



MACKAY CONSERVATION GROUP

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State Development, Infrastructure and Industry Committee

QUEENSLAND PARLIAMENTARY SERVICE

Parliament House

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Subject: Supplementary submission on the Regional Planning Interests Bill 2013

www.parliament.qld.gov.au/SDIIC

24th February, 2014

Dear Committee Members,

Please find below a supplementary submission by Mackay Conservation Group on the Regional Planning Interests Bill 2013. MCG is a regional environmental NGO covering the area from the Whitsundays south to Broadsound and inland to Clermont. We also work in partnership with North Queensland Conservation Council and Capricorn and Gladstone Conservation Councils on regional planning issues that affect our regions.

At the Public Hearing on Feb 14, 2014 the following matters were raised which we support.

1. Cape York Land Council

- a. The bill should include **regionally significant cultural heritage values**.
- b. ... there are **provisions that restrict the parties who are able to appeal a decision** made. about an assessment application... it is limited to parties who are directly involved in that assessment process which, for various reasons, may not directly involve a prescribed body corporate, so a native-title holding entity or an Indigenous corporation that may have tenure interests in land. Our proposal is that there should be provision included so that it is clear that those entities have standing to actually lodge an appeal if they have issues with a decision that has been made.

... an Indigenous entity, whether it is a native title body, or a landholding body, or whatever the case may be, should fall within those particular definitions.

2. **HANNAN, Mr Luke, Manager—Advocacy, Local Government Association of Queensland**
HOFFMAN, Mr Greg, General Manager—Advocacy, Local Government Association of Queensland

- a. ...**the regulation and criteria** ... documents will ultimately determine the successful implementation of the bill.
- b. **Mr Hoffman:** As identified in our submission, we were seeking clarification around the **definitions of 'strategic environmental areas'** and those other aspects that may be prescribed. Certainly **the devil is in the detail.**

Mackay Conservation Group Comment:

We agree that the devil is in the details, as pointed out in other presentations as well as that of the LGAQ that is not possible to fully review the implications of this Bill without the details, and hard to support it when such details are not available in any form at present.

Elsewhere in the presentations Jeff Seeney, Deputy Premier of Queensland points out that Regional Councils will have the power and responsibility to select 'strategic environmental areas' to become part of the protected areas within the proposed Regional Plans.

Our concerns are that Regional Councils often lack the expertise and sometimes the will to fully protect significant environmental areas. In Mackay coastal development has proceeded in areas with state and nationally environmental significance. In the past decade the high tide wader roost site for resting migratory shorebirds listed under the EPBC Act has been rendered ineffective as habitat because of constant human disturbance following the construction of a concrete road/footpath through the middle of Sandfly Creek Environmental Reserve on the south bank of the Pioneer River. This became part of the Bluewater Trail around the city and along the Pioneer River despite our earlier submissions in 2002 and onwards that the migratory birds would not be able to tolerate the disturbance. The environmental officer attached to Reef Catchments at the time and the Council's own then environment officer both agreed with us. We subsequently surveyed the impacts of the pedestrian traffic along the road/footpath and that data confirmed that migratory bird numbers were plummeting and that human disturbance was the major cause.

Council also approved a coastal development at Midge Point north of Mackay which affected a coastal ecosystem listed as threatened under the EPBC Act and the water quality within habitat for the False Water Rat a threatened species listed at the state and federal levels under the EPBC Act.

Council usually is unaware of threatened species that may be harmed by a development and has not required a developer to search for such species that are likely to be present unless we point this information out to them. For example the Cougar Housing Development west of Bakers creek contained habitat suitable for the False Water Rat. When we informed Council after reviewing the Development Application they had the developer hire an ecologist to search the area. He subsequently found the nest of this species within the proposed development boundaries.

Councils constantly face the threat of lawsuits from developers and must husband their resources to avoid going to court. It may be more expedient for them to let developments that may cause environmental harm to threatened and migratory species and this is our experience in cases we are aware of. We feel the Queensland government should not abdicate their responsibilities in this area by placing full responsibility on to local governments, especially when such an action is an unfunded mandate.

We agree for the need for Councils to have a role in deciding on 'environmental strategic areas' but that they must be adequately funded and resourced with qualified and experienced staff to do this work

comprehensively and to the highest standard. And Councils should be resourced to undertake the planning and management of such natural resources. They should had supportable and justifiable selection criteria and be able to explain transparently to the public their reasons for selection and rejection of 'strategic environmental areas'. They cannot for example be just National Parks, and they should include Nature Refuges and all areas with high conservation values. Selection criteria should be similar across Councils i.e. there should be some standardisation to avoid conflict and confusion across Queensland Councils as to what constitutes a 'strategic environmental area'.

- c. **Mr HART:** ... there is the availability of exemptions for priority agricultural areas for pre-existing resource activities in priority agricultural areas but there does not appear to be any exemptions for pre-existing resource activities in priority living areas.

Mr Hoffman: If they are longstanding and have been there, there is not an issue in it of itself unless **people are still concerned about hazardous situations or if further development was proposed in, on or in relation to that infrastructure**. Then it might become an issue. In terms of those that are there at the moment, we are not aware that there is a strong push for any exceptional consideration in relation to them.

Mackay Conservation Group Comment:

In the U.S. there are many aging gas pipelines that pass through townships and communities that are very close to housing. Occasionally these catch fire and cause tremendous destruction. So this and other long-term risks are an issue that should be addressed in the Bill. It may be that gas companies are required to provide long-term funding to ensure maintenance and removal of disused pipelines if they are built in vulnerable areas where people or livestock or wildlife are at risk. Their construction in higher risk areas should also be avoided.

3. **CHAIR:** I just want to tease out from you what you mean when you talk about 'scenic amenity'. Would you care to explain what that might mean? ...
CHAIR: I imagine it would be something difficult to define.
Mr Hoffman: Yes. There is the subjectivity that Luke mentioned before as to **how you value scenic amenity as such and the significance of it to a particular area**. If a particular area's current significant economic activity is built on such things, then you potentially have a **clash of interests** that are both economic in effect but for quite significantly different outcomes

Mackay Conservation Group Comment:

Research on defining scenic areas has been done. The Natural Resource Management Groups have experience in that when preparing their regional management plans and conforming to the requirements of the Queensland Coastal Planning Act. The concept of 'solastalgia' also applies here which applies to the feelings of connection a community has towards their surrounding environment and this has to be respected and considered in regional planning schemes.

Solastalgia: noun. From the Latin solacium (comfort) and the Greek root -algia (pain). "the pain experienced when there is recognition that the place where one resides and that one loves is under immediate assault"

4. LYON, Mr Barry, Senior Conservation Ranger, Steve Irwin Wildlife Reserve, Australia Zoo

Mr HOLSWICH: I would just like to ask you a question. **The thing that has been coming through in our public hearings and in all the submissions is about co-existence of mining activities with other activities.** Do you have a particular view on whether there could be any co-existence of any sort of activities in and around the Steve Irwin Wildlife Reserve or is that, in your view, completely impossible in that instance?

Mr Lyon: The reserve has been set aside for nature conservation purposes. Unfortunately, the nature of strip mining is that such large areas are cleared. On the landscape scale, we are looking at thousands of hectares here. If the bauxite, which is the supporting substrate for the ecosystem, is taken out and the landscape is lowered, **you cannot rehabilitate that**, because that substrate that supported the original ecosystem is gone. **It also affects the hydrology.** The land has **been set aside for nature conservation purposes and mining is incompatible on this land.** That is our position.

Mr YOUNG: I would have thought that reclamation up there had been successful. You are saying that it is not.

Mr Lyon: It is possible to replant country, but you could use the **analogy of a farm: if you cleared off the rich topsoil and you are left with poorer soil underneath or a different type of soil you could not possibly grow those same crops there.** It is the same in a natural ecosystem. **That bauxite is critical to supporting the different ecosystems not only that grow on it but also in driving the hydrology.** There has been some dispute over what is known as the Coolibah Springs, which emanate from this bauxite plateau. Where does the water come from for those? We now have irrefutable evidence that monsoonal rain that falls on the bauxite plateau filters through the bauxite. So it plays a role in mediating that hydrology. It filters down into the deeper aquifer. We have been working with hydrologists. So to take that bauxite away you are losing that big geological sponge that initially absorbs all of that water and then feeds the springs, which then feed the river.

Mackay Conservation Group Comment:

We agree strongly with Mr Lyon about reclamation not being able to restore what values were lost especially biodiversity losses. There are very few examples of successful rehabilitation of coal mining sites. This is a hidden long-term cost to Queensland's biodiversity assets especially where open cut mining and river and creek diversions are employed. This is the cheapest and most favoured form of mining by coal mining companies but where coal deposits exist close to the surface on a very large scale in the Bowen and Galilee Coal Basins it means the clearing of hundreds of thousands of hectares of native woodlands and grasslands, some of which is endangered. Proposed biodiversity offsets cannot fully offset the loss of these environmental assets. In most cases the open coal pits are left and only re-sculptured with sparse grasses. The costs of these environmental losses are not figured into the price of coal and as such this represents a permanent loss of assets to the State.

Regional Planning legislation must address the continuing loss of biodiversity and habitats of threatened and near-threatened species and conserve much more native vegetation. The costs of such losses must be figured in so open cut mining does not remain the cheapest option because coal is not fully priced by including its environmental costs. The lesson from broadscale clearing for agriculture in the past in NSW and Victoria is clear. There many species of regional conservation significance now common in the Galilee Basin have declined dramatically becoming endangered or extinct e.g. hooded robin and speckled warbler.

**5. ARMITAGE, Mr Stuart, Board Member, Cotton Australia
GALLIGAN, Mr Dan, Chief Executive Officer, Queensland Farmers Federation**

Loss of Community Engagement

- a. **Mr. Galligan:** The bill has really become an opportunity for **regulating certain areas for certain activities**, and therefore we may well have **lost that community engagement on implementation of statutory regional plans**

Mackay Conservation Group Comment:

We are very concerned about the loss of community engagement through this process for Statutory regional Plans. Engagement is already extremely limited with the environmental sector virtually excluded from involvement until called on for comment on this Bill initially in the Christmas holiday period and now with brief notice with this supplementary commentary period. Add to that the proposal to restrict the right of appeal to affected landowners and Regional Councils and the reality is that the environmental sector has been largely excluded from this process. We agree with EDO's in that it is in the long-term public interest to get the highest quality legislation outcomes for regional planning and that means inclusion of all potentially affected sectors, not just those economically affected. Other existing environmental legislation that affects planning does this so why is this Bill different? Why is it taking the high risk of failure by not being fully inclusive?

- b. **MULHERIN:** Do you support AgForce's submission that the **definition of strategic cropping land should be taken from the strategic cropping land for inclusion in this bill?**

Mr Galligan: Effectively, yes. That is how you would give effect to what we are suggesting, and then also amended for the priority agricultural areas as well

Mackay Conservation Group Comment:

We support that as well especially for protection of SCL near growing urban areas such as Mackay that need to protect the sugar cane industry and good quality land for horticultural crops close to the city. Currently a developer wants to build a 950 person FI-FO camp close to the Mackay Regional Botanical gardens and the Pioneer River. On planning grounds there are a number of reasons for refusal, but one of the main reasons is that this land is of highest agricultural quality and is part of the land assigned to Racecourse Sugar Mill for sugar cane farming. Loss of such land threatens the viability of the mill and as Mackay has few alternative industries besides coal mining and associated industries, economic diversity will suffer with the continued loss of good quality agricultural lands to housing developments. The more reasons Council has to reject such applications the more likely it is that developers will not choose to object to such decisions in the Planning & Environment Court and the more strength Council has to win such appeals.

**6. HAUSLER, Mrs Sarah, Member, Management Committee, Queensland
Environmental Law Association**

- a. **We have suggested that the definition of 'affected landowner' be removed and perhaps appeal rights be tied to whether a person makes a submission.**

That is the process that is used in the Sustainable Planning Act and it gives rise to a fairly objective question about whether a person made a submission within the relevant period. It is a yes/no answer and then you move on. It also gives project proponents some idea of the issues that they are likely to

face in any appeal and who the relevant interest groups are. So it gives a bit more transparency to the process.

...

Mrs Hausler: The bill currently proposes that there will be a notification process for some applications, and the detail will be in the regulation. Assuming that you have an application where you have to publicly notify and the community can make submissions after hearing about it from the assessing authority and **that submission would be their ticket, if you like, to going to court and having an appeal right**

...

Mr MULHERIN: What you are saying is that an environmental group or another community group that may not live in the area where this activity is being carried out would not have the right to make an appeal?

Mrs Hausler: Yes. It might be somebody like that or it might be a **downstream property owner** who may not be affected in the relevant sense and they might not get over the threshold or they might be put off by the threshold being there and the costs and the lack of certainty. So it is not necessarily just about community groups; it might also be about **a business that has a broader regional interest and others in the community more generally.**

...

Mrs Hausler: The concern was about the way that the definition of ‘affected landowner’ has this general concept of being proximate to the relevant project and there being an impact. The concern is really that those things are not very easy to determine at the outset. You need to have a look at the project and you need to have a look at that person’s particular property interests and how their farm operates or how perhaps their nature reserve operates, or whatever it might be, in order to determine whether they have appeal rights. **So it is setting up an extra process, if you like, before you get into the merits of any particular appeal.**

Ms MILLARD: Okay. So you are just referring purely to proximity—**a proximity issue?**

Mrs Hausler: The proximity, yes.

Mackay Conservation Group Comment:

We agree with QELA on this. More than the “affected landowner” and Councils can be affected adversely by a development or mining resource proposal i.e.

advocates for the environment who advocate the application of environmental laws and policies for best environmental outcomes.

7. **CAMPBELL, Ms Fiona, Senior Solicitor, Environmental Defenders Office of Queensland and Northern Queensland**
HAMMAN, Mr Evan, Solicitor, Environmental Defenders Office of Queensland and Northern Queensland
KOROGLU, Ms Rana, Solicitor, Environmental Defenders Office of Queensland

- a. Managing land use inevitably involves weighing private and public considerations, but **in our view this bill is weighted too far towards private interests**. As has been raised by others in their submissions to this inquiry, **important provisions are missing from the bill and will be put in regulations that are still not publicly available**.

It is difficult for all of us to assist the committee in fully investigating the effect of the bill without cross reference to regulations. It is like selling a steak sandwich with just the bread and maybe some sauce and onions, but with no steak.

Skeleton or framework legislation such as this bill should not be passed by parliament until there has been community consultation on these regulations.

The underlying concepts in this bill, that there are areas of regional interest and importance that must be managed appropriately, are ultimately for the benefit of present and future generations of Queenslanders.

Regional interest areas concern our fundamental necessities of food security, healthy waters and the environment on which all of us rely.

So the very concept that there are areas of regional importance that need to be managed differently is ultimately for the public interest.

We are very concerned about the department's decision not to engage in community consultation on the development of this bill.

...

the bill is ultimately for the benefit of the community and the decisions made under this bill affect all of our communities, not just private landowners and private resource companies, so of course the community should be consulted.

Mackay Conservation Group Comment:

We share these concerns.

- b. To us, it is somewhat counter intuitive to have legislation that attempts to manage land-use conflicts in the public interest. It is not allowing the public themselves, that is, our communities, to appeal a regional interests authority decision.

This is going to be inconsistent with the current processes under SPA, the Sustainable Planning Act, and the Environmental Protection Act.

Mackay Conservation Group Comment:

We share these concerns.

- c. **Ms Campbell:** One of the biggest issues in regard to strategic environmental areas is that the criteria in regard to the level of protection are not provided, so they **lack certainty**.
- d. Until the regional criteria are known, and they are not clear in the regional plan nor in the Regional Planning Interests Bill, there is a lot of uncertainty not just for conservationists, people trying to protect those areas, but also for resource companies, for people wanting to practice agriculture in different areas.

Mackay Conservation Group Comment:

We share these concerns.

- e. **Ms Koroglu:** Certainly. Currently, the way the bill is drafted it requires regional interests authority applications for activities that are occurring within a regional interest area. There are obviously maps. But **if a resource activity is occurring just outside that regional interest area or somehow approximate to it, this bill does not capture that particular type of activity at all.**

...

in the objects of the act, it states **one of the objects is to manage resource activities on regional interest areas**, but in our view that **does not actually occur if activities occurring outside of the area that impact on the area are not being addressed by the legislation.**

Mackay Conservation Group Comment:

We share these concerns. The object of the Bill does not appear to be met in this respect.

Sincerely,

A handwritten signature in black ink that reads "Patricia Julien". The signature is written in a cursive style with a large initial 'P' and 'J'.

Mrs. Patricia Julien

Research Analyst

Mackay Conservation Group

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