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Using the law to protect our environment.

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EDO Qld's recommendations on key improvements needed to resource assessment in Queensland

1. Provide meaningful post-approval Court merits appeal power for government decisions

Currently the Land Court undertakes a full merit appeal of all of the evidence on the application and the concerns of objectors, but then is only empowered to make a recommendation back to the government decision makers who make the final decision. The current process:

- wastes the benefit of having a court merit appeal process, being an impartial, unbiased forum for analysis of the evidence available to help determine the best decision. government The government can completely ignore the Land Court findings, wasting Court, government, community and industry resources.
- provides a very complex review process, whereby the Land Court decision, the decision on the environmental authority and the decision on the mining lease can all be subject to separate judicial reviews.
- is inconsistent with other approval processes, such as for urban planning decisions and petroleum and gas decisions which all have post-approval merits appeal to a court which has a determinative decision power.

2. Provide for clear and certain 'no go areas' to protect ag land, biodiversity and townships

At present in Queensland there are very few areas that resource activities are given a clear message that they cannot operate. Clearly inappropriate areas like our good quality agricultural land, areas of high biodiversity and conservation value and areas close to communities are all open to potential exploitation for resources. This wastes the resources of government, community and industry in creating uncertainty and lengthy assessments where a clear 'no' should be given from the start.

3. Clear requirements for assessment helps remove uncertainty for all stakeholders thereby greatly increasing efficiency

Big improvements could be made in environmental impact assessment to ensure proponents provide the necessary information of sufficiently high quality from the start of the assessment process. This would prevent the need for repeated requests for more information from the government. We recommend as a start:

- mandatory minimum terms of reference for more consistency and certainty in what is required in an EIS;
- stricter rules for provision of impact assessments up front rather than approvals being given without all impact assessment having been finished; and
- more resourcing for assessment units to properly assess application materials.

4. Repeal the extensive powers of the Coordinator-General to overrule all other departments and the Land Court – hindering decision making and wasting resources of all stakeholders

Transparency International recently rated the risk of industry influence in the assessment of coordinated projects (by the Coordinator General) as high. Yet currently specialist Departments and even the Land Court cannot provide for conditions that are inconsistent with Coordinator-General conditions provided for the EIS evaluation report. This is highly inappropriate, since the Land Court undertakes a full merits review with expert assistance to analysis the application material before it – often leading to better understanding of the likely impacts - after the Coordinator-General provides these conditions. It also restrains specialist experts in the Department of Environment and Science in providing conditions. This significantly limits the submissions that may be raised by the community, and the applicant's ability to suggest alternative conditions to address objector concerns or unfavourable evidence. It also significantly limits the Court in providing positive solutions through amended conditions as a result of the outcomes of an objection hearing. This is a highly inefficient, inappropriate and ineffective power that should be repealed.

***5.* Stop unlimited extensions of applications - Set maximum time periods for EIS with limited extensions and lapsing applications**

Currently a coordinated project declaration lapses if the final EIS is not accepted within 18 months, but the Coordinator General can grant unlimited extensions.[1] In practice these extensions are regularly granted.[2]

This can lead to the community consultation on the EIS preceding the mining lease and environmental authority applications by 5-10 years. The information in the EIS can then relate to very different social and economic circumstances compared with the time the project actually commences.

It also reduces the ability of the community to raise new issues that arise in the decade that may follow consultation of the EIS, because their ability to object to the ML and EA may be limited to their EIS objections. To ensure EIS consultation remains current the CG should be limited to extensions up to a maximum of 30 months from the declaration being made.

6. Improve ease of access to information to reduce inefficiencies and improve quality of assessment

Improving the ability of the community to access timely information on resource applications will improve the timeliness and quality of submissions and reduce timeframes for preparing for any appeals. Currently Right to Information (RTI) legislation is inadequate for this purpose due to considerable time lag in receiving documents requested; making it clearly unsuitable for responding in the 20-40 day timeframes provided for responding to TORs, EIS, Draft Approvals etc.

The best practice model, enshrined in the preamble to the RTI Act, is a 'push model' by which key documents are proactively published on a publicly accessible website so that all the community and industry can readily access the information without time wasted in processing RTI requests. This means everyone will have the information needed before them for more efficient and informed assessment.

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[1] SDPWOA, s27A.

[2] See for example the extensions granted to the China Stone Coal Project on 1 July 2016, 3 February 2017 and 5 July 2017. We note that the project was first applied for in 2012 and is still undergoing assessment six years later.

7. Provide extended standing in EP Act, as provided in the *Nature Conservation Act 1992* (Qld) and fed environment law

Extended standing should be provided to guarantee those working in environment related areas the right to request reasons for decisions and judicially review decisions under the *Environmental Protection Act 1994.* This would save resources of the community and government in fighting over whether an interested party is 'aggrieved' for the purposes of the *Judicial Review Act 1991*. It would also improve accountability and transparency of government decisions in resource assessment, and avoid time wasted by the Courts on challenges to standing.

Submissions close **5pm Thursday, 4 October 2018.**

Get your submission in via:

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