Submission No. 057
17 January 2014
11.1.14

EDO NQ
ABN 32 017 484 326
Level 1, Suite 1, 96-98 Lake Street
Cairns QLD 4870 AUSTRALIA
E: edonq@edo.org.au
W: www.edonq.org.au
T: +61 7 4031 4766
F: +61 7 4041 4535

EDO Qld.
Environmental Defenders Office
Using the law to protect our environment.

30 Hardgrave Rd WEST END, QLD 4101
tel +61 7 3211 4466 ***fax*** +61 7 3211 4655
edoqld@edo.org.au www.edo.org.au/edoqld

17 January 2014

State Development, Infrastructure and Industry Committee
Queensland Parliament
By email only: sdiic@parliament.qld.gov.au

Dear Chair and Committee Members

EDO Qld and EDO NQ's joint submission on the Regional Planning Interests Bill 2013

Who we are

The Environmental Defenders Office (Qld) (**EDO Qld**) and the Environmental Defenders Office (Northern Qld) (**EDO NQ**) are non-profit, non-government community legal centres with expertise in environmental law. We assist both urban and rural clients as well as those in coastal areas to understand their legal rights to protect the environment. A number of our clients are concerned about the impacts of resource activities on the environment and hence our submission on the Regional Planning Interests Bill 2013 (**RPI Bill**).

Consultation on the Bill and policy

We are concerned about the decision by DSDIP not to engage in community consultation on the development of this Bill. Whilst it appears that there has been consultation on specific regional plans including the Darling Downs, Central Queensland and Cape York regional plans, the consultation to date with the community has been on the plans themselves and not the Bill.

The underlying concepts of this Bill – that there are areas of regional interest and importance that must be managed – are ultimately for the benefit of all Queenslanders as they concern our fundamental necessities of food security, water safety and a healthy environment on which we all rely. Community consultation is a normal and important part of policy development by governments and the public should not be excluded from this process.

We are aware that DSDIP has consulted with industry (mining and agricultural sectors) and local government on the Bill, however there has been no community or public consultation on this Bill or the policy objectives behind it. This consultation by the Committee is the only opportunity the community has had to provide feedback on the legislation and its policy

objectives. This is extremely inefficient for the Government, as there are major issues with the Bill which could have been avoided at an early stage the Bill's preparation.

Summary of our submission

Whilst we are generally in support of the Government's attempt to manage land use conflicts between resources and agriculture in areas of regional importance, we have several concerns which arise out of this Bill:

1. The Bill undermines legal procedures and protections afforded by the *Environmental Protection Act 1994* (Qld) by allowing a Regional Interests Authority (RIA) to override an Environmental Authority (EA);
2. Important criteria is left out of the Bill and placed in Regulations yet to be seen;
3. The Bill does not provide for 'public interest' appeal rights;
4. Unlimited discretion is given to the Chief Executive of DSDIP to grant an RIA;
5. The exemptions for not requiring an RIA are far too broad and lenient towards the resource industry;
6. The RPI Bill does not consider impacts of resource activities on regional interest areas, where those resource activities do not occur in a regional interest area;
7. The Bill and DSDIP's suggested co-existence criteria for Strategic Environmental Area (SEAs) do not provide adequate protection;
8. The purposes of the Bill are ambiguous, conflicting and do not reflect the substantive provisions of the Bill;
9. There must be stronger provisions for public access to information (open government); and
10. Application and notification requirements are vague and there must be notification to the public regarding RIA applications.

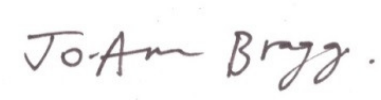
Overall, the RPI Bill appears to be rushed legislation, lacking in any sufficient detail to have a meaningful debate about the Bill. We do not support passage of the Bill in its current form and urge the Committee to implement our recommendations outlined below.

We remind the Committee that under section 93(1) of the *Parliament of Queensland Act 2001* (Qld) a portfolio committee, in examining each Bill, is to consider 'the policy to be given effect by the legislation as well as the fundamental legislative principles. We urge the Committee to hear and consider input on the policy behind the Act, in addition to whether the provisions of the Bill satisfy fundamental legislative principles.

Should you require any further clarification on issues raised in our submission, please contact Rana Koroglu or Evan Hamman of EDO Qld on (07) 3211 4466. We would welcome the opportunity to present to the Committee at the public hearing.

Yours faithfully,

Environmental Defenders Office (Qld)



Jo-Anne Bragg
Principal Solicitor

Environmental Defenders Office (NQ)

Fergus Power
Principal Solicitor

EDO Qld and EDO NQ submissions on the RPI Bill

1. The Bill undermines legal procedures and protections afforded by the *Environmental Protection Act 1994* (EP Act)

Part 9 of the Bill amends the EP Act so that if there is an inconsistency between a RIA and an EA, the EA can be amended to ensure it is consistent with the RIA. Similarly, section 5 of the Bill specifically states that the RPI Bill will override the provisions of the EP Act.

Currently, any person is entitled to raise a submission or objection or appeal in relation to an EA application for resource activities in Queensland.[1] If a person engages with that legal process under the EP Act and influences conditions of approval in an EA, then why should the RIA override those conditions – particularly given the original submitter will have no appeal rights with respect to the RIA application.

This approach entirely undermines the operation of the EP Act and will result in confusion and poor outcomes for the community. It is a direct breach of section 4(3)(a) of the LSA.

The Queensland Government's Legislation Handbook states that legislation should not seek:

> *"[a] reduction of existing rights of review or appeal, or the provision of review or appeal rights with less than the usual process…"*[2]

This is particularly important for proposed activities in Strategic Environment Areas (**SEA**s) although it has relevance to all areas of Regional Interest where resource activities are allowed to occur.

The intention of the policy underlying this provision may not have been to override environmental protections in the EA, however the current drafting of the Bill has that effect.

Solution:

Any person or group who made a submission or objection in relation to the application for the EA relating to the resource activity should be entitled to bring an appeal in relation to the RIA application decision with respect to those activities. This will ensure those persons already concerned about the impacts of the resource activity do not have their efforts undermined by an RIA decision.

2. Important criteria is left out of the Bill and placed in Regulations yet to be seen.

Queensland's laws should be transparent, unambiguous and provide certainty about decision making for all Queenslanders who have an interest in land use and the environment. To this end, essential criteria for executive decision-making, and the corresponding rights and of

[1] EP Act, section 160 (and section 182) and see also MRA section 260.
[2] http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook/fund-principles/rights-and-freedoms.aspx

individuals with respect to those decisions should be clearly outlined in the legislation to give the public the confidence and certainty it needs in our parliamentary democracy.

Whilst the Department states that this Bill is only 'framework legislation,'[3] important information such as the co-existence criteria for Priority Agriculture Areas (**PAA**s) and Strategic Environmental Areas (**SEA**s), which is likely to be included in regulations, [4] has still not been made publically available. With important provisions missing from the Bill, the Bill is only 'skeleton legislation' and unacceptably places important criteria into subordinate legislation which can be easily changed without significant public debate.

Emeritus Professor of Law at the University of New South Wales, Mark Aronson has written about this disturbing trend of placing important matters in regulations:[5]

> *"In a paper given at the 2009 Scrutiny of Legislation Conference, Dennis Pearce wrote:*
>
> > *…matters are often left to be included in regulations because there has not been time to cover all issues in the Bill introduced into the Parliament. Time is thus gained to deal with matters that may be of significance.*
>
> *One suspects the government's lack of time to formulate much more than a skeleton bill is sometimes a product of the current political addiction to the 24-hour news cycle, with its demands for almost daily announcements."*

This appears to be what has happened with the RPI Bill – a rushed attempt at legislation, following consultation with a select few groups and without all the detail available for making decisions. Examples of essential information left to the regulations in this Bill include:

- The criteria for the assessing agency to make its decision.[6]
- Who the assessing agency will be for a RIA;[7]
- Whether an application is 'referable' at all;[8]
- The functions of an assessing agency on a referral;[9]
- The criteria for whether an application is publicly notified or not;[10]
- Regulated Activities for areas of regional interest;[11]
- Criteria for determining whether land is 'highly suitable for cropping;'[12]
- Areas prescribed as PAAs;[13]
- Declarations of SEAs;[14]

---

[3] Public Briefing Inquiry into RPI Bill 13 December 2013, transcript page 5.
[4] Public Briefing Inquiry into RPI Bill 13 December 2013, transcript page 4.
[5] *"Skeleton acts raise a number of concerns, ranging from the transfer of substantively important legislative power from the parliament to the executive, and the diminution in the transparency of a legislative process increasingly conducted without parliamentary debate."* Mark Aronson, 'Subordinate legislation: lively scrutiny or politics in seclusion' *Australasian Parliamentary Review*, Spring 2011, Vol. 26(2), pp. 4–19 at p 5.
[6] RPI Bill, section 41(2)(b)
[7] RPI Bill, section 27(1)
[8] RPI Bill, section 39(2)
[9] RPI Bill, section 40
[10] RPI Bill, section 34(2)(a)
[11] RPI Bill, section16(b)
[12] RPI Bill, section 10(4)
[13] RPI Bill, section 8(1)(b)
[14] RPI Bill, section 11(1)(b)

- The time period for making submissions on an application;[15] and
- The way in which an applicant must publicly notify an assessment application;[16]

Drafting some of this information in the regulations is understandable;[17] however there is absolutely no reason why DSDIP should not be transparent about the key criteria for decisions and public notification requirements prior to the referral to the Committee of this Bill. It makes meaningful contributions to the Committee on the Bill all the more difficult. We note that 'example' criteria for PAAs and PLAs appear in the draft Cape York regional plan, however there is no example criteria for SEAs. In any event, these criteria were provided as 'examples'. There is no reason why the development of such important criteria should occur behind closed doors.

Additionally, placing key information in the regulations in this manner appears to be a direct breach of the fundamental legislative principle that legislation must have sufficient regard to rights and liberties of individuals. The Committee should consider whether this is a breach of section 4(3)(a) *Legislative Standards Act 1992* (Qld) (**LSA**). Additionally, the Queensland Government's own Legislation Handbook provides:

> *"… it is generally inappropriate to provide for administrative decision making in a Bill without stating criteria for making the decision..."*[18]

This is exactly what has happened here. How can the public have any confidence when such important criteria can be easily introduced and swiftly changed without proper parliamentary debate or a thorough public consultation process?

Solution:

The key criteria for key decision making, such as the final co-existence criteria must be in the Bill itself and be open to public scrutiny and debate. Otherwise, that information must be publicly released in advance of being introduced to Parliament and subject to an equivalent level of public scrutiny. If contained in the regulations, any changes to the criteria should be deemed to be 'significant subordinate legislation' and require a Regulatory Impact Statement, or an equivalent public consultation process to be followed.

3. The Bill does not provide for 'public interest' appeal rights.

Third party appeal rights currently exist in Queensland's mining, planning and environmental laws (SPA, *Mineral Resources Act 1989* (Qld) (**MRA**) and the EP Act). In these Acts, any person is entitled to make a submission, followed by a merits appeal to court about the impacts of mining, coal seam gas, or development on the environment. The rationale for this is that the environment (and our natural resources) belong to everyone in the community, that decisions affect the interests of the whole community, and community members are entitled

[15] RPI Bill, section 35(4)
[16] RPI Bill, section 35(1)(a)
[17] For example, the administrative detail of areas declared to be PAAs and SEAs.
[18] Department of the Premier and Cabinet, 'Legislation Handbook', at 7.2.1 available at: http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook/fund-principles/rights-and-freedoms.aspx

to challenge decisions that affect the community. We also note that tourism operators have no appeal rights and may have their commercial interests affected.

Further, those rights are founded on the premise that protection of areas – whether they be protected for their unique environmental values, for the importance of the agricultural land, or because they are nearby to residential communities – are ultimately for the benefit and enjoyment of current and *future generations* of all Queenslanders regardless of who currently has a right to the property interest.

Example

Would it be right to say, by way of comparison, that those Queenslanders who aren't 'affected landholders' living next to or on the Great Barrier Reef are not entitled to have their say on management of the Reef? Of course not. The environment belongs to everyone in Queensland and land use decisions should allow the community, particularly those community members seeking to protect the environment, to be actively involved with the decision making process.

The drafting at Part 3 Division 4 of the Bill suggests that third parties can make submissions on RIA applications.[19] EDO Qld and EDO NQ are supportive of legislation that allows concerned Queenslanders, to make submissions on RIA applications. Third party submitters and appellants play an important role as they seek to protect things other than their own pecuniary interest such as our national parks, threatened wildlife, rivers, lakes and underground aquifers as well as the quality of air on which we all rely.

EDO Qld and EDO NQ urge the Committee to consider seriously whether denying third party appeal rights is a breach of section 4(3) LSA. The former Scrutiny of Legislation Committee consistently took the approach that the matters listed in the section 4(3) 'are not exhaustive of all matters relevant to an individual's rights and liberties' and that the Committee must consider that there is a balance within legislation "…between individual and community interests."[20]

Regional interest areas are ultimately for the benefit of the public. The Committee should also consider whether denying third party appeal rights is a breach of natural justice and s 4(3)(b) LSA by depriving affected persons of the right to be heard. The Legislation Handbook states that 'a lack of consideration of the views of third parties, that is, persons whose rights may be affected by action taken under legislation against another person' is a matter that the former Scrutiny Committee monitored.

In narrowing appeal rights to affected landholders and dissatisfied proponents, the RPI Bill has placed individual interests over community interests. It has upset the balance which is consistent throughout our planning and land use framework under the EP Act and SPA and many other statutes such as the *Water Act 2000* (Qld), at a State and Federal level, which allow for and encourage third party public participation in decision making. Failure to allow third party appeals means there is reduced government accountability and transparency.

[19] Although the Bill does not expressly provide that 'any person' can make submissions regarding an RIA application, there is no restriction in the Bill as to who can make submissions.

[20] http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook/fund-principles/rights-and-freedoms.aspx

Solution:
There should be open standing for the public to appeal RIA decisions, provided they act 'in the public interest.' Section 69 should be amended to reflect this.
Alternatively, if the Committee is not minded to make such a recommendation, then section 69 of the RPI Bill should be amended to introduce restrictions on who can appeal to narrow the scope to those with a relevant connection to the region. Suggested wording could include:

> *"any person or group who at any time in the 2 years immediately before the regional interest decision is made, has engaged in a series of activities relevant to the protection or conservation of, or research into, the impact of activities in the region."*

And/or;

> *"any person or group who is a resident of, or conducts relevant activities from, within the boundaries of the region."*

And/or;

> *"any person or group who can demonstrate a particular interest in, expertise or commitment to land use activities in the region."*

We also refer to our earlier recommendation that submitters on an EA should be able to appeal.

We also note that the definition of 'owner' in Schedule 1 is identical to the definition of 'owner' in Schedule 3 of *SPA.* This means that the current definition of 'affected land owner' is limited to those capable of 'receiving rent.' There are no reasons in the Explanatory Notes or the Second Reading Speech that would explain why the legislature wishes to use this narrow definition over and above established definitions of owner and occupier such as those found in the Mineral Resources Act, Land Act, and EP Act.

The SPA definition of 'owner' is not appropriate to use in the RPI Bill. Its main purpose in SPA is to identify who is required to give consent to proposed development. This must be viewed in the context that planning decisions affect all members of the public and there is standing for members of the public to appeal development decisions under SPA.

However under the RPI Bill, this narrow definition is used to restrict who can appeal an RIA decision. For example, a person who has a registered leasehold of a lease that does not permit sub-leasing would not fall within the current definition of land owner in the RPI Bill. This would also have the effect that farmers with leases or occupiers with permits who cannot sub-let, and whose land is affected by an RIA, would have no appeal rights. Additionally, traditional owners and other types of owners and occupiers would also be excluded. Using the SPA definition of owner is fraught with difficulties and should be replaced with another definition (for example, the *Land Act 1994*) and expanded to include 'occupier' as well. Reliance on "owner" to define who can appeal not only excludes the general community, but also others (for example, tourism operators) who may have their commercial interests directly affected by decisions.

Example

A leasehold grazier near Yeppoon becomes aware that an RIA has been granted on a nearby property, allowing mining to occur. The grazier is aware that his property and the nearby property share an underground aquifer and concerned the RIA will have impacts on his own

property. The terms of the farmer's lease do not allow the farmer to sublet and he has no potential to 'receive rent'. The grazier does not have standing under the Bill to appeal against the RIA decision, even though his property will be 'affected' by the RIA decision.

EDO Qld and EDO NQ do not consider there is a need for any definition of owner as we oppose the restriction on the public's rights to appeal. We note that the definitions of 'owner' and of 'occupier' under the *Land Act 1994* (Qld) would be more appropriate than the current definition.

4. Unlimited discretion is given to the Chief Executive of DSDIP to grant an RIA

There are no limits placed on the power of the Chief Executive in deciding an assessment application. Section 49(2) of the RPI Bill states:

> *"Also, the chief executive may consider any other matter [in deciding the application] the chief executive considers relevant."(emphasis added).*

In terms of PLAs, whilst the Chief Executive must 'give effect to' a Local Council's recommendation,[21] they can also consider any other matter they like in making the final decision as long as it is not 'inconsistent with' the Council's recommendations (if any).

The power given to the Chief Executive in this instance in section 49(2) does not have sufficient limits attached and is therefore contrary to fundamental legislative principles in the LSA section 4(3)(a) which requires that where legislation makes the rights and liberties of individuals dependant on an administrative power, that power must be 'sufficiently defined'.

Solution:

There must be clear criteria for the Chief Executive to apply when making an RIA decision. Section 49(2) should be removed from the Bill.

5. The exemptions for not requiring an RIA are far too broad and lenient towards the resource industry.

Exemption where there is agreement with the land owner – section 22

The exemption in section 22 means the RPI Bill will not apply where the land owner and the resource authority holder have entered into an agreement for an activity on a Priority Agriculture Area (**PAA**) that 'is not likely to have a significant impact on the PAA'.[22]

Our concerns with this exemption are threefold.

Firstly, the 'land owner agreement exemption' is based on the premise that the land owner has ultimate discretion and determination of what happens on the PAA, regardless of the public interest in maintaining the PAA as an area of agricultural importance not only for the region but for all Queenslanders. If a PAA has been identified (or any regional interest area),

[21] RPI Bill section 50(2)
[22] Section 22(2)(b) RPI Bill.

it has been identified by the Queensland Government with the interests of the public and future Queenslanders, to ensure activities are managed that may be damaging to areas of regional interest. Why then, should it be up to an individual land owner at one point in time to determine that the impacts on the PAA are 'not significant', if the PAA has been identified as an area to be managed in the interests of future farmers and the public? This is a myopic exemption that does not contemplate that land ownership changes.

Secondly, the exemption applies where the activity is not likely to have a 'significant impact' on the PAA, however the notification requirements at section 26 do not require any assessment of whether the activity will have a significant impact. The chief executive is not required to be satisfied of the accuracy of the exemption notification under section 26. This effectively allows the proponent to 'self-assess' that the impacts of their resource activity will not be significant and therefore qualify for the exemption. Additionally, there are no penalties where an activity actually does have 'significant impacts'.

Allowing proponents to 'self-assess' whether their activities will have a significant impact, allows proponents and land owners to exploit such an exemption. Land owners who have been paid to agree that such activities can occur on PAA land should not be excused from the application of the legislation.

Solution:

The exemption in section 22 should be removed.

Exemption for 'short term' resource activities in PAA and SCA - section 23

Section 23 permits a person who is undertaking a short-term resource activity on a PAA or SCA that does not have impacts after 12 months, to be exempt from the RPI Bill. However the information required to be provided under section 26 does not require the resource activity authority holder to demonstrate that its activities will not have impacts on the PAA or SCA. Sections 23 and 26(2) therefore allow a proponent to 'self-assess' whether they fall within the exemption.

Additionally, there is no 'call in' power granted to the chief executive to determine that a notification should actually be assessed under the RPI Bill. For example, a proponent may be undertaking an activity for less than 12 months, but the impacts on the area will be sustained longer than 12 months. The proponent simply provides information on how they will restore the area within 12 months. There is no assessment of whether the activity will have impacts lasting more than 12 months. Problematically, there are no penalties where an activity (where the extent of the impacts have been 'self-assessed' by the proponent) actually does have impacts after a 12 month period or the impacts are not or cannot be restored within a 12 month period.

The wording of section 23(b) refers to "restoring…the impact". This wording suggests it is the impact must be restored, which is unlikely to be the intent of the drafters. The word 'rehabilitate' should be used instead at 23(b) and 26(2) to ensure consistency with the EP Act.

Clearly section 23 has been included in an attempt to allow exploration activities to be exempt from the legislation. However given the Government is planning a huge expansion

and increase of resource activities in Queensland, including uranium exploration,[23] all short-term exploration activities will be exempt from this legislation. This means all these impacts will not be 'managed' under this Bill, despite the cumulative impacts of thousands of exploration activities on valuable water sources in regional interest areas ('death by a thousand cuts').

Solution:

The exemption in section 23 should be removed.[24]

Exemption for small scale mining activity - section 25

This exemption refers to the definition of "small scale mining activity" in the EP Act, which is surprisingly broad, allowing up to 5 hectares of land to be "significantly disturbed" under a mining lease that may allow up to 1000 square metres of land to be "disturbed".[25]

Given that a significant disturbance of land is allowed whilst undertaking small scale mining activities, the definition in the EP Act prohibits small scale mining activity from occurring in various environmentally sensitive areas, including:[26]

- watercourse or riverine areas;
- within one kilometre of a category A environmentally sensitive area;
- within 500 metres of a category B environmentally sensitive area;
- a designated environmental area;
- Strategic Cropping Land or potential SCL; and
- wild river high preservation area or wild river special floodplain management area.

Clearly then, the EP Act envisages that small scale activities should not occur in areas identified for their environmental values. Logically, and to ensure consistency with the EP Act, small scale mining activities should not be allowed to occur in SEAs without assessment under the RPI legislation.

Solution:

The exemption in section 25 should not apply to Strategic Environmental Areas.

[23] "An action plan to recommence uranium mining in Queensland - Implementation strategy 2013–14", DSDIP available here: http://mines.industry.qld.gov.au/assets/Uranium-mining/uranium-action-plan.pdf

[24] At the very least, section 26(2) should be amended to include an assessment of the impacts on the PAA or SCA must be provided. Additionally, there is no role identified for the chief executive where the notification under section 26(2) reveals that there are impacts lasting longer than 12 months or that the plan for rehabilitating (not 'restoring') the area is inadequate.

[25] *Environmental Protection Act 1994* (Qld), Schedule 4.

[26] Ibid.

6. The RPI Bill does not consider impacts of resource activities on regional interest areas, where those resource activities do not occur in a regional interest area

The RPI Bill requires proponents who wish to undertake a resource activity *in* a regional interest area to apply for an RIA. Section 18 of the Bill prohibits the carrying out of a resource activity *in* an area of regional interest without an RIA. Part 3 of the Bill sets out how applicants apply for an RIA "for a resource activity to be carried out *in* an area of regional interest".[27]

This is a limited approach as the Bill does not provide for the management of impacts *on* regional interest areas from resource activities, in circumstances where the resource activity is not occurring *within that* regional interest area. This also presents a land use conflict. It is a significant omission from the Bill and should be rectified.

Example

A group of farmers who own Strategic Cropping Land around Gympie meet to discuss an open cut mine that has been given the green light by DEHP and DNRM, which is not taking place on their Strategic Cropping Land but is close by. The farmers believe that there will be negative impacts from the mine on their Strategic Cropping Lands.

Despite these potential impacts, the RPI Bill is not triggered because the activity is not taking place *in* an area of regional interest. The farmers have no appeal rights under the RPI bill.

A further example of this problem occurs with Priority Living Areas (PLAs). If a local government refuses to allow a resource activity to occur in a priority living area (PLA), then that refusal must be imposed.[28] EDO Qld and EDO NQ welcome the empowerment of local councils to be involved in decision making. However this is only relevant where the resource activity will be carried out within the PLA. The reality for local governments is that most resource applications will occur outside of PLAs. Yet these resource activities could still have major impacts on these PLAs.

The legislation as currently drafted does not require an RIA to be obtained in those circumstances. It means that local councils remain shut out of decision-making about resource activities that affect residents in those PLAs.

Example

The Gold Coast City Council is advised that a petroleum licence and environmental authority has been approved for coal seam gas drilling, which will take place just west of a PLA. The Gold Coast City Council believes there will be negative effects from the CSG drilling on the PLA, including the water impacts on the local catchment Despite the potential impacts on the Gold Coast PLA, no assessment is triggered under the RPI Bill as the resource activity does not fall within the boundaries of the PLA.

The Gold Coast City Council does not have a say in imposing conditions.

The Bill and Regional Plans do not empower local councils to make decisions about resource activities occurring outside the PLA that may impact on the PLA.

[27] RPI Bill, section 29.
[28] RPI Bill, section 50.

The Committee can solve this problem by making minor amendments to the Bill. Section 30(b)(i) already contemplates that all impacts of the resource activity on the regional interest area will be assessed. There is already a definition of 'impact' in section 28, which relates to the impacts on regional interest areas. This definition is not restricted to the activity occurring in the regional interest area, and so provides a useful starting point to remedy the omission.

In order to truly assess and manage impacts of resource activities on regional interest areas, section 29 should be amended to the following (amendments underlined or crossed-out):

> **29 Who may apply for regional interests authority**
> (1) An eligible person (the ***applicant***) may apply for a regional interests authority for a resource activity:
> (a) to be carried out in an area of regional interest; or
> (b) which may have an impact on an area of regional interest (an ***assessment application***).
>
> (2) Also, a person (also the applicant) who intends to carry out a regulated activity in an area of regional interest or which may have an impact on an area of regional interest may apply for a regional interests authority for the activity to be carried out ~~in the area~~ (also an ***assessment application***).

Section 18 which creates the restriction on activities without an RIA would need to be amended to the following (amendments underlined or crossed-out):

> **18 Restrictions on carrying out resource activity or regulated activity**
> (1) A person must not wilfully carry out, or allow the carrying out of, a resource activity or regulated activity:
> (a) in an area of regional interest; or
> (b) that may have an impact on an area of regional interest;
> unless the person holds, or is acting under, a regional interests authority for the activity.
>
> Maximum penalty—6250 penalty units or 5 years imprisonment.
>
> (2) A person must not carry out, or allow the carrying out of, a resource activity or regulated activity:
> (a) in an area of regional interest; or
> (b) that may have an impact on an area of regional interest;
> unless the person holds, or is acting under, a regional interests authority for the activity.

No amendment would be required for section 30(b)(i), which already contemplates the impact of the resource activity on the regional interest area.

Solution:

The Committee should recommend amendments be made to the Bill as set out above, which will truly allow the management of impacts on regional interests areas, not just where the activities occur inside the regional interest area.

7. The Bill and co-existence criteria for Strategic Environmental Area (SEAs) do not provide adequate protection

EDO Qld and EDO NQ welcome the identification of areas as Strategic Environmental Areas (SEAs). EDOs support the number of SEAs that have been declared in the Cape York Regional Plan.

We note with concern that DSDIP officers have indicated to EDO Qld and EDO NQ that no environment or conservation groups have been consulted regarding the identification of SEAs. It appears that for the purpose of the CYRP, economic data is overlaid with environmental data to produce the SEAs.[29] It is unclear why economic data would be required to map SEAs. Surely areas that have environmental values that are significant enough or strategic enough for Queenslanders to be declared SEAs, would not require 'economic data' to decide whether or where to declare them. Such a mapping approach suggests that where there are areas of high economic opportunities that also overlay with areas of high ecological and environmental value, then SEAs would not be declared in those areas. Given the small proportion of area allocated as SEAs in Queensland it would not be controversial to provide them with high protection.

We note with disappointment that there are no SEAs declared in either the Central Queensland Regional Plan (CQRP) or the Darling Downs Regional Plan (DDRP). We are not aware of any consultation with community and environment groups regarding whether or where SEAs should have been mapped in those regional plans. This is despite the presence of important environmental values in those regions – for example, the Bunya Mountains, remnant grassland in the DDRP and the presence of the Brigalow Belt bioregion in both the DDRP and the CQRP.

The co-existence criteria for deciding RIAs in SEAs will apparently be in regulations. No regional or co-existence criteria for SEAs are yet publically available. We have outlined above our serious concerns with firstly, having an inappropriate level of detail in the regulations and secondly, that those regulations are not available for public consultation. DSDIP officers indicated in the departmental public briefing[30] that the co-existence criteria for SEAs would be where the resource activity does not have 'widespread and irreversible impact' on the specific defined values of the SEA. This is an incredibly high level of environmental harm, and indeed is higher than that set out in the definition of 'serious environmental harm' in the EP Act.[31] Additionally, it is open to discretion and debate with some mining proponents already arguing that open cut mining can be reversible and localised. As a result of this, the Committee should consider whether the Bill is in breach of section 4(3)(k) LSA as it is ambiguous and unclear about the threshold for what impacts constitute 'widespread and irreversible impact'.

Table at page 21 of the CYRP provides an "indicative", "non-definitive guide" for potential land uses in SEAs and National Parks, in which Open cut/strip mining appears to be an 'unacceptable use' in SEAs in the CYRP. However if a decision maker under the RPI Bill

[29] DSDIP, *Draft Cape York Regional Plan—mapping regional land use priorities*, available here: http://www.dsdip.qld.gov.au/resources/factsheet/regional/cy-regional-plan-mapping-rlup.pdf

[30] Transcript of Proceedings of the Public Briefing – Inquiry into the Regional Interests Planning Bill 2013, available here: http://www.parliament.qld.gov.au/documents/committees/SDIIC/2013/14-RegPlanInterests/14-pbtrns13Dec13.pdf

[31] *Environmental Protection Act 1994* (Qld), section 17.

forms the view that an application for open cut/strip mining nonetheless meets the regional criteria for the SEA (for example, if the decision maker determines that the resource activity will not risk irreversible and widespread impacts on the environmental values), then the mining activity can be approved under the RPI Bill.

Example: Steve Irwin Wildlife Reserve

On 20 November 2013, the Premier announced that the Steve Irwin Wildlife Reserve would be declared the state's first Strategic Environmental Area. The Premier announced that, ""the Steve Irwin Wildlife Reserve will be protected for all time".[32] Additionally, the Deputy Premier indicated that "today's announcement would be made possible under the proposed Regional Planning Interests Bill 2013 to be introduced into State Parliament" that afternoon.[33] However the RPI Bill itself does not provide any "protection" for SEAs from resource activities. Unless the Regulations clearly provide for a prohibition on open cut or strip mining in SEAs, it remains open to DSDIP to determine that those activities will not have widespread and irreversible impacts and allow an application for the resource activity to take place in the Steve Irwin Wildlife Reserve. This is contrary to statements made by the Premier that the area "will be protected for all time."

Additionally, the RPI Bill does not offer any protection from impacts on the Steve Irwin Wildlife Reserve from open cut/strip mining activities that are occurring in surrounding non-SEA declared areas (general use areas).

Strategic Environmental Areas in Cape York such as the Steve Irwin Wildlife Reserve will be open to other types of activities such as underground mining, extractive resource activities such as sand or silica mining, intensive agriculture activities, infrastructure and all types of development (including industrial), subject to co-existence criteria. It could hardly be said that the RPI Bill offers substantial protection for SEAs.

By allowing any environmental harm at all in a SEA would be considered as 'serious environmental harm' as defined under the EP Act, as it is environmental harm "caused to an area of high conservation value or special significance",[34] such as an SEA. Prima facie then, no environmental harm should be allowed in SEAs and the Bill should be amended to reflect this.

Section 14 EP Act defines 'environmental harm'.[35] This definition should be imported into the Bill as the co-existence criteria for SEAs, requiring the proponent to demonstrate in its

[32] Steve Wardrill, The Courier Mail, 20 November 2013, available here: http://www.couriermail.com.au/news/queensland/premier-campbell-newman-promises-steve-irwin-reserve-at-cape-york-will-be-protected-forever-from-mining/story-fnihsrf2-1226764370422

[33] Quote attributed to the Deputy Premier in Premier Newman's media statements, 20 November 2013, available here: http://statements.qld.gov.au/Statement/2013/11/20/newman-government-protects-steve-irwin-reserve-on-cape-york

[34] EP Act, section 17.

[35] Section 14 EP Act defines 'Environmental harm' as follows:
(1) Environmental harm is any adverse effect, or potential adverse effect (whether temporary or permanent and whatever magnitude, duration or frequency) on an environmental value, and includes environmental nuisance.
(2) Environmental harm may be caused by an activity—
(a) whether the harm is a direct or indirect result of the activity; or

application for an RIA, that the resource activity will not cause 'environmental harm' in the SEA.

Additionally, we note the Archer, Lockhart and Wenlock and Stewart wild river declarations are proposed to be revoked.[36] The Cape York Regional Plan indicates that areas of the Archer, Lockhart and Wenlock wild river declarations will effectively become SEAs. With the RPI Bill as currently drafted, and with the potential for criteria simply being 'no irreversible and widespread impacts, the RPI legislation offers a lesser standard of protection than under the Wild Rivers legislation. Furthermore, most of the high preservation areas of the Stewart basin declaration will obtain no protection at all as it is proposed to be mostly a 'general use area' under the Cape York Regional Plan.

Solution

• Rather than leave the decision to the discretion of DSDIP, there should be express prohibitions on certain types resource activities in the RPI Bill. This is especially so for SEAs. These are the areas where "protection" has been touted by the Queensland Government without any clear protections provided in legislation.
• The co-existence criteria for SEAs should be in the Bill, not the Regulations.
• 'Widespread and irreversible impacts' as the co-existence criteria would allow serious environmental harm to occur in SEAs. The Bill should be amended to include co-existence criteria for SEAs that allow RIAs to be granted where the proponent can establish that there will be "no environmental harm", using the section 14 EP Act definition.
• Consistent with an open and transparent Government, the Committee should adjourn the inquiry until DSDIP undertakes public consultation on the co-existence criteria or at least, include community and environment groups in targeted consultation.

8. The purposes of the Bill are ambiguous, conflicting and do not reflect the substantive provisions of the Bill

The purposes of the RPI Bill need urgent attention for several key reasons. Firstly, the term 'environmental prosperity' in clause 3(1)(a) should be removed as it has no relevance to any current or past planning framework in either State or Federal legislation. The loose choice of words here is confusing and risks detracting from any protections for the environment which might be contained in the Bill, for instance through the declaration of Strategic Environment Areas (**SEA**s). It is ambiguous drafting and a clear breach of section 4(3)(k) of the LSA.

Secondly, the proposed purposes of the RPI Bill directly conflict with the *Sustainable Planning Act 2009* (Qld) (**SPA**) - the very Act under which Regional Plans are made.[37] On the one hand, regional plans are being made to advance the principles of ecological sustainability under SPA[38] including the precautionary principle[39] and principle of

(b) whether the harm results from the activity alone or from the combined effects of the activity and other activities or factors.

[36] EHP, "*Revocation proposal notice for the Lockhart, Archer, Stewart and Wenlock Basins Wild River Declarations*" available here: http://www.ehp.qld.gov.au/wildrivers/pdf/cape-york-wild-river-revocation-proposal-notice.pdf
[37] SPA, Chapter 2, Part 4.
[38] SPA, section 33(b)
[39] SPA, section 5(1)(a)(iii)

intergenerational equity[40] yet decisions under the new RPI Bill can be made with a totally different purpose. Even though the government has made it clear that the RPI Bill will override SPA,[41] this conflicting policy approach will inevitably confuse those impacted by resource activities and other regulated activities as well as those seeking to protect the environment in the interest of the whole community.

Thirdly, the Queensland Government has an express obligation, by way of written agreement with the Federal Government, to implement the principles of ecological sustainable development (**ESD**) into matters of environmental policy in Queensland.[42] The RPI Bill clearly espouses an intention to set or alter environmental policy in Queensland in a significant way and ESD must therefore be included in the Bill's objects.

Fourthly, section 3(2) of the Bill provides, "To achieve its purposes, this Act provides for a **transparent and accountable process** for the **impact** of proposed resource activities **on** areas of regional interest to be **assessed and managed**." Specific problems with this wording are set out below.

1. The Committee must consider that by disallowing third party appeal rights by Queenslanders, there is not an "accountable process" in the legislation. The Bill must be amended to allow third party appeal rights. Without allowing Queenslanders to appeal RIA decisions and an "accountable process", the objects of the Bill are inconsistent with the Bill's provisions.

2. Additionally, by including broad exemptions in Part 2 Division 2, which allow for a range of activities in regional interest areas to be exempted from the regulation, the legislation will not achieve the objectives of 'managing' the impacts or having a "transparent process". We refer to our earlier comments regarding exemptions.

3. Finally, the true impacts on RIAs will not be managed as the legislation only considers activities on regional interest areas, not the impacts *on* regional interest areas from resource activities on other land. This is inconsistent with the objects which refer to impacts *on* areas of regional interest.

Solution:

Remove the vague and misleading term 'environmental prosperity' and instead include specific reference to achieving ecologically sustainable development as required for Regional Plans and encapsulated in the purposes of the *Sustainable Planning Act 2009* (Qld) and the *Environmental Protection Act 1994* (Qld).

Make amendments to the Bill, as earlier detailed throughout this submission, to ensure that the words used in section 3(2) are accurately reflected in the substantive content of the Bill.

[40] SPA, section 5(1)(iv)
[41] RPI Bill, section 5(1)
[42] Intergovernmental Agreement on the Environment: http://www.environment.gov.au/node/13008 at S 3

9. There must be stronger provisions for public access to information (open government)

Section 53(2)(b) requires when notifying the public of the decision, such notification must, "briefly describe any conditions…" on the activity. This drafting suggests less information is required by 'briefly describing' the conditions rather than simply notifying the actual conditions. Disclosing the entire decision will have other benefits, for example another party may choose not to appeal against a decision[43] after seeing the specific and exact details of the conditions.

Section 35 of the RPI Bill requires the RIA applicant to publish a notice about the application in the way prescribed under a regulation. EDO Qld and EDO NQ strongly submit that DSDIP must ensure that each application appears on the Queensland Government website, which is in keeping with the Newman Government's commitment to open and accountable government.[44] Furthermore, all information concerning the application and the decision must be publically available. Information on activities for which an exemption has been notified must also be made publically available.

Solution
Section 35 be amended to require online publication of all details and information concerning the application. There must be public information regarding the notified exempt resource activities.
Section 53(2)(b) must be amended to remove the words "briefly describe" and replace with the words "provide".

Additionally, allowing local governments to have submissions available for physical inspection only at their offices[45] is an archaic and impractical means of disseminating information, especially in rural areas. The submissions received must be published on the State Government's website or the assessing agency's website to ensure public access to information.

Solution
Section 38(2) be amended to require online publication.

10. Application and notification requirements are vague and there must be notification to the public

In applying for a RIA, the proponent must provide a report "assessing the resource activity or regulated activity's impact on the area of regional interest and identifying any constraints on the configuration or operation of the activity".[46] EDO Qld and EDO NQ are concerned that this vague description requires considerably more detail and would expect to see such detail

[43] Either by way of judicial review or merits review.
[44] "*We want to make sure the three fundamental elements - honesty, fairness and openness - become a key part of the process and outcomes for the state's integrity system.*" Premier Newman, 13 August 2013, Media Statement available here: http://statements.qld.gov.au/Statement/2013/8/13/queenslanders-asked-to-think-about-open-government
[45] RPI Bill, section 38(2).
[46] RPI Bill, section 30.

in the regulations. For example, there would also need to be a requirement of setting out exactly how the resource activity complies with the co-existence criteria.

Sections 34-35 set out the public notification requirements for the assessment of the RIA application, however the applicant can apply to not have a public notification. Subsections 36(2) and (3) negate the need to comply with notification requirements, allowing a decision to be made on the application without the applicant complying with public notification requirements.

EDO Qld and EDO NQ totally oppose the making of a decision without a proponent needing to comply with notification requirements. These subsections would allow a proponent to totally ignore notification requirements, not allowing the Queensland public to know about the application, and yet a decision can be made to allow the resource activity to proceed under an RIA.

Regional interest areas exist for the public interest, the interest of all Queenslanders now and in the future. If notification requirements are not adhered to, then the public will not be aware of the application and will not be able to make submissions about the application.

It has been suggested to us by DSDIP officers that this provision exists if an applicant has already complied with notification requirements under resource legislation, to allow flexibility. However such an intention appears nowhere in the legislation. The chief executive only needs to be satisfied "there is enough information about the relevant matters for the application" in order to then decide the application without public notification. There are no circumstances in which the Queensland public should be denied an opportunity to make submissions about an RIA application, however that is exactly what this section allows.

The RPI Bill is a new regulatory regime with a different purpose than the resource legislation. It is understandable the Government wishes to increase efficiency of the notification process, however the way to do this is to clearly stipulate in legislation that a proponent can give public notification under the resource legislation and the RPI Bill within the same notice.

EDO Qld and EDO NQ strongly submit that the Parliament should not allow section 36 to pass unamended, as it would allow the Department to make decisions about RIA applications without informing the Queensland public.

It would also be a breach of section 4(3)(a) LSA, as it allows the executive to make a decision on an application without any public notification, removing the rights of individuals to make submissions. Section 36 of the Bill, if allowed to pass without amendments is in clear breach of the LSA.

Solution

Section 36 be removed. The public has a right to be informed about an RIA application and be afforded the opportunity to make submissions. Efficiency measures to allow simultaneous notification with other notification requirements could be included in the legislation, but there must not be any decisions made on an RIA application without public notification (other than a decision to reject the application on the basis that it has not complied with notification requirements).