Mining lease notification and objection initiative discussion paper

Including regulatory assessment

This publication has been compiled by the Department of Natural Resources and Mines.

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Context

The Queensland Government is committed to supporting resources sector growth by cutting red tape, regulation and speeding up project approvals to stimulate Queensland's economy and create jobs.

The whole of government *Governing for Growth* initiative supports economic growth by focusing on boosting productivity, reducing costs to business and providing clear and predictable decision-making. By reducing statutory requirements and associated delays and costs at the resource application stage the government is removing obstacles that will enable industry to better leverage market opportunities.

This discussion paper aims to facilitate further consultation on proposed changes to the application process, in particular, the notification and objection provisions for a mining lease (ML) application under the *Mineral Resources Act 1989* (MRA) and obtaining an environmental authority (EA) under the *Environmental Protection Act 1994* (EP Act).

There will be no changes to the consideration of Native Title or the rights of traditional owners and indigenous persons as a result of initiatives in this paper.

Issues

Currently the notification and objection process for a mining operation is duplicated under the MRA and the EP Act. The process does not take into account the size and impact of the mining operation. A small-scale alluvial gold mine that may only directly impact a single landholder is required to go through the same process as a mid-size coal mining operation impacting several landholders, the local government and the broader community. The process is also duplicated for large impact mining operations under the *State Development and Public Works Organisation Act 1971* (SDPWO Act).

When the Land Court hears an objection to a ML application under the MRA it must consider highly technical and commercially confidential financial matters and issues. The issues considered under one Act overlap with other legislation such as the EP Act, resulting in confusion, duplicate objections and additional costs for industry and objectors.

In addition, unlike all other EAs, objections to mining EAs are on a draft decision by the Department of Environment and Heritage Protection (EHP). Once the Land Court hears an objection it makes recommendations to EHP for consideration when deciding the final EA resulting in delays and uncertainty.

This discussion paper proposes a model where the notification and objection process reflects the level of risk, scale of operations, removes duplication, shortens project delays and lowers the cost impact on industry.

The proposals in this paper ensure an assessment or objections to an application for a ML under the MRA are considered by the most appropriate entity under the most appropriate jurisdiction to do so.

This paper also refines the restricted land provisions for ML operations where surface rights are required by the proponent.

All of these proposals, if implemented, will reduce costs to the mining sector.

Policy objectives

A Government mining policy objective is to reduce regulatory burden by cutting red tape and regulation and speed up project approvals to stimulate Queensland's economy and create jobs. This discussion paper proposes key reforms that would:

- match notification and objection requirements to the scale, risk and likely impact of a mining project
- ensure those likely to be directly impacted by a mining operation are aware of ML applications and associated environmental issues that may affect them
- retain a right for broad public input into the management of environmental impacts on a case by case basis for mining proposals that are likely to have a significant impact
- retain a right for broad public input into draft eligibility criteria and standard conditions for ML proposals that meet the criteria and comply with the standard conditions
- establish a streamlined process for application and decision-making processes under both the MRA and EP Act
- minimise overlap of considerations by the Land Court exercising its separate jurisdictions under the MRA and EP Act
- ensure an assessment or objections to an application for a ML under the MRA are considered by the most appropriate entity
- provide a flexible framework for restricted land which can be adapted and applied through the ML term with the consent of the landholder
- minimise the opportunity for resource sterilisation, that is, the resource is not able to be mined.

Options for reform

(A) Do nothing

Keeping the existing regulatory requirements will not address the Government's policy objectives or meet the criteria established to achieve them.

(B) Total deregulation

Removing the requirement to notify applications and all rights to object to both an EA and tenure application, is inconsistent with fundamental legislative principles and would not provide natural justice for entities directly impacted by mining proposals.

Removing the concept of restricted land would remove the right of a landholder to have control over activity within close proximity of the homestead and would rely exclusively on the protection afforded under the EA. This would not provide sufficient assurance to a landholder.

(C) Proposed model

The model proposed in this discussion paper addresses the issues inherent to the current model and aims to achieve the policy objectives and meet the criteria presented above. The recommendations and actions proposed are:

1. streamline notification requirements by:
   a. removing public notification of a proposed ML under both the MRA and EP Act (and sometimes under the SDPWO Act)
   b. removing public notification of applications for standard applications or variation applications for a mining EA

c. removing the requirement to post a notice about a ML application on the datum post
d. combining the requirements for a certificate of application and certificate of public notice for a ML application under the MRA

2. ensure objection rights are proportionate to the scale, risk and impact of the mining operation by:
   a. limiting the right to object to a ML application to landholders and local government
   b. limiting the right to object to individual mining EA applications under the EP Act to site-specific applications
   c. providing appeal rights for the decision on site-specific applications for an EA

3. ensure the Land Court applies the most appropriate jurisdiction and considers only those matters which an average person could reasonably be expected to have expertise of or knowledge about, by:
   a. identifying the grounds for an objection to an ML application under the MRA
   b. refining the range of matters under section 269(4) of the MRA considered by the Land Court for a ML application

4. reduce the assessment times for the granting of MLs by:
   a. providing for restricted land (identified as part of lodging a ML application) to be amended until the permit is granted if the land owner consents
   b. no longer excluding restricted land from the area covered by the grant of the ML
   c. removing restricted land status where a ML is granted with exclusive surface rights
   d. allowing for compensation on a ML to be agreed up to three months after grant of the ML, and if not agreed by then, referring it to the Land Court. No advanced activities under the ML will be possible until a compensation agreement is in place.

In combination, these proposals cut red tape, remove duplication, speed up approvals, reduce costs to industry and improve industry and landholder certainty.

Impact assessment

If the existing legislation is maintained, there would be:

- no net change to the cost of complying with the legislation
- no quantitative benefits accruing to industry, community or government
- no reduction in timeframes
- no greater certainty or clarity for the resources sector:
  - applicants will still be required to adhere to the same application process irrespective of the scale and likely impact of the proposed operation
  - applicants for all mining operations will be required to notify under the MRA and EP Act
- no streamlining of the operation of either the MRA or EP Act or of the interaction between these Acts on a proposed mine.

If all recommendations of the model presented in this discussion paper are implemented there will be on average an estimated saving to industry of approximately $60 000 per applicant or an overall saving to industry of approximately $6.0 million per year (Table 1).

Table 1 - Total industry savings per annum

(Refer to Appendix 3 Table 1 for detail)

	Advertising ($) (Appendix 3 Table 2)-	Land Court ($) (Appendix 2 Table 4)	Interest ($) (Appendix 2 Table 2)	Restricted Land included in granted area ($) (Appendix 2 Table 5)	Returning to land to post notice ($) (Appendix 3 Table 3)	Total ($)
Average saving per application proposed model	**2415**	**5000**	**47 050**	**1058**	**4131**	**59 654**
Total savings per year proposed model	**241 500**	**500 000**	**4 705 035**	**105 770**	**413 100**	**5 965 405**
Savings based on sector scenarios						
Minimum saving	500	0	2856	0	4131	**7487**
Estimated saving for a typical small mine	500	23 000	27 676	0	413	**55 307**
Estimated saving for a typical medium mine	2000	75 000	78 144	0	4131	**159 275**
Estimated saving for a typical large miner	4650	83 000	230 118	42 308	4131	**364 207**

For mining proposals assessed as having a significant impact, such as large scale coal mines, broad public consultation is facilitated through the SDPWO Act environmental impact statement (EIS) process or the EP Act EA application process. The duplicate requirement to also broadly notify the ML application under the MRA and EA under both the SDPWO Act and EP Act will no longer be required.

For mines that are low risk, because they meet the eligibility criteria and prescribed standard conditions, no further notification of the mining proposals under the EP Act will be required. Broad notification of the eligibility criteria and standard conditions was done when they were established and must be undertaken when these criteria and standards are reviewed. Broad public notification of an application under the MRA will also no longer be required.

For all ML applications the landholders and local government will be notified directly to ensure issues relevant to the tenure application (including compensation, land access and infrastructure) can be considered during the application process and an objection lodged if required.

This approach is considered to be more equitable and appropriate than current arrangements because:

- it more closely aligns with allocation of access to other resource types and consideration of the environmental impacts of exploitation of the resource
- the level of broad public interest is directly linked to an evaluation of whether or not the relevant proposal is low risk and complies with the standard conditions, or approved variations to the standard conditions

- the EP Act retains notification of site-specific application EAs that are not low risk, and the right to lodge a submission is also retained
- there are still pathways to consider and address a broad range of views and issues
- objection rights under the MRA will clarify which issues can be objected to under the respective jurisdictions
- highly technical and commercial in confidence matters to do with the ML application will be considered by the most appropriate entity
- application processes will be streamlined
- restricted land on a ML will be dealt with more flexibly
- time delays in resolving compensation for impacts on landholder surface rights will be addressed.

The cumulative quantitative and qualitative benefits of the model proposed in this paper have been considered against the current regulatory burden and have been determined to provide the greatest net benefit of the options available.

A summary of the proposed reforms is provided in Table 2.

Table 2 Summary of proposed reforms

Issue	Current situation	Proposed model
Notification: ML	Public notification of all ML applications – irrespective of scale, risk and impact	Notification of all ML applications to directly affected landowners and local government only
Notification: Environmental Authority	Public notification of all EA applications – irrespective of scale, risk and impact	Limits public notification to site-specific EA applications. Retains the public call for submissions through any EIS process and review of eligibility criteria and standard conditions. Landholder and local governments would be notified of standard applications for an EA with the ML notification process
Objection: mining lease	Anyone can object to the ML application	Only landholders and local governments directly affected by a ML application can object
Objection: EA	Anyone who has made a submission on an EA application can object to the draft EA issued by EHP	Anyone who has made a submission on a site-specific application for an EA only (through the notification stage or the EIS) can appeal the final EA issued by EHP
Land Court considerations	The Land Court makes recommendations to EHP about whether the EA should be approved and if so, on what conditions The Land Court is also required to conduct a hearing into the application for the grant of the ML and objections, and makes recommendations to the Mining Minister about whether to grant the ML and if so, on what conditions The matters described in the MRA for Land Court consideration on ML applications are extensive and vague and may result in objections being taken to the Court where there are no clear grounds to support an	For EAs, the function of the Land Court will be to hear appeals on EAs after EHP decide a site-specific application. The Land Court will have the power to affirm, amend or revoke the decision appealed against For ML applications, the Land Court will retain the function of hearing objections and making recommendations to the Mining Minister However, it is proposed to refine the grounds for which a matter can be referred to the Land Court under the MRA. For example, by: • removing any overlap or duplicate matters which the Court can decide under other legislation (e.g. environment matters to be considered under the EP Act) • ensuring there are clear grounds for objection under the MRA • excluding highly technical, financial and

Issue	Current situation	Proposed model
	objection (i.e. highly technical, financial and commercial in confidence matters) Objections to both the EA and ML for the same mine proposal are heard at the same time	commercial in confidence matters Objections to the ML and appeals against the EA for the same mine proposal are still to be heard at the same time
Compensation	Compensation must be agreed prior to the grant of the ML	Compensation on a ML finalised no later than three months after grant of the ML. If it is not finalised at this time, it is referred to the Land Court for determination. Until compensation is finalised only preliminary activities are authorised on the ML
Restricted Land	The grant of a ML excludes any restricted land for which there is not written agreement. Because of this, the lease area may be scattered with restricted areas, creating a 'Swiss cheese' effect. For incorporation of restricted land into the ML area, when agreement is reached with the landholders, a new ML application is required	The grant of a ML includes restricted land, but an access right to restricted land requires landholder consent before authorised activities can be undertaken. Landholder consent can be given at any time, and compensation subsequently determined for the restricted land
Restricted land – a ML with surface rights	The grant of a ML with surface rights (e.g. open cut mine) excludes any restricted land for which there is not a written agreement. Where agreement is not reached about access to restricted land, the resource can be effectively sterilised	Where a ML is granted with surface rights, the restricted land provisions do not apply. An applicant seeking surface rights must provide greater justification. Landholders will retain the ability to object to the ML application prior to grant, which may include consideration of surface rights as part of the grant

Making submissions

Please read the Mining lease notification and objection initiative discussion paper before making your submission. Submissions can be made on the proposals within the discussion paper by email to mqra@dnrm.qld.gov.au or by mail to:

MQRA Program
PO Box 15216
City East, Brisbane, QLD 4001.

Consultation closes on **28 March 2014.**

All submissions will be provided to the Office Of Best Practice Regulation as supporting information under the Regulatory Impact Statement System, therefore, if you wish your submission to remain confidential please identify this when lodging your submission.

1. Introduction

The Queensland Government is committed to growing a four pillar economy with resources one of these pillars. Significant benefit can be gained through decreasing the regulatory burden. This paper deals with assigning the appropriate level of regulation to the notification and objection processes and changes to restricted land for ML applications. The level of regulation needs to be relative to the risk and impact of the proposed mining operation and avoid duplication of process.

In the January-June 2013 Six Month Action Plan, the Government signalled its intent to reduce the regulatory burden for small scale alluvial mining operations. This paper is the second consultation process for this initiative. A previous paper was released in July 2013, entitled Reducing Red Tape for Small Scale Alluvial Mining (initial paper).

In the initial paper, the initiatives identified considered the potential reforms to notification and objection processes for MLs under the MRA and the associated EA for MLs under the EP Act.

The initial paper suggested changes to the process were necessary because:

- the MRA included redundant and duplicative requirements that added costs and contributed to time delays in gaining approvals
- notification and objection provisions in both the MRA and EP Act contributed to miner and public uncertainty
- of inconsistencies, and associated inequity, in requirements for EAs relating to MLs as opposed to all other environmentally relevant activity (ERA) EAs
- the jurisdiction of the Land Court for mining EAs was different to all other resource activity EAs[1] and may therefore have become out dated as well as inequitable to miners.

The results of consultation on the initial paper were:

- insufficient clarity in proposed changes to the notification and objection processes for some stakeholders to form a clear or consensus view on an option to address the issues
- no support for a post grant appeal for ML applications under the MRA
- there was concern a reform that was to apply to the mining sector generally was included within a small scale alluvial mining discussion paper
- further more detailed, targeted and specific consultation was required on notification and objection proposals was required to enable an informed debate to take place and a decision to be made on the most appropriate solution
- opinions were divided on whether broad consultation on ML applications under the MRA was necessary.

Accordingly, the Minister for Natural Resources and Mines has released this further discussion paper and associated regulatory assessment. It presents detailed options and recommendations for a notification and objection regime that is commensurate with the range of risks and impacts of mining projects. The proposals reduce the cost of and time delays associated with the current regime while providing greater clarity and certainty for all stakeholders. The individual initiatives have been designed to provide a cumulative benefit as they will ensure the legislation under which notification and objections to mining proposals are regulated work together in a more streamlined and less duplicative manner.

[1] ERAs that are not resource activities are appealed to the Planning and Environment Court not the Land Court

Further initiatives are also contemplated in this document as they relate to compensation and restricted land on a ML.

No changes to the consideration of Native Title or the rights of traditional owners and indigenous persons are proposed or being considered or are anticipated or intended as a result of initiatives in this paper. Existing laws, policies and processes governing Native Title and the rights of traditional owners, indigenous persons and cultural heritage remain in force unchanged.

2. Current process

2.1. Overview

The current regulatory framework prescribes a notification and objection processes for ML applications and a notification and objection process for EA applications. In addition an EIS under the SDPWO Act for a mining proposal is not recognised when considering if notification is required under both the MRA and EP Act. As these notification and objection processes occur concurrently, the processes are duplicative.

Currently, should an objection be made to the EA and/or ML application, the matter is heard by the Land Court. The Land Court then provides recommendations for consideration by: the Mining Minister when deciding an application for an ML; and EHP when deciding a final EA. The depth and breadth of the matters currently within the Land Court's consideration (section 269(4) of the MRA) warrant consideration of whether: the MRA is the most appropriate jurisdiction for their consideration; for highly technical, financial and confidential matters, whether the Minister is a more appropriate entity to consider them; and grounds on which an objection can be founded should be clearly defined.

Further delays and additional red tape can be experienced after the grant of a ML where a holder is seeking to include restricted land into the ML area, which initiates another ML application process for each non-contiguous area of restricted land.

This section describes the notification, objection/submission and Land Court processes as currently in place for the consideration of an ML application, an EA application and the EIS process. It also describes the current additional red tape required to include restricted land into the area of a granted ML.

2.1.1. Notification

Currently all ML applicants must comply with prescriptive processes to notify a broad range of parties about their application. This notification process starts with the requirement under the MRA for the applicant to provide a copy of their Certificate of Application (CoA), as issued by the department, along with the ML application to any landholder within the proposed ML area and over whose land access will be gained.

Once a signed CoA has been endorsed by the chief executive of the department, a Certificate of Public Notice (CPN) must be issued to the applicant.

The CPN identifies the ways that the applicant must meet their notification obligations including:

- on a datum post on the land applied for, this includes durably engraving or marking the proposed ML number on that datum post. The CPN must remain on the post until the end of the last day of the objection period for the application

- the applicant must provide the CPN to the affected landholders, the relevant local government/s and to each holder or applicant for, a resource permit (for example exploration permit or mineral development licence) over the land for another mineral
- the applicant must also advertise the CPN in an approved newspaper circulating in the area at least 15 days before the last objection day, or an approved shorter period.

The objection period must be at least 20 business days.

Once the applicant has met all of their obligations they must notify the department they have done so within five business days of the last objection day (or a longer period determined by the chief executive).

When applying for an ML, the applicant must also apply for an EA. This application can be a standard application, a variation application, or a site-specific application. A ML cannot be granted until the EA has been issued.

The type of EA to be applied for depends on the nature of the ERA presented in the application. If these activities are considered to be 'eligible ERAs' (i.e. low risk activities that comply with a set of eligibility criteria for those activities and undertaken in accordance with standard conditions or approved variations to these standard conditions), then the EA can be applied for as a standard application or, where one or more of the standard conditions are varied, a variation application.

The eligibility criteria for these ERAs are established through a broad public consultation process prior to approving and publishing the final eligibility criteria and standard conditions. This process provides a formal public consultation stage allowing industry and community to comment before the eligibility criteria and standard conditions are finalised. The eligibility criteria distinguish between lower risk EAs (level 2 EAs now standard application and variation application) and higher risk EAs (level 1 EAs now site-specific application).

Consequently, the applicant must assess their project against the eligibility criteria and the standard conditions for the activity they propose to carry out, and make either a standard application (where they comply with both the eligibility criteria and the standard conditions), a variation application (where they comply with the eligibility criteria but wish to vary one or more of the standard conditions), or a site-specific application (where they don't comply with the eligibility criteria, or the activity is too high-risk for eligibility criteria to have been published).

If the application meets the requirements of the EP Act, then the application is accepted as properly made. If not, the administering authority sends the applicant a notice which specifies what information is required to meet the requirements of the EP Act.

Once the EA application has been accepted as properly made, irrespective of which type of EA is being applied for (standard applications, variation applications and site-specific applications) a notice together with the CPN for the ML must be published by the applicant in a newspaper circulating in the general area of the proposed ML. Site-specific application EAs must also post the application on a website established by the applicant.

The public notice must include the following information:

- where the EA application can be inspected
- a link to the applicant's website (if any)
- the closing date for any submissions and where they can be lodged.

Where an EIS is required for a mining activity under the EP Act, further notification of the application for an EA is not required but separate notification of the MRA is required.

Where an EIS is required for a mining proposal under the SDPWO Act, notification (in accordance with the processes identified above) is also required under the EP Act for the EA application and MRA for the ML application.

2.1.2. Objections

Any entity can make an objection to any ML application irrespective of scale, risk or impact or whether they are directly impacted by the proposal. Objections under the MRA are considered by the Land Court prior to a decision on the application by the Minister. The grounds for an objection to an application for a ML are not identified in the legislation. The matters that the Land Court 'must take into account and consider' when making a recommendation to the Minister are prescribed in the MRA.

After hearing objections the Land Court makes a recommendation to the Mining Minister in relation to the grant of the ML.

The Mining Minster may not make a decision to issue the ML until the EA is decided by the administering authority.

Any person can lodge a submission about any mining EA application irrespective of scale, risk or impact or whether they are directly impacted by the proposal. Submissions to the EA application must be considered by the administering authority (EHP for mining ERAs) in reaching their decision, and deciding what conditions to impose on a draft EA (if any). The decision, and any draft EA, must then be given to the applicant and any submitters.

The submitters can then elect to lodge an objection to the administering authority's decision and any conditions on the draft EA. A person, who lodges a submission to an EIS under the EP Act, where one is required, is taken to be a submitter for the EA and may also lodge an objection. Objections are heard by the Land Court at the same time as they hear any objections to the ML application under the MRA.

Once the Land Court hears any objections, it may make recommendations to the administering authority about the decision to issue a draft EA and any conditions that may apply. Any appeal about the Land Court's recommendations is made to the Land Appeal Court who would also make recommendations to the administering authority. Once the administering authority receives the Land Court's or Land Appeal Court's recommendations the authority decides and issues a final decision and the EA (unless the decision is to refuse the application).

A copy of the final EA is provided to the Mining Minister.

2.1.3. Compensation

A ML cannot be granted or renewed unless:

- compensation has been determined (by agreement or by the Land Court) between the applicant and every person who is the owner of the surface of the land and surface access to the ML land
- and the conditions of the compensation have been or are being met.

If an agreement on the amount, timing and conditions of compensation is not reached within three months of the last day for objections to the ML application it must be referred to the Land Court for resolution.

Any party to a compensation agreement can refer the matter of compensation to the Land Court at any time prior to an agreement on the amount, timing and conditions of compensation being reached.

2.1.4. Restricted land

Currently, when granting a ML, unless consent of the landholder is lodged with the department before the last objection day, the restricted land within the area being applied for is excluded from the area granted. An additional ML application is required each time restricted land is to be included into the area to be mined and for each separate non-contiguous area of restricted land. A separate ML is granted for each area applied for.

2.2. Comparison to other jurisdictions

Each Australian jurisdiction's notification and objection regime reflects the relationship between their respective mining and environmental legislation and in some jurisdictions also their planning legislation (e.g. Victoria).

All Australian jurisdictions include a requirement to publicly notify applications either under mining legislation, environmental legislation or planning legislation. In South Australia and Western Australia if notice is given under either the mining or environmental Act it is taken to be notice under the other Act. In some jurisdictions (South Australia) notice is given by the government not by the applicant.

South Australia does not have a general objection provision rather it relies on an outcome based application process whereby the applicant is obliged to deal with all issues raised until they are resolved or until no further corrective action is possible, practicable or will provide any additional benefit. In the event there are outstanding/unresolved issues then either the application will not be progressed by the administering authority until performance standards are met or, if no further action can realistically be taken to further mitigate the issue, then the application is either approved or refused. In this event there are only limited appeal rights – i.e. to affected landholders.

Other jurisdictions identify grounds for an appeal against a mining tenement.

Neither New Zealand nor Alberta Canada, jurisdictions with a similar industry to Queensland, has a general requirement to publicly notify.

All researched jurisdictions require land owners to be advised and consulted and provide a mechanism for the affected land owner to appeal or object. Most jurisdictions also have specific provisions in regard to local government although inclusion of a specific right to object is not as universal as for land owners.

2.3. Issues with current process

2.3.1. Notification process

2.3.1.1. Requirement to broadly notify all ML and mining EA applications under both the MRA and EP Act

While the EP Act provides for examination of large scale or significant impact mining proposals through an EIS, in its totality, the current legislative requirements involve a one size fits all mining proposal process which drives inequity between mining sectors and which fails to recognise risks and impacts of individual proposals or notification that has been undertaken on the same development under other legislation.

Notification under the EP Act is not recognised under the MRA, as a result, public notification is required under both the MRA and the EP Act[2] for all ML and mining EA applications regardless of risk and scale of impact of the proposed mine. Where broad public notification occurs under the SDPWO Act it is not recognised under either the EP Act or MRA. As a result, notification under the SDPWO Act, EP Act and MRA are all required to be undertaken when an EIS is required for the development by the Coordinator-General under the SDPWO Act. Despite the eligibility criteria and standard conditions for deemed to be low risk mining EAs having previously been notified when they were being developed, low risk standard application and variation application mining EAs are notified on a development by development basis.

This homogenous process requires low risk and impact mines to follow the same process as large scale or high impact mines. As a result, the majority of applications are required to follow a process that is not commensurate with the scale of development, adding cost and time delays to these miners and industry. As small scale operations tend to use local services and goods, any benefits to local and rural communities from investment in smaller mining is either delayed or lost.

Large scale mining proposals, such as major coal mines, are generally subject to an EIS under the EP Act or the SDPWO Act. Under these frameworks there is broad public notification and consideration of submissions of both the Terms of Reference and the EIS; and, in many instances, one or more supplementary EIS's. This notification is not recognised by either the MRA or EP Act.

The EP Act recognises the public notification for the EIS where it has been done under that Act and the environmental risks remain the same. The applicant is not required to replicate notification prior to consideration of the EA.

The MRA does not recognise the EIS under either the SDPWO Act or the EP Act so public notification is duplicated for the tenure application despite there being no identifiable benefit to either industry or stakeholders and without adding value to or providing better outcomes. The additional process comes at a cost to industry both financially and in time as a result of the need to publicly notify the MRA application for at least 20 business days.

It is proposed any amendment to the notification and objection process recognise risk of environmental impact and notification requirements under other legislation when determining the extent of notification that is required.

2.3.1.2. No rationale in how notification is dealt with

Standard applications for ML EAs are currently required to undergo application by application consideration unlike any other standard application or variation application ERA. Under the current process, as described in section 2.1, the eligibility criteria and standard conditions which have been developed only for those ERA activities deemed to be of low environmental risk have been through a formal consultation process in their development. Only applications which comply with the eligibility criteria and can meet the standard conditions or approved variations to the standard conditions are treated as low risk applications.

The intent of the eligibility criteria and standard conditions was to reduce red tape and regulatory burden for low risk developments. By requiring low risk mining developments to undergo notification on a case by case basis defeats the very purpose of having deemed to be low risk mining activities.

[2] Under the EP Act notification can occur through an EIS or under the provisions of the notification stage of the Act.

It is usually smaller mining operations that can comply with the eligibility criteria and meet the standard conditions and which are considered low environmental risk. The impacts of such operations are limited to the landholders on whose land the mine is sited, others who may have an interest in the land and the local government who will provide services and whose roads will be used to transport the product from the mine.

As there is the ability to comment on draft eligibility criteria and standard conditions for low risk mining activities when they are published and before they are finalised, it is considered that requiring public notification for standard applications and variation applications for mining EAs makes no useful contribution to the identification and management of environmental risk and is overly onerous for these low risk activities. This should be addressed in any review of notification requirements.

2.3.1.3. Duplicate and redundant notification requirements under the MRA

The notification process within the MRA includes a number of duplicative and arguably redundant requirements whose purpose could be achieved through a more efficient and less costly process.

When an application is made for a ML, two notices are issued by the department (a CoA then a CPN).When each is issued the applicant must give the landowner a copy of the application. Addressing the unnecessary duplication would reduce applicants costs, save time, and reduce uncertainty and confusion for landowners as a result of receiving multiple copies of the same application.

In addition, the legislation requires a copy of the CPN be attached to the datum post, the datum post be engraved with the ML application number, and the public notice must remain attached to the datum post for the duration of the objection period. This regulatory requirement means that applicant must return to the land applied for, usually without any other reason to do so. In the case of alluvial miners this often means travelling substantial distances over hard to access terrain. A similar requirement is in place for mining claims. Given the vast distances travelled it is arguably impossible to ensure the notice remains attached to datum post for the entire notification period.

Industry consultation has confirmed this practice is not only time consuming but of questionable value as in practice the notice will only stay in situ for a short time due to factors including rain, sun, wind, animals and fire.

These requirements serve no useful purpose in notifying stakeholders of a ML proposal as landholders and other directly affected stakeholders are already advised of the application. Its removal would reduce costs and red tape for both MLs and mining claims and should be considered in any review.

2.3.2. Objection process

2.3.2.1. Objection rights generally

From 01 January 2009 to 30 September 2013 there were 474 applications for a ML for which there were with 64 objections. This equates to an average of 100 applications per year of which, in an average year, 90 will be standard application and variation application EAs and 10 will be site-specific application EAs. Over the typical year, on average, 13 applications will be objected to under the MRA or EP Act or both.

Analysis has shown the major concern of landholders to ML proposals is compensation and environmental (including air, noise, waste, water, vibration and light) impact and the major concern of other stakeholders is the environmental impact of the proposed mine.

Currently any submitter to an EA (whether the submission is made via an EIS or notification stage) can lodge an objection on the draft EA under the EP Act and any person may lodge an objection to the ML proposal under the MRA.

Objections can hold up applications unnecessarily, add cost to the applicant and the community and create uncertainty as to when an application will be approved and whether investment in a project will go ahead. Addressing these costs and uncertainty is a priority for the mining industry and government and essential to speeding up project approvals to stimulate Queensland's economy and create jobs.

Currently the MRA does not identify any grounds on which an objection must be based. However, the matters the Land Court must have regard to and consider are extremely broad in extent and vague in nature. As a result objections are often made under the MRA that should arguably be considered under another jurisdiction (e.g. environmental issues under the EP Act) or on the technicalities of the mining operation, geology and financial considerations.

In regard to the latter as hearing on such matters in the Land Court will generally attract submissions from only one party, the applicant. This is usually because the matters on which the objection are made are highly technical, financial in nature or commercially in confidence; matters on which the average person could not have knowledge or be reasonably be expected to gain knowledge on which to base an objection. As such the integrity of the role of the Court in deciding an objection on which there are no clear grounds of objection can be questioned.

Both the Productivity Commission[3] and industry[4] peak bodies have raised concerns that at least some objections to mining proposals (under both the MRA and EP Act) have some basis in a philosophical opposition to mining generally and coal mining in particular and may be lodged simply to delay an application proceeding. For example, the stated strategy of the Australian anti-coal movement is "*… to disrupt and delay key projects and infrastructure while gradually eroding public and political support for the industry and continually building the power of the movement to win more*"[5]. The existing opportunity in the current arrangements to lodge simultaneous objections on environmental grounds under both the MRA and EP Act exacerbates this potential[6] for objections to be lodged simply to delay an application.

While it is reasonable to expect there should be a forum in which broad philosophical issues can be discussed, it is unreasonable to expect individual applicants to be put through the delays and uncertainty associated with a prolonged legal campaign to debate whether an industry or mining sector is appropriate rather than the specifics of their particular proposal.

It is, therefore, appropriate for the government to consider the effect of any person being able to object to a ML under both the MRA and EP Act and whether the grounds to object to a ML are insufficiently defined to ensure objections are reasonable and relevant to the ML application under the MRA.

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[3] Productivity Commission (May 2013) *Mineral and Energy Resource Exploration - Draft Report* http://www.pc.gov.au/_data/assets/pdf_file/0016/123622/resource -exploration-draft-pdf

[4] Stopping the Coal Export Boom – Funding Proposal for the Australian Anti-Coal Movement *http://www.abc.net.mediawatch/transcripts/1206_greenpeace.pdf*

[5] Stopping the Coal Export Boom – Funding Proposal for the Australian Anti-Coal Movement *http://www.abc.net.mediawatch/transcripts/1206_greenpeace.pdf [page 3]*

[6] See for instance *Xstrata Coal Qld Pty Ltd v Friends of the Earth - Brisbane Co-op Ltd & Ors and Department of Environment and Resource Management [201] QLC 013*

2.3.2.2. Providing certainty in mining EA decision processes and consistency with EAs for other activities

Under the current process, the Land Court makes recommendations to the administering authority about the draft EA based on the Court's consideration of objections under the EP Act. The administering authority then must make a final decision on whether the EA is issued and what conditions should be attached. Therefore, there is no certainty for either the applicant or an objector about the final conditions at the end of the objection process. This process is unique to MLs.

The process for mining EAs is different to all other EAs where submissions are considered prior to the decision being made. Then if any submitters dissatisfied with the administering authority's final decision, the submitter can appeal to the relevant Court where an alternate decision or adjustments to the approval can be made.

Overwhelming feedback from all sectors on the alluvial discussion paper was, objections relating to mining tenure should be resolved prior to grant. There are sound reasons for retaining the pre-grant objection process for ML applications, including native title and compensation considerations, rather than post grant appeals.

Therefore, consideration of a post grant appeal in this discussion paper and associated impact assessment is limited to the EA issued under the EP Act. Critical to this is that any reform should ensure that a single simultaneous hearing for objections against the ML under the MRA and appeals (to site-specific application EAs under the EP Act) be retained.

Providing for a final EA decision, whether it be issued by the administering authority or as a result of findings by the Land Court, prior to the grant of the ML provides greater certainty for industry and the community and an opportunity to further reduce costs. In circumstances that the Land Court's decision is final, the administering authority's consideration of the Land Court's recommendations and associated administrative requirements can be avoided, reducing cost and unnecessary delays in granting approvals.

The EP Act provides for a 20 business day period for the administering authority to consider the Land Court's recommendations and to seek advice from the Mining and State Development minsters before making a final decision on the EA. A further five days is provided for the administering authority to issue a final EA. That is a total of twenty five business days that could potentially be saved.

Therefore, it is considered appropriate that consideration be given to a post-grant appeal process for the EA application.

2.3.3. Compensation

Currently, a compensation agreement must be in place prior to the grant of a ML. In the event that compensation cannot be agreed to it can be referred by either the applicant or landholder to the Land Court. In addition, if an agreement has not been reached within three months of the last objection day for the ML application then it must be referred to the land Court.

Objections about compensation have the potential to hold a ML approval up for extended periods while it is negotiated (there are examples of applications being held up for several years) adding cost to the applicant and the community and creating uncertainty as to when an application will be approved and whether investment in a project will go ahead.

Addressing these costs and uncertainty is a priority for the mining industry and government and essential to speeding up project approvals to stimulate Queensland's economy and

create jobs. In this regard, in December 2013 the Government amended the *Land Court Rules 2000*[7] to enable an objection to be heard where either party was considered by the Land Court to be uncooperative to speed up compensation objections. Any review of compensation processes should build on this initiative.

2.3.4. Restricted land

2.3.4.1. Restricted land amended up to grant

Currently, the MRA requires that all restricted land is identified at the point of lodging a ML application with the chief executive. No further changes to what has been identified as restricted land can be made after the application has been accepted by the chief executive.

Additionally, if there are inaccuracies in identifying the restricted land when the application is lodged, the application is terminated and has to be re-lodged—even though there might be a mutually agreeable pathway to rectify the non-compliance.

Providing for greater flexibility in allowing agreed amendments to restricted land throughout the application process while retaining a requirement for a final determination prior to granting a permit will speed up approvals, streamline the application process and reduce red tape.

2.3.4.2. Restricted land not excluded from ML

A ML may ultimately be granted over restricted land, if a written agreement from the landholder is lodged with the chief executive before the last day of the objection process.

The grant of a ML excludes any restricted land for which there is not a written agreement. Because of this, the lease area can be scattered with areas that are restricted, creating a 'Swiss cheese' effect, or holes, in the contiguous area of a ML.

The impact of this can be misleading to third parties, is impractical for mining operations, creates uncertainty and adds significant cost and time delays as an application for each hole must be applied for separately once restricted land status is resolved.

Providing for greater flexibility in resolving restricted land by eliminating the 'hole' in the lease area will reduce red tape, regulatory burden, cost and time delays without compromising the purpose of restricted land.

2.3.4.3. Surface rights

Where access to the surface of the land over the entire area of the application is required, such as occurs through the grant of a ML for an open cut mine, there is potential to sterilise the resource where restricted land is excluded from the ML. It is inconsistent to have restricted land where surface rights have been granted over the entire ML area. If the resource is sterilised then investment and job opportunities may be lost.

Exempting the operation of the restricted land provisions in situations where surface rights are essential to the viability and operation of the mine will assist in preventing sterilisation. The requirement for compensation for loss of access rights and grant of the lease resolved through the Act. This proposal would reduce red tape, time delays and costs and promote investment.

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[7] *Land Court Rules 2000* section 36A

3. Criteria for assessing options

3.1. Policy objectives

The Government has stated its intention to reduce regulatory burden, cut red tape and regulation for the mining industry to support resources sector growth by speeding up project approvals to stimulate Queensland's economy and create jobs. The discussion paper seeks to achieve these objectives through key reforms that will be assed against the following criteria.

3.2. Criteria for assessing options achieving policy objectives

3.2.1. Approval process reflects the risk and impact of mining proposed

Ensure notification and objection requirements are efficient, commensurate with the risk of significant impact, consistent with the approach to similar resource ERAs and streamlines and speeds up approvals to stimulate economic growth and create jobs

3.2.2. A simplified and flexible process that reduces regulatory burden and provides clarity and certainty for industry and the community

Ensure a streamlined and clear application and decision-making process that provides a certainty to industry and landholders that will, in turn, attract investment

Ensure the integrity of the Land Court's role in regard to ML applications is preserved and the Court's consideration of matters with regard to objections to mining proposals is under the most appropriate jurisdiction

Ensure a flexible restricted land and compensation framework which can be adapted and applied through the ML application process to reduce red tape and regulation and to avoid sterilisation of resources the subject of the ML.

3.3. Relative cost benefit

Any new processes need to have better cost benefit results when compared to the current process.

Determination of preferred options for dealing with identified issues will be on the basis of relative quantitative and qualitative costs and benefits of options. As per the requirements of the Regulatory Impact Statement System, unless there is some over-riding policy consideration, the option with the greatest net benefit is proposed for implementation.

4. Options for dealing with issues

This section presents the proposed departmental approach to addressing issues raised by industry about the current notification and objection processes associated with ML applications.

4.1. Notification

4.1.1. Balancing notification processes with impact and risk

The current process provides for a single homogenous process for assessing applications under the MRA with no consideration of the parallel requirements under the EP Act. Consistent with criteria 3.1.1 any amendments to the process should be cognisant of the

level of risk and result in an efficient application process and with criteria 3.1.2 provide for a streamlined process.

Currently, where an EIS is conducted under the SDPWO Act the notification of the intention to mine and the need for an EA for the mine is not recognised by either the MRA or EP Act. By removing the requirement for broad notification of the MRA (as discussed below) and requirement to re-notify the EA application under the EP Act would remove the unnecessary duplication in notification processes. Under such arrangements, a submitter to the SDPWO Act EIS could elect to become an appellant to the site-specific application for an EA.

For applications where no EIS is required under the EP Act notification under both the EP Act and MRA are required. The cost of these duplicate notification requirements costs is, on average, more than $2400 per application and $240 000 industry wide (Table 3).

A practical mechanism would be to remove the broad public notification requirement of the ML application under the MRA, and retain a notification process for directly impacted entities such as relevant landholders and local government while ensuring other stakeholders have an opportunity to input into issues of most concern to them.

The vast majority of objections by entities other than directly affected stakeholders, landholders and local government, relate to environmental issues such as air, dust, noise, light, vibration, water and waste. These issues are all dealt with under the EP Act rather than the MRA.

Any mine, regardless of size, that fails to meet the eligibility criteria and comply with standard conditions or approved variations to the standard conditions (variation application[8]) is required to submit a site-specific application for an EA under the EP Act. Under this process, broad public notification of mining proposals that have been deemed not to be of low environmental risk will still occur. As a result all parties retain an opportunity to review and make submissions about environmental matters for EAs that are likely to have a significant impact; on the issues of most concern for the majority of stakeholders.

ERAs are divided into eligible ERAs and ineligible ERAs based on the chief executive for the EP Act having first done a risk assessment of the activity, with the eligibility criteria for particular ERAs defining the divide between standard applications and variation applications on the one hand and site-specific applications on the other hand.

[8] Noting that a variation application must still comply with the eligibility criteria and be deemed to be low risk

Table 3 – Indicative Cost of fulfilling advertising notification obligations versus savings of reform proposals[9]

	ML and EA together $ per application	Cost per year Total $	Cost of notifying site-specific application EA only $ per application	Saving for site-specific application $ per application	Saving - standard application and variation application $ per application	Estimated costs per year following reform $ per application	Estimated annual savings Total $
Local newspaper[(2)]	500 x 10	5000	0	0	500 x 10	0	5000
Regional newspaper[(3)]	2000 x 70	140 000	0	0	2000 x 70	0	140 000
State or national newspaper[(4)]	5000 x 20	100 000	350 x 10	4650 x 10	5000 x 10	3500	96 500
Total		245 000	3500	46 500		3500	241 500
	Estimated annual saving to industry per year						**241 500**
	Estimated Average savings per application						**2415**

Prior to finalising the eligibility criteria and standard conditions, the chief executive for the EP Act must publish draft eligibility criteria and standard conditions for mining activities and allow 30 days for submission on the draft. These submissions must be considered by the chief executive prior to finalising and publishing the final eligibility criteria and standard conditions which are prescribed under the *Environmental Protection Regulations 2008*.

Individual standard applications and variation applications are assessed against the final eligibility criteria and standard conditions developed through this process.

Mining activities with eligibility criteria and standard conditions are currently being reviewed by EHP. This review will be subject to submissions as per the requirements of the EP Act (set out above). Consequently, the community will have an opportunity to comment on eligibility criteria and standard conditions prior to them being finalised, prescribed and published.

Given there is already the ability to comment on the eligibility criteria and standard conditions when they are drafted, requiring public notification for standard applications and variation applications on an application by application basis is not proportionate to the activities low level of risk and fails to acknowledge the very purpose for which the eligibility criteria and standard conditions were developed in the first place.

If other changes to notification were to proceed and the current requirements to notify standard applications and variation applications for EAs were retained, these low risk EA applications would be required to be publicly notified for at least 20 business days and may be subjected to objections to the Land Court. At a minimum, savings would accrue from not having to advertise the application and from Land Court objections and, ultimately, the time taken for the administering authority to consider the recommendations of the Land Court when making a final decision.

Notification of all EAs will occur either on an application by application basis for site-specific application mining EAs or by notification of eligibility criteria and standard conditions for deemed to be low environmental risk standard application and variation application mining

[9] The assumptions associated with Table 3 are included with a replication of this Table in Appendix 3 Table 2.

EAs. This process is entirely consistent with the requirement for all other EAs regulated in accordance with eligibility criteria and standard conditions.

As the EA covers the issues that are of greatest concern to the majority of stakeholders, the duplication of notification through a requirement to also notify the ML application is a questionable requirement. It seems a more appropriate option to limit notification of the ML application to those entities that are directly impacted by additional concerns to those relating to environmental considerations. This approach would require directly affected landholders and local governments to be notified directly of the application for a ML under the MRA. Directly affected landholders are included due to land access issues and compensation. Local government are included due to infrastructure and impacts on the services they provide.

In summary, notification of and objections to proposed mines will occur through:

- in all instances, the landholder and local government being notified directly and having an objection right to the ML, this process will occur under the MRA
- broad public notification and objection retained for any mining operations requiring an EA obtained through a site-specific application. This process will occur under the EP Act or, where an EIS is required under it, notification will occur under the SDPWO Act (unless there are changes to the level of environmental impact identified in the EA application)
- broad public notification for mining EA eligibility criteria and standard conditions for deemed to be low risk mining operations, this process will occur under the EP Act. Standard application and variation application EAs must still meet the eligibility criteria, standard applications still must comply with conditions, and variation applications still must comply with approved variations to standard conditions.

4.1.1.1. Recommendations:

It is proposed to implement a model that reduces applicant's costs and time delays, simplifies the process for the applicant, the community and government and is proportionate to the risk and impact of low risk mining proposals by:

- **removing the requirement to publicly notify a proposed mine twice under both the MRA and EP Act**
- **remove the requirement to re-notify an EA application when an EIS for the mining activity has been conducted under the SDPWO Act**
- **limiting notification requirements for a ML tenure application under the MRA to directly affected landholders and local government[10]**
- **limiting the requirement to publicly notify mining EA applications to site-specific applications**

4.1.2. Streamline the MRA application process to address inefficiency and reduce cost and time delays

Post notice on datum post

The requirement to attach the notice to the datum post is likely to have extended back to the 1800s and probably made sense when people travelled across country on horseback. Now when miners have a range of modern sophisticated communication tools at their disposal and travel is largely restricted to roads it makes less sense.

[10] The assumptions associated with Table 1 are included with a replication of Table 1 in Appendix 3. government of the land in which the ML is proposed

As most MLs are isolated from public access the chances of anyone observing a public notice on a datum post on land they may have to trespass on to read is remote. The only effective way to ensure the notice stays posted for the entire objection period, as is required in the current process, would be to stay on site for the entire period. A measure that is obviously impractical.

Additional reforms currently being considered by the government will result in applicants being able to file an application for a ML without any physical boundary marks. The requirement to post a notice and engrave the datum post would be further redundant as a result of this initiative if it is implemented.

To post a notice the applicant must return to the land the subject of the application, usually without any other reason to do so, and in many instances travelling substantial distances over hard to access terrain. It has been estimated the total cost to industry of having to return to the land to post a notice on a ML alone is $413 100 a year or approximately $4131 on average per application (Table 4).

An alternative suggestion has been to require mines to post an advertising sign on the access to the land in question. The cost versus benefit of this in comparison to alternatives is questionable. Most isolated rural roads are predominantly travelled by the landholder, and in some instances their near neighbours, and may be quite isolated from the proposed mine site. Posting a sign on these remote locations will, therefore, be unlikely to provide any benefits that will not be achieved by providing relevant landholders and the local government with a copy of the ML application and, for Mining EA applications that are deemed not to be a low risk (all site-specific applications), broad public notification of the EA application on the miners website and in a newspaper.

As maps relating to MLs and mining claims are available through the DNRM website by generating a Local Area Mining Permit (LAMP) Report, information about the proposed ML would still be freely available to the entire community despite removal of the requirement to post a notice on the datum post.

Removal of the regulatory requirement to lodge a notice on the datum post will reduce costs and regulatory burden and streamlines the application process achieving policy criteria 3.1.2 and is therefore the preferred option in this instance.

Duplicate certificates

The complexity, duplicative requirements and prescriptive nature of the existing legislation can be seen and demonstrated to add to costs and uncertainty for applicants. It is proposed to implement specific and targeted reform to address these issues.

Table 4 Estimated costs of travel to post notice on the datum post[11]

	Quantity	Current model	Proposed model
ML applications/year	100	100(a)	100
Labour costs/hour	108	108(b)	0
Hours/person/day	8	8 (c)	0
Number of people/trip	2	2 (d)	0
Average days/trip	2	2 (e)	0
Total labour/trip (assumes 2 people, over 2 days and 8 hours per day)	108 x 8 hours x 2 people x 2 days	3456(f) (=bxcxdxe)	0
Total cost of labour 100 trips	100	345 600(g) (axf)	0
Average Kilometres/trip	900	90 000km(h)	0
Rate/km	$0.75(i)	67 500(j) (=ixh)	0
Total cost to industry/year		**413 100(k)** (g+j)	**0**
Average cost/application		**4131** (k/a)	**0**
Total saving to industry/year		**0**	**413 100**
Average saving to industry/year		**0**	**4131**

On average 100 applications per year of which it is estimated[12] 90 applications are for small and medium MLs and 10 are for large or very large MLs. Of the 10 very large mine applications three are for very large highly complex MLs with significant environmental risk that are typically subject to an EIS and duplicate broad public notification under the MRA (including the requirement to issue both a CoA and CPN and provide multiple copies of the application to relevant land holders).

Removing the requirements for two notices and to give the landowner/s multiple copies of the application and replacing them with a single written notice and copy of the application will reduce costs and delay times by up to five business days (seven interest days) for all applications. Rough estimates of the cost to industry of delays have been calculated at $500 per application for a typical small mine[13], $1500 per application for a typical medium mine[14] and $38 000 per application for a typical large mine[15] (Appendix 2 Table 2). The cost for a very large scale mine from the requirement for duplicate notices is estimated to be at least $38 000[16] per application.

[11]. The assumptions associated with Table 4 are included with a replication of this Table in Appendix 3 Table 3.
[12] Application numbers have been rounded for ease of analysis
[13] Based on capital investment of $250 000 at an interest rate of 10% per annum or $68/day
[14] Based on capital investment of one million dollars at an interest rate of 7% per annum or $192/day
[15] Based on capital investment of $50 million at an interest rate of 4% per annum or $4579 per day
[16] A very large mine may have investments in excess of $1 billion but these may be staged; therefore, the cost to a very large mine is assumed to be at least the equivalent of a large mine

Therefore the estimated total cost to industry of time delays for the duplicate notices is estimated to exceed $435 000 per year[17] or, on average, around $4350[18] per application (based on Appendix 2 Table 2).

A notice plays a unique and vital role for industry and local government including providing information on the proposed mine, where to search for further information and by what date an objection is required to be made. Therefore, removing the legislative requirement for a notice, while it would achieve the policy objective of streamlining the MRA application, is not considered a viable option.

Replacement of the legislative requirement to issue two notices with a single notice reduces time delays for every application by up to five business days[19] and total cost and meets objective 3.1.2 by streamlining the MRA ML application process.

Under the current requirements, the applicant is required to provide landholders with multiple copies of an application, the first when the application is accepted as lodged and then again during the public notification process. This can create confusion for landholders and add costs for the applicant. Not having to give a copy of the application to the landholder is not considered appropriate on natural justice and equity grounds and would likely lead to increased legal costs for landholders, applicants and government as a result of increased applications for Judicial Review.

Replacing the requirement to duplicate notices and provide multiple copies of an application with a single notice and copy of the application avoids additional costs, reduces costs and confusion and is consistent with policy objective 3.1.2.

4.1.2.1. Recommendations:

It is proposed to implement a model that reduces applicant's costs and simplifies the process for the applicant by:

- **Removing the requirement to post a copy of the notice on the datum post Replace the requirement to issue a CoA and CPN with a single written notice**
- **Provide directly affected landholders and local government with a single copy of the ML tenure application**

4.2. Objections

4.2.1. Balancing objection processes with impact and risk

Duplicate objections, objections seeking only to delay a decision and objections where there are no clear grounds adds to the complexity and cost of Land Court hearings increases uncertainty and delays the approval processes.

Currently any entity may make a submission on a ML application after it has been publicly notified. Industry is supportive of a mechanism for directly impacted landholders with legitimate concerns to be able to continue to make an objection. However, the broad nature of matters the Land Court must have regard for and consider can result in objections by entities wishing only to delay the application from being decided.

[17] Appendix 2 Table 2 delay as a result of certificate of public notice: [7 + days saved interest rate/ day/ number of applications] = 7x68x80+7x192x10+7x4579x10) $435 050

[18] From Appendix 2 Table 2, footnote 18 divided by number of applications = 435 000/100

[19] seven interest days

Relying on the courts to resolve issues relating to an application are a costly and time intensive process, it should be relied on only where no alternative means by which issues may be addressed exist.

Based on applications received and objections lodged between 1 January 2009 and 30 September 2013, on average around 100 mining lease applications are made each year of which 13 applications a year are objected to. The remaining 87 applications proceed without objection[20].

Objections may be made by any entity under the MRA, EP Act or both (subject to the entity having made a submission on the draft EA). Analysis of applications has shown that in a typical or average year, only two objections are made under a single Act with 11 being made against both the EP Act and MRA[21].

Objections can be classified as objections could be classified as low complexity; complex; and highly complex based on the number of Acts objected under and the number of objectors. Where a:

- low complexity objection involves an objection against either the EP Act or MR Act only by a the land holder only or a single appellant
- a complex matter involves an objection an objection against either the MR Act or EP Act by the land holder and other appellants or against both the EP Act and MR Act the land holder or a single appellant
- complex matter involves objections against both the EP Act and MR Act by the landholder and/or multiple appellants.

Of the typical 13 objections received, on average two will be low complexity, three are complex and eight are highly complex. The higher the complexity of objections the higher the cost will be to both industry and to objectors.

The basis of objections received on both the EA and ML is[22]:

- landholders primarily object about the issues that directly impact on them such as compensation, access, proximity of mining operations to their homes and the direct impact of environmental issues (such as through air, noise, light, vibration, dust, water and waste)
- local governments primarily object about impacts and demands on services and infrastructure they own and manage, the location of access to mines, proximity to schools, cemeteries and other sensitive environments and environmental issues (as per landowners)
- adjoining landholders object to the proximity of mining operations to their property and environmental issues relating to impacts on quality of life and property such as through air, noise, light, vibration, dust, water and waste
- third parties primarily object about environmental issues such as through air, noise, light, vibration, dust, water and waste and the proximity of mining to schools and other sensitive locations.

Under the current legislation objections may be made: under both the MRA and EP Act in regard to environmental issues as the grounds on which objections can be lodged under the MRA are not defined; and under the MRA where the issues are beyond the expertise and/or

[20] Source Mineral and Energy Resources Location and Information Network (MERLIN) October 2013
[21] Additional more detailed analysis of objection statistics is included in Appendix 2.
[22] Source Mineral and Energy Resources Location and Information Network (MERLIN) October 2013

knowledge of the ordinary person and their capacity to ascertain information (i.e. highly technical, operational and financial and commercially in confidence matters).

Environmental issue such as air, noise, light, vibration, dust, water and waste are dealt with under the jurisdiction of the EP Act, any additional requirements imposed under the MRA duplicate or at worst would conflict with the requirements under the EP Act. As these are the issues that are of most concern to persons other than directly affected landholders and local government, it makes little sense to provide for objections against the ML application on environmental issues. Where an appropriate mechanism exists under the EP Act to deal with the risk of impact of a mining proposal on the environment it is arguable that a broad right to object to the MRA is redundant.

The eligibility criteria and standard criteria for low risk mining EAs have been and are about to be advertised for public submissions. This provides a suitable mechanism, commensurate with the risk of impact, by which environmental conditions can be set and against which environmental performance can be measured. The need for a mechanism to object to these low risk activities on a case by case basis is arguably redundant.

For mining EAs that are not deemed to be low risk any entity that lodges a submission in regard to the application has a right to elect to have an objection to the draft EA heard by the Land Court. Under the existing provisions a submitter must make a decision whether to object after a draft EA is issued. The decision of the Land Court in regard to those objections is considered by the administering authority when they decide the EA.

As discussed further in 4.2.2 below, it is proposed to change this process to provide for submitters to elect to lodge an appeal against the administering authority's final decision on the EA. Under this process the Court's findings will be final (subject to appeal to a higher court) and will not have to be referred back to the administering authority.

It is arguable therefore, that only directly affected landowners, landowners affected by access and local governments should retain the right to object to a ML application under the MRA. Landowners are included because of compensation and impact on their livelihood. In such instances, natural justice should prevail and landholders should retain a right of objection. Local government retain a right to object due to potential for direct impact on services and infrastructure they provide, administer and own.

Complete removal of all rights to object to a ML would not provide entities that are directly impacted by the proposal to have issues resolved and as such would breach principles of natural justice. Therefore, the complete removal of objection rights provides no means by which submissions on any part of applications for large scale and high risk ML proposals could be considered. It is not, therefore, considered to be proportionate to the potential risk and impact of proposals nor is it a viable option.

4.2.1.1. Recommendations:

It is proposed to implement a model that reduces applicant's costs and time delays, simplifies the process for the applicant, the community and government and is proportionate to the risk and impact of low risk mining proposals by:

- **limiting the right to object to a ML application to directly affected landholders and local government**

4.2.2. Providing greater certainty in the EA decision process

The current EA process provides for submissions on any mining EA application and an opportunity for all submitters to lodge an objection in regard to the draft EA. On applications where an objection is lodged, the Land Court's recommendations must go back to EHP to

decide the final EA. Meaning neither the applicant nor any objector has certainty about the final conditions at the end of the objection process.

As a result of the proposed reforms, a minimum of 25 business days will be removed from the time frames for consideration of standard application and variation application mining EAs as a result of there being no objection (five days for EHP to notify of their decision and 20 days to make an objection).

Once the Land Court hears the objections the Court makes a recommendation to the administering authority on changes to the draft decision. The administering authority has 20 business days to make a decision in regard to those recommendations and then five business days to notify the applicant and any objectors.

This has been estimated to save on average twenty five business day delay per application. The cost to industry of this delay, excluding very large scale mines, has been estimated to be more than $2.2 million per year in delay costs[23]. This equates to approximately $21 500 per application[24] if the total cost is averaged across all ML applications (based on Appendix 2 Table 2).

The delay cost to any applicant required to do an EIS under the SDPWO Act having to renotify under the MRA and EP Act is estimated to exceed $192 000 based on 35 interest days at least $4579/ day[25]. Similarly, the cost having to renotify an EIS under the EP Act under the MRA is $383 000 (assuming two EIS under the EP Act per year). The total cost of renotifying is estimated to exceed $575 000.

Providing for an appeal to the Land Court on a final decision by the administering authority would result in the decision of the Court replacing the original decision of the administering authority at no social or environmental cost, providing greater certainty to potential submitters, objectors and industry and a significant saving to industry. All stakeholders will have certainty, if the issues raised in their submission are not adequately addressed by the administering authority, they can lodge an appeal to the Land Court and the Court's decision is final and binding (subject to review by higher jurisdictions). Under the current arrangements, the court's findings inform recommendations to the administering authority rather than it being a binding judgement.

No diminution of environmental standards or consideration results from this initiative.

The only options considered for this issue have been retention of the existing arrangements or providing for submissions on the administering authority's final decision. Complete removal of the right to lodge submissions and object to environmental consideration of large scale and high risk and impact mining proposals is not in accordance with principles of natural justice and fundamental legislative principles. It is, therefore, not considered to be a viable option.

4.2.2.1. Recommendations:

It is proposed to implement a model that reduces applicant's costs and time delays, simplifies the process for the applicant, the community and government and is proportionate to the risk and impact of mining proposals by:

[23] From Appendix 2 Table 2: Decision on draft EA = [number of days saved x interest rate per day x number of applications] = 35x68x80+35x192x10+35x5479x10= $2 175 250 or approximately $2.2 million
[24] Total cost from footnote 25 divided by number of applications = 2175250/100 = $21 752.5
[25] At least the equivalent of the interest of a large mine

- **Providing for submitters to site-specific applications for a mining EA to lodge an appeal on the administering authority's EA decision**
- **Limiting the right to appeal to individual mining EA applications under the EP Act to site-specific applications**

4.3. Considerations of the Land Court under the MRA

Objections can hold up applications unnecessarily, add cost to the applicant and the community and create uncertainty as to when an application will be approved and whether investment in a project will go ahead. Addressing these costs and uncertainty is a priority for the mining industry and government and essential to speeding up project approvals to stimulate Queensland's economy and create jobs.

Currently the MRA does not identify any grounds on which an objection must be based. As a result, objections are often made under the MRA that should arguably be considered under other legislation (e.g. environmental issues should be considered under the EP Act) or are based on the technicalities of the mining operation, geology, financial considerations, etc.

The matters which the Land Court must consider under section 269 of the MRA are extremely broad in extent and in some respects, are matters on which the average person could not have knowledge or be reasonably expected to gain knowledge on which to base an objection. For example, criteria related to the technicalities of the mining operation, geology, financial considerations, etc. are matters which generally only the applicant can address the Court about (although there have been some cases where objectors have led evidence before the Court about whether the land applied for is mineralised and whether there will be an acceptable level of development).

It is questionable whether it is appropriate for the Court to consider matters which are highly technical, financial in nature, commercially in confidence or more appropriately considered under another jurisdiction. Accordingly, it is proposed to review the criteria specified in section 269 of the MRA in consultation with the Court.

As previously quoted, both the Productivity Commission and industry peak bodies have identified concerns through the use of the objection processes in legislation. The existing opportunity in the current arrangements to lodge simultaneous objections on environmental grounds under both the MRA and EP Act exacerbates the concerns that have been expressed.

It is reasonable to expect there should be a forum in which the issues raised in the circumstances cited by the Productivity Commission and industry should be discussed. It is, however, inappropriate that individual applicants be put through the delays and uncertainty associated with a prolonged legal campaign based on industry wide or sectoral issues beyond the scope of their specific development proposal.

The existing references to the environment in the MRA appears to be a relic of historical requirements prior to when environmental considerations were transferred to the EP Act. These provisions in the MRA are now redundant and create uncertainty for applicants and the community in what can be objected to and under what jurisdiction. Not only are most third party objections related to environmental issues, analysis of submissions to mining EAs indicates a range of issues outside of the EP Act jurisdiction were frequently raised as objections such as whether mining is an appropriate and preferred dominant land use, whether mining is an appropriate use of agricultural land, road infrastructure and location. matters that are also outside of the MRA jurisdiction.

This situation is partly created or compounded by not currently having grounds in the MRA to make the objection against a ML.

Clearly identifying what grounds there are for lodging an objection under the MRA will provide certainty for both industry and the community and assist in the Land Court being able to schedule reasonable and relevant cases for hearing. In regard to the latter it is noted the Land Court has made changes to the *Land Court Rules* to enable matters to be moved on in a more expeditious manner.

It should also be noted the assessment process or decision on an EA can be declared as a prescribed project under the SDPWO Act. There are a number of grounds on which the Minister for the SDPWO Act (currently the Deputy Premier, Minister for State Development, Infrastructure and Planning) may declare a project to be a prescribed project, including that he considers it to be 'economically or socially significant' or it 'affects an environmental interest'. This could include an EA under the EP Act. The SDPWO Act also states that the prescribed project legislation applies despite any other law and gives the Coordinator-General the power to make a decision in place of any decision maker, which could include the Land Court as its power to hear a matter arises from the EP Act. Consequently, if the Minister declares a project to be a prescribed project and the Coordinator-General gives a step-in notice for the project, the Coordinator-General's decision overrides any Court process and any appeal that was made or review that was started about the prescribed project is of no further effect. Under the SDPWO Act, the Coordinator-General's decision cannot be appealed, including under the *Judicial Review Act 1991*.

A decision made by the Governor in Council or a Minister is excluded from the prescribed project legislation under the SDPWO Act, so this process cannot be applied to a decision about the grant or renewal of a ML.

It is proposed to review the considerations of the Land Court to ensure they are well defined and specific to the purposes of the MRA and objections have the necessary grounds in law.

The option to completely remove any grounds of objection and consideration by the Land Court has been dismissed as non-viable, contrary to natural justice and regulatory best practice.

4.3.1. Recommendations:

It is proposed to implement a model that reduces applicant's costs and time delays and simplifies the process for the applicant, the community and government by:

- **identifying the grounds for an objection to an application for a ML made under the MRA**
- **refining the range of matters as presented under section 269(4) of the MRA that must currently be considered by the Land Court for a ML application under the MRA.**

4.4. Restricted land

The existing provisions of the MRA require all restricted land to be correctly identified at that point in time at which an application is made. This can be a difficult outcome to achieve and often requires detailed discussions between the applicant and the underlying land or tenure owner on the actual mining operations that will take place. At the pre-application point in time this is not always clearly established and may be subject to substantial change, particularly in the footprint of mining operations for access, and ancillary development.

If any inaccuracies in the identification or location of restricted land are discovered in the application post lodgement, this may be subject to Judicial Review or Land Court scrutiny.

This may be fatal for the application as no remedy to rectify the omission or inaccuracy exists, despite the potential agreement of parties to any changes necessary to correct the problem.

Providing for amendment of restricted land as it is refined throughout the application process with the land holders agreement will provide for greater flexibility and reduce unnecessary delays.

As the ML is not granted over any restricted land the lease area is not continuous but subject to a 'Swiss cheese' affect that can be misleading to third parties and a significant impediment to mining operations.

As the restricted land is the subject of a compensation agreement between the land owner and miner and the land owner will be aware of where the restricted land is on the ground it is considered a better approach that the ML be granted over the restricted land.

4.4.1. Recommendations:

Reduce red tape and assessment times for the granting of MLs providing greater certainty to industry and the community, reducing costs and speeding up approvals:

- **providing for restricted land (identified as part of lodging a ML application) to be amended up to the point the permit is granted with the land owners consent**
- **providing restricted land no longer be excluded from the area covered by the grant of the ML**
- **considering the option to remove restricted land status where a ML is granted with exclusive surface rights**
- **allowing for compensation on a ML to be agreed anytime up to three months after the grant of the ML, after which time it be referred to the Land Court**
    - **ensuring no advanced works under the MLA will be possible until a Compensation Agreement is in place.**

5. Proposed model cumulative impact assessment

5.1. Qualitative assessment

Together the recommendations make up the **Proposed Model** (Figure 2) which has been compared in, its totality, to the **Current Arrangements** (Figure 1). Appendix 1 Table 1 provides a comparison of the relative qualitative costs and benefits for each sector of the current arrangements and the proposed model.

Ability for the community to have issues about mining proposals addressed

Site-specific applications for an mining activity EA will continue to be publically notified. The removal of a public notification of the ML application itself provides no fewer opportunities for objections and does not remove broad community rights to object on social or environmental grounds to the application. No social impacts are anticipated from the specific measures to streamline the process and implementation of a three tiered framework related to the scale of development. Pathways will still exist in law for a range of direct and indirect issues to be addressed, the exception to this will be where there are no grounds for an objection that would currently be lodged under the MRA.

Notification and objection processes

Analysis of ML and EA objections to the Land Court has identified since 1 January 2009, 13 per cent of applications in any one year are objected to[26]. This equates to, on average, 13 objections per year.

The proposed model would result in:

- the community retaining the right to object to environmental considerations for site-specific applications for an EA for a ML on environmental issues that are of direct consequence to them
- greater certainty for standard applications and variation applications for a mining EAs
- affected landholders and local government retaining the right to object on non-environmental operational aspects of the proposed ML that are of direct consequence to them
- certainty about the grounds of objections to the ML under the MRA
- where there are objections to both the ML tenure and EA they would be heard at the same time

These complimentary initiatives will result in greater certainty on both EA and ML approvals and a reduction in costs and delays for applicants. Importantly they will have no deleterious impact on the environment; the environmental impacts of mining will continue to be appropriately managed under the EP Act. Although the initiatives in the package will rationalise the pathways for stakeholder input, all stakeholders will continue to have input into those issues that are directly relevant to them albeit through a reduced number of processes than what are currently available (Table 5).

No additional administrative burden for industry or government is anticipated as a result of the initiatives. No additional training or systems will be required. No deleterious impact on the environment will result in comparison to the current arrangements, ML proposals of all sizes, risks and impact will continue to have environmental conditions attached.

The net effect of these initiatives will be that at the lowest end of the risk and impact spectrum, the general community will continue to have a right to input into a ML proposal through eligibility criteria and standard conditions. Relevant landholders and local government will retain a right to object to the Land Court for these low environmental risk and impact mining proposals under the MRA.

For mining proposals not deemed to be low environmental risk, any one will continue to be able to lodge submissions and a subsequent objection under the EP Act.

Table 4 Mapping of pathways for dealing with stakeholder concerns

Issue	Current process	Proposed arrangements
Directly affected landholders (LH)		
Whether a ML should be granted which affects their existing land use rights and any compensation that may be made for the loss	LHs have a right to lodge an objection to a ML under the MRA with the Land Court in regard to whether a ML should be granted, any conditions that should apply and what compensation should be made	LHs rights to object remain unchanged by the proposed arrangements.

[26] Mineral and Energy Resources Location and Information Network

Issue	Current process	Proposed arrangements
of rights	for any loss of rights or access. This includes landowners affected by access.	
Identification and management of land within the proposed ML boundaries which is constrained by the definition of restricted land under the MRA	Land that meets the definition of restricted land must all be identified **prior to an application being lodged** and is excluded from the ML if consent from the LH is not obtained prior to the end of the notification period. Impacts of the mining activity on the area of restricted land (such as the impacts of dust and noise on a homestead) are managed under the EP Act.	For a ML that does not require surface rights the identification of all restricted land must be finalised **prior to the grant of the lease** and is included in the ML granted. The restricted land operates as a constraint layer within the ML, the consent of the LH must be obtained prior to any restricted activity excluded by the restricted land's status occurring in the area of restricted land. Environmental issues continue to be managed under the EP Act. Where surface rights are applied for and granted, restricted land does not apply.
Management of environmental risk and impacts (air, noise, waste, water, dust, vibration, etc.)	For deemed to be low environmental risk EAs, LHs can input into eligibility criteria and standard conditions when they are developed and updated. **For all mining EAs**, submissions can be made on applications and any submitter may object to the Land Court to the draft decision. LH can lodge an objection to the Land Court on environmental issues under the MRA. The Land Court only makes recommendations.	LHs can continue to input into eligibility criteria and standard conditions for mining EAs when they are developed or updated for deemed to be low environmental risk activities. **For more significant risk activities only** (site-specific applications) submissions can be lodged about the application and submitters may then lodge an appeal to the Land Court against the EA decision. The Land Court can change the decision. LHs will no longer be able to lodge an objection under the MRA for environmental issues as the grounds for objection will exclude matters dealt with under other jurisdictions.
Post approval issues such as environmental nuisance, failure to comply with conditions of approval or meet obligations under agreements.	Both the EP Act and MRA provide for remedy of such situations through administrative actions or the Land Court.	No changes to the remedies available are proposed.
Adjoining landholders (ALH)		
Whether the ML should be granted, what conditions should be imposed or compensation	Any entity, include ALHs, may object to the Land Court about the grant of a ML under the MRA.	Only directly affected landholders within the ML area and the local council have the right to object
Identification and management of land adjacent to the proposed ML boundaries which is	Land that meets the definition of restricted land must all be identified **prior to an application being lodged** and is excluded from the ML if consent is not	For a ML that does not require surface rights the identification of all restricted land must be finalised **prior to the grant of the lease** and is included in

Issue	Current process	Proposed arrangements
constrained by the definition of restricted land under the MRA	obtained from the ALH prior to the end of the notification period. Impacts of the mining activity on the area of restricted land (such as the impacts of dust and noise on a homestead) are managed under the EP Act.	the ML granted. The restricted land operates as a constraint layer within the ML, the consent of the ALH must be obtained prior to any restricted activity excluded by the restricted land's status occurring in the area of restricted land. Where surface rights are applied for and granted, restricted land does not apply. Impacts of the mining activity (such as the impacts of dust and noise on a homestead) are managed under the EP Act.
Management of environmental risk and impacts (air, noise, waste, water, dust, vibration, etc.)	For deemed to be low environmental risk EAs, ALHs can input into eligibility criteria and standard conditions when they are developed and updated. **For all mining EAs**, submissions can be made on applications and any submitter may object to the Land Court on the draft decision. ALH can lodge an objection to the Land Court on environmental issues under the MRA. The Land Court makes recommendations only.	ALHs can continue to input into eligibility criteria and standard conditions for mining EAs when they are developed or updated for deemed to be low environmental risk activities. **For more significant risk activities, site-specific applications only**, submissions can be lodged about the application and submitters may lodge an appeal to the Land Court against the EA decision. The Land Court can amend the decision. ALHs will no longer be able to lodge an objection under the MRA for environmental issues.
Directly affected local government (LG)		
Whether a ML should be granted due to impacts of proposed ML on infrastructure LG owns or manages and services that LG delivers	LGs have a right to lodge an objection to a ML with the Land Court in regard to whether a ML should be granted, any conditions that should apply. Provisions in the MRA trigger compensation for impacts on road infrastructure the LG owns or manages.	LGs retain the right to object to a ML proposal under the grounds provided for in the MRA. No changes to the road infrastructure triggers are proposed.
Management of environmental risk and impacts (air, noise, waste, water, dust, vibration, etc.)	For deemed to be low environmental risk EAs, LGs can input into eligibility criteria and standard conditions when they are developed and updated. **For all mining EAs**, submissions can be made on applications and any submitter may object to the Land Court on the draft decision. LH can lodge an objection on environmental issues under the MRA. Land Court makes recommendations only.	LGs can continue to input into eligibility criteria and standard conditions for mining EAs when they are developed or updated for deemed to be low environmental risk activities. **For more significant risk activities, site-specific applications only**, submissions can be lodged about the application and submitters may lodge an appeal to the Land Court against the EA decision. The Land Court may amend the decision. LGs will no longer be able to lodge an

Issue	Current process	Proposed arrangements
		objection under the MRA for environmental issues as the grounds for objection will exclude matters dealt with under other jurisdictions.
Post approval issues such as environmental nuisance, failure to comply with conditions of approval or meet obligations under agreements.	Both the EP Act and MRA provide for remedy of such situations through administrative actions or the Land Court.	No changes to the remedies available are proposed.
General community		
Whether the ML should be granted and what conditions should apply	Any entity, include the general community, may object to the Land Court about the grant of a ML under the MRA.	Only affected landholders and local government will have the right to object to matters under the MRA.
Management of environmental risk and impacts (air, noise, waste, water, dust, vibration, etc.)	For deemed to be low environmental risk EAs, the community can input into eligibility criteria and standard conditions when they are developed and updated. **For all mining EAs**, submissions can be made on applications and any submitter may object to the draft decision. Community can lodge an objection on environmental issues under the MRA.	The community can continue to input into eligibility criteria and standard conditions for mining EAs when they are developed or updated for deemed to be low environmental risk activities. **For more significant risk activities only** (site-specific EAs), submissions can be lodged against the application and submitters may lodge an appeal against the final decision. The community will no longer be able to lodge an objection under the MRA for environmental issues

Reduced time delays

It is estimated all applications under the proposed model will save on average 30 business days in processing times as a result of: the removal of duplication of certificates under the MRA; and no objections for standard application and variation application EAs; or post grant appeals on site-specific applications for EAs.

Of those matters that go to the Land Court, the bring forward time will vary dependant on the time taken for the Court to hear each objection. An objection can take several years to resolve, but it is estimated a Land Court hearing takes on average 12 months to finalise.

If separate hearings were required for objections to applications under both the EP Act and MRA, any savings would be totally offset by the need for multiple hearings and the time between hearings.

It is more likely investment will not occur the longer a project is delayed as companies look for alternative investment opportunities for realising a return and greater certainty development proposals will proceed in a timely manner. This shift in expenditure may be outside Queensland into another jurisdiction that has less regulatory burden and greater certainty of approval. The social impacts of delayed and lost investment opportunities include lost job opportunities and lost expenditure in the community in which a mine is proposed. As most mines are in remote and rural environments mining can sustain a skills base in these

communities that might otherwise be lost or moved elsewhere. That skills base can be critical to the sustainability of these communities and retention of youth within them.

Generally, reducing time delays has social benefits rather than social costs. As environmental issues will still be dealt with under the EP Act no impact on the environment will result from the proposed model in comparison to the current arrangements.

Fewer and less complex Land Court hearings

It is anticipated up to three applications a year will no longer require hearing by the Land Court as a result of the implementation of the proposed model. This will occur where existing objections are either:

- a landowner objection against a standard application or variation application EA only[27]
- an objection under the MRA made by an entity that is not a relevant landholder or local government only
- multiple person objections under the MRA and EP Act where the objector to the MRA is not the landholder and objector to the EA is the landholder and the EA is a standard application or variation application EA.

Analysis of almost five years of objections has indicated that one each of these objections in any one year is possible if not likely. Under the proposed model these objections could not be lodged. Each of these applicants will save on average 12 months in processing time with no environmental impact and arguably no social impact as an EA is still required and pathways still exist for resolution of MRA issues.

The length and cost of a Land Court hearing has a direct relationship to the complexity of the hearing. Complexity is also influenced by the number of appellants and the number of Acts under which objections are made and the number of issues objected to. As the proposed model will potentially reduce the number of appellants, multiple Act objections and the number of issues which can be objected to the complexity of individual hearings is likely to be reduced, saving both time and money for industry and the community.

As objections could no longer be made against the EA, it has been estimated that three hearings considered complex under the current requirements, because they are landholder objections against standard application EAs and the ML tenure, would be low complexity objections under the proposed model. Similarly, as third party[28] objections against the MRA will no longer be available, two highly complex objections under the current requirements, non-landholder objections against site-specific application EAs and the ML tenure will be complex under the proposed model.

Again, arguably there will be no additional cost to either the community or industry as a result of this reduced complexity as the model still provides an objection pathway for those issues that are of most concern to each sector. Environmental issues will continue to be addressed in exactly the same way as they are under the current requirements through conditions of approval established by the administering authority. All stakeholders will accrue a right to object to the environmental issues relating to a high risk and impact ML by making a submission to the site-specific application for an EA or EP Act EIS. This is exactly the same as how a right to object is obtained under the current requirements.

[27] While there is an existing right for a submitter that is not the landholder to object to a standard application or variation application EA, no record of such an objection has been identified.

[28] A third party in this context is someone other than relevant landholders and local government

Streamlining

By ensuring relevant stakeholders are provided with the ML application after site-specific applications for EAs are notified, or when standard applications and variation applications for EAs are properly made, will ensure stakeholders are provided with all of the information on the ML and EA at or about the same time and coordination between the ML and EA processes is retained.

This alternative approach would make the certificate of application process redundant ensures landholders do not receive multiple copies of the application, ensures applicants only get a single notice for each application and removes un-necessarily prescriptive requirements about the use of prescribed forms.

Internal work practices will ensure consistency is achieved in the content of the notice and they continue to meet industry's needs for proof of acceptance of the application documentation to provide to financiers.

Replacing the requirement for multiple notices will have no social or environmental consequences or costs and results in no diminution of environmental standards. Environmental issues will continue to be addressed in exactly the same way as they are under the current requirements through conditions of approval established by the administering authority.

5.2. Quantitative assessment

Delay

A very course measure of delay costs is based on interest accrued by both small and medium scale mining companies[29] on capital investment during the average period of 12 months that it takes to have objections heard by the Land Court. These calculations use interest rates of 10 per cent for small mines, seven per cent for mid-range mines and four per cent for larger mines (Appendix 2 Table 2).

Benefits will be realised to industry through reduced time delays and reduced costs resulting from removal of administrative requirements. It has been estimated that all applications will have a 30 business day time reduction in processing as a result of the initiatives in this package. It has been estimated that a small miner will save on average $68/day, a mid-range miner $192/day and a larger mine $5479/day in interest for every day of delay in processing their application. As a result it has been estimated that industry will save approximately $2.6 million a year in delay costs ($228 000 for small miners, $81 000 for medium miners and $2.3 million for large and very large mines) or on average $26 000 for each application, as a very rough estimate based on the interest on capital investment alone (Appendix 2 Table 2).

The benefits accruing to the very large scale mining sector[30] are more difficult to assess as they will inevitably be required to undertake an EIS which can take several years to be finalised. As the reforms in the proposed model apply equally to these large scale mining proposals, regardless of whether the EIS is undertaken under the EP Act or SDPWO Act, each applicant will benefit by reduced time delays of at least 30 business days and saved interest payments of at least $5479 per day.

[29] Small mining company = a company with capital investment of on average $250,000; medium mining company = a company with capital investment of on average one million dollars, a large scale mining company = a company with capital investment of on average $50 million.

[30] A very large mining company may have capital investment exceeding $10 billion

It is anticipated up to three applications a year will not be objected to as a result of the implementation of the proposed model. Each of these applicants will save on average 12 months in processing time.

As a result of the three cases per year that it is anticipated will not be required under the proposed model a total of $2 1 million per year (small mining operations $25 000/year and medium scale mining sector $70 000/year and large mining sector $2.0 million/year) in delay costs will be saved and, averaged across the total number of small, medium and large mine applications per year, approximately $21 000 per application (Appendix 2 Table 2).

Land Court

The total cost of Land Court to the parties to a hearing, under the current arrangements, has been estimated at $5.6 million of which approximately $1.733 million is attributable to industry and $3.865 million is attributable to the community (all objectors – landholders, local government and third parties). On average, this represents a cost to industry of approximately $17 000 per application (averaged across the 100 applications received a year) or $133 000 per hearing (averaged across the 13 hearings a year) and a cost to the community of $39 000 per application or $92 000 per appellant (Appendix 2 Table 4).

If separate Land Court hearings were conducted for the EP Act and MRA objections rather than retaining the requirement to have all objections heard at the same time, Land Court cost would increase by $1.46 million per year of which an additional $406 000 is attributable to industry. This equates to approximately an additional $81 000 per applicant that will be required to attend multiple hearings. Costs for the community would increase by $1.233 million per year or $82 000 per person objecting to multiple Acts (Appendix 2 Table 4).

As a result of the initiatives in the proposed model it is estimated a total of $1.7 million would be saved in costs of Hearings in the Land Court per year. Of this $500 000 would benefit industry. On average this represents approximately $50 000 saving for each of the 13 applicants per year for which an objection is currently lodged. If the total benefit were averaged out over all of the applications for a ML per year[31] this is estimated to be in the order of $5000 per application. Community costs would decrease by $2.2 million, or on average $22 000 per application, $200 000 per appeal or $92 000 per appellant (Appendix 2 Table 4).

Advertising costs

It is estimated the total cost of advertising for ML applications (including EA and tenure newspaper notification but excluding EIS notification) under the Current requirements is $ 241 500. Approximately $145 000 of this cost is spent in regional or local communities (Table 1 Appendix 3).

As a result of the amended notification requirements in the proposed model it is estimated that the saving to industry will be $241 500 per year or on average approximately $2415 per application.

While there will be a reduction in money spent in local and regional communities of approximately $145 000, this is thought to have little or no effect on regional or local communities and be more than offset by the benefits of advanced expenditure and certainty resulting from the removal of time delays for the commencement of mines and investment.

[31] On average 100 applications per year (484 since 1 January 2009)

Travel

The cost to travel to post the CPN and ML number on the datum post is estimated at $4131 per application or a total annual cost to industry of $413 100[32]. This will be saved under the proposed arrangements (Table 2 Appendix 3).

Including Restricted Land in the granted ML area

It is proposed that an ML be granted over the entire area applied for, including any restricted land. Currently restricted land (defined around primary residences and other facilities) is excluded from the granted area. A separate application for each discreet (non-contiguous) parcel of restricted land within the ML area is required after consent of the landholder is achieved. By including restricted land in the granted area, landholder consent can be given at any time, and compensation subsequently determined for the restricted land.

Note, this option, while it includes the restricted land within the ML, does not provide for access rights to the restricted land. Landholder consent is still required.

As detailed in Table 5 of Appendix 2, this would save $10 577 per application, a total annual saving of $105 770 in the cost associated with applying for a ML over areas of previously restricted land. If the total annual cost is spread over all applications $1058 per application would be saved.

Where the landholder and the mining operation cannot co-exist, such as in an open cut operation, the need for landholder consent over the restricted land can have the effect of sterilising the resource where landholder consent is refused. Taking this one step further, it may be appropriate in circumstances where an ML is granted with surface rights, that any restricted land be extinguished at the time of grant. This would provide greater certainty to all parties.

On costs

The reductions in time delays will bring forward investment and any flow on effects to remote and regional communities. It is estimated that for every one million dollars in investment that is brought forward, that up to $570 000 would benefit the local community or 0.57 indirect jobs based on 50 per cent leakage in the first level (including rent and mortgages) and 20 per cent at the second (including maintenance costs, fuel and food).

Total cost or benefits

On average it is estimated that the typical applicant under the proposed model would save approximately $59 654 per application and industry would save approximately $5 965 405[33] per year as a result of the initiatives in the proposed model over the current arrangements (Table 1).

The minimum saving has been estimated to be $7487 for no advertising costs, reduced interest due to reduced delay times and not having to return to the lease to post a notice on the datum post.

For a typical small mining operation required to notify standard application EA and ML applications in local newspaper, paying interest on their loan at $68/day at 10 per cent, where compensation with the landholder has been resolved and has no restricted land of concern would save approximately $55 307 and their application will be processed and approved approximately 407 days sooner than it would under the current requirements.

[32] See section 4.3.1 of this discussion paper

[33] As some benefits do not accrue to all applications per year the average anticipated saving per application cannot be simply multiplied by the number of applications

For a typical mid-range mine requiring to notify a variation application EA and ML applications in a regional paper, paying interest on an investment loan at $192/day at seven per cent where compensation with the landholder has been resolved and with no restricted land concerns would save an estimated $159 275 and their application would be processed 407 days sooner than it would be under current requirements.

For a typical larger mine required to notify a site-specific application EA and ML applications in a state newspaper, paying interest on their loan at $5479 a day with an objection lodged by the landholder and by persons other than the landholder against EA would save $364 207 and have their application processed 42 days sooner than it would be under current requirements.

Additional savings would accrue to very large scale mines due to reduced delay times of at least 42 (interest) days in processing their applications to what it would take under the current requirements.

Assessment of the data clearly indicates that the proposed model as providing the greatest net benefit.

The proposed model is, therefore, the preferred option.

6. Consultation

The mining industry generally has advised of the need for legislative change to reduce the regulatory burden and red tape stifling resource companies.

The government Six Month Action Plan January – June 2013, signalled its intent to reduce red tape for the small scale alluvial mining sector as part of its broader commitment to reduce the regulatory burden on business by 20 per cent by the 2018.

In August 2012 through the Agriculture, Resources and Environment Committee's (AREC) Agriculture and Resources Inquiry the North Queensland Miner's Association (NQMA), as 'the voice' of the North Queensland (NQ) mining industry, identified a range of issues that are constraining the resources sector in NQ[34].

The key issues made in that submission included: the need to:

- reduce the regulatory burden and red tape associated with lengthy and expensive approval processes
- develop more flexible mining regulation to suit the NQ region
- provide some balance into the public debate and perception of mining and miners.

The issues raised by NQMA were mirrored by the Queensland Small Mining Council in their written submission and evidence given to AREC's Inquiry into the Mining and Other Legislation Amendment Bill 2013[35]. QSMC advised, while they were grateful for and supportive of the package of reform that had been delivered for the small scale opal and gemstone sector, a further package of red tape reduction initiatives specifically for the small scale alluvial sector was required.

The issues raised by NQMA and QSMC reflect concerns that have been expressed by the Queensland Resource Council over many years.

[34] http://www.parliament.qld.gov.au/documents/committees/AREC/2012/QldARIndustries/submissions/2-NQMA.pdf at p5
[35] http://www.parliament.qld.gov.au/documents/committees/AREC/2012/MiningOLAB12/submissions/013.pdf

On 5 July 2013 the Honourable Andrew Cripps, Minister for Natural Resources and Mines released a discussion paper titled 'Small Scale Alluvial Mining Red Tape Reduction discussion paper'. In his press release, Minister Cripps noted that the discussion paper applied to mining generally and not just to small scale alluvial mining and that any interested party should review the paper. The discussion paper was advertised on the DNRM and Get Involved web site until 26 July 2013 and also noted the discussion paper applied more widely than small scale alluvial mining.

While submissions on the discussion paper were sought by 26 July 2013 submissions were received and accepted as late as 8 August 2013. The discussion paper remains posted on the department's web page which notes additional comments will continue to be accepted and considered throughout the policy development process.

Additional meetings were held with QRC, NQMA, AgForce, Queensland Farmers Federation (QFF) and the Local Government Association of Queensland (LGAQ) and key state agencies. Submissions were received by individual miners and mining companies, QRC, NQMA, AgForce, QFF, LGAQ, Environmental Defenders Office, Queensland Law Society and Cape York Land Council Aboriginal Corporation and several state agencies.

Submissions sought further consultation in regard to proposed initiatives relating to notification and objection based on clear and fully developed options and their relative costs and benefits. This Regulatory Assessment is intended to achieve this purpose.

This consultation paper will be advertised on the Get Involved, EHP and DNRM web sites. Additional direct consultation will be undertaken as required.

Consultation will extend for 28 days, all submissions made will be summarised and posted on the EHP and DNRM web sites.

Copies of all submissions made to this discussion paper will be provided to the Office of Best Practice Regulation on a confidential basis in support of Regulatory Impact Statement documentation.

7. Consistency with other policies and regulation

7.1. Competition principles agreement

There are no restrictions on competition as a result of the proposal.

7.2. Fundamental legislative principles (FLP)

Due to changes to existing objection rights there are potential FLPs on *Legislative Standards Act 1992* section 4(2)(a)the principles include requiring legislation has sufficient regard to rights and liberties of individuals. In particular the principle – 'abrogation of established statute law rights and liberties must be justified'.[36]

In this instance the reduction in those that can object to:

- standard applications and variation application for mining EAs is considered to be justified as:

[36] *Legislative Standards Act 1992* Part 2 section 4(2), Office of Queensland Parliamentary Counsel – Fundamental Legislative Principles: The OQPC Notebook, *Chapter 3: Individual's rights and liberties _ FLP issues not listed in the Legislative Standards Act;* 3.1 Abrogation of common law rights must be justified

- the right to influence standard conditions and eligibility criteria is retained through the process by which they are developed and are being reviewed
- the standard mining conditions are currently being reviewed by EHP and the EP Act requires the draft standard conditions and eligibility criteria are advertised with a period for comment from both industry and the community before they are finalised.
- due to transitional arrangements in the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*, this review must be completed by 31 March 2016
- the review provides the community with the opportunity to have standard conditions and eligibility criteria better address issues of concern to them
- the broad right to lodge objections for standard applications and variation applications is disproportionate to the risk and impact of projects that qualify for these types of EA and places unnecessary costs and uncertainty on industry

- a ML application is considered to be justified as:
  - the right for the public to object is a relic from previous legislation that was not removed when environmental considerations were removed from mining legislation
  - the grounds of objection to a ML will be clarified to ensure environmental considerations are grounds for appeal under the EP Act not the MRA and to exclude issues such as the financial and technical capacity of the applicant
  - most third party objections under the MRA concern environmental issues within the jurisdiction of the EP Act
  - a mechanism to address the issues of concern to entities other than landholders and local government will still exist in legislation
  - it is not appropriate the philosophical appropriateness of mining be argued on a case by case basis
  - it is not reasonable to expect individual miners to carry the burden of philosophical debate on whether mining is an appropriate land use through their ML application
  - there is legal precedent that individuals do not bear the burden of broad community issues through their application[37]
  - the net effect of the changes in combination with other initiatives in the proposal is there is no abrogation of rights as the public retain the right to object on those issues that directly impact them under the EP Act for site-specific applications and through the review of eligibility criteria and standard conditions for standard applications and variation applications.

8. Implementation, evaluation and compliance support strategy

It is proposed any amendments to legislation resulting from the proposal will start on implementation. The drafting process and committee consideration of the Bill will provide stakeholders with an opportunity to have any issues they may have addressed by the departments and the Parliament.

Post implementation evaluation of any legislative changes will occur through the MQRA program when the appeal provisions of the legislation are transitioned into the common section and then common resources Acts.

[37] Such as the *Integrated Planning Act 1997* and *Sustainable Planning Act 2001* on catchment carrying capacity and cumulative impact

Standard conditions for mining EAs will be reviewed by March 2016.

Further evaluation of the reforms will occur in consultation with the Land Court, industry associations and other peak bodies.

The numbers and types of appeals and objections under the new arrangements will be monitored as will any appeals that are dismissed due to there being no grounds for lodgement. Adjustments to the legislative provisions will be made as required.

Review of new legislation is required under the *Statutory Instruments Act 1992*.

9. Next steps

The identified issues and the concerns raised by industry, relate to existing provisions and administration of the MRA and EP Act. Therefore, the only way to reduce the regulatory burden and cut red tape is for government to amend the legislation.

Where possible a non-regulatory response will be implemented (such as through the removal of redundant provisions). Non-government action is not possible in this instance.

This discussion paper and associated regulatory assessment will remain open for public consultation for 28 days through the Departments of Natural Resource and Mining, Environment and Heritage Protection and Queensland Get Involved web sites.

10. Making submissions

Submissions can be made to the Modernising Queensland's Resources Acts Program by email at mqra@dnrm.qld.gov.au or by mail to:

MQRA Program
PO Box 15216
City East, Brisbane, QLD 4001

Consultation closes on 28 March 2014.

It is intended submissions will be provided to the Office of Best Practice Regulation in support of Regulatory Impact System consideration. If you wish to remain anonymous, this should be clearly noted on your submission.

Late comments will be given regard where possible.

11. Acronyms used in this document

CoA	Certificate of Application
CPN	Certificate of Public Notice
EA	environmental authority
EHP	Department of Environment and Heritage Protection
EIS	Environmental Impact Statement
EP Act	*Environmental Protection Act 1994*
ERA	environmentally relevant activity
FLP	Fundamental legislative principles
LG	local government
ML	mining lease
MQRA	Modernising Queensland's Resources Acts
MRA	*Mineral Resources Act 1989*
SDPWO Act	*State Development and Public Works Organisation Act 1971*

Appendix 1 – Qualitative analysis

Table 1 – Comparative qualitative costs and benefits of current requirements and proposed model

	Current requirements	Proposed model
Costs	Industry • Retains a single homogenous process for mining developments of all sizes and risks of impact • Administrative processes under both the MRA and EP Act add time delays and as a result significant additional and unnecessary cost and uncertainty to mining development • Some notification processes do not add any value to the consideration and conditioning of mining development and therefore add unnecessary costs • Does not remove redundant and duplicative requirements in MRA application process • Does not modernise the legislation despite acknowledgement there are relic provisions and old style drafting that add costs and time delays to mining proposals • Does not address uncertainty resulting from Land Court review of draft EA decision rather than a final EA decision • Would not reduce operational timeframes since all appeals must be heard before the ML can be granted. • Consequently, commencing mining activities are delayed, regardless of whether there are grounds for a stay, since any appeal on the EA can hold up the grant of the ML. • Does not address inconsistency between requirements for mining EAs and all other resource EAs • Inequity between low risk mining activity standard application and variation application EAs and other low risk resource standard application and variation application EAs • The number and complexity of Land Court hearings adds to the cost of hearings • Does not address the uncertainty in the notification and objection requirements across the EP Act and MRA • Can result in objections outside the jurisdiction of either or both the EP Act and MRA resulting in time delays and increased costs • Provides opportunities for vexatious and frivolous objections • Provides a forum for broad philosophical objection to mining that cannot be addressed by individual miners • Cumulative effect of time delays is increased uncertainty that mining investment will proceed resulting in lost opportunities and jobs • Does not achieve red tape reduction • No decrease in regulatory count • Perceptions that the government is not listening to industries concerns	Industry • All appeals must be heard before the ML can be granted resulting in time delays • Commencing mining activities are delayed, regardless of whether there are grounds for a stay, since any appeal on the EA can hold up the grant of the ML. Community • The right to object to a ML is limited to Local Government and relevant landholders, entities that are directly impacted by the proposed lease only. As a result some community members lose the right to object on operational issues related to ML applications • The right to object to standard application and variation application for mining EAs is limited to submissions on eligibility criteria and standard conditions when they are advertised rather than application by application so landholders and other community members lose the right to be heard about the environmental conditions for mining activities deemed to be low risk • Loss of objection rights means loss of say of what happens in local community • Perception that mining is not adequately regulated and government has been captured by industry Government • Community concern that issues relating to individual mining applications will not be addressed • Perception of industry capture

	Current requirements	Proposed model
	• Fails to address the policy objectives established • Fails to address concerns over restricted land • Need to adjust business and operational practices and sequencing of mining to adjust for restricted land • Cost of applying for restricted land to be included in ML area Community • The right to object to a ML is limited to local government and relevant landholders • The right to object to standard application and variation application for mining EAs is limited to submissions on eligibility criteria and standard conditions when they are advertised rather than application by application so landholders and other community members lose the right to object on mining proposals in their area • Does not address inconsistency between mining EAs and all other EAs • Does not address the uncertainty in the notification and objection requirements across the EP Act and MRA • Can lodge objections where there are no grounds under the legislation which results in additional and unnecessary or wasted costs • Confusion in what can be objected to under what legislation • Increased uncertainty as to whether mines will result leading to lost or delayed employment opportunities • Difficult for local government to plan and sequence development and less contribution from the mining sector to funding capital works and maintenance • Additional cost from commenting on standard application and variation application mining EAs when they have already been through advertising process • Potential to have recommendations from the Land Court overturned by the administering authority or Mining Minster Government • No change or reduction in regulatory burden resulting in loss of confidence in the government • Additional cost from commenting on standard application and variation application mining EAs when they have already been through advertising process • Delays in mining investment from time delays on approvals result in delay in Royalties and job creation • Continued decline in sector • Loss of faith that government is in control • Perception that government is out of touch and sitting on its hands while industry is declining • Fails to address relic provisions left over from of old legislation • Legislation remains complex and difficult to understand and implement	

	Current requirements	Proposed model
	• Retains existing duplication in consideration of environmental issues • No grounds of appeal in legislation • Continued uncertainty of investment in Queensland mining industry • restricted land issues unresolved	
Benefits	Industry • No changes to process provides some certainty about what can be expected and anticipated • No increase in costs resulting from implementing change • Retains a simultaneous Land Court hearing for MRA and EP Act objections • No training costs • No net impact on the environment • No net social costs • No impacts on competition and no barriers to entry Community • No changes to process provides some certainty about what can be expected and anticipated • Retains a simultaneous Land Court hearing for MRA and EP Act objections • No increase in costs • No training costs • No net impact on the environment • No net social costs • Community retains the right to object to a ML and the right to be heard on operational issues to do with mining • The right to object to standard application and variation application mining EAs application by application s retained so community members retain the right to be heard about the environmental conditions for small mining Government • Retains a simultaneous Land Court hearing for MRA and EP Act objections • No increase in costs • No training costs • No net impact on the environment • No net social costs • No impacts on competition and no barriers to entry	Industry • Retains a single Land Court hearing for MRA and EP Act objections • decrease costs • reduce time delays resulting from requirement to issue two notices • removes redundant and superfluous requirement to post a notice on the datum post • addresses inconsistency between mining EAs and all other EAs • addresses the uncertainty in the notification and objection requirements across the EP Act and MRA • provides greater certainty about what can be objected to under EP Act and MRA • greater certainty in the pathways that are in legislation to deal with stakeholder issues, rights of objection are a last resort and retained for high impact considerations only • Achieves greater certainty on approval timeframes • EA decision is a final decision subject only to appeal for site-specific applications for mining EAs • Submissions and right to appeal the administering authority's decision on site-specific applications for mining EAs • Land Court decision is final, subject to appeal to a higher jurisdiction, and replaces the administering authority's decision providing greater certainty for industry • Achieves established policy objectives • Achieves red-tape reduction for mining industry • Decrease in regulatory count • No impact on environment • Reduced delays and greater certainty in approval processes and lower costs result in increased investment with investment most likely to be accelerated in small scale sector which is the sector most at risk from current framework • Can amend restricted land after lodgement • Less cost for including restricted land in lease area Community • Community retain pathways and mechanisms in legislation to address issues that impact on them • Greater certainty that their appeal will not be dismissed on having no grounds for appeal • Reduced costs for community

	Current requirements	Proposed model
		• Entities that are directly impacted by the proposed lease, Local Government and relevant landholders, retain the right to object to a ML on operational issues • Community retains the right to object to high impact site-specific applications for mining EAs about the environmental conditions for small mining • Appeal on final EA rather than a draft EA so greater certainty on whether issues raised in submissions have been had regard for • Land Court findings are final decision (subject to further appeal) • No net impact on environment • Reduced delays and greater certainty in approval processes and lower costs result in increased investment • Investment most likely to be accelerated in small scale sector which is more likely to benefit small communities and remote and rural Queensland • Greater employment opportunity for local industries and tradespeople supporting small scale mining • Greater investment in mining will realise more investment in local economies and increase viability of local business and economies Government • Reduced timeframes • Reduced regulatory count • Removes duplicative and redundant provisions • Greater certainty in approval timeframes • No net impact on environment • Reduced delays and greater certainty in approval processes and lower costs result in increased investment • Investment most likely to be accelerated in small scale sector which is more likely to benefit small communities and remote and rural Queensland • Greater employment opportunity for local industries and tradespeople supporting small scale mining • Greater investment in mining will realise more investment in local economies and increase viability of local business and economies • Achieves established policy objectives • Achieves redtape reduction for mining industry and contributes to the government's targets for regulatory reform • Perception that government is listening to industry's concerns • Can amend restricted land after lodgement

Appendix 2 – Quantitative analysis

Table 1 – Projected time savings (in business days)

Below table estimates the number of business days (BD) saved under the proposed changes.

Summary of the proposed changes	ML applications with EA with either standard conditions or variations to standard conditions		ML applications with site-specific EAs	
	Current	Proposed model Estimate of the number of BD saved	Current	Proposed model Estimate of the number of BD saved
Pre-notification streamlining certificate of public notice(1)	0	Up to 5 BD	0	Up to 5 BD
Days for administering EA decision (2)	0	Approx. 25 BD	0	Approx. 25 BD
Sub total *(business days saved)*	0	Approx. 30 BD	0	Approx. 30 BD
Business days saved from changes to objection/appeals process(3)	0	Approx. 250 BD	0	Nil – no change
Maximum total business days saved under proposed model	0	Approx. 280 BD	0	Approx. 30 BD

Assumptions

1. Maximum time for issuing a certificate of public notice once certificate of application has been issued
2. Statutory time for administering authority to make a decision and then provide a notice once Land Court has made recommendations or associated with notifying a standard application or variation application EA
3. Average time for Land Court to hear an objection is estimated to be a saving of 12 months (250 BD or 50 weeks per annum)
4. Proposed model assumes that changes to the objection process (discussed in section 4.2) will yield a reduction in number of appeals due to removing third party objections to the ML, removing objections to standard or variation applications for an EA and the opportunity to settle compensation post grant of the ML.

Table 2 – Projected savings from elimination of delays for small, medium and large mines

Table estimates the possible saving in interest costs as a result of the reduction in the time to process, numbers in subscript in the table relate to assumptions.

Delay cause [1]	Current No. of days (Interest days)[2]	Interest per small mine[3] ($)	Interest per medium mine[4] ($)	Interest per large and very large mine[5] ($)	No. of interest days in proposed model (Interest days)	Interest per small mine ($)	Interest per medium mine ($)	Interest per large and very large mine ($)
Delay as a result of Certificate of Public Notice	7 (a)	476 (ax3)	1344 (ax4)	38 353 (ax5)	0	0	0	0
Decision on draft EA	35 (b)	2380 (bx3)	6720 (bx4)	191 765 (bx5)	0	0	0	0
Minimum delay application (a+b)	42 (c)	2856 (cx3)	8064 (cx4)	230 118 (cx5)	0	0	0	0
Total delay cost per year for process changes [9]	Small 3360 days (cx9) Medium 420 days (cx9) Large & very large 420 days (cx9)	228 480(d) (cx9x3)	80 640(e) (cx9x4)	2 301 180(f) ((cx9x4) +(Hx9x4))	0	0		0
		2 610 300 (d+e+f)						
Total delay cost to industry per year for appeals [12,13,14]	Small 730 days(g) (15x16) Medium 1095 days(h) (15x16) Large & very large 2920 days(i) (15x16)	49 640 (j) (gx3)	210 240(k) (hx4)	15 998 680(l) (ix5)	Small 365(q) (16x17) Medium 730(r) (16x14) Large & very large 2,555(s) (16x17)	24 820(t) (qx3)	140 160(u) (rx4)	13 998 845(v) (sx5)
		16,258,560 (j+k+l) Cumulative cost across different mine sizes				14 163 825(w) Cumulative cost over different mine sizes		
Estimated total delay cost per year per sector (process + appeals)		278,120(m) (d+j)	290,880(n) (e+k)	18 299 860 (f+l)		24 820(x)	140 160(y)	13 998 845(z)
		18 868 860(A) **(m+n+o)** Cumulative cost across small, medium and large and very large mines				**14 163 825(B)** **(x+y+z) Cumulative cost across small, medium and large mines**		
Average estimated delay cost per year per application	**188 689C)** **(A/9)**				**141 638 (D)** **(B/9)**			
Total projected savings resulting from time saved in processing					**4 705 035(E)** **(p-aa)**			
Total projected savings per application					**47 050** **(E/9) = (C-D)**			

Assumptions

1. Delay times from Appendix 2 Table 1
2. Days in Table are interest days (delay times in legislation are typically referred to in Business Days however, interest is charged 7 days a week and 365 days per year)
3. Small mine assumed to require an average of $250 000 investment at 10% per annum or $68/day
4. Medium mine assumed to require an average one million dollar investment at 7% per annum or $192/day
5. Large mine assumed to require an average $50 million investment at 4% per annum or $5479/day
6. Very large mines assumed to require investments of at least the equivalent of a large mine.
7. Very large mines assumed to require an EIS under either the EP Act (2 per year) or SDPWO Act (one per year), on average three EISs are lodged per year for very large mines
8. Assumes 97 of the ML application made per year are small, medium or large
9. Of the 100 applications 80 are small, 10 medium, seven large[38] and three are very large. This is the multiplied by the number of interest days saved (42 days).
10. Assumes on average there will be applications for three very large mines/year requiring an EIS
11. Of 100 applications per year, 90 are standard application or variation application EAs[39]
12. Small and medium mines assumed to be standard application or variation application EAs
13. Large and very large mines assumed to be site-specific application EAs
14. All applications will benefit by process savings identified in Table 5
15. Assumes average of 12 months (250 business days or 365 interest days) for Land Court to hear an objection
16. Assumes 13 applications will be objected to per year of which two are small mines, three are medium mines, eight are large mines or very large mines
17. Under the proposed reforms it is assumed the number of objections would be reduced to 10 applications per year. Approximately one objection for a small mine, two objections for a medium mines, seven objections for a large mines or very large mines
18. One EIS per year will no longer require re-notification under either the EP Act or SDPWO Act; two EIS's per year will not have to be renotified under the MRA.

[38] All numbers have been rounded for ease of calculations
[39] All numbers have been rounded for ease of calculations

Table 3 – Estimated per party costs for land court hearings

Complexity / Component	Low complexity[1]	Complex[2]	Highly Complex[3]
Solicitors	1	1	2
Solicitor prep time	10 days @ $1000/day	20 days @ $1000/day	30 days @ $1000/day
Counsel	Junior @ $3000/day	Junior @ $3000/day Senior @ $5000/day	Junior @ $3000/day Senior @ $5000/day
Counsel prep time	3 days	Junior – 6 days Senior – 2 days	Junior – 6 days Senior – 6 days
Hearing time	1 day	3 days	5 days
Estimated average cost per case per party	**$23 000**	**$75 000**	**$158 000**
Estimated total minimum cost per case[4]	**$46 000**	**$150 000**	**$316 000**
Estimated cost for multiple objector cases[5]	**$92 000**	**$300 000**	**$632 000**

Assumptions

1. Low complexity = An EA or ML issue from a single objector, based on: 10 days preparation time for a solicitor at $5000/week; junior counsel at $3000/day for three days preparation for each appeal; and a single day for each hearing for both solicitor and counsel
2. Complex = Multiple objectors objecting either EA or ML or multiple issue single objector, based on: 20 days preparation time for a solicitor at $5000/week; junior counsel at $3000/day for six days preparation; senior counsel for two days preparation; and three days for each hearing for both solicitor and counsel
3. Highly Complex = Both EA and ML objected to by multiple objectors, based on: 30 days preparation time for two solicitors at $5000/week; junior counsel at $3000/day for six days preparation; senior counsel for six days preparation and five day for each hearing for solicitors and counsel
4. Based on applicant and a single objector
5. Based on applicant and estimated average of three objectors

Table 4 – Estimated average annual Land Court costs

		Low Complexity	Complex	Highly complex	Cost per year	Saving all parties /year	Saving to industry /year	Saving to industry /year /hearing	Saving to industry /year averaged across all applications lodged
Assumptions	**A.** Number of parties per hearing when only 1 objecting party involved	2	2	0					
	B. Number of parties per hearing with more than 1 objecting party involved	0	4	4					
	C. Cost per party (from Table 7)	$23 000	$75 000	$158 000					
Current	**D.** Hearings with only 1 objecting party	2	3	0					
	E. Number of parties involved for hearings with one objecting party (A x D)	4	6	0					
	F. Hearings > 1 objecting party	0	0	8					
	G. Number of parties involved for hearings with >1 objecting party (B x F)	0	0	32					
	H. Total number of parties involved (E + G)	4	6	32					
	Cost (C x H)	**$92 000**	**$450 000**	**$5 056 000**	**$5 598 000**		**$0**	**$0**	**$0**
Proposed model	**I.** Hearings with only 1 objecting party	3	0	0					
	J. Number of parties involved for hearings with one objecting party (A x I)	6	0	0					
	K. Hearings >1 objecting party	0	2	5					
	L. Number of parties involved for hearings with > 1 objecting parties (B x K)	0	8	20					
	M. Total number of parties involved (J + L)	6	8	20					
	Cost (M x C)	**$138 000**	**$600 000**	**$3 160 000**	**$3 898 000**	**$1 700 000**	**$500 000**	**$50 000**	**$5000**
Separate Hearings	**N.** Hearings under MRA with only 1 objecting party	3	0	0					
	O. Number of parties involved for hearings under MRA with only 1 objecting party (A x N)	6	0	0					
	P. Hearings under EP Act with only 1 objecting party	0	0	0					
	Q. Number of parties involved for hearings under the EP Act with only 1 objecting party (A x P)	0	0	0					
	R. Hearings with >1 objecting party under the MRA	0	0	5					
	S. Number of parties involved for hearings under MRA > 1 objecting party (B x R)	0	0	20					
	T. Hearings under EP Act with > 1 objecting party	0	2	5					
	U. Number of parties involved for hearings under the EP Act with < 1 objecting party (B x T)	0	8	20					
	V. Total number of parties involved (N + P + R + T)	6	8	40					
	Cost (C x V)	**$138 000**	**$600 000**	**$6 320 000**	**$7 058 000**	**-$1 460 000**	**-$405 555.56**	**-$27 037**	**-$4056**

Assumptions:

- From 01 January 2009 to 30 September 2013 there were 474 applications for a ML for which there were with 64 objections. An average of 100 applications per year and 13 applications a year objected to
- Of these 100 mining proposals on average 70 are standard application or variation applications and 30 are site-specific applications
- 5 of 13 objections/year (40%) are made by a single person
- 5 of 13 objections/year (40%) are made by a person other than the landholder
- 8 of 13 objections/year (60%) are made or include someone other than the landholder
- 8 of 13 objections/year (60%) are made by or include the landholder
- 2 of 13 objections/year (17%) relate to a single Act
- 5 of 13 objections/year (42%) are standard applications or variation applications
- 8 of 13 objections/year (58%) are site-specific applications

Based on this analysis the following mix of cases is anticipated in the Land Court under each of the options.

Current:

- two single person/single Act objections one under the EP Act against standard application by the landholder and one under the MRA by someone other than the landholder- low complexity objections
- three multiple Act/single person objections by the landholder under the EP Act against standard application and MRA against the ML - complex objections
- eight multiple Act/multiple person objections under the EP Act against the EA and MRA against the ML of which:
    - one is an objection under the EP Act about a standard application EA by the landholder and an objection under the MRA against the ML by someone other than the landholder
    - two are third party objections under the MRA and EP Act against the ML and site-specific application for an EA
    - five are landholder/third party objections under the MRA and EP Act against the ML and site-specific application for an EA
    - all are highly complex objections

Proposed model (with all of the proposals implemented):

- two single person/single issue objections against a standard application for an EA and non-landholder objection against the MRA (both low complexity objections) will no longer be lodged
- one multi issue objection against a standard application for an EA by the landholder and ML (a highly complex objection) by non-landholders will no longer be lodged
- three multi Act single person (landholder) objections against the standard application for an EA under the EP Act and ML under the MRA (complex objections) will become single issue single person (low complexity objections)
- two multi Act multi third party objections against the site-specific application for an EA and ML (highly complex objections) become single Act multi person objections against the site-specific application for an EA (complex objections)

Table 5 – Application costs for lodging application to include restricted land

Process			Costs calculations			
Process	**Sector**	**Number**	**Ave Hours**	**rate**	**Outgoing costs**	**Cost**
Pre-lodgement meeting/s with Mining Registrar	Company	10	2	$108		$2160
Complete approved form	Company	10	8	$108		$8640
Proof of identify and Authority	Company	10	1	$108		$1080
Prescribed application fee	Company	10	1	$108	$3861	$39 690
Insert pegs and take coordinates	Company	10	32	$108	$5060	$39 620
Supporting maps and diagrams	Company	10	2	$108		$2160
Applicant details	Company	10	0.5	$108		$540
Proposed Initial Development Plan (IDP)	Company	10	1	$108		$1080
Proposed human, technical and financial resources for term of ML	Company	10	1	$108		$1080
Rationale for grant	Company	10	1	$108		$1080
Financial and technical capability statement	Company	10	1	$108		$1080
Infrastructure required	Company	10	1	$108		$1080
Applicant submits ML application	Company	10	3.5	$108		$3780
Receive Certificate of Application	Company	10	0.5	$108		$540
Receive Certificate of Public Notice	Company	10	0.5	$108		$540
Pay rent, security and assurance	Company	10	0.5	$108		$540
ML granted for duration justified by application	Company	10	1	$108		$1080
Cost to Industry						**$105 770**
Cost per application						**$10 577**
Cost averaged over 100 mining lease applications per year						**$1058**

Process			Costs calculations			
Process	**Sector**	**Number**	**Ave Hours**	**rate**	**Outgoing costs**	**Cost**
Pre-lodgement meeting/s with Mining Registrar to discuss tenure and application	DNRM	10	2	$73		$1460
Open application; receipt and preliminary check	DNRM	10	1	$73		$730
Checking peg locations and co-ordinates	DNRM	10	24	$73	$5060	$22 580
Initial administrative and technical assessment	DNRM	10	3	$73		$2190
Issue Certificate of Application	DNRM	10	0.5	$73		$365
Technical assessment	DNRM	10	6	$73		$4380
Request correction of deficiencies and assess	DNRM	3	6	$73		$1314
Issue Certificate of Public Notice	DNRM	10	0.5	$73		$365
Mining Registrar makes recommendation (includes preparation of report and associated briefing)	DNRM	10	2	$73		$1460
Min makes recommendation	DNRM	10	1	$73		$730
Issue invoice for rent, security and assurance	DNRM	10	0.5	$73		$365
Receipt for rent, security and assurance	DNRM	10	0.5	$73		$365
ML granted for duration justified by application	DNRM	10	1	$73		$730
Update Merlin and record management	DNRM	10	1	$73		$730
Sub total DNRM						**$37 764**
Industry Fees						**$38 610**
Total DNRM cost						**-$846**

Assumptions

10 applications per year for inclusion of restricted land within ML area and <10% of applications (estimated 1 application over a three year period would be refused)

Appendix 3 –Quantitative analysis and assumptions of tables in body of submission

Table 1 - Total industry savings per annum (replicated in body of discussion paper as Table 1)

	Advertising ($) (Appendix 3 Table 2)	Land Court ($) (Appendix 2 Table 4)	Interest ($) (Appendix 2 Table 2)	Restricted Land included in granted area ($) (Appendix 2 Table 5)	Returning to land to post notice ($) (Appendix 3 Table 3)	Total ($)
Average saving per application proposed model	2415	5000	47 050	1058	4131	**59 654**
Total savings per year proposed model	241 500	500 000	4 705 035	105 770	413 100	**5 965 405**
Savings based on sector scenarios						
Minimum saving(1)	500(2)	0	2856(3)	0	4131(4)	**7487**
Estimated saving for a typical small mine(5)	500(6)	23 000(7)	27 676(7,8,9)	0	4131(10)	**55 307**
Estimated saving for a typical medium mine(11)	2000(12)	75 000(13)	78 144(14)	0	4131(15)	**159 275**
Estimated saving for a typical large miner(16)	4650(17)	83 000 (18,19)	230 118(20)	42 308(21)	4131(22)	**364 207**

Note
The use of the terms small, medium and large in this context are used to assist in estimating cost only it is acknowledged that a particular proposal may have significant environmental impact regardless of size. This is taken into account when determining the level of notification and objection rights that may apply to an application.

Assumptions for Table 1

Minimum saving

Current situation

1) Notification of both the EA and ML applications advertised in local newspaper, interest at $68/day on investment loan of $250 000 at 10 per cent, standard application EA no objections no restricted land of concern

Proposed situation

2) No requirement to advertise
3) Saved interest for 42 days at $68/day as a result of processing time savings
4) No requirement to return to land to post a notice on datum post

Small scale miner

Current situation

5) Notification of both the EA and ML applications advertised in local newspaper, interest at $68/day on investment loan of $250 000 at 10 per cent, standard application EA objected to by landholder on compensation, no restricted land of concern

Proposed situation

6) No requirement to advertise
7) Compensation settled post grant prior to Land Court therefore no court costs and saved interest of 365 days at $68/day
8) Saved interest for 42 days at $68/day as a result of processing time savings
9) Total interest saved is 407 days at $68/day (as a result of no objection to the Land Court and processing time savings)
10) No requirement to return to land to post a notice on datum post

Mid-range mine

Current situation

11) Notification of both the EA and ML applications in regional newspaper, investment loan of $192/day on investment loan of one million dollars at seven per cent, variation application EA, objected to by landholder on compensation and EA conditions, no restricted land of concern

Proposed situation

12) No requirement to advertise
13) Nil Land Court for low complexity objection (cannot appeal standard condition and compensation settled prior to court)
14) Seven per cent interest for 407 days at $192/day (as a result of no objection to the Land Court and processing time savings)
15) No requirement to return to land to post notice

Large mine

Current situation

16) Investment loan of $50 million at four per cent interest for 42 days at $5,479/day, notification of both the EA and ML applications in a state newspaper, site-specific EA, objections by landholder on compensation and by persons other than the landowner against both EA and ML,

Proposed situation

17) Notification for site-specific EA only
18) Compensation agreed to post grant prior to Land Court
19) Reduced complexity of the Land Court hearing from highly complex to complex as only landowner and local government can object to ML
20) Four per cent interest for 42 days at $5479/day as a result of processing time savings
21) Applications for four non-contiguous areas of restricted land not required (four applications at (10 577/application).
22) No requirement to return to land to post notice

Table 2 – Indicative cost of fulfilling advertising notification obligations versus savings of reform proposals (replicated in body of discussion paper as Table 3)

	ML and EA together $ per application	Cost per year Total $	Cost of notifying site-specific application EA only $ per application	Saving for site-specific application $ per application	Saving - standard application and variation application $ per application	Estimated costs per year following reform $ per application	Estimated annual savings Total $
Local newspaper[(2)]	500 x 10	5000			500 x 10	0	5000
Regional newspaper[(3)]	2000 x 70	140 000			2000 x 70	0	140 000
State or national Newspaper[(4)]	5000 x 20	100 000	350 x 10	4650 x 10	5000 x 10	3500	96 500
Total		245 000	3500	46 500		3500	241 500
	Estimated annual saving to industry per year						241 500
	Estimated Average savings per application						2415

Specific assumptions for Table 2

1. Notification as required by the *Mineral Resources Act 1989* for a ML application and *Environmental Protection Act 1994* for a m ining Environmental Authority (EA) application
2. Estimated 10% of applications are advertised locally
3. Estimated 70% of applications are advertised regionally
4. Estimated 20% of applications are advertised in state or national newspapers.

General assumptions for Table 2

- Based on 100 applications per year of which 90% of applications are standard application or variation application EAs
- Standard application and variation application EAs are most likely, although not exclusively, to be advertised locally or regionally; 10 are advertised locally and 70 and advertised regionally and 10 are advertised in State newspapers
- All 10 site-specific applications are likely to be advertised in state or national newspapers;
- It is assumed that no applications are advertised in multiple newspapers
- Costs of advertising an EIS are not included
- Following reforms only site-specific applications not requiring an EIS will be advertised.

Table 3 – Estimated costs of travel to post notice on the datum post (replicated in body of discussion paper as Table 4)

	Quantity	Current model	Proposed model
ML applications/year	100	100(a)	100
Labour costs/hour	108	108(b)	0
Hours/person/day	8	8 (c)	0
Number of people/trip		2 (d)	0
Average days/trip		2 (e)	0
Total labour/trip (assumes 2 people, over 2 days and 8 hours per day)	108 x 8 hours x 2 people x 2 days	3456(f) (=b*c*d*e)	0
Total cost of labour 100 trips	100	345 600(g) (a*f)	0
Average Kilometres/trip	900	90 000km(h)	0
Rate/km	$0.75(i)	67 500(j) (i*h)	0
Total cost to industry/year		**413 100(k)** (g+j)	**0**
Average cost/application		**4131** (k/a)	**0**
Total saving to industry/year		**0**	**413 100**
Average saving to industry/year		**0**	**4131**

Assumptions

1. Average wage per hour for mining industry based on 6300DO005_201205 Employee Earnings and Hours, Australia, May 2012 table 1.4 full-time non-managerial adult employees, average weekly cash earnings and hours paid for industry by sex by states and territories, Queensland.
2. Motor Vehicle Allowance Directive No 14/2010, Attorney General and Minister for Industrial Relations – Automobiles 2601cc and over for employees performing official duties
3. Estimated average distance from office to mine site of 450km (900km round trip)
4. Due to work place health and safety obligations two people required to travel to remote locations
5. Due to remote locations and off road situations and work place health and safety vehicles used taken to be large four wheel drive vehicle.

Appendix 4 – flow charts for Option 1 and 3

Figure 1 – Option A current requirements

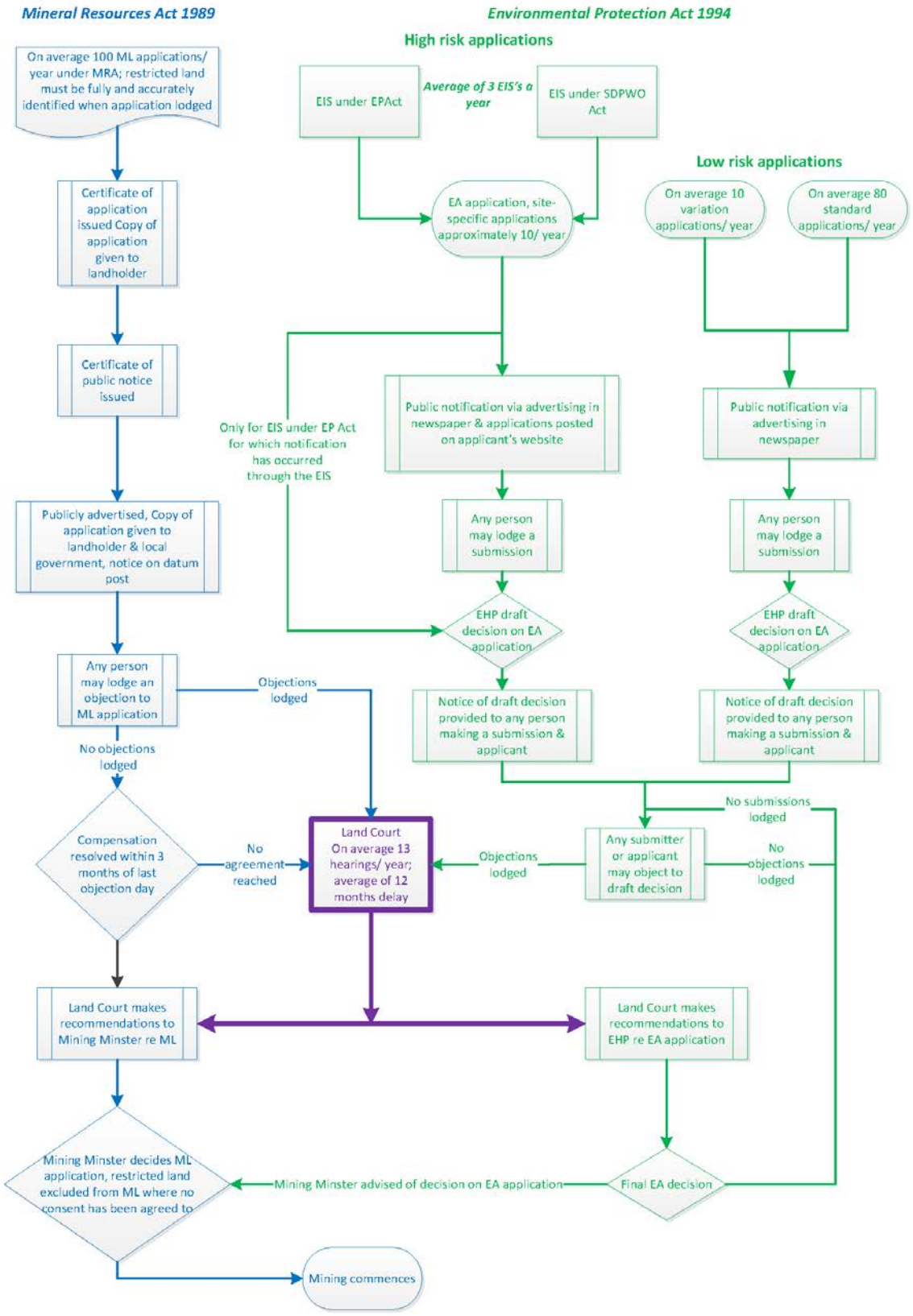

Figure 2- Option C proposed model