Dear Chair and members of the SDIIC,

Supplementary submission on the Regional Planning Interests Regulation 2014

We refer to SDIIC’s email dated 11September 2014 inviting EDO Qld to make a supplementary submission on the Regional Planning Interests Regulation 2014 (the RPI Regulation). We thank you for that opportunity. This submission mainly addresses the process for changing Strategic Environmental Area (SEA) maps declared by regulation.

Recent example evidencing the need for a transparent process for map changing

We note that since SDIIC announced an inquiry into the RPI Regulation, Queensland Country Life has reported that “Coal seam gas company QGC has applied to have the potential Strategic Cropping Land status removed from numerous deeds of land between Wandoan and Yuleba, which critics see as a deliberate act to ensure that resource projects are not under the higher environmental scrutiny required under the new Regional Planning Interests Act.”\(^1\)

Whilst QGC’s application to change the maps was made under the process of the now repealed Strategic Cropping Land Act 2011 (Qld), this clearly demonstrates the interest by and willingness of resource companies to seek to change maps to avoid being subject to the new Regional Planning Interests Act 2014 (Qld) (RPI Act), and acts as a warning to Parliament as to the seriousness of the issue.

Summary of submission

Our overall recommendation is that the RPI Regulation should be amended to require that change to SEA maps declared by a regulation should require public consultation and submission period, as well as public notification and submission rights for applications in each of the regional interest areas. This would bring SEAs declared by regulation into line with SEAs in regional plan.\(^2\)

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2 Sustainable Planning Act 2009 (Qld), s 70.
In summary, EDO Qld considers the RPI Regulation breaches the following fundamental legislative principles:

1. Failure to notify the public of RIDA applications is inconsistent with principles of natural justice;
2. It inappropriately allows a subdelegation of a power;
3. It does not allow the delegation of administrative power only in appropriate cases;
4. The provisions of the Regulation are inconsistent with the Act’s policy objectives; and
5. It makes rights and liberties dependent on administrative power without the power being sufficiently defined and subject to appropriate review.

It appears that in the process of changing the SEA maps declared by regulation, there will be no opportunity for sufficient parliamentary scrutiny of the plans for changing SEA boundaries for maps declared by regulation, if the maps can be changed on the Department’s website. EDO Qld further notes this is in marked contrast to other laws of Queensland concerning maps, which provide for transparent processes of changing maps held by the Department.3

Breach of LSA (3)(b): Failure to notify the public of RIDA applications is inconsistent with principles of natural justice

The New South Wales Independent Commission Against Corruption’s 2012 report stated that “community participation and consultation requirements also act as a counter balance to corrupt influences. The erosion of these requirements in the planning system reduces scrutiny of planning decisions and makes it easier to facilitate a corrupt decision.”4 This statement by the anti-corruption watchdog confirms the importance of community consultation and notification in planning issues and shows the potential for abuse if that right to be heard is not adhered to.

Natural justice requires that legislation should be procedurally fair and that matters affecting a person’s rights and interests be made fairly.5 The right to be heard requires that something should not be done to a person that will deprive them of some right, interest or legitimate expectation of a benefit, without the person being given an adequate opportunity to present their case.6 The issues of notification and submission are directly related to the right to be heard as they provide the system for people to have their say on resource development, especially those in rural and regional communities.7 The Regulation states that only an application for a Regional Interests Development Authority (RIDA) in a Priority Living Area (PLA) will require public notification under s.35 of the Act and thereby allowing for public submissions under s.37 of the Act.8

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3 See for example, Sustainable Planning Act 2009 and Vegetation Management Act 1999.
6 Ibid.
7 This is especially so in circumstances where the public has recently witnessed a removal of their rights to be notified about most proposed resource activities: Mineral and Energy Resources (Common Provisions) Bill 2014 (Qld); see EDO Qld’s submission on this Bill available here: http://www.parliament.qld.gov.au/documents/committees/AREC/2014/24-MinEngResBill/submissions/005-EDO.pdf (accessed 24 September 2014).
8 Regional Planning Interests Act 2014 (Qld) s 13.
This means that rural and regional communities living with the impacts of resource industries in SEAs, Priority Agricultural Areas, and Strategic Cropping Land will not be afforded the opportunity to be notified or make a submission on the grant of an RIDA in their community. This clearly inhibits community participation and makes for a less accessible system.

Overall, the right to be heard is a fundamental principle of natural justice and ensures fair and accountable decision-making. Having no clear requirements for notification or public submission on matters is a breach of the right to be heard and ultimately leads to less transparency and accountability.

**Breach of LSA (5)(e): It inappropriately allows a subdelegation of a power**

It is a fundamental legislative principle that in order for subordinate legislation to have sufficient regard to the institution of Parliament, it should only allow the subdelegation of a power delegated by an Act ‘in appropriate cases and to appropriate persons’, and ‘if authorised by an Act’.  

The RPI Act s 11 provides that SEAs are to either be shown on a regional plan map as an SEA or prescribed under regulations. Section 95 then stipulates that it is the Governor in Council who may make regulations under the RPI Act. Section 5(1) of the RPI Regulation prescribes a number of SEAs according to their respective SEA maps. Section 5(2), however, provides that those SEA maps are the maps ‘identifying the area, that is held by the department and published on its website’.

Section 5(2) RPI Regulation is effectively subdelegation. The RPI Act delegates the power to make regulations under the Act to the Governor in Council, but the RPI Regulation then purports to vest a department with the function and power of holding and maintaining the SEA maps. This is particularly problematic and of concern given that the RPI Regulation fails to prescribe any defined process for changing the SEA maps. Furthermore, the RPI Act, the principal Act, includes no reference to said department in respect of SEAs or authorisation of subdelegation. Accordingly, the purported subdelegation would not only be in breach of the fundamental legislative principles, but also the strict statutory prohibition on subdelegation without authorisation.

**Breach of LSA (3)(c): It does not allow the delegation of administrative power only in appropriate cases and to appropriate persons**

With regard to SEA maps declared by regulation, the power to amend them without public scrutiny is left with the Department and is not sufficiently defined. In order to create a transparent system, the process needs to be set out clearly within the Regulation. Otherwise the absence of a transparent process is too opaque, is open to misuse, and is contrary to the stated way the RPI Act achieves its purpose.

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9 *Legislative Standards Act 1992 (Qld) s 4(5)(e).*
10 *Acts Interpretation Act 1952 (Qld) s 27A(12).*
11 *Regional Planning Interests Act 2014 (Qld), s 3(2), which provides “…this Act provides for a transparent and accountable process…”*
Breach of LSA (5)(b): The provisions are inconsistent with policy objectives

Subordinate legislation will have sufficient regard for the institution of Parliament if it is consistent with the policy objectives of the authorising Act. In achieving its purposes, that include the identification of areas of regional interest and the giving effect of policy about matters of State interest, the RPI Act s 3(2) stipulates that it is to provide ‘a transparent and accountable process for the impact of … activities on areas of regional interest’.

The RPI Regulation cannot be said to meet the policy and statutory objective of providing a transparent and accountable process when there is not even a clear and defined process for changing or otherwise dealing with the SEA maps declared by regulation. There is real concern in the notion that the SEA maps, relied upon for identifying SEAs under the RPI Act and RPI Regulation, can be arbitrarily changed and without the transparency or scrutiny that legislation and subordinate legislation necessarily carry. It is entirely conceivable that certain parcels of land could be included on a SEA map one day, but omitted the next. Accordingly, this kind of inconsistency is undesirable and should be rectified in either the RPI Act or RPI Regulation.

Breach of LSA (3)(a): It makes rights and liberties…dependent on administrative power without the power being sufficiently defined and subject to appropriate review

As the maps are not part of a regulation and exist simply by way of reference to the Department’s website, it is not clear how changes will be made. This means that changes could occur without consultation of stakeholders and without notification to inform affected persons once changes come into effect. This clearly demonstrates that the power to change maps is not sufficiently defined in the regulation or legislation. This is not the standard approach in other legislation and may lead to the rights of individuals being infringed upon as it is unclear as to how the decision-making will be made.

Should you require any further clarification on issues raised in our submission, please contact Jo Bragg or Rana Koroglu of EDO Qld on (07) 3211 4466.

Yours faithfully,

Environmental Defenders Office (Qld)

Jo-Anne Bragg
Principal Solicitor

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12 Legislative Standards Act 1992 (Qld) s 4(5)(b).
13 Regional Planning Interests Act 2014 (Qld) s 3(1).
14 Regional Planning Interests Act 2014 (Qld) s 3(2)
16 See for example, Sustainable Planning Act 2009 and Vegetation Management Act 1999.