Supplementary submission no. 085
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11.1.14

QGC
A BG Group business

10 March 2014

Mr David Gibson
Chairman
State Development, Infrastructure and Industry Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Gibson,

Regional Planning Interests Bill 2013 Supplementary Submission

Thank you for the opportunity to provide a supplementary submission to the State Development, Infrastructure and Industry Committee **(Committee)** inquiry into the Regional Planning Interests Bill 2013 **(the Bill)**.

QGC supports the submission made by the Australian Petroleum Production & Exploration Association **(APPEA)**.

The company remains concerned the Bill still contains anomalies that has the potential to Adversely affect land access and approval timeframes. This will create a greater level of investment uncertainty.

QGC therefore urges the Government to amend the following areas of the Bill:

- Transitional and exemption arrangements - s22 – s24
- Assessment timeframes - s41 and s42
- Rights of appeal and automatic stay of decisions - s52, s53, s68, s69 and s72 ad s73

Revision of the Bill is required to:

- Avoid impacts on pre-existing approvals
- Avoid conflict with the existing land access regime
- Implement an efficient and timely decision-making process
- Ensure the proposed process does not reward vexatious and frivolous claims

QGC has commissioned legal advice in respect of possible amendments to the Bill to achieve these policy objectives. Appendix items 1, 3 and 4 contain drafting amendments recommended by external legal counsel.

As the majority of submitters have outlined, it is not possible to assess the full impact of the Bill without seeing the supporting regulations and guidelines. QGC is working with APPEA to address concerns with the impending regulation directly with the Department of State Development, Infrastructure and Planning.

Transitional arrangements

QGC's proposed amendments to s22-24 are included in Appendix 1. The reasons supporting the proposed amendments are as follows:

1. *Transitional protection for currently authorised resource activities which have already been assessed prior to commencement of the Bill – section 24*

   The current transitional provisions provide extremely limited protection for currently authorised and existing activities. This results in retrospectivity which is a significant concern.

   Should the Bill be passed into law in its current form, activities currently being lawfully undertaken in prescribed areas of regional interest in the Surat Basin, will require further authorisation under the new regime.

   The carrying out of those activities will immediately be in breach of the Bill's offence provisions, and will continue to be so until a Regional Interest Authority **(RIA)** is obtained (assuming approval is ultimately granted by the Chief Executive and any appeal is unsuccessful).

   Activities not currently being carried out, but which are authorised at the State (and in many instance Federal) level will also become subject to the new regime.

   That is because:
   (a) section 24(2) of the Bill means that the exemption does not apply where a Cumulative Management Area **(CMA)** has been declared over parts of a priority agricultural area. All QCLNG tenures are within the area of the Surat Basin CMA (Appendix 2); and
   (b) the current exemption is not based on authorisation under a resource authority or related Environmental Authority **(EA)**, but is rather based on 'resource activity work plans' which are subsidiary plans; and
   (c) the current exemptions don't recognise activities which have been assessed under an EIS "approved" before the commencement.

   The current drafting means that an exempt activity is dependent on the relevant activity having been identified in a 'resource activity work plan' which for the natural gas industry is a Plan of Operations **(PoO)** (for petroleum leases), or a work program (for authorities to prospect).

   There are a number of reasons why reliance on 'resource activity work programs' is not fit for purpose.

   1. The exemption should be based at the EA and resource tenure level, because the legislative framework governing petroleum activities is such that:
      (a) A resource authority is granted under the *Petroleum and Gas (Production and Safety) Act 2004* (**P&G Act**), which also authorises activities that can be carried out under the particular authority (including incidental activities);

(b) Resource activities cannot be undertaken without an EA granted under the *Environmental Protection Act 1994* **(EP Act)**. Nor can a resource authority be granted unless a relevant EA for the authority has been issued; and
(c) A PoO or Work Program are subsidiary documents which relate to, but do not govern, the extent of activities authorized under the relevant resource authority and EA.

2. Both the P&G Act and the EP Act establish obligations to update resource activity work plans. In the Bill's current form, an activity included in a later updated resource activity plan would become subject to the Bill's assessment regime – even if carrying out those activities was previously authorised under the relevant EA and resource authority.

3. Reliance on PoOs and work programs does not address activities authorised under resource authorities other than Petroleum Leases and Authorities to prospect (e.g. Petroleum Facility Licenses and Petroleum Pipeline Licenses).

4. The Bill appears to assume that the PoOs identify details of proposed resource activities at a property level. The explanatory notes state *"A plan of operations provide detailed information about the resource activities to be carried out at a property level"*. This is not correct. The PoO reflects the location of existing infrastructure, and quantum of proposed disturbance levels of yet to be constructed infrastructure at an authority, not individual property level. Constraints for the placement of infrastructure can only be fully identified until a site based survey has been undertaken. The location of infrastructure is then discussed with landholders taking into consideration the unique characteristics and use of their individual property. For yet to be constructed infrastructure, this occurs post submission of the PoO.

Example - QGC submitted a Plan of Operations to EHP in September 2013. It will expire in December 2014. The next phase of well development is to be identified in the next PoO (the period for which would commencement in January 2015). Even though that development is currently authorised under the EA and relevant resource authority, they will become subject to the new regime, at the end of the current PoO period.

Recommendation:
- As per the proposed amendments in Appendix 1:
  - Provide exemption for activities approved under environment and resource authorities or an EIS prior to the commencement of the Bill
  - Remove the CMA reference
- If reliance on resource activity plans is to remain, remove the reference in the explanatory notes to these documents providing information at a property level along with the anticipation that this type of information will be available before a RIA is granted. New exemptions for activities authorised under resource authorities other than petroleum leases and authorities to prospect would also need to be established.

2. *Exemptions by landholder agreement – section 22*
The exemption for activities agreed with a landholder does not assist in avoiding the retrospectively of the Bill. That is because there is no transitional process for determining

whether activities currently the subject of a Conduct and Compensation Agreement **(CCA)** will either:

(a) have a significant impact on the relevant area of regional interest; or
(b) be likely to have an impact on land owned by a person other than the land owner.

Additionally, the Bill needs to provide the same legal rights to all landholders – both private landholders and resource companies.

The current drafting does not allow for the landholder agreement exemption to apply if a resource company owns the land on which it is conducting activities.

This is inconsistent with the current land access regime and s500A of the P&G Act which provides that the CCA requirement does not apply where a petroleum authority holder owns the land.

QGC consolidates major infrastructure such as water treatment plants and compressor stations on company owned land to minimise impacts on landholders. Under the Bill, QGC loses the incentive to purchase land for this purpose.

The Bill proposes that additional infrastructure built on company owned land will be subject to a Regional Interest Authority application, thus allowing "affected landholders" (which is broadly defined) to appeal, seek a stay of operation and delay the project.

The Bill also undermines the current land access regime, in that the exemption does not apply where recourse is had to the Land Court to resolve compensation.

Recommendation:

- The Bill be amended to ensure consistency with the land access provisions established in the P&G Act.
- The Bill provides the same legal rights to all landholders – both private landholders and resource companies.

3. *Activities carried out for less than one year – section 23*

The current drafting will result in an unnecessarily restrictive application of this transitional provision.

It is unclear how land is considered to be "restored" in this context.

Several variables can affect timing of the rehabilitation process (which includes stabilization and restoration), such as weather.

Also, the current drafting does not recognise that although certain tenures (such as a petroleum survey license) only have a 1 year term, rehabilitation conditions imposed by an Environmental Authority continue in effect after the tenure ends.

The requirement of subsection 23(1)(c) is sufficient to maintain the policy intent of allowing limited activities to be undertaken within a 12 month timeframe.

Recommendation:

- Remove reference to the term "restored" and make any reference to required rehabilitation activities and timeframes being consistent with relevant Environmental Authorities.

Assessment timeframes

The Bill introduces risk of schedule delay created by an open-ended RIA assessment process that does not exist under the current land access framework. Proposed amendments are included in Appendix 3.

Amendment to introduce specific assessment timeframes would increase certainty for industry, landholders and government. This would be consistent with similar assessment systems established in the *Sustainable Planning Act 2009* **(SPA)** and the EP Act.

Under the land access framework outlined in the P&G Act, following the statutory negotiation process and unsuccessful Alternative Dispute Resolution **(ADR),** a company can apply to the Land Court to resolve the matter. After filing, access to land is usually available, allowing work to commence whilst the dispute is heard.

Given the preferred option to reach voluntary agreement with the landholder, logically, the earliest point in the land access process a RIA application would be lodged is following unsuccessful ADR. As the assessment process is undefined, it is not possible to determine potential land access timeframes used to schedule production forecasts and construction contracts.

Specified timeframes would allow resource proponents to make assumptions in determining project delivery schedules as per the current framework.

Additionally, notification of a decision should be limited to the landholder and affected landholders who have made a "properly made" submission as per section 37 of the Bill.

Example – QGC requires 50 wells to supply a Field Compression Station (FCS). One Landholder has nine wells and contiguous connection to 21 others that supply the FCS. The landholder is a member of the Lock the Gate Alliance. While we support the concept that access agreements should be voluntary, the safety valve of the Land Court and defined timeframes is essential.

Recommendation:

- As per the proposed amendments in Appendix 3, require the chief executive to:
  - Provide assessing agencies with a copy of the application within 5 business days of receipt
  - Decide an application within 30 business days of receipt

Rights of appeal and automatic stay of decision

The Bill's broad appeal rights provide further uncertainty and risk of delay for resource companies. Proposed amendments are included in Appendix 4.

The Bill needs to limit rights of appeal to an applicant and to any submitter (having made a "properly made" submission), consistent with the process established in provisions of the EP Act the SPA, and *Strategic Cropping Land Act 2011* **(SCL Act)**. Further, a test of standing needs to be established to determine appropriateness of submissions.

Currently a right of appeal is given to "affected landholders" - which is not defined in the Bill and is potentially very broad.

The draft provisions would effectively allow a neighbouring activist to delay works unreasonably, even if the landowner on whose land the activity is taking place has no issue with the works.

If passed into law, these provisions would fundamentally alter the land access regime that underpinned BG Group's multi-billion dollar investment in the QCLNG project.

QGC is concerned an automatic stay of operation doesn't allow for appropriate checks and balances and is contrary to other legislation provisions relevant to the resource sector, including in respect of:

- Appeals against the issue of an environmental authority under the EP Act
- Appeals against decisions under the SCL Act, and
- The hearing of compensation disputes at the Land Court

Requiring a Court to consider applications for a stay will avoid the provision of the Act from being used vexatiously to prevent works from being undertaken.

Clear disincentives need to be introduced to deter baseless claims intended to disrupt resource projects.

Example - QGC has purchased a 1,700 hectare property to locate 2 field compressor stations, 33 wells and 70 kilometers of gathering lines. This location was chosen to consolidate infrastructure and minimise impact on adjoining landholders. Under the provisions of the Bill "affected landholders" living in the vicinity of the property could use the assessment and appeal project to delay construction on QGC land.

Recommendation:

- Limit the rights of appeal to those who have appropriate standing to appeal the decision
- Remove the automatic stay of operations that may be potentially used to delay projects

If you have any questions in relation to the above or require further information please contact Ms Lizzie Staines on (07) 3024 7591 or lizzie.staines@bg-group.com.

Yours sincerely

Tracey Winters

Tracey Winters
Vice President - Community, Land and Environment

APPENDIX 1- SUGGESTED TRANSITIONAL ARRANGEMENT AMENDMENTS s22 – s26

Item 1: Proposed amendment to section 22

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Section 22(1) – omit

Section 22(2) – omit and replace with:

"22(1) The resource activity is an exempt resource activity for an area of regional interest if either –

(a) a conduct and compensation agreement requirement does not apply under a Resource Act; or

(b) if a conduct and compensation agreement requirement applies under a resource Act –

(i) the land owner and the authority holder are parties to a conduct and compensation agreement under the resource Act; and

(ii) the activity is not reasonably expected to have a significant impact on the area of regional interest; and

(iii) the activity is not likely to have a relevant impact on adjacent land which is not subject to a conduct and compensation agreement requirement."

Section 22(3) – omit, insert –

for subsection 22(1)(iii), a resource activity has a relevant impact on land if the activity will have an impact on the suitability of the land for the purpose for which it has been identified as an area of regional interest."

Item 2: proposed amendment to section 23

Amend by deleting subsection 23(1)(b).

Item 3: Proposed amendment to section 24

Replace existing section 24 with:

"(1) A resource activity is an **exempt resource activity** for an area of regional interest if –

(a) the activity is carried out or is proposed to be carried out–

(i) on land in the area; and

(ii) pursuant to an environmental authority and resource authority; and

(iii) the land was not in an area of regional interest when the environmental authority for the activity first took effect; or

(b) the activity is carried out or proposed to be carried out –

(i) on land in the area; and

(ii) pursuant to an environmental authority and resource authority related to one or more pre-existing resource authorities; and

(iii) in the area of the pre-existing resource authority; and

(iv) the land was not in an area of regional interest when the environmental authority related to the pre-existing resource authority first took effect; or

(c) the activity forms part of a resource project, and is proposed to be carried out

(i) on land in the area; and

(ii) the land was not in an area of regional interest when the EIS stage for the resource project was completed.

(2) in this section:

EIS Stage is considered to be completed *if one of the following applied for an EIS for, or that included, the proposed activity–*
(a) the EIS Process had been completed under the Environmental Protection Act, section 60;
(b) the giving, under the State Development Act, of the Coordinator General's Report for the EIS.
Resource project *means resource activities carried out, or proposed to be carried out, under 1 or more tenures, in any combination, as a single integrated operation*

Pre-existing resource authority *means a resource authority granted under a Resource Act before Commencement"*

Item 4: proposed amendment to section 26: notice requirements

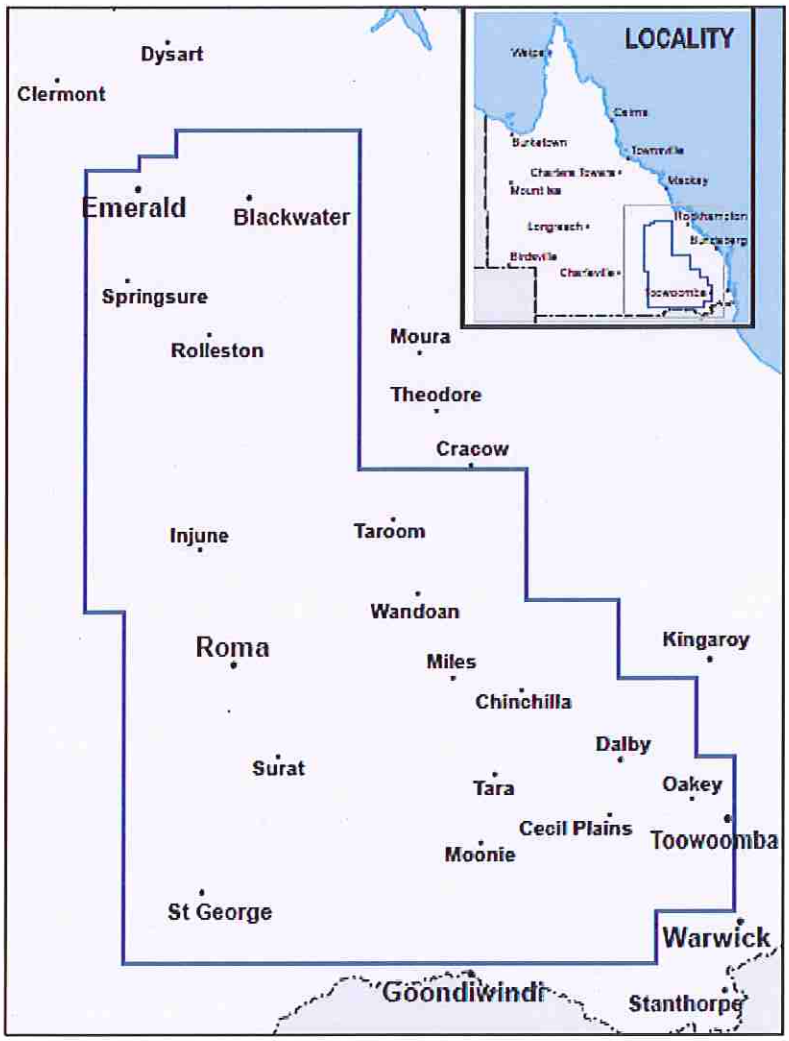
Subsection 26(2) omit, insert –

"26(2) A notice for a resource activity that is an exempt resource activity under section 23 must be accompanied by a document stating the authority holder's plan for completing the activity in the period mentioned in section 23. The notice must include the anticipated timeframe for satisfaction of final rehabilitation requirements imposed under the relevant environmental authority for the activity."

Subsection 26(3) omit, insert –

"26(3) this section does not apply to a resource activity that is an exempt resource activity under section 22 or 24."

APPENDIX 2 – SURAT CUMULATIVE MANAGEMENT AREA



Source: http://www.dnrm.qld.gov.au/ogia/surat-underground-water-impact-report

APPENDIX 3 – SUGGESTED ASSESMENT PROCESS AMENDMENT

Item 1 proposed amendment to section 41: assessing agency's assessment of application

Subsection 41(1) – omit, insert –

(1) The chief executive must give the assessing agency for the application a copy of the application within 5 business days of receiving the application.

Item 2 proposed amendment to section 42: response by assessing agency

Subsection 42(3)(b) – omit.

Item 3 proposed amendment to section 47: chief executive's decision

Subsection 47(2) – omit, insert -

"(2) the chief executive must decide the application within 30 business days from receipt of the application.

(3) If a requirement notice is given in respect of the application under Part 3, Division 6 of the Act, a day is not to be counted as a business day for the purposes of (3) if it is on or before the day:

(a) the requirement notice was given; or
(b) the requirement notice was complied with.

(4) If the application is notifiable and section 36(2)(a) does not apply, a decision cannot be made about the application before the closing day for submissions."

APPENDIX 4 – SUGGESTED AMENDMENT TO RIGHTS OF APPEAL AND AUTOMATIC STAY OF DECISION

Item 1 – proposed amendments about notice of decision

Subsection 52(1) – omit, insert –

"(1) As soon as practicable after deciding an assessment application, and within 5 business days after deciding the application, the chief executive must give the applicant a decision notice about the decision."

Subsection 52(2) – omit, insert –

"(2) the chief executive must give a copy of the decision notice to –

(a) if the applicant is not the owner of the land – the owner of the land; and

(b) if the assessment application was notifiable, and section 36(2)(a) does not apply, any submitter;

(3) in this section 'submitter' means an entity who makes a properly made submission about the application."

Subsection 53 – omit.

Item 2 – amendment to sections 68 and 69: appeals

Section 68 – omit definition of 'affected land holder'.

Section 69 – omit, insert -

" A recipient of a notice under section 52 may appeal against a regional interests decision to the Court."

Item 3 – amendment to section 72: stay of operation of decision

Omit – insert:

72 Appeal does not generally affect decision

The appeal does not affect the operation of the decision or prevent the implementation of the decision unless the decision is stayed under section 73.

73 Stays

*(1) The court to which the appeal is made may, on the appellant's application, make an order staying the operation of the decision (a **stay**).*

(2) A stay may be granted only if the court thinks it is desirable after considering—

(a) the interests of any person whose interests may be affected by the order being made or not being made; and

(b) written or oral submissions made to it by the decision-maker for the decision; and

(c) the public interest.

(4) In granting a stay, the court may require an undertaking, including an undertaking as to costs or damages.

(5) The court may assess the costs or damages.

*(6) In this section— **costs or damages** includes compliance action expenses."*