GasFields Commission Queensland

# Review of the *Regional Planning Interests Act 2014* Assessment Process

# Report

October 2021

Updated August 2023

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# Executive Summary

The Queensland Audit Office's (QAO) performance audit report "Managing coal seam gas activities" found stakeholders have concerns with the complexity of Queensland's planning and development framework; and whether the *Regional Planning Interests Act 2014* (RPI Act) effectively manages the coexistence between coal seam gas (CSG) activities and agricultural interests. As part of this report, the QAO recommended that the GasFields Commission Queensland (the Commission) review the assessment processes associated with the RPI Act.

The scope of the Commission's review focused on:

- the assessment process and the assessment criteria used to manage the impacts of CSG activities in priority agricultural areas (PAA) and the strategic cropping areas (SCA);
- the effectiveness of the implementation of the assessment framework;
- the exemptions to the assessment process; and
- the definitions and classification of agricultural land in Queensland.

The Commission undertook targeted consultation during a four-week period in March 2021 based on the release of the Consultation Paper, "Review of the *Regional Planning Interests Act 2014* Assessment Process" (the Consultation Paper). The Commission sought submissions on the Consultation Paper from key stakeholder groups.

Submissions on the Consultation Paper delineated how the use of exemptions to the Regional Interests Development Approval process (RIDA), specifically the Exemption – land owner agreement, meant it was impossible to ascertain the extent of activities being undertaken in areas of regional interest, whether the resource authority holder complied with all the requirements under that exemption or if the land owner was aware that their Conduct and Compensation Agreement (CCA) related to matters of regional interest.

Submissions also described how industry achieved high levels of innovation that likely met or exceeded required outcomes when working in areas of regional interest. However, due to the lack of transparency, these practices were not recognised by all stakeholders as appropriately addressing impacts to areas of regional interest.

Regional Plans, specifically those which inform the prescribed solutions for priority living areas and strategic cropping areas were found to be quite generic and lacking in regionally specific details. They do not provide enough specificity to fully inform prescribed solutions and exemption criteria and may not be effective.

For those activities that are subject to the RIDA process, an applicant's ability to demonstrate meeting prescribed solutions required a level of specificity around field design that was only possible at the completion of all other planning and approval processes. This resulted in applications under the RPI Act occurring too late in the process for many stakeholders. This also led to the potential for either the real or perceived duplication in approval processes, particularly between the RPI Act and *Environmental Protection Act 1994*.

In relation to land use classifications, the Commission found that submissions were consistent across all stakeholders. The framework is complex, inconsistent and imprecise.

Based on assessment of submission, the Commission adopted six principles adopted which guided recommendations:

- maintain a focus on coexistence
- provide a greater level of transparency
- improved information and guidance
- greater commitment and accountability
- focus on directly affected stakeholders
- efficient regulatory processes.

To address these findings the Commission has made seven recommendations encompassing the following areas:

- the Exemption – agreement with land owner, be removed and replaced with a self-assessment option informed by a code and notification process to provide greater transparency and accountability to the process;
- the RIDA assessment framework would benefit from more guidance on the required outcomes for priority agriculture area and strategic cropping area informed by the reviewed Regional Plans;
- State Government should identify and task the appropriate and relevant state agency to lead a review of the agricultural land use classifications as they relate to coexistence outcomes;
- improved guidance materials to explain the function and implications of the RPI framework for land owners.

## Background

The Commission came into effect on 1 July 2013 as an independent statutory body. The objective and purpose of the Commission is to manage and improve sustainable coexistence of landholders, regional communities, and Queensland's onshore gas industry.

Under *the Gasfields Commission Act 2013* (GFCQ Act), the Commission has 14 functions[1] which compel the Commission to:

- facilitate effective stakeholder relationships, collaborations, and partnerships to support education and information sharing related to Queensland's onshore gas industry;
- review the effectiveness of the implementation of regulatory frameworks related to Queensland's onshore gas industry; and
- advise agriculture and gas industry peak bodies, government ministers and regulators, landholders and community groups on matters relating to sustainable coexistence, leading practice, and management of Queensland's onshore gas industry.

The QAO's performance audit report No. 12: 2019–20, titled "Managing coal seam gas activities" found that stakeholders have concerns with the complexity of Queensland's planning and development framework and whether the RPI Act effectively manages the coexistence between CSG exploration and agricultural interests.

[1] Section 7 GFCQ Act

Specifically, the QAO identified stakeholders were concerned about:

- the exemptions and limitations on the requirement for assessments under the framework; and
- the inconsistency of land classifications across the different Acts under the framework.

As a result of the QAO's findings, it recommended that the Commission "*reviews the assessment process identified under the Regional Planning Interests Act 2014 to determine whether the process adequately manages coal seam gas activities in areas of regional interest. This should take into consideration stakeholders' concerns about inconsistent definitions of land and exceptions to the assessment process*". The Commission agreed to this recommendation.

The Commission undertook to review and evaluate:

- the assessment process and the assessment criteria used to manage the impacts of CSG activities in priority agricultural areas (PAA) and the strategic cropping areas (SCA), as prescribed under Part 3 of the RPI Act and Schedule 2 of the *Regional Planning Interests Regulation 2014* (the RPI Regulation);
- the effectiveness of the implementation of the assessment framework under Part 3, Division 5 of the RPI Act;
- the exemptions to the assessment process as prescribed under Part 2, Division 2 of the RPI Act; and
- the definitions and classification of agricultural land in Queensland.

This report, detailing the findings of the review and recommendations to enhance the current framework, has been prepared for the relevant Minister(s) pursuant to section 7(1)(e) of the GFCQ Act.

## Regional Planning Interests Act 2014

The RPI Act identifies[2] and gives effect to the policies about matters of state interest stated in Regional Plans[3]. In doing this, the RPI Act seeks to manage the impact[4] and support the coexistence of resource activities and other regulated activities[5] in areas of regional interest. The RPI Act is supported by the RPI Regulation.

Together, the RPI Act and Regulation seek to achieve an appropriate balance between protecting priority land uses and delivering a diverse and prosperous economic future for regional Queensland. In addition, the RPI Act provides the framework for implementing various policies of the government's statutory Regional Plans.

The RPI Act protects:

- living areas in regional communities;
- high-quality agricultural areas from dislocation;
- strategic cropping areas; and
- regionally important environmental areas.

There are four areas of regional interests under the RPI Act:

[2] Section 3(1)(a) RPI Act
[3] Section 3(1)(b) RPI Act
[4] Section 3(1)(c)(i) RPI Act
[5] Section 3(1)(c)(ii) RPI Act

- a priority agricultural area (PAA)[6]
- a priority living area (PLA)[7]
- the strategic cropping area (SCA)[8]
- a strategic environmental area (SEA)[9].

Each area of regional interest is defined under the RPI Act and has been identified because of its contribution, or likely contribution to Queensland's economic, social and environmental prosperity.

Under the RPI framework, Regional Plans are intended to describe policy matters of state interest within areas of regional interest. Informed by these Regional Plans the RPI Act seeks to manage:

- the impact of resource activities and other regulated activities on areas of regional interest; and
- the coexistence, in areas of regional interest, of resource activities and regulated activities with other land uses.

A PAA is an area of regional interest because it contains one or more priority agricultural land uses. A PAA may also include other features, such as a regionally significant water source which support the priority agricultural land uses (PALU).

A PLA includes the existing settled area of a city, town or other community and other areas that are necessary or desirable to manage the future growth of the settlement and provide for an appropriate buffer between the existing or future settled area and resource activities.

The SCA is an area of regional interest because it includes land that is, or is likely to be, highly suitable for cropping because of a combination of the land's soil, climate, and landscape features.

An SEA is an area of regional interest because it contains one or more environmental attributes.

The assessment framework has an overarching intent across all areas of regional interest

"*the focus of the assessment criteria is on ensuring that both the agricultural industry and the resource industry can co-exist as much as possible without displacing the industry that we believe should have the priority in those areas, and that is the agricultural industry. That is why, of course, it is called a priority agricultural area*". [10]

## Consultation

In February 2021, the Commission undertook targeted consultation followed by the release of the Consultation Paper, "Review of the *Regional Planning Interests Act 2014* Assessment Process".

The Consultation Paper was formally provided to a range of stakeholder representative bodies and to members of the Commission's Surat Stakeholder Advisory Group, with submissions sought as part of this process.

[6] Section 8 RPI Act
[7] Section 9 RPI Act
[8] Section 10 RPI Act
[9] Section 11 RPI Act
[10] Hansard. Second Reading RPI Bill 2013, Queensland

The Commission received 23 submissions on the Consultation Paper, the majority coming from the agriculture, landholder, and community sectors (15), with three from the resources sector and five from local government authorities. In general, responses were consistent within the three groups summarised below:

| Submitter Group | Common themes expressed |
|---|---|
| Landholder, Agriculture and Community | • Does not protect PAAs/SCAs from resource activity – focus is exclusively on managing coexistence<br>• Assessment process is not transparent or accountable<br>• No government oversight or compliance of the 'self-assessment process' for exemptions<br>• Process to determine an exemption is not transparent<br>• No clear assessment of regional impact on self-assessments<br>• Very limited guidance or information relating to the assessment process available to landholders<br>• Assessment comes too late in the process<br>• Notifications of an assessment application is at the discretion of the Chief Executive of the administrating authority<br>• Notification process does not allow for public submissions (only applies to affected landholders)<br>• Submissions from the notifications process are considered at the discretion of the Chief Executive of the administrating authority. |
| Resource Industry | • Coexistence is working and the RPI Act is achieving its stated purpose<br>• Overarching view is that substantial change is not required<br>• The current exemptions are effective and efficient and steer the process towards 'agreement making'<br>• Guidance materials do not provide insight into interpretations and application of assessment criteria<br>• There is unnecessary duplication in the approvals process. |
| Local Government Authorities | • The existing RPI Act assessment framework has adequately addressed regional land use planning matters<br>• Operational advice provided by the guidelines is sufficient for stakeholders<br>• All submitters to an assessment application should have the right to appeal the decision<br>• Consider removing the 'agreement with landholder' exemption because there is the possibility that this may lead to an incomplete assessment of all the impacts from a proposed activity on PAA and/or SCA areas<br>• Require the relevant regulatory body to record and publish notice of all exempt CSG resource activities on the Queensland Government website<br>• Provide guidance material that details how the self-assessment process works specifically regarding assessing a "significant impact"<br>• A fulsome review of agricultural land use classifications that examines all aspects of the classification system and how land is used is needed. |

## Results and Analysis of Consultation

To assist with analysis and assessment of the submissions received, the Commission developed six principles which are consistent with its legislative functions. The analysis and assessment against these six principles ensured that a uniform, balanced approach was adopted when reviewing the submissions.

By using these six principles to analyse and assess the submissions, the Commission identified potential enhancements to the RPI Act's assessment framework and land classifications, which ultimately guided the Commission's seven recommendations.

### Principles

The six principles adopted by the Commission to guide recommendations are:

- maintain a focus on coexistence
- provide a greater level of transparency
- improved information and guidance
- greater commitment and accountability
- focus on directly affected stakeholders
- efficient regulatory processes.

### Maintain a focus on coexistence

The intent of the RPI Act is to identify and protect areas of Queensland that are of regional interest. In doing so, the RPI Act seeks to manage the impact and support coexistence of resource activities and other regulated activities in areas of regional interest.

The Commission, in line with its legislative remit, is focused on enhancing the potential and extent of coexistence in all areas where it is appropriate. The Commission does not seek to diminish the ability of a RIDA assessment to identify and exclude activities that are incompatible with a regional interest through an informed and transparent assessment process. However, the Commission does seek to enhance the RPI framework to protect the long-term productivity of high value agricultural land.

### Provide a greater level of transparency

The principle of transparency is a critical component of the RPI Act achieving its purpose[11]. The QAO report found that to coexist effectively, landholders and the community need confidence that the industry's behaviour is transparent, and that government will hold all parties (including the resources industry and regulators) accountable. Lack of transparency was one of the major concerns of submitters, in terms of the current function of the RIDA assessment and associated exemptions.

### Improved information and guidance

Effective implementation of the RPI framework requires all stakeholders understand their obligations and rights. The framework has the added complexity of operating within in a multilayered approval process that manages resource activities. It is of paramount importance that information and guidance is provided not only to applicants, but to stakeholders to which the framework is relevant.

The submissions the Commission received suggested that the existing RPI Act Statutory Guidelines (statutory guidelines) need to be enhanced to provide useful information to assist resource companies to navigate the

[11] Section 3(2) RPI Act

complexities of the framework. In addition, the statutory guidelines should provide detailed information that clearly describes the rights and protections afforded to the various stakeholders, specifically landholders and directly affected stakeholders.

### Greater commitment and accountability

The onshore gas industry has achieved a high level of coexistence generally when undertaking activities. In some areas of PAA and SCA this is less certain due to the lack of availability and transparency of information about development on PAAs and SCAs. Notwithstanding in areas of PAA and SCA, there have been examples of industry using innovative techniques to reduce impact genuinely and measurably on areas of regional interest.

A focus on greater commitment and accountability is expected to provide more transparency of positive coexistence outcomes and increase visibility to local communities and the public in general. Through this, it is expected that proponents and communities will be better informed by the work occurring elsewhere in areas of regional interest.

In addition, increasing visibility of the avoidance or reduction of impact to regional interests should add to the social license of industry when undertaking activities in these areas.

### Focus on directly affected stakeholders

The focus on directly affected stakeholders should be maintained. The Commission views directly affected stakeholders as those who host resource activities, as well as those who may be impacted. A specific focus on neighbouring landholders is important due to the regional nature of the interests being protected and the nature of impacts likely to be experienced.

### Efficient regulatory processes

As a general principle, aiming for efficient regulatory processes applies to all regulation. In relation to the RPI Act it applies even more so. This is due to the overlaps the RPI Act has with, to differing extents, resource, environmental, agriculture, planning and water related legislation.

Where relevant and appropriate, streamlining legislative requirements should be prioritised, particularly where additional regulatory burden may be imposed by a recommendation.

## Recommendations

Informed by the submissions made on the Consultation Paper and assessed against the six principles, the Commission has identified five recommendations to improve the RIDA assessment process and exemption criteria of the RPI Act, one for the land classifications that underpin PAA and SCA and one to improve guidance material.

### Exemption – land owner agreement

For a resource activity to occur in an area of regional interest, the resource authority holder must obtain a RIDA. However, under the RPI Act the resource authority holder may not need a RIDA if the resource activity is found to be exempt from requiring a RIDA. One of these exemptions is if the resource authority holder has:

- a CCA with the land owner other than because of the order of a court or a voluntary written agreement and the carrying out of the activity is consistent with the agreement;
- the activity is not likely to have a significant impact on the PAA or area that is in the SCA; and

- the activity is not likely to have an impact on land owned by a person other than the land owner.

The exemption to the RIDA assessment process is determined by the resource authority holder based on their own assessment of compliance with the exemption criteria. There is no requirement to notify either the administrating authority or the land owner when the exemption is being used. As a result, there is no documented evidence required to demonstrate the impact (or lack of) on the PAA or SCA or neighbouring land owner.

One of the key issues raised in submissions centred around transparency and accountability of the process, particularly in relation to the Exemption – land owner agreement. Whilst the Commission considers voluntary agreements with land owners to be a preferable outcome incentivised within the RPI Act, it also considers other aspects in relation to the wider impacts to be as equally important.

As the exemption currently stands there is little to no visibility of how resource authority holders have considered whether the activity is likely to have a significant impact on the PAA, SCA, or land owned by another person.

The current process lacks transparency as is not possible to ascertain the extent of activities being undertaken on PAA or SCA, whether the resources authority holder follows all the requirements under the exemption, or if the land owner was aware that the CCA related to a matter of regional interest.

Submissions on the Consultation Paper also highlighted some unintended consequences through the use of this exemption, which included:

- a feeling of *fait accompli* for land owners negotiating agreements
- the inability to appropriately assess activities that are partially exempt
- a lack of transparency of the impact to the regional interest.

Through their submissions, land owners detailed examples of negotiations progressing whilst other negotiations on neighbouring properties had concluded. Noting the possibility that the same negotiations may not reach agreement, thereby requiring a RIDA assessment application, concern was expressed that activities may commence on those neighbouring properties that are covered by an exemption.
This could lead to the situation where an activity partially assessed through a RIDA assessment application process, does not meet the prescribed outcomes for the PAA or SCA and therefore is not approved. However, for the same activity, where land owner agreement was reached activities are able to commence.

Where a resource activity occurs across multiple properties there are circumstances where the RPI framework becomes fragmented. Where the exemption agreement with a land owner is being used, but not taken up by every land owner, the RIDA assessment process is forced to assess the portion or property not subject to the exemption through a formal RIDA process whilst the rest is not assessed as it is exempt.

Submitters also raised concerns that as the RIDA is not connected to other approvals and can be applied for at any time, often long after the grant of the Environmental Authority (EA) and tenure. Submitters felt that this meant there was significant momentum which could influence the RIDA assessment process. Both these examples illustrate how submitters viewed the issuing of RIDA as a *fait accompli*.

Due to the nuance of what is being assessed and the overriding goal that an agreement with the land owner was the preferred method to achieve coexistence, a purely self-assessable approach (as per the current exemption) with no level of transparency or accountability is not deemed appropriate.

## RECOMMENDATION 1

**Remove** the exemption – agreement with land owner. Replace with a **self-assessment process** informed by a **code** that clearly articulates acceptable development outcomes**.**

The self-assessment process is recommended to require **notification** to the administrating authority where activity is to be undertaken in compliance with the code. Notifications should function and **be equivalent to a RIDA** with relevant information placed on a **publicly accessible register.**

In considering possible solutions to improve the transparency and accountability of the RIDA assessment process, the Commission considered other approval frameworks. Noting that there was no like for like approach that was deemed appropriate, elements from a range of assessments types were considered.

The Commission proposes that in place of the Exemption – land owner agreement, the RPI framework requires a resource authority holder:

- to **self-assess** their proposed activities against a **code**;
- **notify** the administrating authority on the range of **activities** that will be undertaken, the **lots** this applies to; and
- they **understand** and will **comply** with the **code.**

The administrating authority would be required to:

- place the **notification** on a **publicly accessible register.**

The notification on a publicly accessible register is proposed to function and be **equivalent** to a RIDA.

Recommendation 1 includes the development of a code that would provide a range of prescribed solutions and mandatory requirements. This is to ensure the activity is not likely to have a significant impact on the PAA or SCA, or on land owned by a person other than the land owner (i.e., the existing criteria associated with the exemption). This would set a clear and transparent baseline standard for development on PAAs and SCAs.

The code would need to be prescriptive and/or clear enough that a person could determine whether they are able comply without requiring further assessment by the administering authority. This could include prescriptive acceptable solutions, such as proportional impact thresholds (i.e., maximum level of impact such as the 2% threshold currently contained in the RPI Regulation), rehabilitation standards and other measures. A specific prescriptive condition in the code would need to be that a voluntary agreement or CCA is required before any activities commence.

The process would require the applicant to design their activity to comply with the code.
The Commission encourages the code development be undertaken in close consultation with all relevant stakeholders, particularly the agriculture and resource industries.

In addition, a resource authority holder would be required to engage up front and demonstrate to the land owner how they will comply with the code in relation to activities on their property. This would provide the land owner with the ability to provide details to a resource authority holder about their property and activities. This assists the resource authority holder to understand the constraints the activity may have on agricultural operations.

The self-assessment would require acknowledgment from a resource authority holder seeking to undertake the activity, that they consulted the land owner on all relevant code conditions. This means that a discussion was had that involved the resource authority holder describing:

- the range of activities that would occur on the land;
- the associated risks and impacts of those activities, including how these might impact on PAA or SCA values and related agricultural operations; and
- how the resource authority holder proposes to meet the code's relevant conditions.

The acknowledgment does not mean the land owner has approved or agreed that the resource authority holder can, will or is complying with any relevant code conditions. This acknowledgment does not replace or diminish the function of a CCA. It demonstrates that a genuine discussion occurred whereby the resource authority holder confirmed how they would approach addressing requirements of the code and the applicant's obligations under the RPI Act.

For neighbouring land owners, it is proposed that a resource authority holder would be required to notify them of the future activities occurring immediately adjacent to them. The Commission encourages this to occur in a genuine engagement, with the resource authority holder considering and where appropriate addressing any issues raised.

No assessment by the administrating authority is proposed in relation to this declaration (or any other part of the notification), however providing a false declaration will invalidate the notification. Section 19 of the RPI Act should apply when undertaking an activity without a valid notification.

Whilst the Commission acknowledges the potential increase in administrative burden, there are significant benefits in enabling earlier engagement with land owners and their neighbours, increasing the level of transparency, enabling more constructive discussions, and building trust. The ability for a land owner and their neighbours to understand how the resource activity complies with statutory requirements of the regional interest on their land can only increase opportunities for coexistence.

This approach would also provide greater certainty and clarify statutory obligations for industry. It would establish clear and easily understood regulatory standards that fill the current void of information regarding compliance. Recommendations 1 and 2 would also provide a suitable level of transparency in relation to compliance processes and guidance for the administering authority.

## RECOMMENDATION 2

When providing a notification for using the proposed self-assessment option, a resource authority holder should be required to make a **declaration** that they have **consulted** with all relevant land owners about:

- the **range** of activities that would occur on the land;
- the associated **risks** and **impacts** of those activities, including how these might affect activities the land owner is, and may in the future, undertake; and
- how those activities **meet** any relevant code conditions.

In addition, the declaration should also reflect that resource authority holders have **notified** any neighbouring land owners they are utilising the self-assessment process.

**No assessment** by the administrating authority is proposed in relation to this declaration (or any other part of the notification).

In order to uplift expectations around landholder engagement about RPI Act requirements (particularly the proposed code) the Commission believes that increased statutory requirements for landholder engagement are required.

Therefore, when providing a notification that self-assessment against a code has occurred, the Commission proposes a resource authority holder must declare they have **consulted with** any relevant land owner on how they will **comply** with the **code** in relation to activities **on the land owners property** and notified any neighbouring land owners.

A **declaration** on the notification provided to the administrating authority would be deemed appropriate to demonstrate this.

### Prescribed Solutions for PAA and SCA

The RPI Act requires resource activity in a PAA or SCA to be assessed against prescribed solutions and required outcomes(s) unless it is exempt.

For PAAs, this requires the applicant to demonstrate the activity will not have a material impact on the use of the property for a PALU, or result in a material impact on the region because of the activity's impact on the use of land in the PAA, for one or more priority agricultural land uses.

For SCAs, it requires the applicant to demonstrate the activity will not result in any impact on strategic cropping land within the SCA. Where this cannot be achieved the activity will not result in a material impact on strategic cropping land on the property and where relevant on strategic cropping land in an area within the SCA.

Both the code informing the self-assessment process as described in Recommendation 1 and the required outcomes and for PAAs or SCAs all relate to protecting and addressing the risks that are **common to both** respectively.

The self-assessment approach is intended to be the default process to facilitate appropriate gas resource activities to occur in identified PAAs and SCAs, with the full RIDA assessment process in place to allow for full application based assessments where these may be required. That is either where a voluntary agreement cannot be reached, the code conditions cannot be met by the resource authority holder or where the resource authority holder is the also the land owner.

The Commission is of the view that it is important the required outcomes sort are clear and required to be addressed whether the self-assessable process is utilised, or a full RIDA assessment is required. This would ensure that there is clear guidance as to what overall development outcomes are sought via both processes.

However, in instances where a full RIDA assessment is required, a more flexible, and outcomes focused assessment is appropriate and would provide a resource authority holder the opportunity to demonstrate additional means or methods to address the required outcomes. This is consistent with the current RIDA assessment process and 'prescribed solutions' contained in the RPI Regulation for PAAs and SCAs.

This would also enable the same activity to be assessed through a mix of assessment approaches to achieve the same development outcome.

Resource authority holders would at the time of receiving their authorities (or notifying under the code), have a clear a set of standards to assess whether their particular activity would be acceptable within an area of regional interest. Regardless of whether they require a full assessment or can utilise the self-assessment process.

This would allow, pending an agreement with the land owner or a full assessment, the resource authority holder to plan for and have a degree of certainty of being able to do the things they seek to and otherwise have approval for.

## RECOMMENDATION 3

Required outcomes for a regional interest and any related self-assessment code conditions should **address the same risks** (with the code conditions clear and prescriptive and required outcomes appropriately flexible). Thereby enabling the same activity to be assessed through a mix of assessment approaches to achieve the same development outcomes.

Within PAAs and SCAs there may be circumstances where one activity is required to be assessed using a combination of both assessment approaches. They should, wherever possible, reflect the same standards and protections for the regional interest.

There should be no code conditions associated with the self-assessment process that are not represented in some form through the required outcomes for the same regional interest.

### Regional Plans

The prescribed solutions for PAAs and SCAs under the RPI Regulation are intended to address many of the typical/generic risks associated with resource activities on agricultural land. They apply for any PAAs or SCAs across Queensland and may not capture the unique regional interests for each area. In many instances the prescribed solutions are similar to what an applicant must comply with under their EA and/or Land Access Code. There is no clear link to address the specific and unique risks associated with any one PAA or SCA.

In relation to PAAs, it is noted that the Regional Plans intended to inform prescribed solutions are not clearly articulated in the prescribed solutions under the RPI Regulation. For example, in the 2013 Darling Downs Regional Plan the following is provided in relation to PAAs.

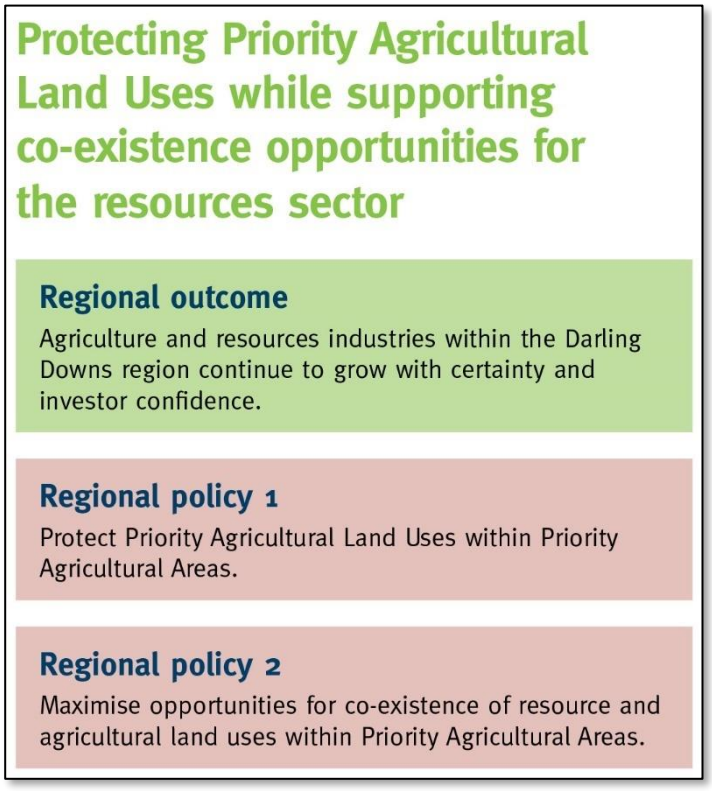


***Figure 1: Extract from the 2013 Darling Downs Regional Plan***[12]

Further expanded upon the Regional Plan is the clearly defined Regional Policy 1, PAAs, are identified in the plan and comprise the region's strategic areas containing highly productive agricultural land uses. In these areas PALU are the land use priority. PALUs within the PAA will be recognised as the primary land use and given priority over any other proposed land use.

The prescribed solutions in the RPI Regulation for PAAs do not clearly address Regional Policy 1 whilst only partially addressing Regional Policy 2. Submissions on the Consultation Paper raised the issue of the RIDA assessment process not seeking to protect PAAs.

The current relevant Regional Plans (Central Queensland and Darling Downs) play a limited role in setting policy direction or development standards in relation to the PAAs and SCAs. Given the overarching purpose of these plans is to describe matters of state interest at a regional scale, the Commission believes that there is an opportunity to better utilise the plans to explore and engage on the regional characteristics of these areas, in order to better inform state interests at the regional scale.

[12] Page 16 – 2013 Darling Downs Regional Plan

## RECOMMENDATION 4

**Regional Plans** that relate to PAAs or SCAs under the RPI Act should be **reviewed** and **updated** where required, to clearly articulate the specific risks associated with those regional areas.

The purpose of the RPI Act is to –

- identify areas of Queensland that are of regional interest because they contribute, or are likely to contribute, to Queensland's economic, social, and environmental prosperity;
- give effect to the policies about matters of state interest stated in **Regional Plans**; and
- manage, including in ways identified in **Regional Plans**—
  - the impact of resource activities and other regulated activities on areas of regional interest; and
  - the coexistence, in areas of regional interest, of resource activities and other regulated activities with other activities, including, for example, highly productive agricultural activities.

The Regional Plans for areas with PAA or SCA are important to inform how the required outcomes and prescribed solutions are articulated in the RPI Regulation. They should do this by describing objective and measurable outcomes that address the specific risks to regional areas.

### Ability to lodge RIDA assessment applications earlier

Submissions in response to the Consultation Paper described the RIDA assessment process as coming too late in the broader resource's approval process. This has reportedly led to a range of issues including perceived duplication approval considerations, potential lack of flexibility due to critical field design having already been completed and increased complexity and time taken with CCA negotiations.

The Commission found there appears to be no legislative impediment under the RPI Act to submitting and assessing a RIDA application earlier in the broader process, including immediately after obtaining a resource authority and associated EA. The Commission understands that in assessing RIDA applications the administering authority has an operational policy that requires detailed field designs including precise location (GPS points) of where specific activities will be taking place in order to progress assessment of an application. This is only possible late in the planning process for the resource authority holder.

The Commission observes that this may be due in part to how the prescribed solutions are expressed. In order to demonstrate compliance with the outcomes a high degree of certainty and specificity with field design is required. A possible solution is to only include those conditions that manage the unique and specific risks associated with the regional interest that are not managed or conditioned by another legislative instrument. Through this approach it is probable that any prescribed solutions (and in turn under the proposed self-assessment process) will be small and quite specific.

In order to facilitate earlier consideration of a RIDA, the administering authority would have to provide greater flexibility for an applicant to lodge a higher level, 'conceptual application' that would be based on development profile and footprint rather than detailed design.

Allowing an applicant to lodge a more 'conceptual' RIDA would allow for consideration and potential conditioning at a broader scale and provide an opportunity to engage with affected communities and land owners earlier in the process. It would also provide greater certainty for industry and regional communities in terms of coexistence outcomes and expected development outcomes.

## RECOMMENDATION 5

The administering authority should work alongside assessing agencies to allow **earlier** lodgement and assessment of RIDA assessment applications.

The RPI Act does not prescribe when a RIDA application may be submitted. The only prerequisite is that the resource authority holder is not exempt.

The administering authority has an **operational policy** that requires a high level of specificity on the physical location of any resource activity. This is only possible towards the end of the planning process and immediately prior to construction commencing. This potentially causes significant issues including creating a sense of inevitability and placing undue pressure on the administering authority to approve an application.

The administering authority should work alongside the assessing agencies to explore pathways that would allow earlier submission of RIDA assessment applications at a more 'conceptual' level. Ideally, this would be closer in time to when other primary approvals such as when the Resource Authority and EA are approved. This may increase opportunity to engage with communities under the RPI framework around coexistence outcomes.

### Agricultural land use classifications

Submitters to the Consultation Paper were united in their views regarding land use classifications. The current system is viewed as complex, inconsistent and imprecise.

Mapping of land classifications has been built upon over decades to address particular land use purposes, during which time the classifications have evolved into an overly complex system. Due to the range of uses or characteristics that are being mapped, across such a large area, it is not surprising the system is not accurate nor up to date in parts.

The range of uses and characteristics being mapped cover a wide remit, from very specific analytics relating to soils to other more descriptive measures like types of activity on land and other resource inputs such as water resources.

The range of layers that are represented in the mapping are informed and managed by multiple state agencies. There is no one state agency with the overarching authority to inform and manage agricultural land use classifications. Any recommendations to improve one layer should be assessed and balanced against the impact to other layers where relevant. The Commission believes a more integrated approach to classification and mapping, led by a single state agency would improve the process and produce

An important consideration raised by stakeholders was limitations around correcting inaccurate mapping. The ability to validate mapping layers, through an appropriate evidence-based approach, is deemed very important. It ensures that any obligation or restriction relating to a mapped area is appropriate and justified, as well as providing a greater level confidence amongst all stakeholders with land use classifications.

It should be noted that the scope of this review is limited to the interaction between PAAs and SCAs and the onshore gas industry. The agricultural land use classification system interacts with other forms of land use planning in the state. For the purpose of this review the recommendations have been created in relation to considering agricultural land classifications in the context of coexistence with the onshore gas industry.

## RECOMMENDATION 6

The State Government should identify and task the appropriate and relevant state agency to lead a review of the agricultural land use classifications as they relate to coexistence outcomes. This review should:

- develop guidelines to clearly articulate how land is classified;
- assess, clarify, and where appropriate consolidate mapping layers;
- incorporate a validation process for mapping layers; and
- define how these relate to the various planning frameworks.

The extent and complexity of the land use classification system is such that the Commission is not the appropriate entity to provide specific informed recommendations to improve this system. Due to the complexity and extent of the mapping a multi-agency project approach is recommended.

### Guidance Materials

The Commission also found that in relation to guidance material, whilst the administrating authority has provided clear, comprehensive and helpful guidelines for applicants and resource authority holders, other stakeholders particularly land owners were not provided the same quantity of guidance materials.

Given the potential implications of the RPI Act in relation to landholder rights, it is seen as appropriate to provide additional guidance material specifically focused on landholders and how they are likely to interact with resources authority holders in relation to the framework. The Commission believes that it could play a key role in leading or assisting the development of such materials.

## RECOMMENDATION 7

Guidelines for the RPI Act should be reviewed and updated to ensure they provide sufficient detail **for all stakeholders**. This includes providing **specific guidance for land owners** on their expected interactions with the application processes.

The RPI Act operates in a complex multilayered regulatory environment. A wide cohort of stakeholders interacts with the legislation. To achieve its intent the legislation, especially the assessment framework, must be easily understood by all stakeholders. The administrating authority has achieved this for industry stakeholders.

Land owners felt that current statutory guidance material does not address matters related to them and only focused on the applicant.

### Other observations

During the assessment of submissions and development of recommendations the Commission made observations on other potential improvements to the RPI Act.

The RPI Act allows for a range of other exemptions in addition to the Exemption – land owner agreement. These include:

- Exemption – activity carried out for less than 1 year
- Exemption – pre-existing resource activity
- Exemption – wild river area under the repealed *Wild Rivers Act 2005*
- Exemption – pre-existing regulated activity.

Whilst these exemptions were raised by submitters, as these exemptions (with the exception of the 'exemption – activities carried out for less than a year') are not exclusive to the regional interests of PAAs or SCAs it would not be appropriate to assess these and make any specific recommendations outside of a more comprehensive review that included examining other regional interests such as PLAs or SEAs.

The review identified that the term "Land Owner" under the RPI Act was not consistent with the terms "owner or occupier" of land as defined across the various resource and environmental Acts that manage gas activities in Queensland. Some stakeholders questioned whether the term Land Owner included other persons with an interest in the land, specifically lease holders.

For the purpose of clarity, the definition of Land Owner in the RPI Act has the same intent of definitions of owners and occupiers in other resource and environmental legislation. Therefore the term Land Owner in the RPI Act includes lease holders and as such, a lease holder is treated the same as a Land Owner. Consequently, a resource authority holder could not differentiate between the Land Owner and lease holder (occupier) and therefore would be afforded the same protects as a Land Owner under the RPI Act.

# Appendix 1 – Out-of-Scope Submissions

From the outset of the consultation process, the Commission has committed to capture all out-of-scope issues raised in response to the Consultation Paper. The Commission identified five out-of-scope concerns raised via the submissions.

Furthermore, the Commission committed that whilst it would not be able to deal with the out-of-scope concerns, it would ensure that the issues be communicated to the State Government in the final report. The Commission has not conducted any analysis in relation to out-of-scope concerns.

The out-of-scope issues identified by the Commission are as follows:

- **Other forms of development –** a number of submissions raised concerns that the Commission's review targets coexistence between agricultural and the onshore gas industry only. Some of the significant issues relating to the RPI Act that are out of scope for this review included:
    - protections of high-quality agricultural lands from renewable energy sector projects and urban development
    - coal mining impacts on high value agricultural land, regional communities and significant environmental areas
    - impacts of onshore gas development on significant environmental areas and urban areas
    - lack of protection for significant cultural heritage sites from resources activities
    - unmapped areas of regional significance, due to delays in regional plan reviews.

- **Broader review** – as a result of the limited scope and identified out-of-scope concerns, a number of submissions called for a broader review of the RPI Act by the State Government.

- **Mitigation Rates** – the RPI Regulations Section 16 provides monetary mitigation values for SCAs, however some submissions noted sale prices of SCAs have increased dramatically in recent years and these increases have not been reflected in the RPI Regulation. The values provided in section 16 of the RPI Regulation should be reviewed in line with current market values and an index applied moving forward.

- **New exploration land release** – clear statutory guidelines should be set for any future release of land for exploration. Areas of regional interest already subject to exploration leases should be allowed to lapse or be required to undertake a RIDA.

- **Priority Living Areas** – the inconsistent application of regulations across Queensland for the protection of townships as Priority Living Areas (PLAs) was raised as an issue. PLAs are mapped through Regional Plans, however not all Regional Plans have been updated to define PLAs for regions around Queensland. For example, the Wide Bay Burnette Regional Plan was last published in September 2011, prior to the RPI Act, and therefore has no provision for PLAs to be mapped for that region. This region includes Kingaroy which has been facing a potential mine located 6 kilometres from the town, yet this township, with a population of over 10,000 people, does not have the oversight and protection intended to be provided through the PLA mapping framework.

## Glossary

| | |
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| **CCA** | Conduct and Compensation Agreement |
| **CSG** | Coal Seam Gas |
| **DES** | Department of Environment and Science |
| **DOR** | Department of Resources |
| **EA** | Environmental Authority |
| ***Fait Accompli*** | Something that has already happened or been done and cannot be changed |
| **GFCQ Act** | *Gasfields Commission Act 2013* |
| **OGIA** | Office of Groundwater Impact Assessment |
| **PAA** | Priority Agricultural Area |
| **PALU** | Priority Agricultural Land Use |
| **PLA** | Priority Living Area |
| **QAO** | Queensland Audit Office |
| **RIDA** | Regional Interest Development Approval |
| **RPI Act** | *Regional Planning Interests Act 2014* |
| **RPI Regulation** | *Regional Planning Interests Regulation 2014* |
| **RPI Framework** | The RPI Act's assessment process, exemptions or any other related aspects |
| **SCA** | Strategic Cropping Area |
| **SEA** | Strategic Environmental Area |
| **Statutory Guidelines** | RPI Act Statutory Guidelines |
| **SSAG** | Surat Stakeholder Advisory Group |
| **The Commission** | GasFields Commission Queensland |
| **The Consultation Paper** | "Review of the *Regional Planning Interests Act 2014* Assessment Process" |

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