Briefing note 7 – State Development and Public Works Organisation Act 1971

Notes to the Commission

Key decisions made under the State Development and Public Works Organisation Act 1971 (SDPWO Act) that are relevant for our review are:

- the decision by the Coordinator-General (C-G) to declare a mining project a 'coordinated project', which enlivens the C-G's environmental coordination powers (relevantly, to require and coordinate the environmental impact statement (EIS) for the project)
- the decision by the C-G to impose conditions as part of the evaluation report on the EIS
- the decision by the Minister, effected by a regulation, to declare a project a 'prescribed development'
- the decision by the Minister to declare a mining project a 'prescribed project'.

Our terms of reference ask us to consider how any recommended process for deciding contested applications for mining leases (MLs) and associated environmental authorities (EAs) under the Mineral Resources Act 1989 (MRA) and the Environmental Protection Act 1994 (EP Act) would interact with decisions made under, relevantly, the SDPWO Act. The identified decisions interact in the following way:

- an EIS under the SDPWO Act is accepted as an EIS under the EP Act, with mining projects that are declared 'coordinated projects' exempt from the requirement to undergo an EIS under the EP Act[1]
- conditions imposed by the C-G as part of the evaluation report on the EIS apply to the ML, EA and Progressive Rehabilitation and Closure Plan (PRCP) schedule and take precedence over inconsistent conditions[2]
- for prescribed developments, the C-G has power to prepare infrastructure coordination plans and make decisions about the project[3]
- for prescribed projects, the C-G has power to manage decision-making processes and timeframes and step into the shoes of the decision-maker for the EA.[4]

This briefing note explores these interactions to identify key issues and reform options. It has been developed on the basis that recommending reform to the SDPWO Act is outside the scope of this review. The issues and options included are those identified as falling within the processes under the MRA and EP Act. It is a matter for the Commission to consider the extent to which it may make recommendations for changes to the MRA and EP Act that would impact the scheme established under the SDPWO Act.

The SDPWO Act gives the C-G strong powers in relation to significant projects, including mining projects, in Queensland. The original intent was to encourage development and the creation of jobs in post-Depression times. This has evolved over time, with the role of the C-G increasingly focussing

on promoting economic and social development while managing environmental impacts. The C-G's broad powers under the SDPWO Act reflect the focus of the role on economic and social development.[5]

As significant mining projects in Queensland are declared coordinated projects, the implications of decisions under the SDPWO Act for the process we recommend are significant. Paradoxically, and importantly, a relevant consideration for the C-G in deciding to declare a project a coordinated project is that it has significant environmental effects.[6] Similarly, coordinated projects found to impact 'matters of national environmental significance' assessed under the bilateral agreement between the Commonwealth and State Governments undergo environmental impact assessment under the SDPWO Act. In both cases, this has the effect of exempting the project from the EIS process under the EP Act, which has objectives and principles which focus on environmental protection (the SDPWO Act does not).

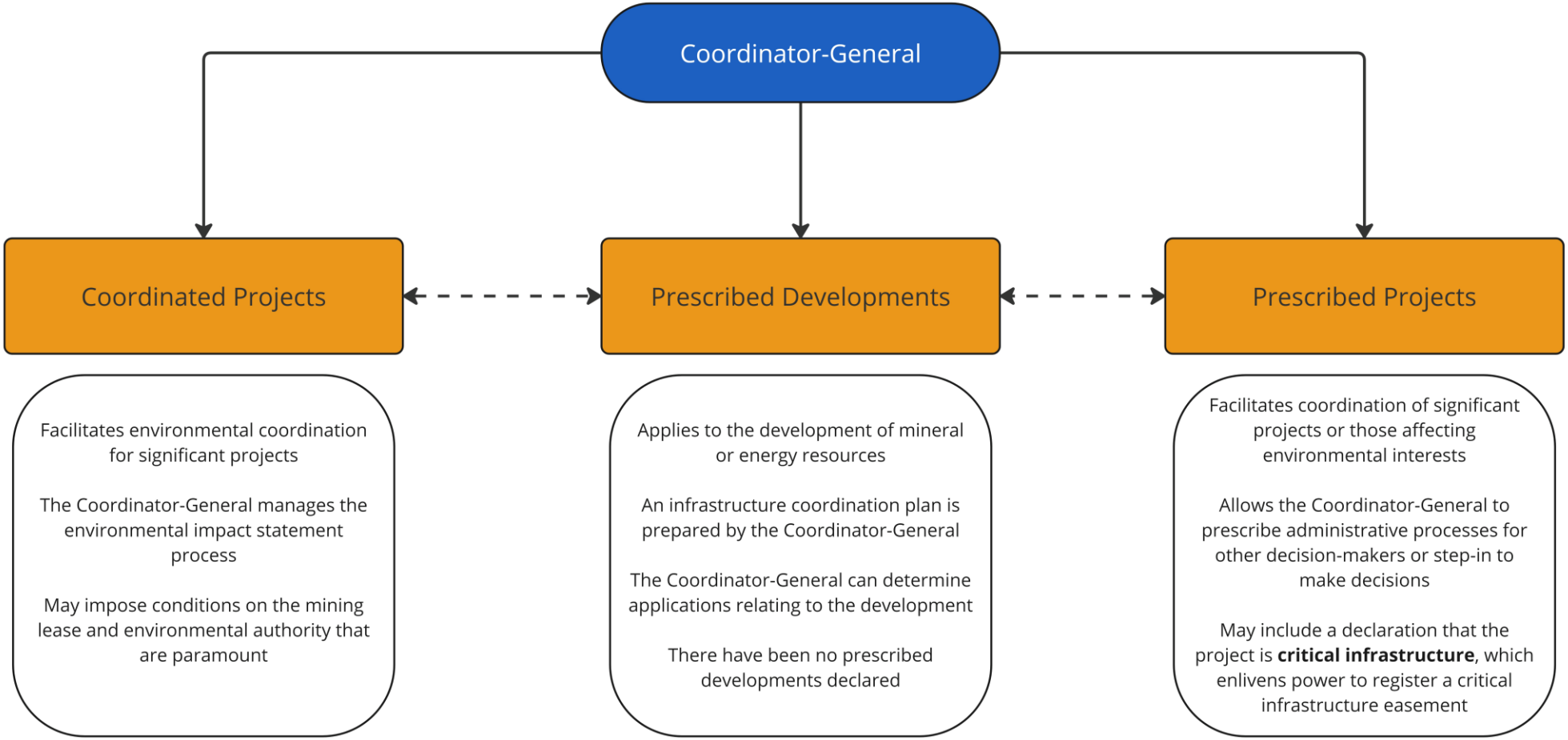
While the size of large mining projects is decreasing (attributed to a decline in the establishment of new coal mines and an increase in the number of critical minerals projects), some stakeholders have forecast that this will not result in a decrease in the number of mining projects declared coordinated projects. To the contrary, the risks and complexities of new technologies and brownfield mining associated with critical minerals mining has been anticipated to see an increasing number of critical mineral mines declared coordinated projects.

We recognise that our understanding of relevant issues will necessarily expand and develop throughout the review.

Overview of current law

Under the SDPWO Act, the C-G has power to coordinate various projects of State significance, including mining projects.

Table 1: The Coordinator-General's functions that may apply to mining projects



Coordinated projects

By declaring a mining project a 'coordinated project', the C-G assumes power to coordinate the environmental impact assessment of the project.

The C-G may (on his own initiative or following application by the proponent)[7] declare a project a 'coordinated project' if it has one or more of the following characteristics:[8]

- complex approval requirements imposed by local, State or Commonwealth governments
- strategic significance to a locality, region or the State, including for the infrastructure, economic and social benefits, capital investment or employment opportunities it may provide
- significant environmental effects
- significant infrastructure requirements.

In making a declaration decision, the C-G must have regard to:[9]

- detailed information about the project given by the proponent in an initial advice statement
- relevant planning schemes or policy frameworks of a local government, the State or the Commonwealth
- relevant State policies and Government priorities
- a pre-feasibility assessment of the project, including how it satisfies an identified need or demand
- the capacity of the proponent to undertake and complete the EIS or impact assessment report (IAR) for the project
- any other matter considered relevant.

While the C-G is empowered to declare a coordinated project as one requiring an EIS or an IAR, major mining projects are usually determined to require an EIS due to their size and risk (to date, no mining projects have been assessed through the IAR process).[10]

The C-G manages the EIS assessment process, which includes the social impact assessment under the Strong and Sustainable Resource Communities Act 2017 (the objectives of which are to ensure residents of communities in the vicinity of large resource projects benefit from their construction and operation).[11] At the conclusion of the EIS process, the C-G must prepare a report evaluating the EIS which, while not an approval in itself, can state conditions for the ML, EA and PRCP schedule.[12] These conditions apply to the ML, EA and any PRCP Schedule and take precedence over conditions in those documents to the extent of any inconsistency.[13]

Table 2: Approval of EISs and EAs pursuant to the EP Act and SDPWO Act

Prescribed developments

Projects for the development of mineral or energy resources (or for the processing or handling of such resources) can be declared 'prescribed developments' under Part 5 of the SDPWO Act.

The criteria for the investigation of a development are that:

- the development will be of major economic significance to the State or
- the provision of infrastructure for the proposal would place an excessive financial burden on the State or significantly affect the State or local body's ability to provide services and facilities.[14]

Prescribed developments are declared by regulation.[15] The declaration of a prescribed development vests the C-G with power to decide applications relating to the project.[16]

While this Part is not used,[17] the potential for decisions made under this Part to impact the process for deciding contested applications for MLs and associated EAs remains.

Prescribed projects

Mining projects that are assessed as of significance, particularly economically and socially, to Queensland or to a region or that affect an environmental interest of the State or a region can be declared 'prescribed projects' by the Minister.[18] A mining project can be declared both a coordinated project and a prescribed project.[19]

In deciding whether to declare a prescribed project the Minister may consider:[20]

- the public interest,
- potential environmental effects
- other matters considered relevant.

Once declared, the C-G has power to coordinate, intervene in and manage the decision-making process for the project, including by:

- issuing a progression notice, requiring decision-makers to progress administrative processes
- issuing a notice to decide, requiring decision-makers to make decisions within a stated timeframe or
- issuing, with the Minister's approval, a 'step in' notice and assuming the decision-maker's powers to make a particular assessment and decision.[21]

A decision on an EA application can be declared a prescribed project.[22] Decisions required to be made by the Governor in Council or a Minister are excluded from the prescribed project legislation, so decisions on MLs are excluded from this process.[23]

The Minister can also declare a prescribed projects a 'critical infrastructure project', if the Minister considers the project is critical or essential for the State for economic, environmental or social reasons.[24] This declaration creates the power for critical infrastructure easements to be registered over land already subject to a public utility easement, removing the right for landowners to object to their resumption.[25]

Issues identified

The overarching issue identified with the interaction of the process for deciding contested applications for MLs and associated EAs with decisions made under the SDPWO Act is the largely unfettered nature of the C-G's power under the SDPWO Act. This power manifests as follows:

- conditions set by the C-G override other conditions, including by:
    - fettering the Minister's power in deciding the ML application
    - binding the chief executive of the Department of Environment, Science and Innovation in deciding the EA application
    - limiting the Land Court's power to impose conditions attached to a recommendation to grant an authority.
- decisions made by the C-G are not subject to judicial review.

Issue	Details for consideration	Stakeholder	Commissioner notes
Assessment of environmental impacts of coordinated projects	**There are procedural and substantive concerns with EISs under the SDPWO Act which supplant the EIS requirement in the EP Act, compromising the integrity and standard of the EA application:** An EIS under the SDPWO Act is accepted as an EIS under the EP Act, with mining projects that are declared 'coordinated projects' exempt from the requirement to undergo an EIS under the EP Act. Academics, environmental organisations and the Government note the different focus and purposes of the SDPWO Act and the EP Act. Academics note that the Department of State Development's key strategic objectives focus on economic development, investment promotion, growth and job creation and raise concerns about this	Academics, Government, Environmental organisations, Landholders, Community	

Issue	Details for consideration	Stakeholder	Commissioner notes
	substitution, which can create a conflict of interest in the C-G's management of environmental approvals.[26] Concerns are also raised about the rigour, transparency and consistency of EISs managed by the C-G, with environmental, community, academic and landholder stakeholders noting the following concerns: • the lack of a legal framework guiding the C-G's decisions about EISs (the SDPWO Act does not contain an objects clause and does not prescribe statutory criteria for decision-making, only prescribing what the C-G must have *regard* to), coupled with a lack of environmental focus and expertise and the lack of differentiation in the statutory framework between environmental protection and infrastructure and development planning. (This is contrasted with the clear objects, criteria and legal framework for decisions by the Department of Environment, Science and Innovation) • lack of transparency regarding information that is the basis for decisions by the C-G • significant 'political' discretion of the C-G, notably in relation to whether to publicly notify the terms of reference for an EIS for the project, whether to seek information to assist in the preparation of the EIS and whether to evaluate the environmental effects of the project in evaluating the EIS, which is identified as creating vulnerability for corruption[27] • limited independent review of the scientific modelling used in EISs managed by the C-G • the closed nature of decisions by the C-G and that the C-G is not a statutory party to Land Court proceedings, creating challenges with questioning decisions and decision-making processes • a lack of merits review and judicial review of the C-G's decisions		

Issue	Details for consideration	Stakeholder	Commissioner notes
	Academics and environmental organisations also contend that there is, or is the risk of, regulatory capture of the C-G by the mining industry.[28] Industry stakeholders have expressed that they highly value the role played by the C-G and consider the C-G very helpful. The declaration of a coordinated project is openly celebrated and described as a 'fast track to approval' in industry news and publications.[29]		
	Different processes for EISs under different Acts creates complexity: Environmental organisations point to significant differences between the processes for environmental impact assessments under the EP Act and the SDPWO Act, which they say disadvantages landholders and communities grappling with complex information.	Environmental organisations	
	The timing of decisions by the C-G can create delay and uncertainty for the EP Act assessment process: The SDPWO Act provides that a coordinated project declaration lapses if the final EIS is not accepted within 18 months, but the Coordinator General can grant unlimited extensions. Legal professionals and environmental organisations note that in practice these extensions are regularly granted. This can lead to the community consultation on the EIS preceding the ML and EA applications by 5 to 10 years. Accordingly, the EIS can be based on very different and dated social, economic and environmental information by the time the project commences. It also reduces the community's ability to raise contemporary issues, because their ability to object to the ML and EA may be limited to their EIS objections. Legal professionals point to the challenges with coordination they experience, noting that major protects declared coordinated projects 'are not that coordinated', creating delay and uncertainty.	Environmental organisations, Legal professionals	

Issue	Details for consideration	Stakeholder	Commissioner notes
Impact on decision-making and review	**Conditions imposed by the C-G fetter the Minister's decision-making power:** Fundamental democratic concerns arise with the fettering of the Minister's decision-making powers that results from the C-G's power to state conditions in the evaluation report for the EIS that are binding (rather than recommendatory) on the Minister in making the final administrative decision on the ML application. Government, landholder, environmental and community stakeholders raise concerns about the C-G's unfettered power to impose conditions that bind decision-makers and take precedence over other conditions to the extent of any inconsistency in this way.	Government, Landholders, Environmental organisations, Community	
	Conditions imposed by the C-G (stated in the evaluation report for the EIS) for the ML and EA may be inferior and dated by the time those authorities are merits assessed and finally decided: Government, landholder, environmental and community stakeholders note concerns that the C-G's conditions may be developed early in the application process, unsupported by a rigorous assessment process (as noted above) and exempt from thorough consideration and interrogation through the merits assessment process, including through expert evidence. A related issue is that this exemption prevents objections on conditions imposed by the C-G, limiting the scope of public participation and restricting the proponent's ability to develop amended or additional conditions in response to concerns raised by objectors. Environmental organisations consider the Land Court to be in a better position to determine appropriate conditions than the C-G. Concerns with the constraints that flow from the "inconsistency test" have also been noted by the Productivity Commission[30] and by the Land Court.[31] The extent of consistency or inconsistency with C-G	Environmental organisations, Community, Landholders, Government	

Issue	Details for consideration	Stakeholder	Commissioner notes
	conditions has been the subject of complexity and judicial review proceedings, protracting resolution of applications. Significant time can pass from the C-G's decision-making process and evaluation and the mining objections hearing and decisions.[32] There can be changes to relevant laws and policies in that time.[33] Difficulties can arise when there is a significant passage of time between the C-G's environmental impact assessment and the environmental assessment by the Department of Environment, Science and Innovation, with the conditions imposed by the C-G "suffer[ing] from the time lag" yet not open to challenge by the time of the final decision.		
	Concerns with compliance and enforceability of conditions imposed by the C-G on the ML and EA: The Government has raised concerns about the enforceability of conditions imposed by the C-G, notably ESG conditions, particularly in the context of a mining life cycle that is significantly longer than the life span of the decision. They note that the Strong and Sustainable Resource Communities Act 2017 was intended to address this issue in the contemporary space, yet question the link between the legislation and the mining approval process.	Government	
	Restrictions on judicial review of decisions by the C-G: The SDPWO Act contains privative clauses restricting judicial review of decisions, action or conduct by the C-G under Part 4 (environmental coordination) and Part 5A (prescribed projects),[34] notwithstanding that the decisions by the final decision-makers are subject to judicial review. While the better view is that this does not remove the Supreme Court's jurisdiction for jurisdictional error,[35] the restrictions on judicial review in the legislation, coupled with the practical barriers and complexities associated with bringing judicial review proceedings	Academics, Environmental organisations	

Issue	Details for consideration	Stakeholder	Commissioner notes
	where standing is in question (see briefing note 6) have the effect of limiting the accountability and transparency of decisions by the C-G. Academics have noted that other Australian jurisdictions don't have equivalent privative clauses. It is also noted that these clauses are inconsistent with fundamental legislative principles (defined in the Legislative Standards Act 1992 as the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'), as the inclusion of a provision that effectively removes the right to judicial review of decisions is inconsistent with the principles of natural justice.[36]		

Options

- Introduce a threshold that must be met for projects declared Coordinated Projects to be exempt from the requirement to obtain an EIS under the EP Act.
- Introduce an independent process for verification of the EIS and modelling systems used, with independent scientific review and input built into the process to support greater integrity, rigour and certainty
- Designate the Minister, rather than the chief executive, as the decision-maker for the EA.
- Reform the EP Act to remove the inconsistent conditions provision.[37] While the SDPWO Act provides for the C-G to state conditions for the EA and requires the C-G to give the Minister a copy of the report, it does not contain an override power.[38] The situation is different for MLs however, the SDPWO Act gives the C-G's conditions override power over the conditions in a ML.[39]

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1 *State Development and Public Works Organisation Act 1971* (Qld) ss 50, 51.

2 *State Development and Public Works Organisation Act 1971* (Qld) ss 34D, 45, 47B, 47C. See also: Queensland Government, 'A guide to the key functions of the Coordinator-General', March 2020 A guide to key functions of the Coordinator-General (statedevelopment.qld.gov.au). This is subject to specific exceptions.

3 *State Development and Public Works Organisation Act 1971* (Qld) ss 67, 72.

4 *State Development and Public Works Organisation Act 1971* (Qld) Part 5A.

5 Queensland Government, Coordinator-General, https://www.statedevelopment.qld.gov.au/coordinator-general, 18 January 2024.

6 *State Development and Public Works Organisation Act 1971* (Qld) s 26(1).

7 *State Development and Public Works Organisation Act 1971* (Qld), s 27AA.

8 *State Development and Public Works Organisation Act 1971* (Qld) s 27(2)(b). See also: Queensland Government, 'A guide to the key functions of the Coordinator-General', March 2020 A guide to key functions of the Coordinator-General (statedevelopment.qld.gov.au).

9 *State Development and Public Works Organisation Act 1971* (Qld) s 27; Queensland Government, 'Coordinated projects', 16 March 2023 https://www.statedevelopment.qld.gov.au/coordinator-general/assessments-and-approvals/coordinated-projects.

10 *State Development and Public Works Organisation Act 1971* (Qld) s 26; Transparency International Australia, 'Environmental Impact Statement Process Map QLD', 4 February 2021 https://transparency.org.au/wp-content/uploads/2021/02/QLD-EIS_Process_V2.6_4-Feb-2021.pdf.

11 *Strong and Sustainable Resource Communities Act 2017* (Qld) s 3. Note that under this Act, social impact assessments are required for all large resource projects subject to an EIS under either the *State Development and Public Works Organisation Act 1971* (Qld) or the *Environmental Protection Act 1994* (Qld): *Strong and Sustainable Resource Communities Act 2017* (Qld) ss 9, 10.

12 *State Development and Public Works Organisation Act 1971* (Qld) ss 34D, 45, 47B, 47C. See also: Queensland Government, 'A guide to the key functions of the Coordinator-General', March 2020 A guide to key functions of the Coordinator-General (statedevelopment.qld.gov.au).

13 *State Development and Public Works Organisation Act 1971* (Qld) ss 34D, 45, 47B, 47C. See also: Queensland Government, 'A guide to the key functions of the Coordinator-General', March 2020 A guide to key functions of the Coordinator-General (statedevelopment.qld.gov.au).

14 *State Development and Public Works Organisation Act 1971* (Qld) s 54.

15 *State Development and Public Works Organisation Act 1971* (Qld) s 57(2).

16 *State Development and Public Works Organisation Act 1971* (Qld) ss 67, 72.

17 *State Development and Public Works Organisation Act Amendment Act 1981* (Qld). The Coordinator-General's website states that no prescribed development declarations have been made: https://www.statedevelopment.qld.gov.au/coordinator-general/project-facilitation/prescribed-developments. However, Minnery suggests that one prescribed development declaration was been made in 1982: Minnery J, 'Planning Joh's way via prescribed developments', August/September 1983, Australian Planner.

18 *State Development and Public Works Organisation Act 1971* (Qld) s 76E.

19 *State Development and Public Works Organisation Act 1971* (Qld) s 76E(1)(d).

20 *State Development and Public Works Organisation Act 1971* (Qld) s 76E(2).

21 *State Development and Public Works Organisation Act 1971* (Qld) Part 5A, Div 3.

22 *State Development and Public Works Organisation Act 1971* (Qld) s 76D, definition of 'prescribed decision'.

23 *State Development and Public Works Organisation Act 1971* (Qld) s 76D, definition of 'prescribed decision'.

24 *State Development and Public Works Organisation Act 1971* (Qld) s 76E(4).

25 *State Development and Public Works Organisation Act 1971* (Qld) Part 6 Div 8.

26 The objective of the *Environmental Protection Act 1994* (Qld) is to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends (ecologically sustainable development): see s 3. Section 4 prescribes phases for the achievement of the objective. The *State Development and Public Works Organisation Act 1971* (Qld) does not state an objective. In the absence of a preamble, objects or purpose clause in the SDPWO Act, the long title can be used to define the purpose of the Act: *Amatek Ltd v Googoorewon Pty Ltd* [1993] HCA 16; (1993) 176 CLR 471 at 477. The long title ('An act to provide for State planning and development through a coordinated system of public works organisation, for environmental coordination, and for related purposes'), was amended in 1978 by the State and Regional Planning and

Development, Public Works Organization and Environmental Control Act Amendment Act 1978. Prior to its amendment, the long title referred to 'environmental controls', rather than 'environmental coordination'.

27 *State Development and Public Works Organisation Act 1971* (Qld) ss 29(1)(b), 31, 34D(3)(a). See Transparency International Australia, *Corruption Risks: Mining Approvals in Australia: Mining for Sustainable Development Programme*, October 2017, 32-3.

28 Regulatory capture is the theory that a regulator and the industry it regulates build working relationships that have the potential to lead to the regulator becoming unwilling to perform its compliance tasks diligently and impartially in respect of the entities so as to avoid jeopardising those relationships: Queensland Ombudsman (2007) *Tips and Traps for Regulators*, 63.

29 This has been openly reported in industry news and publications. See for example the media following the declaration that the Metallica Minerals' Cape Flattery Silica project as a coordinated project, with Industry representatives stating that the project had 'won' coordinated project status, that the declaration was 'hailed as signifying strong support from the Queensland Government' and that they are 'very pleased to have been declared a coordinated project': IQ Industry News, 'Coordinated project status for Cape Flattery Silica', 15 December 2023, https://industryqld.com.au/coordinated-project-status-for-cape-flattery-silica/. Australian Mining Monthly, 'Cape Flattery on fast track to approval' 15 December 2023, https://www.miningmonthly.com/management/news/1463235/cape-flattery-fast-track-approval. See also: Cape York Weekly, 'Coordinated celebration for Cape Flattery silica project', 26 January 2024, https://capeyorkweekly.com.au/coordinated-celebration-for-cape-flattery-silica-project/7701/.

30 Productivity Commission, Resources Sector Regulation, 2014, 186 https://www.pc.gov.au/inquiries/completed/resources/report/resources.pdf.

31 See for example *New Acland Coal Pty Ltd v Ashman & Ors and Chief Executive, Department of Environment and Heritage Protection (No. 4)* [2017] QLC 24 at [191], cited in *New Acland Coal Pty Ltd v Smith & Ors* [2018] QSC 88 at [319]. In the latter case, Bowskill J (as she then was) made some observations about the effect of the inconsistency test: *New Acland Coal Pty Ltd v Smith & Ors* [2018] QSC 88 at [322] – [330].

32 For an example involving an extended timeframe, see *Oakey Coal Action Alliance Inc v New Acland Coal Pty Ltd & Ors* [2019] QCA 184 from [9]. In that case, the Coordinator-General declared the proposed mine a 'coordinated project' in May 2007. A draft EIS was initially produced in 2009, but the proposal was subsequently modified and a modified draft EIS was released for public comment in early 2014. The Coordinator-General invited public comment in August 2014 and published his report in December 2014. The applications for the ML and associated EA were referred to the Land Court in October 2015. The Land Court hearing commenced in March 2016. The Land Court hearing was reopened in February 2017 following an application from New Acland to tender further evidence and further evidence was received in April 2017. Judgment was given in May 2017 recommending that the Minister reject the ML application. New Acland applied for judicial review of this decision and the judicial review application was heard in May 2018. It was appealed to the Court of Appeal and heard in February and March 2019.

33 *New Acland Coal Pty Ltd v Ashman & Ors and Chief Executive, Department of Environment and Heritage Protection (No. 4)* [2017] QLC 24 per Member Smith.

34 *State Development and Public Works Organisation Act 1971* (Qld) ss 27AD, 76W.

35 This was the view taken by Applegarth J in *Waratah Coal Pty Ltd v Coordinator-General, Department of State Development, Infrastructure and Planning* [2014] QSC 036. Section 27AD was inserted into the Act when simultaneous amendments altered the character of the Coordinator-General's decisions. Previously, decisions about coordinated projects were not considered final or operative and therefore were not amenable to judicial review: *Judicial Review Act 1991* (Qld) s 4; see also *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 337, cited in *Griffith University v Tang* (2005) 221 CLR 99 at 122, where it was held that a decision must be final or operative, at least in a practical sense, to fit the definition of 'decision'; this view of the interpretation of s 27AD is reinforced by the Revenue and Other Legislation Amendment Bill (No. 2) 2008, Explanatory Notes, p 55. During the passage of this amendment, it was conceded that the intention of Parliament was to oust the purview of the *Judicial Review Act 1991* (Qld) but not the inherent (supervisory) jurisdiction of the Queensland Supreme Court: Revenue and Other Legislation Amendment Bill (No. 2) 2008, Explanatory Notes, pp 29, 56. This construction conforms to the view of the High Court that an attempt by a State Parliament to expel the supervisory jurisdiction of the State Supreme Court for jurisdictional error will be beyond legislative power: *Kirk v*

Industrial Court (NSW) (2010) 239 CLR 531 at 580–581 [98]–[100]. In introducing s 76W into the SDPWO Act, Parliament sought only to remove the application of the *Judicial Review Act 1991* (Qld) and not the supervisory jurisdiction of the Supreme Court, with the stated rationale for its introduction to avoid unnecessary delay and prevent vexatious litigants from starting actions: State Development and Other Legislation Amendment Bill 2006 (Qld), Explanatory Notes, p 6. In *Northbuild Construction Pty Ltd v Central Interior Linings Pty Ltd* [2012] 1 Qd R 525 at [6]: it was held: "The 2007 amendment and explanatory note strongly suggest that the legislature intended to exclude from judicial review by the Supreme Court all administrative decisions under enactments listed in sch 1, pt 2 to the Judicial Review Act, including judicial review of an adjudicator's decision under the Payments Act. But the High Court in Kirk v Industrial Court (NSW) has recently made clear that the legislature cannot exclude the power of a State Supreme Court to exercise its supervisory jurisdiction as to jurisdictional error in executive and judicial decision-making… There is no doubt that an adjudicator's decision under the Payments Act is an administrative decision over which the Supreme Court of Queensland has a supervisory jurisdiction, despite s 18(2*) Judicial Review Act*."

36 *Legislative Standards Act 1992* (Qld) ss 4(1), 4(3)(b). This was acknowledged in the explanatory notes to the State Development and Other Legislation Amendment Bill 2006 (Qld), which introduced Part 5A of the SDPWO Act.

37 *Environmental Protection Act 1994* (Qld) s 190(3).

38 *State Development and Public Works Organisation Act 1971* (Qld) s 47C.

39 *State Development and Public Works Organisation Act 1971* (Qld) ss 45, 46.