The definition of 'affected land owner' in s68 extends beyond just neighbouring landowners as the phrase 'proximity to the land' is likely to be construed broadly by courts. By way of example – given that an aquifer may be an area of regional interest (as a 'water source' under s8(2)(b)), we believe that a landowner obtaining water from that aquifer may be able to mount a case that they are an 'affected landowner' with standing to appeal a decision under the Bill.

Even if such actions were ultimately dismissed by the Courts, APPEA believes that operations would be likely to be stayed by the Court until a ruling on the action was made. As a result, there is in APPEA's view significant potential for abuse of the appeals process under the Bill.

KEY ISSUE 4: TIMEFRAMES FOR APPROVAL AND APPEALS

The Bill represents a fundamental shift in the framework for access to land in affected areas. Instead of a clear line of sight to the resource within a defined timeframe, investors within PAAs and other areas will not have certainty of access or certainty of timeframe as there is no set timeframes for approvals and appeals under the Bill.

What the Bill says

Part 3 of the Bill outlines the approval process under the Bill. Part 5 of the Bill outlines the appeals process under the Bill.

Part 5 of the Bill contains no timeframes. Part 3 of the Bill contains some timeframes (for example, at s42) however even the timeframe at s42 can be extended at the chief executive's discretion, without reference to the applicant (see s42(3)(b)). Crucially, there is no timeframe provided at s47 of the Bill, for the giving of a regional interests decision by the chief executive.

APPEA acknowledges that setting timeframes for the approval process may in some cases mean that approvals timeframes are longer than they otherwise would be, and that any timeframe set would be arbitrary. However, timeframes provide additional certainty to project scheduling and this is highly valued by industry. APPEA also considers that establishing timeframes would provide a benefit to landholders through increased certainty of process.

OTHER SUGGESTED IMPROVEMENTS TO THE BILL

1. INTERNAL REVIEW OF DECISIONS

APPEA considers that the approvals process under the Bill would be improved if proponents were able to seek internal review of a regional interests decision prior to commencing any court process.

As the Bill currently stands, if a proponent disagrees with the terms of a regional interest decision, the only avenue of review for this is to appeal the decision to the courts. Internal review would provide a low cost (for all parties) way of resolving disputes before escalation to the Courts.

2. STATE GOVERNMENT SHOULD HAVE THE FINAL SAY

APPEA supports local government and communities 'having a say' in the approvals process under the Bill.

In the context of the Regional Planning Bill, APPEA considers that the role of local government should be limited to activities within PLAs and that it would be prudent for State government to retain the power to override local government recommendations in relation to regional planning. This would enable the State's interests to be appropriately balanced against local government interests.

3. INSERTION OF A TRANSITIONAL REGULATION MAKING POWER

Finally, APPEA recommends that the State should consider the insertion of a broad transitional regulation making power into the Bill, similar to that contained in clause 95 of the recently released *Environmental Offsets Bill 2014.* This would allow for specific transitional issues to be addressed, consistent with the government's policy, from time to time over the next year, in a flexible and responsive manner.