Submission No. 35
11.1.19
19 May 2014

16 May 2014

Ms Erin Pasley
Research Director
State Development, Infrastructure and Industry Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Ms Pasley

Thank you for the opportunity to make a submission to the State Development, Infrastructure and Industry Committee's inquiry into the *Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014* (**Bill**) as it relates to the *State Development and Public Works Organisation Act 1971* (**SDPWOA**).

QGC has also contributed to the Queensland Resources Council submission which it supports in principle.

QGC notes that while this Bill is currently under consultation the Federal Government has also introduced into Parliament the *Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014* (Bilateral Bill) and the *Environment Protection And Biodiversity Conservation Amendment (Cost Recovery) Bill 2014* (Cost Recovery Bill), and released the draft approval bilateral agreement between the Federal Government and the State of Queensland. These documents should be considered in conjunction with each other.

QGC strongly supports the bilateral agreement process and acknowledges the efforts of both the State and Federal Governments to progress this important reform.

QGC is developing the Queensland Curtis LNG Project (QCLNG), a $20 billion investment that involves taking natural gas from coal seams in Central Queensland, to Gladstone where it will be liquefied for export.

QGC also supplies gas to the Eastern Australian gas market, currently meeting about twenty per cent of Queensland's gas demand.

The project employs about 14500 people and, to date, has involved expenditure of more than $19 billion. When we begin exports in 2014, we will have invested $14 million a day, every day over four years. At peak production we expect to pay about $1 billion a year in state and federal taxes and royalties – or enough to fund twenty primary schools or about one thousand hospital beds a year.

QGC is a wholly owned subsidiary of BG Group. We are committed to working sustainably and with respect for the environment.

In terms of the industry's regulatory regime, the time needed for regulatory approvals in Australia is estimated to take eighteen months longer than key competitor countries[1].

Our industry in Queensland - being the first of its type in the world - is one of the most heavily regulated industries globally, with each major project subject to 1,500 primary conditions and thousands of sub conditions. It is for this reason that QGC supports government's effort to reduce regulatory duplication.

The planning, approval and development stages of our project have spanned more than six years.

This experience informs QGC's suggested amendments to the Bill, most of which seek to ensure the Bill is consistent with the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act). QGC recommends that:

- the Bill be amended to prescribe decision timeframes, and timeframes for the provision of notice, as well as the giving of environmental approvals.
- the Bill be amended to moderate the CG's capacity to recover costs associated with obtaining additional information, by requiring that any such costs incurred be "reasonable".
- the Bill be amended to ensure that any prospective change to conditions during any Environmental Approval amendment be properly related to the subject matter of that application.
- the Bill be amended to require the Minister to seek comment from a proponent in respect of a proposed decision and any conditions to be imposed, and allow a reasonable timeframe within which such comment may be provided.
- the Bill be amended to ensure consistency with provisions of the EPBC Act by allowing the Minister to choose to suspend an approval, rather than cancelling it in the first instance, and to establish a process for any suspended or cancelled approvals to be reinstated.
- further clarification be provided about the process for preparation of a "protected matters report" by proponents.

It is also noted that the draft approval bilateral agreement contemplates accreditation of approval processes under the *Environmental Protection Act 1994* (**EP Act**). QGC therefore assumes that amendments to that Act, similar to those proposed by the Bill, will soon be introduced to ensure that, where appropriate, proponents who adopt the EP Act approval pathway rather than seeking a coordinated project declaration under the SDPWOA may still gain the benefit of the 'one-stop-shop' reforms. The following comments would apply to any such proposed amendments.

Proposed amendments to the Bill

There are several instances where the Bill is not consistent with relevant provisions of the *EPBC Act*. In the interests of achieving streamlined regulation and efficiency, and avoiding uncertainty, it would be beneficial if approval processes under the two Acts were consistent. The following matters deal with areas in which inconsistencies arise in the draft Bill.

Decision timeframes

[1] Minerals Council of Australia. 2013.

The draft provisions in the Bill (sections 54T, 54ZC) do not prescribe a timeframe within which decisions must be made by the Coordinator-General (CG), either on the approval or refusal of a coordinated project for Federal purposes, or any changes to approvals. Similarly there is no timeframe prescribed for giving notice of a decision (section 54X), issuing any environmental approval, or amended approval (sections 54Y and 54ZE).

Although this is consistent with the existing provisions of the SDPWOA about the giving of the CG's report (which is not itself an "approval")– this is not consistent with the approval process under the EPBC Act (section 130), and the EP Act.

It is recommended that the Bill be amended to prescribe decision timeframes, and timeframes for the provision of notice about decisions, as well as the giving of environmental approvals.

Ability to request further information

Section 54S establishes an ability for the CG to request further information after receiving the "final protected matters report". The CG has broad discretion to do so (i.e. when considered "reasonably necessary" for the CG to consider the criteria for decision established in section 54W (s54S)).

This is generally consistent with the process under the *EPBC Act* where the Minister can request further information where the Minister believes on reasonable grounds that they do not have enough information to make an informed decision (s132).

However, unlike the EPBC Act, in its current form (and the EP Act), the Bill proposes to include a mechanism whereby the CG can recover as a debt the cost of obtaining advice from another entity, or "services the CG considers necessary to decide an application, or take action, under [Part 4A]" (section 54ZO).

The explanatory notes for the decision criteria (in section 54W) highlight that it is envisioned that the CG will commission expert advice, at the cost of the proponent, necessary to make an informed decision.

Section 54ZO establishes broad power, and does not provide for the reasonableness of costs sought to be recovered. We recommend that the Bill be amended to establish a head of power for a regulation to prescribe methods to work out what costs are reasonable, and properly recoverable, and a process for proponents to seek reconsideration of the determination of costs. The reconsideration process should include prescribed timeframes for a decision by the CG. This would be consistent with the amendments proposed by the Cost Recovery Bill.

For example, no provision is made for a situation in which the same advice is relied upon by the CG for multiple projects. It is unclear whether in that instance costs could be divided among affected proponents. Clarification about what would happen in this regard is necessary.

Conditioning power

The Bill proposes to establish broad conditioning powers, which are consistent with the equivalent provisions of the EPBC Act (section 134 in particular).

However, under the current drafting of the Bill, where an amendment to an environmental authority is sought, the CG has unfettered discretion to amend or remove a condition of the approval, or impose a further condition which was not requested by a proponent (s54ZC(5)). Such conditioning power should be moderated by the usual statutory tests for condition validity.

It will create uncertainty for proponents if any condition can be changed in any way, any time an environmental approval amendment is sought.

We recommend an amendment to the Bill to ensure that any unilateral change to conditions be properly related to the subject matter of that amendment application, and that any conditions imposed be considered to be necessary or convenient. This would be consistent with the test imposed by proposed section 54U(2) and the equivalent provision of the EP Act (s240(3)).

In addition, we recommend the addition of a provision equivalent to section 131AA of the EPBC Act, requiring Minister to seek comment from a proponent in respect of a proposed decision and any conditions to be imposed, and allow a reasonable timeframe within which such comment may be provided.

Cancelling approvals

Division 5 of the proposed new Part 4A of the Bill establishes a unilateral power for the CG to cancel approvals in certain circumstances.

Those circumstances are generally consistent with the requirements established in section 145 of the EPBC Act, however, unlike the EPBC Act, there is no ability for the Minister to suspend or reinstate approvals in the relevant circumstances.

We recommend that the Bill be amended to ensure consistency with these provisions of the EPBC Act.

Although in practice it would be unlikely for these provisions to be relied upon, in the event of such a situation arising, it is important that the CG have powers at their discretion which allow a more moderate response than the cancellation of an approval, and an ability to re-enliven approvals in the appropriate circumstances

Clarifying Amendment

Preparation of a protected matters report

QGC notes that the preparation of a "protected matters report" by the proponent will be the basis for the proposed new authorisation process.

Given that the regulation is not yet available, it is unclear as to what the report is required to address and how long the report is likely to take to prepare.

In addition to the requirements that will be prescribed by regulation, the Bill also proposes that the CG have unfettered discretion to give a proponent a notice to include specified information (Division 2 SDPWO Act S54P).

While it may be assumed that a process will be established that is similar to the Terms of Reference process for Environmental Impact Statements (EISs) further clarity in that regard would be beneficial for industry. This clarity could be provided in the Explanatory Memorandum.

If the Committee requires any further information or clarification, please contact Cameron Crowther at Cameron.Crowther@bg-group.com

Yours sincerely

Tracey Winters

Tracey Winters
Vice President
Land & Environment