



INSURANCE  
CONSTRUCTION &  
ENGINEERING  
RESOURCES  
CORPORATE  
COMMERCIAL  
PROPERTY  
LITIGATION &  
DISPUTE  
RESOLUTION  
AVIATION

## Regional Planning Interests - A new layer of approval for Queensland resource projects

James Plumb, Partner  
Duncan Lomas, Solicitor

Since the implementation of the *Strategic Cropping Act 2011* (Qld) (**SCL Act**), the Queensland Government has continued to monitor the concerns of the agricultural industry and regional landholders regarding ongoing resource development. As a measure described by the Queensland Deputy Premier as 'giving more control to... landholders', the Queensland Parliament has recently passed the *Regional Planning Interests Act 2014* (Qld) (**RPI Act**). The RPI Act was passed on 20 March 2014 and will commence upon a date to be proclaimed.

The key obligation imposed by the RPI Act is to require resource companies to apply for a regional impact development approval (**RIDA**) in order to undertake resource activities in areas of regional interest (**ARI**).

The RPI Act will incorporate the key purposes of the SCL Act and will additionally define further areas of land to be protected by introducing a requirement for resource companies to obtain a RIDA before commencing resource activities. Land currently protected by the SCL Act is included as one of four ARIs as defined in the RPI Act. Accordingly, the commencement of the RPI Act will correspond with the repeal of the SCL Act.

The development of the RPI Act has progressed hand in hand with the development of new Regional Plans, which are statutory instruments created under the *Sustainable Planning Act 2009* (Qld).

Regional Plans have been developed for the areas of Central Queensland and the Darling Downs. The Queensland Government is continuing to develop Regional Plans for the areas of Cape York and South East Queensland, which are due to be completed by mid to late 2014.

The Regional Plans will serve as the primary mechanism for identifying ARIs, as the Regional Plans contain maps which identify particular ARIs. In the case of strategic cropping land (**SCL**), the SCL trigger map contained on the Department of Natural Resources and Mines website will continue to be the point of reference for determining whether an area of land might be captured within a strategic cropping area.

### Regional Impact Development Approval

The RPI Act creates an offence for any resource activity or regulated activity to be undertaken in an ARI without an RIDA.<sup>1</sup> A resource activity is defined to include any activity for which the grant of tenure is required under Queensland resources legislation.<sup>2</sup> A regulated activity is essentially an activity prescribed by regulation. At this stage, broadacre cropping is the only defined regulated activity.<sup>3</sup>

An entity which has been granted an environmental authority or tenure under the resources legislation may apply for a RIDA to undertake resource activities in an ARI.<sup>4</sup>

## Areas of Regional Interest

Under the RPI Act, there are four types of ARI:

- a. A priority agricultural area;
- b. A priority living area;
- c. A strategic cropping area; and
- d. A strategic environment area.

## Priority agricultural area (PAA)

A PAA is an area which includes one or more areas used for a priority agricultural land use (**PALU**) and which is either shown on a map in a Regional Plan or prescribed under regulation.<sup>5</sup>

The Queensland Government is continuing to develop new Regional Plans. An examination of the finalised regional plans will serve as the primary tool for identifying whether a particular parcel falls within a PAA.

At the time of tabling the Regional Planning Interests Bill 2013 (Qld) in Parliament, the Government also released the draft Regional Planning Interests Regulation 2014 (Qld) (**RPI Regulation**) for consultation. By way of example, the draft RPI Regulation declares that the Condamine Alluvium is a regionally significant water source.<sup>6</sup>

A PALU is highly productive agriculture of a type identified in a Regional Plan for an ARI or of a type prescribed under a regulation for an ARI. For example, the Darling Downs Regional Plan provides that a PALU means a land use included in clauses 3.3, 3.4, 3.5, 4 or 5.1 under the Australian Land Use Management Classification Version 7, published by the Department of Agriculture, Fisheries and Forestry.

Where an application is made for a RIDA in a PAA, an assessment will be made with reference to the PAA assessment criteria, which are contained in the draft RPI Regulation.<sup>7</sup>

The PAA assessment criteria essentially includes two parts with corresponding required outcomes for a RIDA to be granted:

- a. Required outcome 1 – **Managing impacts on use of property for PALU in PAA**: The activity will not result in a material impact on the use of a property for a PALU in a PAA; and
- b. Required outcome 2 – **Managing impacts on a region in relation to use of an area in the region for a PALU**: The activity will not result in a material impact on a region in relation to the use of an area in the region for a PALU.

In order to meet required outcome 1, the applicant will need to demonstrate either that the activity will not be conducted on land in a PAA used for a PALU or:

- a. That reasonable steps were taken to consult and negotiate with the landowner about the expected impact of the resource activities;
- b. That the activity cannot be carried out on other land in the region not used for a PALU;
- c. That the impact of the resource activity on the area used for a PALU is minimised to the greatest extent possible;

- d. That the activity will not constrain, restrict or prevent the ongoing conduct on the property of a PALU; and
- e. That the activity will not result in the loss of more than 2% of the land used for a PALU and that the activity will not result in the loss of more than 2% of the productive capacity of the PALU on the property.

In order to meet required outcome 2, the applicant will need to demonstrate that the application adequately addresses the regional outcomes and policies stated in the governing Regional Plan. In addition, the applicant must have in place a strategy relating to groundwater impacts or the management of coal seam gas water, which provide for the net replenishment of a regionally significant water source.

Further, the applicant will need to demonstrate:

- a. That reasonable steps were taken to consult and negotiate with the landowner about the expected impact of the resource activities;
- b. That the activity cannot be carried out on other land in the region not used for a PALU;
- c. That the impact of the resource activity on the area used for a PALU is minimised to the greatest extent possible;
- d. That the activities will not result in widespread or irreversible impacts on the future use of an area in the region for a PALU; and
- e. That the activity, despite any negative change in the quantity, quality or velocity of overland flow water that may occur because of the activity, will not constrain, restrict or prevent the ongoing or future use of an area in the region for a PALU.

## Priority Living Area (PLA)

For land to be within a PLA, it must be shown on a map in a Regional Plan as a PLA. Additionally, the PLA must include the existing settled area of a city, town or other community and other areas necessary or desirable:

- a. For the future growth of the existing settled area; and
- b. As a buffer between the existing or a future settled area and the potential encroachment of resource activities.<sup>8</sup>

Prior to the passage of the RPI Act, the Department of State Development, Infrastructure and Planning had released its draft PLA Assessment Criteria for consultation. The preamble provides that each PLA is mapped in a regional plan, having been determined with regard to the population of the city or town (generally above 200 residents), and the planned growth of the city or town.

For example, PLAs in the Central Queensland and Darling Downs regional plans are listed in Schedule 1 of each respective plan. Accordingly, a review of the relevant regional plan will be all that is required to determine whether land falls within a PLA and therefore constitutes an ARI.

Since the passage of the RPI Act however, the assessment criteria have been incorporated into the draft RPI Regulation.<sup>9</sup>

The governing required outcome under the RPI Regulation is that the location, nature and conduct of the activity is compatible with the planned future for the priority living area stated in a planning instrument under the *Sustainable Planning Act 2009* (Qld).<sup>10</sup>

The key emphasis as described in the RPI Regulation is that the activity must be unlikely to adversely impact on development certainty in the PLA and additionally be likely to result in community benefits and opportunities, such as financial and social benefits.

## Strategic Cropping Area (SCA)

A SCA is defined as an area shown on the SCL trigger map as strategic cropping land.<sup>11</sup> SCL is then defined as land which is likely to be highly suitable for cropping, because of a combination of the land's soil, climate and landscape features.

If land is shown as SCL on the trigger map, it will be in an ARI. The assessment criteria governing an application for an activity to be carried out on SCL are also contained in the draft RPI Regulation.<sup>12</sup> The assessment criteria specify two required outcomes:

- a. Required outcome 1 – **Managing impacts on SCL on property in the SCA:** the activity will not result in a material impact on SCL on a property in a SCA; and
- b. Required outcome 2 – **Managing impacts on SCL for a region:** the activity will not result in a material on SCL in the SCA.

Importantly, with respect to required outcome 1, the applicant may satisfy the outcome by demonstrating that the activity will not be carried out on SCL that meets the criteria for land stated in Schedule 3 of the RPI Regulation. Schedule 3 sets out a number of characteristics which the land must contain.

Otherwise, the governing criteria for assessing an application involving a SCA closely mirror those governing the assessment of an application involving a PAA. There is however an additional element relating to required outcome 1, such that the applicant must demonstrate that the activity will not have a permanent impact on more than 2% of the property. A permanent impact will be established where the SCL cannot be restored to its pre-activity condition.

In addition, with respect to required outcome 2, there is an additional element that the application demonstrates details of mitigation measures. If an approval is granted subject to mitigation conditions, the mitigation values can be discerned from the RPI Regulation.<sup>13</sup>

## Strategic environmental area (SEA)

A SEA is an area with strategic environmental value which is either shown on a map in a Regional Plan or prescribed by regulation.<sup>14</sup> The meaning of environmental value is drawn from the *Environmental Protection Act 1994* (Qld), and essentially means *inter alia*, where there is a quality or characteristic of the environment that is conducive to ecological health or public amenity.<sup>15</sup>

For example, the draft RPI Regulation declares that the Channel Country, as shown on the Channel Country trigger map, is a SEA for the purposes of the legislation.<sup>16</sup> The Channel Country trigger map is published on the website of the Department of Natural Resources and Mines.

The assessment criteria are contained in the draft RPI Regulation.<sup>17</sup> The criteria specify two required outcomes:

- a. Required outcome 1 – **Management for SEA:** the activity will not result in a material impact on an environmental

attribute of a SEA contained in an area:

- ii. if a SEA is shown on a map in a Regional Plan – identified as a management area for the SEA on the map; or
  - iii. for the Channel Country SEA – identified on the Channel Country trigger map as a management area.
- b. Required outcome 2 – **Protection area for SEA:** the activity will not result in widespread or irreversible impacts on an environmental attribute of a SEA contained in an area:
    - i. if a SEA is shown on a map in a Regional Plan – identified as a protection area for the SEA on the map; or
    - ii. for the Channel Country SEA – identified on the Channel Country trigger map as a protection area.

The governing criteria for required outcome 1 focus upon whether the application addresses the regional outcomes specified in the Regional Plan and also upon whether it is demonstrated that the potential impact upon the SEA will be minimised.

Similarly, the governing criteria for required outcome 2 focus upon whether the application addresses the regional outcomes specified in the Regional Plan and also upon whether it is demonstrated that the potential impact upon the SEA will be minimised. In addition, the application must demonstrate how the activity will not threaten an environmental attribute of the SEA at present and in the future. An environmental attribute is defined in the RPI Regulation.<sup>18</sup> and relates to natural hydrologic processes, water quality of natural sources and beneficial flooding of floodplains.

## Exemptions

The RPI Act specifies a number of exemptions to the requirement to obtain a RIDA.

## Agreement with landowner

A resource authority holder will not need a RIDA to carry out its activities within a PAA or a SCA if the authority holder has entered into either a conduct and compensation agreement (CCA) or other written agreement with the owner of the land. For the exemption to apply:

- a. The activity will not be likely to have a significant impact on the PAA or the SCA; and
  - i. in the case of a PAA, the activity is not likely to have an impact on land owned by a person other than the landholder, being an impact on the suitability of the land to be used for PALU; or
  - ii. in the case of a SCA, that the activity is not likely to have an impact on land owned by a person other than the landholder, being an impact on the land's soil, climate and landscape features that make it likely to be highly suitable for cropping.<sup>19</sup>

The exemption is therefore focused upon allowing resource companies and landholders to enter into voluntary agreements to obviate the need for a RIDA, provided the activities will not have a significant impact on the impact



land. Further, adjacent landholders that are not party to a CCA are protected to the extent that the exemption will only apply where the suitability of their land for a PALU or cropping, will not likely be impacted.

Importantly, this exemption does not apply where the resource authority holder is the owner of the land.

## Activity carried out for less than one year

An exemption will apply where the resource activity is to be carried out on a property in a PAA or SCA for no longer than one year.<sup>20</sup>

## Pre-existing resource authority

If, before the relevant land is declared to be subject to an ARI, the resource activity could be carried out lawfully on the land, the resource authority holder will not be required to apply for a RIDA.

Essentially, this exemption will be satisfied where the activity may be carried out under a resource authority or environmental authority without the need for any further authority or approval relating to the location, nature or extent of the expected surface impacts of the activity.

It should be noted that the information provided in support of the original application for the resource or environmental authority identified the location, nature and extent of the expected surface impacts on the activity.<sup>21</sup>

Slightly different considerations apply where the activity is a regulated activity, as opposed to a resource activity.<sup>22</sup>

## Application process

In passing the new Act, Government has heeded some of the concerns of industry stakeholders in the consultation process, and has implemented a set of prescribed timeframes governing the application process in order to promote industry certainty.<sup>23</sup> Further, the relevant assessment agencies who will process the applications have been identified in the draft RPI Regulation.<sup>24</sup>

It appears that depending upon the type of ARI, the assessing agencies may include the governing local council, the Department of Natural Resources and Mines and the Department of Environment and Heritage Protection.

## Penalties

Conducting resource activities without a RIDA or otherwise contravening the conditions of a RIDA may attract significant

financial penalties and even terms of imprisonment in the case of willful contravention.<sup>25</sup>

## Conclusion

While the new regime stops short of granting a veto right for impacted landholders, the RPI Act has introduced another layer of approvals for many Queensland resource projects. With the impending commencement of the RPI Act, resource companies will need to carefully examine proposed projects and those already engaged in application processes under other legislation, in order to determine whether the relevant land is captured within an ARI. It will then be necessary to carefully consider whether an exemption to the requirement for a RIDA applies.

In the interim, impacted companies can be taking additional steps to lecture executives, for example, under the pre-existing resource authority category.

<sup>1</sup> *Regional Planning Interests Act 2014* (Qld) s 19.

<sup>2</sup> *Geothermal Energy Act 2010* (Qld), *Greenhouse Gas Storage Act 2009* (Qld), *Mineral Resources Act 1989* (Qld), *Petroleum Act 1923* (Qld), *Petroleum and Gas (Production and Safety) Act 2004* (Qld).

<sup>3</sup> *Regional Planning Interests Regulation 2014* (Qld) s 6.

<sup>4</sup> *Regional Planning Interests Act 2014* (Qld) s 28.

<sup>5</sup> *Regional Planning Interests Act 2014* (Qld) s 8.

<sup>6</sup> *Regional Planning Interests Regulation 2014* (Qld) s 4.

<sup>7</sup> *Regional Planning Interests Regulation 2014* (Qld) Sch 2.

<sup>8</sup> *Regional Planning Act 2014* (Qld) s 9.

<sup>9</sup> *Regional Planning Interests Regulation 2014* (Qld) Sch 2, Part 2.

<sup>10</sup> *Regional Planning Interests Regulation 2014* (Qld) Sch 2, s 6.

<sup>11</sup> *Regional Planning Act 2014* (Qld) s 10.

<sup>12</sup> *Regional Planning Interests Regulation 2014* (Qld) Sch 2, Part 3.

<sup>13</sup> *Regional Planning Interests Regulation 2014* (Qld) s 10.

<sup>14</sup> *Regional Planning Act 2014* (Qld) s 11.

<sup>15</sup> *Environmental Protection Act 1994* (Qld) s 9.

<sup>16</sup> *Regional Planning Interests Regulation 2014* (Qld) s 5(1).

<sup>17</sup> *Regional Planning Interests Regulation 2014* (Qld) Sch. 2, Part 4.

<sup>18</sup> *Regional Planning Interests Regulation 2014* (Qld) s 5(2).

<sup>19</sup> *Regional Planning Interests Act 2014* (Qld) s 22.

<sup>20</sup> *Regional Planning Interests Act 2014* (Qld) s 23.

<sup>21</sup> *Regional Planning Interests Act 2014* (Qld) s 24.

<sup>22</sup> *Regional Planning Interests Act 2014* (Qld) s 25.

<sup>23</sup> *Regional Planning Interests Regulation 2014* (Qld) Sch 4.

<sup>24</sup> *Regional Planning Interests Regulation 2014* (Qld) Sch 1.

<sup>25</sup> *Regional Planning Interests Act 2014* (Qld) ss 19, 20.

## Authors



**James Plumb**

Partner

P: 3000 8367

E: [jplumb@carternewell.com](mailto:jplumb@carternewell.com)



**Duncan Lomas**

Solicitor

P: 3000 8397

E: [dlomas@carternewell.com](mailto:dlomas@carternewell.com)

Please note that Carter Newell collects, uses and discloses your personal information in accordance with the Australian Privacy Principles and in accordance with Carter Newell's Privacy Policy, which is available at [www.carternewell.com/legal/privacy-policy](http://www.carternewell.com/legal/privacy-policy). To tell us what you think of this newsletter, or to have your contact details updated or removed from the mailing list, please contact the Editor at [newsletters@carternewell.com](mailto:newsletters@carternewell.com). If you would like to receive newsletters electronically, please go to [www.carternewell.com](http://www.carternewell.com) and enter your details in CNJNewsletter signup.

*The material contained in this newsletter is in the nature of general comment only, and neither purports nor is intended to be advice on any particular matter. No reader should act on the basis of any matter contained in this publication without considering, and if necessary, taking appropriate professional advice upon his own particular circumstances.*

© Carter Newell Lawyers 2014

### Brisbane

Level 13, 215 Adelaide Street  
Brisbane QLD Australia 4000

Phone +61 7 3000 8300

### Sydney

Level 6, 60 Pitt Street,  
Sydney NSW Australia 2000

Phone +61 2 9241 6808

### All correspondence to:

GPO Box 2232, Brisbane QLD 4001

[www.carternewell.com](http://www.carternewell.com)

ABN 70 144 715 010

