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28 April 2011

Hon. Kate Jones
Minister for Climate Change and Sustainability
Department of Environment and Resource Management
PO Box 15155
City East QLD 4002
By email: ccs@ministerial.qld.gov.au

Dear Minister,

DRAFT STATE PLANNING POLICY: PROTECTING WETLANDS OF HIGH ECOLOGICAL SIGNIFICANCE IN GREAT BARRIER REEF CATCHMENTS

This is the submission of the Environmental Defender's Office-Queensland (EDO Qld) and Environmental Defender's Office of Northern Queensland Inc. (EDO-NQ) ("the EDOs") on the draft State Planning Policy: Protecting Wetlands of High Ecological Significance in Great Barrier Reef Catchments (SPP).

The EDOs are community legal centres which specialise in public interest environmental law in Queensland. The primary goal of the EDOs is to protect and enhance the environment in the public interest through the use of the law, by and on behalf of the community. The EDOs are active in law reform and we welcome the opportunity to comment on this important draft policy.

1. Why we need to protect wetlands

Wetlands provide important and unique functions in the Great Barrier Reef catchment area. The functions include: flood mitigation, water supply, water filtering and nutrient removal, erosion control, support for biodiversity, recreational and amenity benefits, climate stabilization and carbon sequestration.¹

¹ Department of Environment and Resource Management, 2010, *Supporting Documentation Draft State Planning Policy: Protecting Wetlands of High Ecological Significance in Great Barrier Reef Catchments*, State of Queensland, page 4.

As the Supporting Documentation makes clear, wetlands of high ecological significance have significant economic value – averaging \$3,826 per hectare per year, or between \$14 million and \$62 million per year in the Great Barrier Reef catchment area.²

These figures do not include wetlands in other conservation estates. The interconnectivity of wetlands makes it possible for these ‘safe’ wetlands to be affected by loss of other wetlands.³ Also not included are flow-on effects such as preventing erosion that would result if the land was cleared. If wetland loss caused increased erosion, it would have negative impacts on the Great Barrier Reef from increased runoff and sediment load in the water.

These values have not been taken into account in past attempts to manage wetlands. The Supporting Documentation cites a wetland loss rate of 7000 hectares lost per year between 1997 and 2003.⁴ Stopping further wetland loss is the objective which the draft SPP must be measured against.

Once the final SPP is published, local governments will be obliged to incorporate it into their planning schemes. As such, it is critical to ensure the SPP is as comprehensive as possible. If it fails to provide sufficient guidance to decision making, the status quo of undervaluing wetlands will not change. The policy will not achieve its stated outcomes of stopping the decline in wetland coverage and health.⁵

2. Summary of policy recommendations

The SPP can be improved in five ways to achieve its goals of preventing further wetland loss:

1. A more comprehensive approach is needed, centred around an Environmental Protection Policy under the *Environmental Protection Act 1994*, in addition to the SPP. The draft SPP does not account for cumulative impacts or interconnectivity between wetlands – only applying to high impact earthworks in wetlands of high ecological significance, and so is inappropriate for achieving its stated policy goal.
2. Details of the existence of wetlands of high ecological significance – their location, and the criteria for being one, should be more transparent and accessible.
3. The ability to use offsets to trade for impacts on wetlands of high ecological significance in urban areas should be removed. The SPP should instead insist that

² Department of Environment and Resource Management, 2010, *Supporting Documentation Draft State Planning Policy: Protecting Wetlands of High Ecological Significance in Great Barrier Reef Catchments*, State of Queensland, page 5.

³ Department of Environment and Resource Management, 2010, *Supporting Documentation Draft State Planning Policy: Protecting Wetlands of High Ecological Significance in Great Barrier Reef Catchments*, State of Queensland, page 5.

⁴ Department of Environment and Resource Management, 2010, *Supporting Documentation Draft State Planning Policy: Protecting Wetlands of High Ecological Significance in Great Barrier Reef Catchments*, State of Queensland, page 2.

⁵ Department of Environment and Resource Management, 2010, *Draft State Planning Policy: Protecting Wetlands of High Ecological Significance in Great Barrier Reef Catchments*, State of Queensland, page 3.

urban development be designed around wetlands, with the policy position strengthened to 'no adverse impacts'.

4. If offsets must be used, more research on the true value of wetlands is needed. In the absence of such information, the precautionary principle must be required to value wetlands at the higher range of estimates. This is the only way the gradual chipping away of wetlands that currently occurs in Queensland will be stopped.
5. The public interest test for determining when it is acceptable to have impacts on wetlands must provide more information on the true ecological and economic values of preserving wetlands. It must recognise that there is a status quo against conserving wetlands, and counteract this with clear information.

3. The SPP must acknowledge that a comprehensive approach is needed

The biggest problem with the draft SPP is that it is piecemeal. It only applies to 'wetlands of high ecological significance', and then only applies to 'high impact earthworks'. This is inadequate.

As the Supporting Documentation notes, wetlands are interconnected.⁶ Impacts on one wetland may have impacts on another – a catchment cannot be separated into distinct parts.

This was the main point made in the 2006 World Wildlife Foundation submission '*A Case for Queensland Wetlands Law Reform*'.⁷ A summary of that submission is enclosed with this current submission. In that submission the following issues were highlighted:

1. No regulation of agricultural practices that release pollutants into wetlands.
2. Current regulation powers to protect wetlands outside coastal areas are not used to their full capacity.
3. Inconsistent and inadequate application of requirements for buffer zones between wetlands and other urban, industrial, and agricultural activities.
4. No protection for some types of riparian vegetation.
5. Existing policies on ponded pasture are disparate and inadequate.
6. No requirements to protect wetlands from impacts of cattle grazing.
7. Insufficient protection of environmental flows under Water Resource Plans.
8. No requirements to implement best practice invasive species management.
9. No obligations on landowners to manage wetlands to best practices or rehabilitate degraded wetlands.
10. Wetlands within protected areas are not protected from activities outside the protected area which impact on the wetlands due to their interconnected nature within the catchment.

⁶ Department of Environment and Resource Management, 2010, *Supporting Documentation Draft State Planning Policy: Protecting Wetlands of High Ecological Significance in Great Barrier Reef Catchments*, State of Queensland, page 5.

⁷ WWF-Australia, 2006, *A Case for Queensland Wetlands Law Reform*, WWF-Australia, Spring Hill.

11. Fire permits are issued by fire commissioner or warden without need to consider impacts on wetlands.
12. Demand management for water consumption is not mandated.
13. There is no regulation of activities which contribute to climate change or acknowledge its impact on wetlands.
14. There is no additional special protection for large or important wetlands which are listed in the *Directory of Important Wetlands in Australia*.⁸
15. Incomplete knowledge of extent and type of wetlands.

These problems still exist. The draft SPP's serious problem is it makes no attempt to address these problems. By only seeking to protect one specific type of wetland, at one specific point in the development process, it will be ineffective in achieving its policy goals.

Because wetlands are interconnected with the catchment, all these other issues will continue to degrade wetlands despite the SPP's operation. As such, the SPP will merely add another layer of regulation without addressing the real problem – a large number of interconnected impacts on wetlands which remain unaddressed.

The EDOs repeat the policy recommendations contained in the WWF submission. The proposed SPP is not the best instrument for achieving the protection wetlands require. WWF's main recommendation was the creation of a wetlands Environmental Protection Policy (EPP) under the *Environmental Protection Act 1994*, with the following characteristics:

1. Regulation of all activities that impact on a wetland.
2. All activities with potential to adversely impact on a wetland be prohibited within a buffer zone surrounding the wetland.
3. All activities with potential to adversely impact on a wetland be regulated within a larger regulation zone including the floodplain which feeds into the wetland.
4. Cumulative impacts must be considered during development assessment.
5. Property management planning with monitoring and compliance reporting as a condition of approval for activities in the regulation zone.
6. Local governments be required to develop wetlands management plans.
7. Approval conditions to include rehabilitation requirements, a prohibition on ponded pastures in or near wetlands, and declared pest management rules.

Such an EPP must also have application to all types of wetlands in the entire catchment, in all catchments of Queensland. This is the only way meaningful wetland protection will be achieved in Queensland.

4. What is a 'wetland of high ecological significance' must be made more immediately apparent

⁸ Environment Australia, 2001, *A Directory of Important Wetlands in Australia, Third Edition*, Environment Australia, Canberra.

The draft SPP provides little guidance to individual property owners on what makes a wetland of high ecological significance. Only a broad scale map is provided.⁹ This map doesn't assist in locating wetlands of high ecological significance at the scale at which landowners or decision makers operate. While it is possible for landowners to search for their property in a database, this doesn't immediately identify where high value wetlands are, and makes it possible for the importance of these wetlands to be overlooked in development planning.

Members of the public will also find it difficult to determine how important a particular wetland is. Without the specific lot numbers, the public will find it difficult to determine if a wetland is one of high ecological significance. This in turn introduces a barrier to making informed public submissions on development applications.

On a more fundamental level, this also introduces an unnecessary layer of obfuscation into the policy. There is no clear guidance in the SPP as to what makes a wetland of high ecological significance, and what does not. While some information is available in the SPP Guideline, this is not easily accessible to the wider public due to its technical nature.

Both developers and community members should be aware of this information. The more information that is known about the value of wetlands, and what makes a wetland valuable, the better decisions can be made, both in government and in the community. Given that DERM has already conducted extensive mapping, the EDOs believe it would not be difficult to provide this information in a transparent manner.

5. Offsets are inappropriate to manage impacts on wetlands

Sections 4.1.2 and 4.3.2 of the SPP provides that environmental offsets can be used to ensure compliance with the SPP's policy outcome where adverse effects cannot be minimised. The EDOs strongly believe offsets are inappropriate for protecting wetlands. As such, these sections should be strengthened to 'avoiding adverse impacts on wetlands of high ecological significance' as the only applicable standard.

Offsets have three problems when used to minimize impacts on wetlands of high ecological significance:

1. Inaccurate valuation of wetlands.
2. Inability of offsets to replace unique wetlands.
3. Offsets do not take climate change into account.

⁹ Department of Environment and Resource Management, 2010, *Draft State Planning Policy: Protecting Wetlands of High Ecological Significance in Great Barrier Reef Catchments*, State of Queensland, page 14.

5.1 Inaccurate valuation of wetlands

The aim of an effective offset is to determine the overall 'value' of the area and then quantify, and weigh and balance the loss and gains.¹⁰ However, before offsets can function adequately, the value of wetlands must be measured. If this value is not accurate, offsets will fail to 'offset' the loss of habitat.

The Supporting Documentation throws doubt on the ability of decision makers to value wetlands accurately: "There have been no assessments of the total economic value for these services for the GBR catchments. However, studies from elsewhere provide indicative values for the flow of these services."

Even these 'other studies' have not been able to set a definite price. Estimates given in the Supporting Documentation range from a low of \$1,000 per hectare per year, to a high as \$4,315 per hectare per year. The Supporting Documentation then goes on to admit that other values, such as erosion control, have not been included in these estimates.¹¹

Accurate pricing is critical for offsets to work. Where prices are inaccurate, offsets are inappropriate. Because the draft SPP is lacking in this area, offsets should be removed from the SPP, at least until there has been a proper attempt to value wetlands of high ecological significance.

5.2 Inability of offsets to replace unique wetlands

Wetlands are unique and relatively rare habitats, covering only 4.1% of Queensland in 2006.¹² Wetlands perform unique ecological functions that other environments do not.¹³

Because offsetting requires an equal value swap, it is inappropriate for wetlands of high ecological significance. Simply replacing a wetland with undeveloped land will not replace the wetland's unique functions.

Due to the rarity of finding other local environments to provide equivalent ecological functions, it will be difficult to fully offset impacts on wetlands of high ecological significance. Therefore, the EDOs believe the inclusion of offsets in the SPP does nothing to advance its policy objectives, but rather exists as a way to justify development. If

¹⁰ Curnow, P & Fitz-Gerald, L 'Biobanking in New South Wales: Legal Issues in the design and implementation of a biodiversity offsets and banking scheme', (2006) 23 EPLJ 298, at 303.

¹¹ Department of Environment and Resource Management, 2010, *Supporting Documentation Draft State Planning Policy: Protecting Wetlands of High Ecological Significance in Great Barrier Reef Catchments*, State of Queensland, page 5.

¹² WWF-Australia, 2006, *A Case for Queensland Wetlands Law Reform*, WWF-Australia, Spring Hill, p 2.

¹³ Schuyt and Brander, 2004, *Living Waters: Conserving the source of Life. The economic values of the world's wetlands*, p 8.

Queensland's remaining wetlands are going to be protected this justification must be removed.

5.3 Offsets do not take climate change not taken into account

The Great Barrier Reef is vulnerable to climate change. The Great Barrier Reef Marine Park Authority recommends increasing resilience to climate change as a core part of the response strategy.¹⁴ Due to the contaminant filtering services of wetlands, protecting wetlands of high ecological significance will be key to this strategy. Other environments will not have the same beneficial effects on protecting the Great Barrier Reef from climate change.

However, climate change is also a threat to wetlands. Potential climate change impacts on wetlands include:¹⁵

- Saltwater intrusion.
- Reduced surface water flows.
- Increased toxic algal blooms.
- Increased soil erosion.
- Increased sediments and nutrients flowing into watercourses.
- Damage to fish habitat areas.

The more valuable a wetland is, the greater these impacts will be. The Australian Government notes the best way to counter such impacts at a local level is to ensure wetlands remain healthy.¹⁶ The more wetlands of high ecological significance that are retained, the more resilience both wetlands and the Great Barrier Reef will have against climate change.

However, because climate change effects arise over a long period (at least 100 years), it's difficult to weigh the true values of wetlands against other environments. We don't have enough data to make an accurate measurement. This makes calculating the true value of offsets very difficult.

Because of this difficulty, the EDOs recommend that offsets should not be used while we lack suitable information.

¹⁴ Great Barrier Reef Marine Park Authority, 2007, *Great Barrier Reef Climate Change Action Plan*, Commonwealth of Australia, p 7.

¹⁵ WetlandCare Australia, 2008, *Wetland Rehabilitation Guidelines for the Great Barrier Reef catchment*, p 10.

¹⁶ WetlandCare Australia, 2008, *Wetland Rehabilitation Guidelines for the Great Barrier Reef catchment*, p 10.

6. Public interest test for justifying impacts on wetlands must more accurately represent the public interest in conserving wetlands

Section 4.3 of the SPP is a large loophole. It allows development to occur inside wetlands if there can be shown to be an overriding need in the public interest for the development. This is a loophole because the public interest factors in Annexure 3 aren't well defined. Annexure 3 simply states:

A3.1: For section 4.3, there is overriding need if:

(a) the overall social, economic and environmental benefits of the development outweigh—

i) any detrimental effect upon the natural values of the land and adjacent areas

ii) conflicts with the policy outcome of this SPP

(b) the development cannot be located elsewhere so as to avoid conflicting with the policy outcome of this SPP.

A3.2: The following do not establish an overriding need in the public interest:

(a) uses with relatively few locational requirements

(b) interests in or options over land

(c) the availability or ownership of land.

These sections require measurement of the values of the wetland against the public interest of the development. However, there is no guidance for measuring the 'natural values' of affected wetlands. Nor is there any guidance for further weighing these up against common public interest factors.

Schuyt and Brander state that wetlands are degraded because decision makers don't understand the value of wetlands – economically or otherwise.¹⁷ This leads to decision makers mistakenly believing that the benefits of a particular development outweigh the benefits of a wetland.

The EDOs believe that Annexure 3 will be ineffective at measuring where the public interest lies. Wetlands are usually undervalued in relation to development. Without serious

¹⁷ Schuyt and Brander, 2004, *Living Waters: Conserving the source of Life. The economic values of the world's wetlands*, p 4.

counteracting policy, this status quo will lead to the public interest test continuing to be interpreted in favour of development against the ecological values of wetlands.

The SPP needs to provide more guidance to both what the values of wetlands of high ecological significance are, and how these values are measured against common public interest factors. Until that guidance is provided, it shouldn't be possible to trade off wetlands of high ecological significance for development in the public interest.

The public interest test also does not account for the significant loss of wetlands that has already occurred. As the Supporting Documentation admits, Queensland has been losing wetlands at a rate of thousands of hectares per year.¹⁸ There is a significant public interest in protecting those wetlands that remain. This should be reflected in the public interest test by stating a firm starting point of the public interest being in preserving remaining wetlands. Otherwise, the SPP will allow for wetlands to be chipped away until there are few left.

7. Conclusion

The State Planning Policy for Protecting Wetlands of High Ecological Significance in Great Barrier Reef Catchments is a step in acknowledging the importance of wetlands in planning decisions. However, it does not acknowledge interconnectivity of wetlands, nor cumulative impacts which have substantially reduced Queensland's wetlands.

Because of these issues, the only way to achieve the SPP's stated policy outcome is through comprehensive wetlands reform. Furthermore, as it stands the SPP will not adequately protect wetlands from its specific target of high impact earthworks on wetlands of high ecological significance. While the science the SPP is based on is sound, the implementation is sparse, and leaves open holes that can be exploited by local councils wishing to push development through.

The EDOs appreciate this opportunity to comment. Our recommendations for addressing the highlighted issues are included throughout this letter and summarised at the beginning of our submission.

Please contact EDO NQ if you wish to discuss any aspect of our submission.

Yours faithfully



Patrick Vuleta

¹⁸ Department of Environment and Resource Management, 2010, *Supporting Documentation Draft State Planning Policy: Protecting Wetlands of High Ecological Significance in Great Barrier Reef Catchments*, State of Queensland, page 2.

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Enclosed: WWF-Australia, 2006, *A Case for Queensland Wetlands Law Reform*, WWF-Australia, Spring Hill.