ISAAC REGIONAL COUNCIL SUBMISSION

REIMAGINING DECISION MAKING PROCESSES FOR QUEENSLAND MINING

Review of mining lease objections processes

Consultation Paper July 2024

ISAAC REGION

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INTRODUCTION

Isaac Regional Council (IRC) welcomes the opportunity to provide a submission to the Queensland Law Reform Commission's *Reimagining decision-making processes for Queensland Mining: Review of mining lease objections processes – consultation paper July 2024.*

Isaac is a region driven by pure people power and is the powerhouse of Queensland's economy, with a Gross Regional Product of $26.8 billion. This economic output comes from our long-standing agricultural sectors, service industries, retail, hospitality and our abundance of natural resources. Two-thirds of the Isaac Region's workforce is employed in the mining sector.

Isaac's contribution to the State's economy cannot be understated – per capita, the gross regional product of Isaac Region residents is near 12 times greater than the Queensland average.

IRC provides this submission to highlight key areas of interest and concern and as Queensland's premier Coal Region seeks to engage further on the limitations of the current regulatory context which impact the residents and communities of the Isaac LGA.

It is Isaac's lived experience current assessment processes, including those relating to Mining Leases (ML) and Environmental Authorities (EA), do not appropriately deal with the full impacts of resource consents, and that there is a dual role for local governments in both protecting the infrastructure and assets of rate payers as well as ensuring community concerns are adequately voiced in conversations regarding the impacts of mining development.

While it is recognised this review is limited to processes under the Mineral Resources Act, Council considers there is a broader systemic issue of consistency of tenure and land use consent legislation across government which should also be addressed by Government.

MAJOR CONCERNS WITH CURRENT APPROVALS PROCESSES

- requests for mining leases which do not accord with earlier Environmental Impact Statement (EIS) approval processes and provisions, or commitments made during these processes (especially projects which were approved prior to the enactment of the Strong and Sustainable Resource Communities (SSRC) Act 2017
- requests for mining leases for 'infrastructure' which can include Worker Accommodation Villages (WAVs) - which serve as a proxy for a Development Application and circumvent the Planning Act processes and as such rights for stakeholder and community participation in the planning process ultimately leading to unmanaged impacts arising from these operations.
- where the scale and duration of proposed operations do not meet the threshold to trigger an EIS process, and the provisions of the SSRC Act do not apply, there is no mechanism to compel proponents to consider social impacts, nor to engage with local government prior to that time the applicant gives public notice. The cumulative effects of numerous small scale projects triggering unmanaged impacts presents a significant risk to positive and socially sustainable outcomes in the region, and Council places an expectation on all proponents who benefit from the region's resources to deliver value beyond compliance and contribute to building a desirable future for the communities which host their operations.
- Concerns around the value placed on environmental and social impact assessment generally in mining projects, where proponents can mitigate impacts from a standpoint of 'not making a bad situation any worse' rather than contributing to a positive and socially sustainable future for the communities which host and support their operations.
- The operational burden placed on local governments in being positioned to respond to complex environmental and social impact assessment materials during limited statutory consultation windows.

KEY OPPORTUNITIES ARISING FROM REVIEW OF MINING LEASE OBJECTIONS PROCESSES

- There is a clear opportunity to align applications made under the Mineral Resources Act with other State Application processes, for example Ministerial Designations under the *Planning Act*, that the applicant be required to undertake pre-lodgement consultation with the Local Government. This could be required under Section 245 of the *Mineral Resources Act*, in which an application for the grant of a mining lease must include evidence of pre-lodgement engagement that the applicant has undertaken with the local government.

  This process would support Council to provide information relevant to the Mining Lease and Environmental Authority at the earliest possible opportunity and to assist with providing opportunity for the applicant to understand the local context of the region in which they are looking to operate.

- Integration of the object of the SSRC Act, that is '*to ensure that residents of communities in the vicinity of large resource projects benefit from the construction and operation of projects'* achieved through *'requiring owners of, or proponents for, large resource projects a) to prepare a social impact assessment for the project and b)to employ people from nearly communities and c) not to discriminate against residents from nearby communities when employing for the project*.' within MRA and EA processes would address many concerns regarding the impacts of proposed projects.

  As noted above, the cumulative effects of multiple smaller operations present the same level of impact and opportunity as those arising from a single large scale project and it is critical the community, and other stakeholders are able to participate in the process to ensure a just and equitable outcome.

- The review presents an opportunity for the consideration of the operational burden for local government in responding to applications made under the MRA and how that might be alleviated through review of statutory timeframes or additional supporting mechanisms.

- Instruments for ensuring Mining Lease applications for infrastructure such as Worker Accommodation Villages are assessed in accordance with the provisions of the Planning Act should also form a central point of this review.

DETAILED RESPONSE TO CONSULTATION QUESTIONS:

Question	IRC Commentary:
Q1 Are the guiding principles of 'fair, efficient, effective and contemporary' appropriate for reform of the current processes?	Yes provided "fair" also means "balanced" and "just", and 'streamlining' does not restrict full consideration of issues at stake, the guiding principles are appropriate.
Q2 Do you agree these are the strengths and problems of the current processes? Are there	Yes. The paper covers the known strengths and problems.

others not mentioned here which are appropriate to be considered for reform of the current processes?	
Q3 What are your views on proposal 1?	• Given the keen and increasing public interest in the future of mining in Queensland, the principles outlined at 67 reflect well the importance of public participation in any process. Council would agree that early public participation aids rather than inhibits efficiency in the process. • Restoring the Land Court's function to post-decision judicial (and merits) review is supported. • The proposal to integrate the ML and EA processes is sound, However does not necessarily guarantee a non-adversarial approach. • Given the specific focus of the review on the interests and engagement of Aboriginal and Torres Strait Islander people, the establishment of an Aboriginal and Torres Strait Islander Advisory Committee for relevant mining proposals aligns with that outcome.
Q4 What forms of participation should be included in the new participation process?	• An Open House should be held at the earliest opportunity (even pre-lodgement) by both miner and government together. If a non-adversarial approach is being sought, then an opportunity to canvass ideas before an application is even made (noting public company obligations for notifying stock markets about plans) can set the tone for the subsequent process. • Would the Community Advisory Committee or Reference Group (pg. 21) just be the democratically-elected local government? The local government might choose to involve others (or assemble a group of others) but this should be a matter for the local government. Allowing the local government to form a (public) opinion and recommend conditions on the proposal (as it does for DA's under the Planning Act) would be a useful addition to process. • Coexistence Queensland should retain the right to establish a Community Leader Coalition (avoid using the term council to not confuse it with the local government) as suggested at 100. • The right for any person or party to make written submissions to a proposal should always be retained and for the "submitter" to retain submitter rights throughout the process. • For mandatory public meetings to add value to the process, they need to be managed by government (not the applicant) and structured in a way that allows an opportunity for all to participate – not just activist views favouring or opposing the proposal.

Q5 How would removing the objections hearing affect private interests?	• The State must retain the right to determine that miners have access to the State's resources, including those contained on (or beneath) private land. • However, landholders must retain a right to have compensation determined by the Land Court as is the current case.

Q6 Should there be tailored participation processes depending on the nature of the project? If so: (a) what criteria should be used to determine different requirements for participation (for example, size, nature of risk, interest or other factors)? (b) what should be the forms of participation?	• The point made at 121 is valid about the importance of consistency to as to not confuse participants is valid, as is the prospect of an applicant "gaming the system" through a tailored process.
	• However, there is merit in establishing a process for an applicant to qualify for an "expedited" process if certain criteria are met, including volunteering public participation.
	• The criteria would be:
	  ○ Size (and value) of the proposed project.
	  ○ Scale and nature of risk (proximity to community, environmental features etc.)
	  ○ An applicant's ESG credentials (155) should be a factor in whether an expedited approval pathway is granted.

Q7 How can we ensure the new participation process is accessible and responsive to the diverse needs of communities?	• Integrating the Object of the SSRC Act with MRA processes would require proponents to undertake meaningful community engagement as part of a mandated Social Impact Assessment, which could from the basis of government led public forums which would ground-truth the findings
Q8 What are your views on proposal 2?	• A consolidated (single source of truth) online, central repository of application material and processing managed by government makes patent sense.
Q9 What additional notice and information-sharing requirements should be included in legislation as part of the new participation process?	• Direct notice requirements should be expanded to include those parties contemplated at 147 and 148.
Q10 What direct notice requirements should be included for applications for: (a) mining leases? (b) associated environmental authorities?	• If the proposal is to bring the two application streams together, then the direct notice requirements should be consistent and required to be issued to the broader number of parties identified above.

Q11 What else is required to notify Aboriginal peoples and Torres Strait Islander peoples who may have an interest in the mining proposal?	• This is likely unique to each area, but the desire to improve engagement with First Nations people should make a tailored approach mandatory.
Q12 What are your views on proposal 3?	• Yes, an Independent Expert Advisory Panel (or equivalent) should be established as part of the governance regime for assessing environmental authority applications.
Q13 What should be the criteria to form an Independent Expert Advisory Committee for an environmental authority application?	• The criteria for forming an IEAP should be those things contemplated at 172.
Q14 What are your views on proposal 4?	• Yes, the MRA should be changed to require the decision-maker to consider the outcomes of any new participation process and any recommendations from a Independent Expert Advisory Committee (or equivalent).
Q15 What are your views on proposal 5?	• Yes, the MRA should be amended to require the decision-maker to consider the rights and interests of Aboriginal and Torres Strait Islander peoples in land, culture and cultural heritage.
Q16 Should the decision-maker for the mining lease application be required to consider the decision (and reasons for decision) of the decision-maker for the environmental authority application in reaching their decision on the statutory criteria for: (a) public interest? (b) adverse environmental impact? (c) the rights and interests of Aboriginal peoples and Torres Strait Islander peoples in land, culture and cultural heritage (see proposal 5)? (d) any other criteria?	• Each of the nominated criteria a-c should be considered by the decision-maker.
Q17 Are there additional reforms to the statutory criteria under the Mineral Resources Act 1989 and the Environmental Protection Act	• The intent and specifics of the *Strong Sustainable Resource Communities Act* should be merged with the MRA and EPA processes (refer Q22).

1994 you would like us to consider?	
Q18 What are your views on proposal 6?	• Support. Refer response to Q3.
Q19 What preconditions, if any, should there be to commence combined review?	•
Q20 Should the Land Court have the power to substitute its own decision on the application or should it be required to send it back to the decision-maker?	• Under the Planning Act, the decision-maker's decision can be appealed to the Planning and Environment Court, but also "called in" by the Minister (thereby retaining ultimate elected body control). • Provided the parties have access to the Court of Appeal, the Land Court could have the power to substitute a decision with the scenario contemplated by 238 attractive. • LGAQ has a long-standing policy that elected officials should retain primacy as decision-maker in Planning Act applications. A similar principle should apply to ML grants with the Minister retaining the decision-maker role as now.
Q21 Should each party pay their own costs of the merits review or should a different rule apply?	• The "asymmetrical costs" method should be employed, recognizing that it is the respondent that has broken the inertia on the matter.
Q22 Are there any issues arising from interactions with decisions made under other Acts that we should consider?	• The Coordinator General function is rather unique to Queensland and should be retained. It remains the government's decision which projects to prescribe or declare. • The use by a miner of non-associated water should continue to be managed under the Water Act alongside other users. Likewise, the taking of "associated" groundwater should be managed englobo by the State's Water Department to ensure the sustainability of the supply. • If the local government was to be the Community Advisory Committee (pg. 21), there would be some recognition of the statutory role conferred upon the local authority (269) to make development decisions in the local interest. • The origin of the earlier iterations of the Regional Planning Interests Act was to protect good quality agricultural land from resource activity. In moving away from its origins, it has diluted its effect. • As for Q17 above, the Strong Sustainable Resource Communities Act should be more closely aligned (or merged) with the MRA and EPA.

	• The local government should be a formal part of the decision-making process and obliged (resourced by government, funded by applicant) and make recommendations to the decision-maker as contemplated at 290. • 299 noted. Samuel Review being considered by Federal Government.
Q23 What opportunities are there, if any, to integrate interacting Queensland Acts with the processes to decide mining lease and associated environmental authority applications?	• The intent of both the Strong Sustainable Resource Communities Act and Regional Planning Interests Acts should be merged with both the MLA and EPA. • The role of local government (290) to make recommendations to the decision maker should be law. • Instruments to ensure the MRA cannot circumvent the Planning Act are essential • Refer to response to Q22 about resourcing of local governments to participate in these State-led processes.
Q24 Should there be a legislated pre-lodgement process?	• Yes. These are substantial processes for significant projects. Spending some time charting a course with the regulator is small but necessary investment in time and effort.
Q25 Is there anything else you would like to tell us about the current processes?	• How does the mining lease grant process contemplate a project's end-of-life, including the preservation of community infrastructure and services. The pending sale of Anglo American assets (and transfer of ML's) to another operator with no guarantee of assignment of such public responsibilities is an example of the failure of the current system.
Q26 Are there any additional options for reform of the current processes you would like us to consider?	•