

**State Development and Public Works
Organisation (State Development Areas)
Amendment Regulation (No. 1) 2014**

Report No. 54

State Development, Infrastructure and Industry Committee

October 2014

State Development, Infrastructure and Industry Committee

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Acknowledgements

The committee thanks those who briefed the committee, provided submissions and participated in its inquiry. In particular, the committee acknowledges the assistance provided by the Department of State Development, Infrastructure and Planning.

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Chair's foreword

This report presents a summary of the State Development, Infrastructure and Industry Committee's examination of the State Development and Public Works Organisation (State Development Areas) Amendment Regulation (No. 1) 2014.

The committee decided to undertake an inquiry into the Regulation due to the amount of public interest within the Galilee Basin and the potential impact on landholders.

The committee's task was to consider the policy outcomes to be achieved by the Regulation, as well as the application of fundamental legislative principles to it, including whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament, and its lawfulness.

Whilst the committee could not change the status of the approved projects within the Galilee Basin area, the committee's intention was to air the legitimate grievances of affected stakeholders who have been a part of the process for some time.

The committee has requested further advice from the Deputy Premier and Minister for State Development, Infrastructure and Planning in relation to a number of matters.

On behalf of the committee, I thank those organisations and individuals who lodged written submissions on the Regulation and others who informed the committee's deliberations. The committee also appreciates the amount of effort that landholders went to in order to be a part of its inquiry.

I would also like to thank the officials from the Department of State Development, Infrastructure and Planning who briefed the committee; the committee's secretariat; and the Technical Scrutiny of Legislation Secretariat.

I commend the report to the House.



David Gibson MP
Chair

October 2014

Abbreviations

ALA	<i>Acquisition of Land Act 1967</i>
committee	State Development, Infrastructure and Industry Committee
the department	Department of State Development, Infrastructure and Planning
EIS	Environmental impact statement
explanatory notes	State Development and Public Works Organisation (State Development Areas) Amendment Regulation (No. 1) 2014, explanatory notes
GB	Galilee Basin
GBSDA	Galilee Basin State Development Area
Galilee Basin SDA	Galilee Basin State Development Area
LSA	<i>Legislative Standards Act 1992</i>
MCU	Material Change of Use
PIF	Private infrastructure facility
PIF Guideline	Private infrastructure facility statutory guideline (December 2012)
the Regulation	State Development and Public Works Organisation (State Development Areas) Amendment Regulation (No. 1) 2014
SDA	State development area
SDPWO Act	<i>State Development and Public Works Organisation Act 1971</i>
SLC	Scrutiny of Legislation Committee
the Strategy	Galilee Basin Development Strategy

Recommendation

Recommendation 1

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The committee recommends the Legislative Assembly notes the contents of this report.

Points for clarification

Point for clarification 1

11

The committee requests the Deputy Premier and Minister for State Development, Infrastructure and Planning provides advice to the committee on the resources available to landholders experiencing difficulties during the negotiation process and how the state monitors that its expectations are being met by proponents.

Point for clarification 2

11

The committee requests the Deputy Premier and Minister for State Development, Infrastructure and Planning provides advice to the committee on the lessons learned from the communication strategy used for the declaration of the state development area and how these methods will be adapted in the future.

Point for clarification 3

11

The committee requests the Deputy Premier and Minister for State Development, Infrastructure and Planning provides advice in relation to how ongoing business losses are calculated in compensation claims.

Point for clarification 4

11

The committee requests clarification from the Deputy Premier and Minister for State Development, Infrastructure and Planning in relation to the following:

- (a) the stage the proposed variation of the development scheme for the Galilee Basin SDA has reached,
- (b) the consultation process that is followed for a proposed variation, and
- (c) the background and rationale for removing the requirement to obtain the owner's consent for an application for land owned by the State, and whether this includes both leasehold and freehold land.

Point for clarification 5

14

The committee requests the Deputy Premier and Minister for State Development, Infrastructure and Planning:

- (a) outlines the differences in the negotiation process between projects declared as a PIF and projects undertaken within an SDA, and
- (b) clarifies why the *State Development Area Landholder Relationship Guide* is not a statutory guideline in the same manner as the *Private infrastructure facility guideline*.

Point for clarification 6

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The committee seeks clarification from the Deputy Premier and Minister for State Development, Infrastructure and Planning regarding:

- (a) the timeframe the Queensland Government would consider reasonable for a proponent to demonstrate progress on a project before consideration would be given to revoking an SDA, and
- (b) the rationale for the requirement for projects approved as a private infrastructure facility to demonstrate they will proceed within a reasonable timeframe and whether it is necessary to have a similar requirement for state development areas.

1 Introduction

1.1 Role of the committee

The State Development, Infrastructure and Industry Committee (the committee) was established by resolution of the Legislative Assembly on 18 May 2012 and consists of government and non-government members.

The committee's primary areas of portfolio responsibility are:¹

- State Development, Infrastructure and Planning
- Energy and Water Supply, and
- Tourism, Major Events, Small Business and the Commonwealth Games.

1.2 The Regulation

The State Development and Public Works Organisation (State Development Areas) Regulation (No. 1) 2014 (the Regulation) was made on 13 June 2014 and tabled in the Legislative Assembly on 5 August 2014, with a disallowance date of 30 October 2014.

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Regulation,
- the application of the fundamental legislative principles to the Regulation, and
- the lawfulness of the Regulation.

1.3 The committee's inquiry process

On 26 June 2014, the committee called for written submissions by placing notification of the inquiry on its website, notifying its email subscribers and sending letters to a range of relevant stakeholders. The closing date for submissions was 14 August 2014. The committee received 22 submissions (see Appendix A for list of submitters).

On 3 July 2014, the committee held a public briefing with the Department of State Development, Infrastructure and Planning (the department). On 15 October 2014, the committee held a public hearing in Brisbane (see Appendix B for list of witnesses).

The submissions and the transcripts of the public departmental briefing and public hearing are available from the committee's webpage at www.parliament.qld.gov.au/sdiic.²

1.4 Policy objectives of the Regulation

The Regulation is made under the *State Development and Public Works Organisation Act 1971* (SDPWO Act).

The objective of the Regulation is to amend the *State Development and Public Works Organisation (State Development Areas) Regulation 2009* to declare specific land within the Galilee Basin as a state development area (SDA). Section 77 of the SDPWO Act provides for the declaration of an SDA.

¹ Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004 (amended 1 July 2014).

² At the time of writing this report, the public hearing transcript was a proof transcript.

An SDA is created for the purpose of defining an area of land for industry, essential services and infrastructure corridors in order to:³

- promote economic development in Queensland,
- provide guidance and development certainty to industry,
- control development in a way that considers existing industry and surrounding development, and
- protect environmental values.

1.5 Background to the Regulation

The Galilee Basin State Development Area (GBSDA) identifies a geographic area of land between the Galilee Basin and the Port of Abbot Point for the purpose of developing proposed rail infrastructure and promoting the development of the Galilee Basin's coal resources. The explanatory notes state:⁴

The declaration will serve to protect the land from incompatible land uses and maximise the potential for industry proponents to use common rail corridors and minimise their impact on landholders and the environment within the Galilee Basin.

The GBSDA comprises two 500 metre-wide corridors approximately 310 kilometres in length from approximately 70 kilometres east of the Carmichael mine to the Port of Abbot Point. One corridor is designed to service the central Galilee Basin and a second corridor is designed to service the southern Galilee Basin.⁵

1.5 The Government's consultation on the Regulation and timeframes

On 7 November 2013, the Premier announced the Galilee Basin Development Strategy (the Strategy).⁶ The purpose of the Strategy was to detail government initiatives aimed at the early development of the southern and central Galilee Basin, which focussed on helping to lower start-up costs for private sector mining companies and infrastructure providers and fast track development.⁷

In January 2014, the Coordinator-General released consultation documents that showed the draft corridor boundaries of the proposed GBSDA. The Coordinator-General's consultation on the GBSDA occurred between early January 2014 and March 2014 with:⁸

- industry proponents known to the State Government as being interested in developing rail infrastructure to service the development of the Galilee Basin coal resources,
- the landholders within the boundary of the proposed GBSDA,
- three local government regional councils, and

³ Explanatory notes, p 1.

⁴ Explanatory notes, pp 1-2.

⁵ Department of State Development, Infrastructure and Planning, 'Galilee Basin State Development Area', downloaded on 10 September 2014 from <http://www.dsdiip.qld.gov.au/coordinator-general/galilee-basin-state-development-area.html>.

⁶ Media statement, *Plan to develop Galilee Basin unveiled*, downloaded on 4 September 2014 from <http://statements.qld.gov.au/Statement/2013/11/7/plan-to-develop-galilee-basin-unveiled>.

⁷ The strategy addressed matters including a) lowering start-up costs; b) streamlining land acquisition, planning, approvals and red tape reduction; c) positioning Abbot Point as the Galilee's gateway to the world; d) supporting infrastructure development and corridors; and e) supporting regional communities. Galilee Basin Development Strategy, November 2013, p 1.

⁸ Public briefing transcript, 3 July 2014, pp 2-3.

- two native title offices – the North Queensland Land Council and the Queensland South Native Title Services.

On 13 June 2014, the 103,904 hectare Galilee Basin SDA was declared. On 26 June 2014, a development scheme for the GBSDA was approved by the Governor-in-Council in accordance with section 79 of the SDPWO Act.⁹

On 12 August 2014, the Coordinator-General’s evaluation report on the environmental impact statement (EIS) for the North Galilee Basin Rail Project was released. The Deputy Premier announced the approval of the project on 14 August 2014 and advised that the Coordinator-General had imposed strict conditions on the construction and operation of the rail line to minimise potential impacts on landholders and the environment. The project also required approval from the Federal Government under the *Environmental Protection and Biodiversity Conservation Act 1999*.¹⁰ On 23 September 2014, the Federal Department of Environment approved the construction and operation of the rail corridor with conditions.¹¹

Recommendation 1

The committee recommends the Legislative Assembly notes the contents of this report.

⁹ Public briefing transcript, 3 July 2014, p 2.

¹⁰ Hon J Seeney MP, Deputy Premier and Minister for State Development, Infrastructure and Planning, ‘Major Galilee Basin rail line receives state approval’, Media statement downloaded on 10 September 2014 from <http://statements.qld.gov.au/Statement/2014/8/14/major-galilee-basin-rail-line-receives-state-approval>.

¹¹ Federal Department of Environment, *Approval – North Galilee Railway Basin Project, Abbot Point to Galilee Basin, Queensland* downloaded on 15 October 2014 from <http://www.environment.gov.au/epbc/notices/assessments/2013/6885/2013-6885-approval-decision.pdf>.

2 Examination of the subordinate legislation

2.1 State development areas

State development areas (SDA) are clearly defined areas of land established by the Coordinator-General to promote economic development in Queensland for the purpose of developing:

- industrial hubs for large-scale, heavy industry - mainly located on the coast of Queensland, in close proximity to ports, rail and major road networks,
- multi-user infrastructure corridors - for the co-location of infrastructure such as rail lines, water and gas pipelines, and electricity transmission lines, and
- major public infrastructure sites - for example, the Queensland Children's Hospital.

Section 77 of the *State Development and Public Works Organisation Act 1971* (SDPWO Act) provides for the declaration of SDAs and their variation or termination. Current SDAs are listed and mapped in the State Development and Public Works Organisation (State Development Areas) Regulation.

A regulation declaring an SDA can include any part of the State. The Governor-in-Council is required to be satisfied that the public interest or general welfare of persons resident in any part of the State requires it.¹²

In considering whether the public interest or general welfare of persons requires the declaration of an SDA the Governor-in-Council may have regard to:¹³

- the purposes for taking or acquiring land, and
- matters the Governor-in-Council considers relevant.

The benefits of SDAs include:¹⁴

- proximity to railways, ports and major road networks,
- greater planning and development certainty for project proponents,
- efficient processing of development applications,
- best practice land-use planning and management - ensuring land and infrastructure assets in SDAs are attractive to existing occupants and potential investors,
- more efficient use of land, most notably through the creation of multi-user infrastructure corridors,
- process for compulsorily acquiring land within an SDA if necessary, including on behalf of proponents, and
- concentration of industrial development in selected areas, thereby minimising or avoiding:
 - environmental impacts,
 - loss of amenity,
 - infrastructure duplications, and

¹² *State Development and Public Works Organisation Act 1971*, section 77(1).

¹³ *Ibid*, section 77(3).

¹⁴ Department of State Development, Infrastructure and Planning, *About state development areas*, downloaded on 16 October 2014 from <http://www.dsdip.qld.gov.au/state-development-areas/about-state-development-areas.html>.

- transport conflicts.

The Coordinator-General is responsible for development in an SDA. Each SDA is subject to a development scheme, which is a regulatory document that controls land-use and infrastructure planning and development in the SDA.

Section 77 of the SDPWO Act enables the Coordinator-General to revoke an SDA if its objectives have been achieved.¹⁵

2.2 Stakeholder issues

Of the 22 submissions received on the Regulation, two submitters expressed support for the government's declaration of the Galilee Basin State Development Area (GBSDA).¹⁶ Adani Mining Pty Ltd stated the declaration of the GBSDA through the Regulation would provide project and process certainty.¹⁷ GVK Hancock Coal Infrastructure agreed that the GBSDA would facilitate certainty 'to secure massive upfront infrastructure investments'.¹⁸

The remaining submitters expressed concerns relating to:

- compulsory acquisition, negotiation and consultation,
- alternative mechanisms for achieving the Regulation's objectives,
- justification for the declaration of the SDA, including demonstrating public interest,
- impact on the agricultural industry,
- timing of the declaration,
- environmental impacts of the projects, and
- size of the Galilee Basin SDA.

2.2.1 Compulsory acquisition, negotiation and consultation

Sections 82 and 125 of the SDPWO Act provide the Coordinator-General with the power to compulsorily acquire and deal with land for the undertaking of works, an SDA or other purposes, including a private infrastructure facility (PIF). Land within an SDA is acquired in accordance with the provisions of the *Acquisition of Land Act 1967* (ALA).¹⁹ The main steps of the compulsory land acquisition process are:²⁰

1. Notice of intention to resume.
2. Objections to land acquisition.
3. Application to acquire land.

¹⁵ Department of State Development, Infrastructure and Planning, *About state development areas*, downloaded on 16 October 2014 from <http://www.dsdip.qld.gov.au/state-development-areas/about-state-development-areas.html>.

¹⁶ Adani Mining Pty Ltd, Submission No. 1; GVK Hancock Coal Infrastructure Pty Ltd, Submission No. 6.

¹⁷ Adani Mining Pty Ltd, Submission No. 1.

¹⁸ GVK Hancock Coal Infrastructure Pty Ltd, Submission No. 6.

¹⁹ Department of State Development, Infrastructure and Planning, 'Compulsory land acquisition', Fact sheet, downloaded on 12 September 2014 from <http://www.dsdip.qld.gov.au/resources/factsheet/cg/sda-factsheet-landholders-compulsory-land-acquisition.pdf>.

²⁰ Department of State Development, Infrastructure and Planning, *About compulsory land acquisition*, downloaded on 16 October 2014 from <http://www.dsdip.qld.gov.au/compulsory-land-acquisition/about-compulsory-land-acquisition.html>.

4. Resumption notice.
5. Compensation.

A common theme expressed by landholders was that the power to compulsorily acquire land created an imbalance of power between private landholders and proponents. Submitters suggested that as a result of this power, landholders had reduced bargaining power during negotiations. Some stakeholders argued that the power forced affected landholders and native title holders to agree to any compensation offered.²¹ One stakeholder stated the power of proponents to seek compulsory acquisition of land meant that they 'do not enter into negotiations in a way that actually hears the concerns of landholders.'²²

In addition to the conduct of negotiations, a specific concern for landholders related to the outcome of those agreements, in particular, compensation.²³ One submitter argued the SDA reduced the ability for landholders to negotiate stronger mitigation measures to reduce impacts on their businesses.²⁴ One landholder stated that he was not opposed to the development of the state's resources or rail infrastructure in common rail corridors but that 'fair' and 'reasonable' compensation should be paid to landowners for the 'loss of income' from the impacts of the proposed projects on businesses. As an example, the landholder estimated the loss of profits to his cattle business as a result of the project would be in the order of \$600,000 per annum. The landholder suggested that scientific monitoring research should be required to determine fair compensation for beef producers who may experience loss of income as a result of the projects.²⁵

Another landholder raised the issue of ongoing compensation for changes to infrastructure on properties due to the proposed rail lines. For example, the landholder would be required to put in approximately \$750,000 worth of infrastructure to continue his business for which he will be compensated. However, the landholder raised the question of whether the proponent would be required to pay for ongoing maintenance or replacement of the infrastructure.²⁶

Variation of a development scheme

Section 80 of the SDPWO Act provides for the approval, implementation, and variation of a development scheme. The process to amend a development scheme follows the same process as an initial development scheme. This includes:²⁷

- approval of the Governor-in-Council,
- notification of the approval in the gazette and in a newspaper that circulates within the locality of the SDA to which the development scheme relates,
- a copy of the scheme made available for inspection by the public at the office of the Coordinator-General and elsewhere as the Coordinator-General directs, and
- the Coordinator-General shall take all necessary steps to ensure the implementation of the scheme.

Stakeholders raised concerns regarding the proposed variation to the development scheme for the GBSDA and argued that it impacted on landholder rights and the negotiation process.²⁸ The

²¹ See: Submission Nos. 3, 4, 5, 8, 9, 13, 15, 16, 18 and 20; Mackay Conservation Group, Public hearing transcript, 15 October 2014, p 5.

²² Lock the Gate, Public hearing transcript, 15 October 2014, p 2.

²³ Mr Val Cormack, Public hearing transcript, 15 October 2014, p 17.

²⁴ Lock the Gate Alliance, Submission No. 20.

²⁵ Mr Val Cormack, Public hearing transcript, 15 October 2014, pp 18, 19; Val Cormack, Submission No. 2.

²⁶ Mr Andrew Rea, Public hearing transcript, 15 October 2014, p 13.

²⁷ Section 80, *State Development and Public Works Organisation Act 1971*.

committee understands that a variation to the development scheme is being prepared following recent amendments to the SDPWO Act, which commenced on 1 October 2014.²⁹ The amendments to the SDPWO Act would allow a development scheme for an SDA to:³⁰

- specify whether it will regulate all or part of the SDA,
- regulate other development in addition to the use of land in an SDA (e.g. operational works), and
- set levels of assessment for regulated development in the SDA (e.g. to make development in an SDA self-assessable).

Stakeholders advised the committee that the proposed variation to the development scheme included removing the landholder's consent for a Material Change of Use (MCU) application for land owned by the State. Documents provided by stakeholders to the committee from the Office of the Coordinator-General said that the proposed amendment is to align SDAs with proposed changes to the Planning Act and consistent with facilitating economic development of State significance in SDAs.³¹

One witness stated this would further erode landholder rights to negotiate with proponents.³²

So we no longer, if this goes through, have any capacity to negotiate a fair and equitable compensation agreement as what little bargaining power we had, as in the ability to sign off on this MCU, has been stripped from us.

In response to concerns about compulsory acquisition powers, the department advised proponents were not able to 'skip over' the negotiation process with landholders and that the processes for land acquisition would be carried out by the Coordinator-General and Minister in accordance with the SDPWO Act and the processes set out in the ALA.

The components of compensation are set out in the ALA. The ALA provides that 'claimants are entitled to claim for loss of income for an amount reasonably attributed to the loss of profits resulting from interruption to the claimant's business that is a direct and natural consequence of the taking of the land.' The process also requires compliance with the *Native Title Act 1993* and the *Aboriginal Cultural Heritage Act 2003*, which ensure the rights of native title holders.³³

When seeking compulsory acquisition, a proponent is required to submit a justification report to the Coordinator-General that details its interactions with the landholder during negotiations and demonstrates the proponent's efforts to establish good relations with landowners. The department further advised:³⁴

²⁸ Committee correspondence dated 17 October 2014; Committee correspondence dated 24 October 2014; Ms Shontae Williams, Corridor to Coast – Galilee Network, Public hearing transcript, 15 October 2014, p 23.

²⁹ The amendments to the SDPWO Act were made by the *State Development, Infrastructure and Planning (Red Tape Reduction) and other Legislation Amendment Act 2014*.

³⁰ Committee correspondence dated 17 October 2014; Ms Shontae Williams, Corridor to Coast – Galilee Network, Public hearing transcript, 15 October 2014, p 23.

³¹ Committee correspondence dated 17 October 2014.

³² Ms Shontae Williams, Corridor to Coast – Galilee Network, Public hearing transcript, 15 October 2014, p 23.

³³ Department of State Development, Infrastructure and Planning, Correspondence dated 28 August 2014; *Acquisition of Land Act 1967*, section 20(5)(f); Department of State Development, Infrastructure and Planning, Public hearing transcript, 15 October 2014, p 34.

³⁴ Department of State Development, Infrastructure and Planning, Public hearing transcript, 15 October 2014, p 34; Department of State Development Infrastructure and Planning, Correspondence dated 28 August 2014.

Part of that justification report will be very detailed information about the interactions that that proponent has had with landholders, including details of meetings, including correspondence, including details of offers that have been made. The expectation will be for a very comprehensive review of the efforts that have been made to negotiate with individual landholders. The purpose of that process is for the Coordinator-General and, ultimately, the minister to form a view around whether a proponent has undertaken sufficient effort in order to move forward into an acquisition phase. ... there is a discretionary decision in order to move, based on the evidence that is given by a particular proponent.

The Deputy Premier advised the declaration did not:³⁵

... take away the rights of the 74 landholders within the corridors to directly negotiate with resource companies to minimise impacts on day-to-day management of livestock, placement of important infrastructure such as cattle yards, or the effective management of water flow.

While the department emphasised that it did not have a direct role in negotiations between proponents and landowners, it encouraged the two parties to work together to reach agreement. This is to occur before the state would consider compulsory acquisition.³⁶

To this end, the committee notes the *State Development Area Landholder Relationship Guide*, which details a number of expectations on proponents when working with landowners, including:³⁷

- the proponent makes reasonable efforts to establish and maintain good relations with landholders,
- the proponent negotiates and enters into access arrangements with landholders that are consistent with the land access principles outlined in the Guide,³⁸
- before accessing land for project activities, the proponent should provide relevant landholders with details of relevant information,
- the proponent consults and negotiates crossing agreements, and
- if purchasing the landholder's interests in the project corridor, the proponent must encourage landholders to seek independent legal and valuation advice on any agreement for the purchase of an interest in land by the proponent; the cost to obtain that advice must be reimbursed to the landholder by the proponent; and the proponent must keep a register of landholder's costs and copies of any documentation relating to the proponent's negotiations and agreements with landholders.

³⁵ Hon J Seeney MP, Deputy Premier and Minister for State Development, Infrastructure and Planning, *Galilee rail zone reduced by 94 per cent*, Media statement downloaded on 15 October 2014 from <http://statements.qld.gov.au/Statement/2014/6/16/galilee-rail-zone-reduced-by-94-per-cent>; Department of State Development, Infrastructure and Planning, Correspondence dated 28 August 2014, p 2; Mr Stephen Lund, Public hearing transcript, 15 October 2014, p 16.

³⁶ Department of State Development, Infrastructure and Planning, Correspondence dated 28 August 2014.

³⁷ Department of State Development, Infrastructure and Planning, 'State Development Area Landholder Relationship Guide' downloaded from <http://www.dsdip.qld.gov.au/resources/guideline/cg/landholder-relationship-guide.pdf>.

³⁸ Land access principles include the proponent taking reasonable care and courtesy; agents and contractors carry authorisation to be on the land; notice of entry; use of agreed access points; proponent to maintain security of landholder's land; proponent required to comply with its weed and pest management plan for the project; vehicles require washdown before entering landholder's land; machinery is maintained and operated safely and not left on the property without the landholder's consent; minimise disturbance to livestock; notify of any damage caused; no firearms, animals or alcohol to be brought onto the landholder's property; removal of rubbish and waste; and no lighting of fires on the property.

GVK Hancock provided advice that it had reached agreement for approximately 75 percent of the required area:³⁹

We value our relationship with landholders and have voluntary contracts and voluntary agreements in place for around 75% of our rail corridor, which outline the commercially agreed terms for the acquisition and compensation of land.

Consultation with landholders

Several submitters called for more engagement with landholders from both the state government and proponents in order to minimise the impacts of the GBSDA and proposed rail lines.⁴⁰ Their key concerns were:⁴¹

- the original maps were poorly drawn, which led to confusion,
- communication with landholders has been inadequate, poorly written and confusing, particularly relating to land use conditions of the GBSDA and the nature of the impacts of the SDA, and
- lack of discussions with proponents and resentment at having to drive significant distances to do so.

The committee notes comments from one landholder:⁴²

The maps we were given were out of date. We were never visited by anyone. We were expected to drive hundreds of kilometres to talk to people who knew less about the Galilee railway lines than we did. There were no public meetings, no consultation...

The department outlined its consultation process on the GBSDA as a two-stage process: a pre-declaration consultation phase and a post-declaration phase. The pre-declaration phase included the following:⁴³

- letters, fact sheets and briefing materials, as well as information on the departmental website 'intended to describe not only the area that was being consulted upon but also the nature of the state development areas and what potentially some of the impacts for affected parties may be',
- the offer to meet with landholders or any interested parties with meetings being held in Clermont, Collinsville and Bowen, and
- the offer to individually meet with parties to work through the potential impacts on properties, which included having an individual map for each property showing where the SDA would be and in particular where it was proposed the rail line would be located on that property.

The second phase included communication from the Coordinator-General to:⁴⁴

³⁹ Committee correspondence dated 24 October 2014.

⁴⁰ See: Submission Nos. 3, 4, 8, 10, 13, 15, 17 and 19.

⁴¹ Mackay Conservation Group, Submission No. 9; Corridor to Coast – Galilee Network, Submission No. 16; Mr Stephen Lund, p 14, Ms Shontae Moran, pp 23-24, Mr James Gordon, p 27: Public hearing transcript, 15 October 2014.

⁴² Mr Stephen Lund, Public hearing transcript, 15 October 2014, p 14.

⁴³ Department of State Development, Infrastructure and Planning, Public hearing transcript, 15 October 2014, p 30.

⁴⁴ Department of State Development, Infrastructure and Planning, Public hearing transcript, 15 October 2014, pp 30-31; Department of State Development, Infrastructure and Planning, Correspondence dated 28 August 2014.

- describe what an SDA is in more detail,
- explain how the Coordinator-General processes work,
- communicate the 1800 freecall number for affected landholders and other members of the public to raise issues and provide feedback, and
- the availability of a Landholder Liaison Manager to provide information and guidance relating to the declaration of the Galilee Basin SDA.

The committee notes that several stakeholders expressed their appreciation of the work undertaken by the Landholder Liaison Manager.⁴⁵

Committee comment

The committee notes that a significant issue for landholders was that they felt there was an imbalance of power during the negotiation process due to the ability to compulsorily acquire property.

The committee is pleased to note advice from GVK Hancock about its progress in negotiating voluntary agreements along approximately 75 percent of its rail line to date and believes this demonstrates that good relations between landowners and proponents can be achieved.

Unfortunately, this is not the experience for all landholders with some expressing dissatisfaction with negotiations and communication with proponents.

Whilst the state cannot intervene in commercial negotiations, the committee deliberated on the issue of whether there is enough support being provided by the state in these particular circumstances.

It is noted that the Coordinator-General is required to review the efforts that have been made by proponents to negotiate with individual landholders before moving into an acquisition phase and that the state has detailed expectations regarding proponents' dealings with landholders. It is unclear to the committee how the state monitors whether its expectations are being met.

The committee requests the Deputy Premier and Minister for State Development, Infrastructure and Planning provides advice to the committee on the resources available to landowners experiencing difficulties during the negotiation process and how the state monitors that its expectations are being met by proponents.

The committee notes concerns regarding the provision of departmental information on the GBSDA, including it being unclear and inadequate, particularly in regard to updates on the GBSDA and land use conditions. The committee requests the Deputy Premier and Minister for State Development, Infrastructure and Planning provides advice to the committee on the lessons learned from the communication strategy used for the declaration of the GBSDA and how these methods will be adapted in the future.

The committee notes questions regarding compensation for the replacement of infrastructure required due to the proposed rail lines, as it deteriorates over time. The committee seeks further advice in relation to how ongoing business losses are calculated in compensation claims.

In relation to the proposed variation to the development scheme of the GBSDA and in the absence of any formal advice from the department, the committee requests clarification from the Deputy Premier and Minister for State Development, Infrastructure and Planning in relation to the following:

⁴⁵ Lock the Gate, p 2; Mr Andrew Rea, p 12; Ms Shontae Moran, p 25: Public hearing transcript, 15 October 2014.

- (a) the stage the proposed variation of the development scheme for the Galilee Basin SDA has reached,
- (b) the consultation process that is followed for a proposed variation, and
- (c) the background and rationale for removing the requirement to obtain the owner's consent for an application for land owned by the State, and whether this includes both leasehold and freehold land.

Point for clarification 1

The committee requests the Deputy Premier and Minister for State Development, Infrastructure and Planning provides advice to the committee on the resources available to landholders experiencing difficulties during the negotiation process and how the state monitors that its expectations are being met by proponents.

Point for clarification 2

The committee requests the Deputy Premier and Minister for State Development, Infrastructure and Planning provides advice to the committee on the lessons learned from the communication strategy used for the declaration of the state development area and how these methods will be adapted in the future.

Point for clarification 3

The committee requests the Deputy Premier and Minister for State Development, Infrastructure and Planning provides advice in relation to how ongoing business losses are calculated in compensation claims.

Point for clarification 4

The committee requests clarification from the Deputy Premier and Minister for State Development, Infrastructure and Planning in relation to the following:

- (a) the stage the proposed variation of the development scheme for the Galilee Basin SDA has reached,
- (b) the consultation process that is followed for a proposed variation, and
- (c) the background and rationale for removing the requirement to obtain the owner's consent for an application for land owned by the State, and whether this includes both leasehold and freehold land.

2.2.2 Necessity of the state development area

Alternative mechanisms for achieving objectives

One of the criteria for considering the declaration of a state development area includes having regard to the purposes of acquiring land. Several submitters argued that alternative legislative means exist to compulsorily acquire land and the declaration of the GBSDA is unnecessary.⁴⁶ The Mackay Conservation Group stated:⁴⁷

⁴⁶ See: Submission Nos. 9, 13, 16 and 20.

⁴⁷ Mackay Conservation Group, Submission No. 9.

There are existing provisions both within the Transport Infrastructure Act and the State Development and Public Works Organisation (SDPWO) Act that allow the government to investigate rail corridors and acquire properties if necessary.

The Corridor to Coast – Galilee Network agreed the declaration of the GBSDA was premature and an ‘overreach of government legislation’, as other Acts would allow for compulsory acquisition.⁴⁸

One of the mechanisms suggested as an alternative to declaring a SDA would be to approve the project as a ‘private infrastructure facility’ (PIF), previously called ‘Infrastructure Facility of Significance’.⁴⁹ Lock the Gate stated that GVK Hancock, one of the proponents for the project, had already received approval as an ‘Infrastructure Facility of Significance’ and Adani, the other proponent, could seek similar approval under a ‘private infrastructure facility’.⁵⁰

According to these submitters, approving the project as a PIF is preferable to declaring an SDA because.⁵¹

- proponents are required to undertake a higher level of negotiation and cooperation with affected landholders while still providing proponents with the ability to compulsorily acquire land, and
- proponents are required to show that the project will proceed within a ‘reasonable time frame’ prior to seeking acquisition under the PIF because of statutory requirements, unlike a project declared under an SDA (refer to section below regarding ‘reasonable timeframes’).

Section 125 of the SDPWO Act provides the Coordinator-General with the power to take land for the purpose of a private infrastructure facility. The *Private infrastructure facility statutory guideline (December 2012)* (PIF guideline), made under section 174 of the SDPWO Act, clarifies the requirements for proponents before seeking approval of the Coordinator-General for a PIF and the taking of land:⁵²

This process reflects the principle that a proponent must try to reach agreement with registered owners and have completed a satisfactory environmental assessment before seeking approval for the Coordinator-General for a private infrastructure facility and the taking of land.

Section 153AH(1)(b) of the SDPWO Act provides that the Coordinator-General must not take land for a PIF unless satisfied that all of the requirements of the SDPWO Act and the guideline have been met, including that the project will proceed within reasonable timeframes. Section 9 of the PIF guideline provides the criteria for determining ‘reasonable timeframe’, including the proponent providing

⁴⁸ Corridor to Coast – Galilee Network, Submission No. 16. Corridor to Coast – Galilee Network is a group of landholders who formed to share information during the negotiation period with proponents over proposed rail developments.

⁴⁹ See: Submission Nos. 9, 18 and 20. A PIF was previously called an ‘infrastructure facility of significance’. A proponent of an infrastructure facility (such as a road, railway, bridge, or electricity generation facility) can apply to the Coordinator-General for approval as a private infrastructure facility. If approval is provided, the proponent must negotiate with the registered owner of the land and/or native title holder to purchase the land needed for the facility and/or enter into an indigenous land use agreement. If these negotiations are unsuccessful, the Coordinator-General, may on behalf of the proponent, compulsorily acquire the land in question. Downloaded on 15 October 2014 from <http://www.dsdip.qld.gov.au/assessments-and-approvals/private-infrastructure-facilities.html>.

⁵⁰ Lock the Gate Alliance, Submission No. 20.

⁵¹ See: Submission Nos. 9, 18 and 20.

⁵² Department of State Development, Infrastructure and Planning, *Private infrastructure facility, Statutory guideline, 21 December 2012*, downloaded on 16 October 2014 from <http://www.dsdip.qld.gov.au/resources/guideline/cg/pif-statutory-guideline.pdf>.

evidence of the steps and timetable for reaching financial close for the project, construction timetables and the procurement contract.⁵³

The department advised that the declaration of the SDA was appropriate for the Galilee Basin in order to achieve the policy objectives of the GBSDA and not solely to allow for the compulsory acquisition of land. A primary focus of the declaration of the GBSDA was to coordinate land use decisions in order to:⁵⁴

... reduce the impact on landholders, agricultural areas and the environment by consolidating rail projects into common rail corridors.

The department further advised the declaration of the SDA would ensure an orderly coordination of infrastructure requirements by granting the Coordinator-General the power to streamline all land use decisions within the SDA. This would facilitate development and increase certainty for proponents and stakeholders. Further:⁵⁵

In an SDA, the Coordinator-General controls land use activities, implements the development scheme and assesses and approves proposals to change a use of land. The SDA provides project and process certainty for proponents and stakeholders and streamlines assessment processes to facilitate development.

Committee comment

The committee is satisfied with the advice provided by the department that the declaration of the GBSDA was not solely focussed on compulsory acquisition powers but to assist with other objectives, such as streamlining land use decisions within the GBSDA, facilitating development and increasing certainty for proponents and stakeholders.

The committee has noted there are key differences between the PIF processes and the SDA processes. In particular, the *Private infrastructure facility guideline* – a statutory guideline that sets out the state’s expectations of proponents before seeking approval of the Coordinator-General to take land for the purpose of a PIF, which includes demonstrating that the project will proceed within a reasonable timeframe. This is different to the *State Development Area Landholder Relationship Guide*, which does not appear to be a statutory document or mention the timeframes for projects.

The committee requests the Deputy Premier and Minister for State Development, Infrastructure and Planning:

- (a) outlines the differences in the negotiation process between projects declared as a PIF and projects undertaken within an SDA, and
- (b) clarifies why the *State Development Area Landholder Relationship Guide* is not a statutory guideline in the same manner as the *Private infrastructure facility guideline*.

⁵³ Department of State Development, Infrastructure and Planning, *Private infrastructure facility, Statutory guideline*, 21 December 2012, downloaded on 16 October 2014 from <http://www.dsdip.qld.gov.au/resources/guideline/cg/pif-statutory-guideline.pdf>.

⁵⁴ Department of State Development, Infrastructure and Planning, Correspondence dated 28 August 2014.

⁵⁵ Department of State Development, Infrastructure and Planning, Correspondence dated 28 August 2014.

Point for clarification 5

The committee requests the Deputy Premier and Minister for State Development, Infrastructure and Planning:

- (a) outlines the differences in the negotiation process between projects declared as a PIF and projects undertaken within an SDA, and
- (b) clarifies why the *State Development Area Landholder Relationship Guide* is not a statutory guideline in the same manner as the *Private infrastructure facility guideline*.

2.2.3 Timeframes for the declaration

As mentioned above, some stakeholders were concerned about the absence of a statutory provision to require that projects proceed within a ‘reasonable timeframe’ in the GBSDA. It was argued that this would not be the case if the projects were given ‘priority infrastructure facility’ status. The lack of consideration of a project proceeding within a reasonable timeframe and no assurances that the projects would even proceed has had the following impacts on landholders:⁵⁶

- reluctance to invest in new infrastructure on their land,
- landholders’ inability to plan for future use of the land in question,
- stalling of agricultural productivity, and
- decreased land value.

A number of submitters commented on the questionable financial viability of the proposed projects. Some submitters cited the declining global demand for coal and the potential for this to create investment instability for proponents. Submitters argued that a full cost benefit analysis of the projects would help to alleviate the uncertainty.⁵⁷ The Australian Institute stated:⁵⁸

... that the viability of the projects is based on assumptions of increasing coal demand and prices. However global investment analysis confirmed that coal demand is slowing and will continue to do so.

To further address the uncertainty for landholders, several submitters recommended that a sunset provision be inserted into the Regulation to revoke the SDA if the projects did not proceed within a certain timeframe.⁵⁹ Several landholders advised the committee they had been communicating with rail proponents for six years but expressed different views about what the timeframe should be.⁶⁰

The Mackay Conservation Group argued a sunset clause could avoid a repeat of the situation that occurred for landholders within the Surat Basin Infrastructure Corridor SDA.⁶¹ The Surat Basin Infrastructure Corridor SDA was declared in November 2011 and approved a 214-kilometre rail corridor between the towns of Wandoan (and the proposed Wandoan thermal coal mine) and Banana. This was a proposed by joint venture partners Glencore, Aurizon and ATEC Rail Group (Surat

⁵⁶ See: Submission Nos. 9, 13, 16, 17, and 19.

⁵⁷ See: Submission Nos. 5, 9, 10, 11, 12, 16, 20, 22.

⁵⁸ The Australian Institute, Submission No. 11.

⁵⁹ See: Submission Nos. 9, 13, 16, 17, and 19.

⁶⁰ Mr Stephen Lund, Public hearing transcript, Brisbane, 15 October 2014, p 14; Ms Shontae Moran, Public hearing transcript, Brisbane, p 24: ‘10 years from at least the beginning of construction should be ample time for a project to consider its viability’; Dr Moira Williams, Mackay Conservation Group, Public hearing transcript, Brisbane, p 7: 12 months; Mr Andrew Rea, Public hearing transcript, Brisbane, p 11: stated he did not have an answer to what the timeframe should be.

⁶¹ Mackay Conservation Group, Submission No. 9.

Basin Rail Joint Venture). In December 2013, the Queensland Government agreed that ex-gratia payments of \$10,000 would be made to affected landholders following a mutual agreement between the Government and the Surat Basin Rail Joint Venture to end an exclusive mandate to develop the rail line.⁶² The Deputy Premier advised:⁶³

...in November 2012 the joint venture advised the State Government that due to global thermal coal market conditions and delays in other key projects in the Surat Basin coal supply chain, the timeframes for the rail project would be delayed.

Following this advice, the acquisition program for the rail corridor was discontinued by the state and all parties came to a mutual agreement to end the mandate.

Submitters also commented that the declaration of an SDA coupled with uncertain development timeframes had impacted land values. One witness estimated that their land value had dropped by 10 to 30 percent due to the declaration of the SDA.⁶⁴ The Mackay Conservation Group was concerned the GBSDA would drive down land values but added that proving a link between decreased land value and the declaration of the GBSDA was difficult.⁶⁵

Providing evidence of the negative impact of SDAs on property values is extremely difficult because it can only be proved by comparable sales (within and outside of the SDA) and there are almost no private sales of properties after an SDA is declared.

In response to concerns the GBSDA would remain in place for an indeterminable period, the department advised that the SDPWO Act provides for an SDA to be revoked by the making of a subsequent regulation, 'if the SDA is no longer required.' However, the department advised that the GBSDA would remain in place in order to achieve the objectives set out in the Development Scheme.⁶⁶

The department further advised:⁶⁷

The declaration of the SDA is critical to the future development of the Galilee Basin and provides greater certainty to all stakeholders. The Galilee Basin SDA will support the timely development of the Galilee Basin and will enable proponents to efficiently progress their proposed rail projects as they move towards financial investment decisions.

The Development Scheme approved for the Galilee Basin SDA ensures that the Rail Corridor Precinct and the Mining Services Precinct are protected from incompatible land uses. The Development Scheme also ensures development within the Galilee Basin SDA occurs in a logical sequence and is focussed on both short and long term economic benefits to the region and State.

Both GVK Hancock Coal Infrastructure and Adani Mining Pty Ltd agreed the declaration would provide project certainty and facilitate investment security for the projects.⁶⁸

The department added that the declaration of the GBSDA assisted proponents with securing investment:⁶⁹

⁶² Department of State Development, Infrastructure and Planning, *Surat Basin Infrastructure Corridor State Development Area*, downloaded on 17 October 2014 from <http://www.edq.qld.gov.au/coordinator-general/surat-basin-infrastructure-corridor-state-development-area.html>.

⁶³ Hon J Seeney MP, Deputy Premier and Minister for State Development, Infrastructure and Planning, *Ex-gratia payments to land owners for rail uncertainty*, Media release, 11 December 2013.

⁶⁴ Dr Moira Williams, Mackay Conservation Group, Public hearing transcript, Brisbane, 15 October 2014, p 6.

⁶⁵ Mackay Conservation Group, Submission No. 9.

⁶⁶ Department of State Development, Infrastructure and Planning, Correspondence dated 28 August 2014.

⁶⁷ Ibid.

⁶⁸ Adani Mining Pty Ltd, Submission No. 1; GVK Hancock Coal Infrastructure Pty Ltd, Submission No. 6.

...the Queensland Government acknowledges the significant upfront costs associated with early stage development by the private sector. The Galilee Basin Development Strategy outlines a number of initiatives to lower upfront development costs and provide the project and process certainty needed by proponents and financiers to commit to development.

The department specifically advised that it was confident the projects within the GBSDA were proceeding as planned:⁷⁰

The government has taken a view that it has enough confidence in those development plans to feel confident to declare the state development area. We have not just a number but also many interactions with both proponents, not only on a weekly basis but, in recent months, it is really coming down to a daily basis. A number of proponents are submitting material-change-of-use applications to the department. There are interactions on a whole range of fronts that collectively have assisted to build confidence that these projects are moving forward.

The stated time frames for Adani, for example, are that they wish to be in construction next year. My understanding is that it is a three-year construction period, so they are looking to have first coal during 2017. From the department's point of view, there has been a lot of scrutiny of those plans and there is confidence that these projects are moving forward; hence, I guess, the recommendation put forward to the government, which was ultimately agreed to by the Deputy Premier and taken forward to Governor in Council, to declare the state development area.

Committee comment

The committee notes the concerns raised by landholders that the lack of a requirement for proponents to demonstrate projects are proceeding within a 'reasonable timeframe' may adversely impact their businesses, land values, agricultural productivity and lifestyle. The committee also notes comments from proponents that the declaration of the SDA provides greater certainty for projects in order to secure investment.

While the committee understands that an SDA can be revoked at any time, the committee is concerned about the Surat Basin Infrastructure Corridor project experience. The committee understands that the SDA is still in force in that area despite the project not proceeding.

The committee requests advice in relation to:

- the timeframe the Queensland Government would consider to be reasonable for a proponent to demonstrate progress on a project before consideration would be given to revoking an SDA, and
- the rationale for the requirement for projects approved as a private infrastructure facility to demonstrate they will proceed within a reasonable timeframe and whether it is necessary to have a similar requirement for state development areas.

⁶⁹ Department of State Development, Infrastructure and Planning, Correspondence dated 28 August 2014.

⁷⁰ Department of State Development, Infrastructure and Planning, Public hearing transcript, 15 October 2014, p 33.

Point for clarification 6

The committee seeks clarification from the Deputy Premier and Minister for State Development, Infrastructure and Planning regarding:

- (a) the timeframe the Queensland Government would consider reasonable for a proponent to demonstrate progress on a project before consideration would be given to revoking an SDA, and
- (b) the rationale for the requirement for projects approved as a private infrastructure facility to demonstrate they will proceed within a reasonable timeframe and whether it is necessary to have a similar requirement for state development areas.

2.2.4 Public interest of project

Under Part 6 of the SDPWO Act, a regulation may declare any part of the State an SDA if the Governor-in-Council is satisfied the public interest or general welfare of persons resident in any part of the State requires it.

Cost benefit analysis and suitability of land

Several submitters stated the declaration of the GBSDA has not demonstrated that the public interest of persons residing in Queensland requires it. The Mackay Conservation Group recommended the GBSDA be withdrawn on this basis.⁷¹

Submitters were concerned a full cost benefit analysis had not been undertaken to:⁷²

- determine the benefits of the development of the Galilee Basin under the SDA for the people of Queensland and not just the proponents,
- assess the costs and long-term impacts of the rail projects to existing industries, such as agriculture, and
- review the land defined under the GBSDA for suitability for industrial development that met acceptable engineering, environmental and social criteria.

The North Queensland Conservation Council recommended, along with other submitters, that a full cost benefit analysis be undertaken as a minimum to examine the long-term impacts on existing industries.⁷³

The department advised that the 'Minister and Governor-in-Council were satisfied that the public interests and the general welfare of persons resident in Queensland required the declaration of the SDA over the area identified.'

In response to calls for a full cost benefit analysis to be conducted, the department stated it had conducted economic modelling that indicated 'the expansion of coal output driven by the development of the Galilee Basin would have significant economic benefits for the region as well as the Queensland economy.' The department emphasised the development of the Galilee Basin could not be done without enabling the transportation of coal from the Galilee Basin to the Port of Abbot Point, which would require the development of heavy rail infrastructure (the objective of the GBSDA). Further, the department stated the 'potential long-term economic benefits for Queensland

⁷¹ Mackay Conservation Group, Submission No. 9.

⁷² See: Submission Nos. 3, 4, 8, 9, 10 and 20.

⁷³ See: Submission Nos 3, 4, 8 and 10.

from opening up the Galilee Basin to mining' demonstrated the declaration was in the public interest of Queenslanders.⁷⁴

The department also addressed the concern about the suitability of the land defined in the SDA for the purpose of developing heavy rail infrastructure:⁷⁵

The boundaries of the SDA were considered appropriate having regard to the nature and purpose of the proposed multi-user infrastructure corridor, the uses to be permitted within the corridor, the underlying tenure of the land and the interests held in the land.

Impact on agricultural industry

Some stakeholders were concerned that the declaration of the GBSDA prioritises the land use within the GBSDA for coal mining, transport and port development over other land uses, such as agriculture. Submitters discussed the potential impacts for the agricultural industry which included:⁷⁶

- increased uncertainty for farmers in relation to compulsory acquisition of land and future use of land under the SDA, which had the potential to adversely impact investment and expansion of farm infrastructure and damage farm productivity,
- destruction of agricultural land in areas to be mined, and degradation of the natural value of the land, and
- disruption of farm businesses, such as by interrupting cattle movements, changing surface water flow and affecting flood plains.

The department stated that the intention of the declaration of the GBSDA was 'to minimise the impacts of mining on agricultural areas by supporting only two rail corridors' and sought to balance the interests of the environment, community and existing industries. The department further advised that following the consultation process, the draft boundaries of the GBSDA were reduced in order to mitigate the impacts on agricultural areas.

In response to concerns regarding the impacts of projects on the environment and agricultural land, the department advised the declaration was 'based on a number of project proposals which have undergone or have substantially progressed an environmental impact statement' with the impacts of each proposal being comprehensively assessed through the EIS process.⁷⁷ The committee addresses this issue in more detail in the section below.

Committee comment

The committee considers the public interest requirements have been adequately considered by the Minister and Governor-in-Council in accordance with the SDPWO Act and that the development of the Galilee Basin, facilitated by the declaration of the state development area, would have significant economic benefits for the region and the state. The committee is also satisfied the Queensland Government has considered matters relating to the suitability of the land in question for the purpose of developing heavy rail infrastructure.

⁷⁴ Department of State Development, Infrastructure and Planning, Correspondence dated 28 August 2014.

⁷⁵ Department of State Development, Infrastructure and Planning, Correspondence dated 28 August 2014.

⁷⁶ See: Submission Nos. 3, 4, 5, 8, 9, 11, 13, 15, 16, 18 and 20.

⁷⁷ Department of State Development, Infrastructure and Planning, Correspondence dated 28 August 2014.

2.2.5 Other issues

Environmental impacts of projects

Some stakeholders were concerned about the potential environmental impacts of the projects within the GBSDA, including the impact of the development and ongoing use of the rail lines on:⁷⁸

- biodiversity and conservation areas,
- floodplain hydrology and ground water supply,
- agricultural land, and
- quality of life, such as noise and the impact of air pollutants (coal dust and diesel fume particulates).⁷⁹

One submitter also questioned how rail corridor fires and railway lines as 'industrial contaminated sites' would be managed.⁸⁰

The key concern was the location of the proposed rail lines and its potential to disrupt floodplain hydrology, which could lead to erosion, land degradation and damage to other infrastructure.⁸¹ Landholders indicated that the location of the SDA interfered with ground water supply and recommended an alternative route that avoided the floodplains of the Belyando and Suttor river systems be investigated.⁸²

In relation to the environmental impacts of the rail projects, the department advised:

- all environmental, social or cultural impacts associated with the rail projects have been or will be assessed through the EIS processes and any subsequent development applications,
- the EIS Evaluation Reports (for those Galilee Basin rail projects whose EIS have already been assessed by the Coordinator-General) have stringent conditions imposed on proponents to address environmental issues, such as air pollutants and noise, and
- the department expects that environmental issues will be further considered by proponents in their detailed design phase and assessed by the Coordinator-General as part of any future change of use of land applications.

In relation to the concern regarding the floodplains of the Belyando and Suttor river systems, the department advised:⁸³

⁷⁸ See: Submission Nos. 3, 4, 5, 8, 9, 11, 12, 13, 15, 17, 19, 20 and 22.

⁷⁹ One landholder provided an example of the projected impact of the project on his lifestyle by advising the rail line would run within 100 metres of his home. The property, already bisected by the Newlands-Pring rail line, would have one half divided into quarters by the proposed rail line in the GBSDA, which would have a number of adverse impacts on how he ran his business: Mr James Gordon, Public hearing transcript, 15 October 2014, p 27. Another landholder also provided details of how the proposed rail line would impact the configuration of his property and business by stating the rail line would run about eight kilometres through his property and work against the movements of his cattle. The project would include two rail crossings, four kilometres apart. Currently, he runs the operation with 10 dogs but this would not be possible with the reconfiguration of his property due to the rail line: Mr Val Cormack, Public hearing transcript, 15 October 2014, p 19.

⁸⁰ Mr Val Cormack, Public hearing transcript, 15 October 2014, p 18.

⁸¹ See: Submission Nos. 9, 17 and 19.

⁸² See: Submission Nos. 1, 8, 12 and 13

⁸³ Public hearing transcript, 15 October 2014, p 34.

Through the EIS process, clearly the Coordinator-General and the Commonwealth government have formed a view that that infrastructure can be developed and constructed in that location and that the impacts of that development can be reasonably mitigated. I guess one of the key points about the flooding issue is that the Coordinator-General has applied very stringent requirements in terms of the EIS and performance requirements in terms of how this infrastructure is to perform.

The conditions imposed by the Coordinator-General on proponents include matters relating to:⁸⁴

- compliance and auditing of conditions,
- general conditions that require proper maintenance and operation of plant and equipment,
- environmental nuisance,
- air quality,
- noise and vibration,
- water quality,
- sediment and erosion control,
- flammable and combustible liquids, and
- rehabilitation.

The committee notes the Federal Department of Environment also approved the construction and operation of the rail corridor, with conditions, following its own environmental assessment process.⁸⁵

Committee comment

The committee notes the concerns raised by stakeholders relating to the potential environmental impacts of the rail lines but is satisfied the EIS process and conditions imposed by the Coordinator-General, as well as the environmental assessment undertaken by the Federal Department of Environment in compliance with the *Environment Protection and Biodiversity Conservation Act 1999* have considered and addressed all matters relating to the environmental impacts of the rail projects in the GBSDA. The committee is also satisfied the Coordinator-General will continue to assess environmental impact issues during the next stages of the projects, as part of material change of use applications.

Size of the Galilee Basin State Development Area

The Corridor to Coast – Galilee Network was concerned the size of the GBSDA was ten times larger than the size of the surveyed EIS area and noted this had resulted in confusion about agreed alignments between proponents and landholders, and created ‘no man’s land’ on properties where landholder infrastructure investment had stalled.⁸⁶

⁸⁴ Department of State Development, Infrastructure and Planning, *North Galilee Basin Rail project: Coordinator-General’s evaluation report on the environmental impact assessment*, downloaded on 16 October 2014 from <http://www.dsdp.qld.gov.au/resources/project/north-galilee-basin-rail/ngbr-cg-eis-evaluation-report.pdf>.

⁸⁵ Federal Department of Environment, *Approval – North Galilee Railway Basin Project, Abbot Point to Galilee Basin, Queensland* downloaded on 15 October 2014 from <http://www.environment.gov.au/epbc/notices/assessments/2013/6885/2013-6885-approval-decision.pdf>.

⁸⁶ Corridor to Coast – Galilee Network, Submission No. 16.

The department advised that the GBSDA was based on a number of rail proposals, which have undergone or substantially progressed through an EIS process. The department explained the process behind identifying the area of land incorporated into the GBSDA:⁸⁷

The precincts as outlined in the draft Development Scheme were based on the best available information at the time for all the proposed rail projects from the Galilee Basin to Abbot Point. The precincts also included buffers to prevent incompatible land uses for locations adjacent to rail infrastructure and to allow flexibility as proponents moved to detailed design.

Through the consultation process, the Coordinator-General has worked with proponents and landholders to refine the precincts where possible in order to reduce impacts on landholders and the environment. Through the consultation process the government refined the boundaries reducing the size of the Galilee Basin SDA by 94 per cent and reduced the number of affected landholders by 95 per cent.

In response to Corridor to Creek's recommendation that the SDA be reduced to the 60 metre wide corridor that was finalised as part of the EIS investigations, the department advised:⁸⁸

The Galilee Basin SDA's Rail Corridor Precinct is currently around 500 metres wide. Once more detailed rail lines are finalised and approved by the Coordinator-General the rail corridor will be reduced to about 60 to 100 metres wide.

Committee comment

The committee is satisfied that further consideration will be given to the size of the rail corridor during later phases of the project that will likely result in a further reduction and potentially further decrease the impact on landholders.

⁸⁷ Department of State Development, Infrastructure and Planning, Correspondence dated 28 August 2014.

⁸⁸ Department of State Development, Infrastructure and Planning, Correspondence dated 28 August 2014.

3 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ (FLPs) are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to the rights and liberties of individuals.

3.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA provides legislation must have regard to the rights and liberties of individuals.

The committee has examined the application of the fundamental legislative principles (FLP) to the Regulation. The Galilee Basin rail projects may potentially affect the rights and liberties of individuals in circumstances where an individual’s ordinary activities may be affected if the rail line is built through an individual’s property. This may affect a person’s quality of life and, in the case of landholders effected by the rail line, their ability to undertake farming on their land. It may also affect communities in or around where the rail line is being built.

The former Scrutiny of Legislation Committee (SLC) considered the reasonableness and fair treatment of individuals as relevant in deciding whether legislation has sufficient regard to rights and liberties of individuals. Consideration of the effect of legislation on the rights and liberties of individuals often involves examining the balance between the rights of individuals and the rights of the community or more general rights.⁸⁹ The former SLC also noted that the extent of interference with civil liberties must be rational, proportionate and reasonably necessary so that the interference does not do more overall harm than good.

The explanatory notes advise that the Coordinator-General has reviewed the project and consulted with stakeholders:

*The Coordinator General consulted with industry proponents known to the State government as being interested in developing rail infrastructure to service the development of Galilee Basin coal resources, the landholders within the boundary of the proposed Galilee Basin State Development Area, three local government regional councils, two native title offices representing native title groups (North Queensland Land Council and the Queensland South Native Title Services) and the legal representatives of the five affected native title groups.*⁹⁰

State and federal Members of Parliament have also been consulted in relation to the proposed development.

The explanatory notes also advise that the major issues raised by stakeholders included: spatial extent, timing, impacts on agriculture and industry, land value and acquisition, environment, and due process. As a result of this consultation, the initially proposed SDA was reduced to an area within the Galilee Basin State Development Area by ninety-four per-cent.⁹¹

The project went through an environmental impact statement (EIS) process pursuant to section 26(1)(a) of the SDPWO Act upon being declared a ‘coordinated project’ by the Coordinator-General.

Further to this assessment, in July 2013 the Federal Environment Minister decided to conduct a separate assessment process pursuant to the *Environment Protection and Biodiversity Conservation*

⁸⁹ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 138.

⁹⁰ Explanatory notes, p 3.

⁹¹ Explanatory notes, p 4.

Act 1999 due to the project's potential impacts on matters of national environmental significance. On 12 August 2014 the Coordinator-General approved the project subject to strict development and operating conditions.⁹² Approval by the federal government was given on 23 September 2014.

Committee comment

The Regulation declares certain parts of the North Galilee Basin as an SDA in order to facilitate the North Galilee Basin and specifically a rail network. The committee considered the need to balance the rights and liberties of individuals (in this case landholders), against the general rights of the wider community. The committee acknowledges the declaration of GBSDA has the potential to adversely affect those landholders whose properties fall within the proposed rail line, as well as rural communities in general as heard during the inquiry process.

However, both the state and federal governments have identified these concerns and have each carried out an EIS to assess the impact of the project on the affected communities and the environment. The Coordinator-General has also acknowledged that the project has the potential to deliver significant economic benefits to the wider community while also conducting significant consultation with the affected parties. In approving the project, the Coordinator-General and the Federal Minister for Environment have placed strict conditions on the parties involved. The committee considers that this approach appropriately balances the impacts on the rights and liberties of individuals.

3.2 Explanatory notes

The Explanatory Notes tabled with the amending Regulation comply with part 4 of the LSA.

⁹² See the Coordinator-General's conditions and recommendations at pp 67-79 at <http://www.dsdip.qld.gov.au/resources/project/north-galilee-basin-rail/ngbr-cg-eis-evaluation-report.pdf>.

Appendices**Appendix A – List of submitters**

Sub #	Name
1	Adani Mining Pty Ltd
2	Val Cormack
3	Jennifer Cowan
4	Richard and Robyn Simmons
5	Avriel Tyson
6	Hancock Coal Infrastructure Pty Ltd
7	Confidential
8	Gayle Shann
9	Mackay Conservation Group
10	North Queensland Conservation Council
11	The Australian Institute
12	Bruce and Annette Currie
13	James Gordon
14	Confidential
15	Stephen Lund
16	Corridor to Coast – Galilee Network
17	Name withheld
18	Claudia Caton
19	Name withheld
20	Lock the Gate Alliance
21	Confidential
22	Waratah Coal Pty Ltd

Appendix B – List of witnesses at the public hearing held 15 October 2014

Witnesses	
1	Ms Eleanor Smith – on behalf of Lock the Gate Alliance
2	Dr Moira Williams – Mackay Conservation Group
3	Mr Andrew Rea – Landholder
4	Mr Stephen Lund – Landholder
5	Mr Val Cormack – Landholder
6	Mr Grant Roberts – Advisor to Mr Val Cormack
7	Mr James Gordon – Landholder
8	Ms Shontae Moran – Manager ‘Double D Partnership’ and Steering Committee Member Corridor to Coast – Galilee Network
9	Mr David Stolz – Assistant Coordinator-General State Development Areas Division, Department of State Development, Infrastructure and Planning

Dissenting Report

Rob Katter MP
Member for Mount Isa

PO Box 1968
Mount Isa QLD 4825
P: 07 4743 5149



Dissenting Report

Mr David Gibson MP
Chair
State Development, Infrastructure and Industry Committee

Dear Chair,

This statement of reservation is written in accordance with the State Development, Infrastructure and Industry Committee's report on the *State Development and Public Works Organisation (State Development Areas) Amendment Regulation (No. 1) 2014*.

It is my feeling that the committee's decision to recommend the Legislative Assembly note the content of the committee's report is inadequate based on the information presented to the committee through submissions and subsequent public hearing on the Galilee Basin State Development Area (SDA) in question.

It is the job of the committee to make consideration of the lawfulness of the Regulation. My understanding is that an SDA is created for the purpose of identifying land areas that promote economic development, provide guidance and development certainty to industry, protect environmental values and consider existing industry and surrounding development.

From the information gathered by the committee through the receipt of submissions and the public hearing process and further to the recommendation by the committee in the report, it is my ultimate recommendation that this Regulation be disallowed.

I believe that the implementation of this regulation is in direct contravention of the overall purpose of a State Development Area's objectives. In this case, yes there would be economic development however it would be without due consideration of existing industry which would as a direct result suffer reduced economic return.


Also, in the agriculture industry in the area, it would have a negative impact on industry certainty and by extension affected communities along the length of the SDA. This in terms of guidance to the industry does not paint a particularly healthy picture. It does not insight development opportunity or certainty.

In terms of protecting environmental values, no amount of EIS by proponents in relation to the Galilee Basin SDA can adequately determine the overall effects that will be incurred by the implementation of this Regulation. Points raised in submissions referred to fire, flood issues and noise impacts.

Lastly, I would like to make reference to a quote from Dr Moira Williams of the Mackay Conservation Group made during the Committee's public hearing:

"The SDA is entirely unnecessary. There are existing legal provisions both within the Transport Infrastructure Act and the SDPWO Act, which the SDA sits under, that allow for both the investigation and acquisition of land for rail corridors. GVK has had infrastructure-facility-of-significance status since 2011 so they have been allowed to acquire land through this process."

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Rob Katter', with a long horizontal line extending to the right.

Rob Katter MP
Member for Mount Isa