Environmental Defenders Office

14 February 2020

Ms Mandy Downes
Senior Executive
Environmental Policy and Programs
Department of Environment and Science
By email: policyinitiatives@des.qld.gov.au

Dear Mandy,

Submission: 'Future management of Lake Eyre Basin (Qld)' policy proposal

Thank you for the opportunity to provide comment on the Queensland Government's recently released 'Future management of Lake Eyre Basin (Qld)' policy proposal.

Unfortunately, we believe that:

- the proposed policy falls far short of Government promises on this matter - which was one of the signature environment commitments of the last two terms;
- this process is significantly hindered through the failure to release the scientific risk assessment that should have formed the basis of this policy proposal;
- the process for developing the policy has been deficient and demonstrably failed key stakeholders including Traditional Owners and pastoralists; and
- the proposed policy is incongruent with consultation by the Government with key conservation sector representatives working on this matter with the Queensland Government over several years.

We ask that the Government:

- urgently revise the proposed policy to ensure it meets the Government's commitments by:
    - prohibiting petroleum wells, well pads, pipelines and associated roads on Channel Country rivers and floodplains by making all resource activities an 'unacceptable use' within an extended Designated Precinct;
    - extending the Designated Precinct to include former High Preservation Areas, Special Floodplain Areas and Floodplain Management Areas; and
- releases the most recent scientific panel report that the Government has commissioned concerning the impacts of unconventional gas activities on rivers and floodplains of the Lake Eyre Basin.

Notwithstanding the above, we extend our support for:

- the extension of the Strategic Environmental Area (**SEA**);
- the red areas provided in the mapping, as former protected areas, being protected as Designated Precinct given their importance and connection as upstream areas of the catchment; and
- the extension of the environmental attributes for the Channel Country SEA to better reflect the suite of environmental values found in this precious region.

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Inadequacy of policy to protect rivers and floodplains

At the 2017 election, the Palaszczuk Government committed to '*work with Traditional Owners, stakeholders and communities to ensure Queensland's pristine rivers are protected; including reviewing the Regional Planning Interests Act 2014 to provide adequate protection of these rivers'.* An almost identical commitment was made at the 2015 election.

Therefore, there has been ample time since the Government committed to protect pristine rivers to develop a considered policy response. It is incredibly disappointing that this has not occurred, and that what is now proposed runs counter to our discussions with government for the last 7 years.

With a level of protection against large-scale irrigation currently in place, the greatest environmental hazard facing the Lake Eyre Basin is the threat of industrial gas activity on the floodplains.

A government commissioned report released in January 2013, 'Hazards posed to riverine aquatic ecosystems in Lake Eyre Basin from future petroleum and gas mining activities',[1] states:

> *'Non-conventional gas activities such as coal seam and shale gas extraction, typically involve a large number of well pads of up to 10 000 m2 to 24 000 m2 in area, generally positioned in a grid pattern. Spacing between wells pads is generally around 750m, with roads and tracks connecting each well pad (Figure 1). However, spacing is dependent on the location of the resource and wells may be located much closer than this. Further wells may also be required as "in-fill" to increase production with these being located between existing wells, thus increasing the intensity and number of wells.*
>
> *Collectively, petroleum and gas activities can create a web of disturbance across the landscape, with a substantially larger footprint than that of a single well. The intensity of wells and associated infrastructure such as roads, water storage dams, nodal compressors, burrow pits and temporary work camps, have the potential to present a considerable threat to river natural values, in terms of interrupted flow patterns, fragmentation and wildlife corridor integrity.*
>
> *Increased land disturbance, such as through the cumulative effects of petroleum and gas activity in the Lake Eyre Basin, could impact significantly on the values for which the basin is renowned. The hazard increases the closer the disturbance is to riverine features. Those areas closest to the watercourse, where terrestrial features such as riparian vegetation, act as a buffer to protect the most critical functions of the river system's main channels and major tributaries. Similarly the extensive floodplain areas within the basin protect the flow patterns across the large networks of waterholes and wetlands that are critical for in-stream organisms and floodplain ephemeral vegetation communities.'*

The Report notes (page 5) that roads, pipelines, well sites and levees all risk fragmenting the floodplain and impacting hydrological and geomorphic processes, wildlife corridor functions and riparian function. Further, roads and increased human access and use risks introduction or dispersal of weed and pest species to aquatic, riparian and floodplain habitats.

Further, the Report states: '*Drilling of wells and construction of roads for petroleum and gas mining are both activities likely to disturb sediments on the Cooper Creek floodplain and these sediments*

[1] Available here: https://www.researchgate.net/publication/255908767_Hazards_posed_to_riverine_aquatic_ecosystems_in_Lake_Eyre_Basin_from_future_petroleum_and_gas_mining_activities

may subsequently be transported and deposited in the channel of the river. The greater the area of disturbance, the greater will be the likely intensity of the risk to aquatic ecosystems.' (page 6).

This Government proposal still allows exploration and production of gas on floodplains which means that construction of gas wells, well pads, and networks of roads and pipelines would be permitted. This is in direct opposition to implementing your promises to protect pristine rivers and to the expressed position of the Lake Eyre Basin Traditional Owners Alliance to prohibit new resource activities on the floodplains of the Channel Country.

This last-minute proposed policy, provided with such inadequate consultation, is unacceptable. These failings by the Queensland Government must be rectified to ensure trust is maintained in this Government.

New research on Lake Eyre Basin floodplains must be released

We note an additional commitment prior to the 2017 from the Deputy Premier that Labor would **'***not proceed with the development of oil shale, shale oil and shale gas resources until there has been a public consideration of the environmental impacts of extraction of these resources. We have commissioned an independent scientific assessment of the environmental impact of exploitation of these resources and impacts on other industries including agriculture and tourism. This assessment remains underway.'***.**

This commitment has not been implemented. There has been no '*public consideration of the environmental impacts of extraction*' since making this commitment. We understand that the Government has commissioned some independent scientific assessments, including most recently on the impacts of unconventional gas development on floodplains and rivers of the Lake Eyre Basin, but they have not been released to the public.

Therefore, we further request that you urgently provide the scientific reports the Government has commissioned on the impacts of unconventional gas in the Lake Eyre Basin (Qld).

As noted above, protection of the rivers and floodplains of the Channel Country has been one of the key promises of two terms of Labor Government. We urge you to ensure it is delivered in full as promised, so that it can garner strong and vocal support from Traditional Owners, pastoralists and conservationists as a signature environmental reform of the new decade.

Reform of the Regional Planning Interests Act 2014 (Qld) (RPI Act) essential

Part of the government's commitment, extracted above, was the review of the RPI Act. This Act was introduced by the Campbell Newman Government and replaced the repealed *Wild Rivers Act 2005* (Qld) (**Wild Rivers Act**) and *Strategic Cropping Act 2011* (Qld) (**Strategic Cropping Act**). The RPI Act was drafted in a hasty manner with inadequate consultation, and has significant weaknesses, particularly a high level of discretion and uncertainty and a lack of accountability and transparency measures to ensure the integrity of the Act.

As provided on the government website which lists all approvals and applications, 42 approvals have been granted under the RPI Act. There has been very limited judicial interpretation of the RPI Act; this is most likely due to the limited requirements to notify communities when a proponent proposes to apply to undertake an activity in an area of regional interest, along with limited community appeal rights.

We have provided an overview of some of our concerns with the RPI Act framework in the **Appendix** to this letter. We hope the government undertakes to fulfil its commitment to review the RPI Act and

to further commit to its reform to make sure it is a strong and effective Act that achieves the publicly expected aim of not only protecting our rivers, but also our townships and best agricultural land.

We would be happy to meet to discuss this submission as desired by the government.

Yours faithfully,
Environmental Defenders Office

Revel Pointon
Senior Solicitor

APPENDIX

Key concerns with the RPI Act

Landholders and those concerned about protecting prime agricultural land, Queensland's townships and our river systems are frequently concerned that the RPI Act does not provide the level of certainty and strength of protection that is needed to ensure our remaining healthy river, townships and good quality agricultural land are protected from inappropriate development.

In summary, the key concerns are that:

1. the purpose of the Act does not meet community expectations or the public interest in protecting our best agricultural land, townships or healthy rivers and other key regional environments;
2. there is a disconnection from major approvals which may weaken the application of the Act;
3. there are significant exemptions, inconsistency, uncertainty and discretion in decision making;
4. there is inadequate accountability / independent oversight; and
5. there has been inconsistent application of regulations across Queensland.

These concerns are provided in more detail below, with recommendations as to how the RPI Act framework could be improved to address these concerns.

1. Purpose of RPI Act doesn't protect regional interests and purpose not being met

The purpose of the RPI Act does not reflect community expectations to protect regional interests of good quality agricultural land, our regional townships or strategic environmental areas such as our healthiest rivers. The purpose of an Act is important because it is used to help interpret the application of the Act, particularly where there is any uncertainty in the provisions.

The purposes of the RPI Act are to (per s3(1)) —

> *(a) '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; and*
> *(b) give effect to the policies about matters of State interest stated in regional plans; and*
> *(c) manage, including in ways identified in regional plans—*
> > *(i) the impact of resource activities and other regulated activities on areas of regional interest; and*
> > *(ii) the coexistence, in areas of regional interest, of resource activities and other regulated activities with other activities, including, for example, highly productive agricultural activities.'*

As can be seen above, the purpose of the Act is to 'manage' impacts and the co-existence of resource activities and other regulated activities on regional interests. There is no mention in the Act of a requirement to protect or avoid impacts to our areas of regional interest. Many Queenslanders would have an expectation that our laws should provide protection of our prime agricultural land, townships and healthy rivers; this Act does not meet that expectation. Instead, arguably the word 'manage' assumes that impacts are going to occur.

We can compare this to the purposes of the Acts that the RPI Act replaced, as outlined below.

The Strategic Cropping Act provided its purpose was to—

a) *'protect land that is highly suitable for cropping; and*
b) *manage the impacts of development on that land; and*
c) *preserve the productive capacity of that land for future generations.'*

The Wild Rivers Act provided a purpose to—

(a) *'preserve the natural values of rivers that have all, or almost all, of their natural values intact; and*
(b) *provide for the preservation of the natural values of rivers in the Lake Eyre Basin.'*

Both of these Acts provided for protection and preservation of strategic cropping land and the river systems regulated. This level of protection has not been provided for in the RPI Act.

Further, under section 3(2) the Act states that to achieve its purposes, this Act *'provides for a transparent and accountable process for the impact of proposed resource activities and regulated activities on areas of regional interest to be assessed and managed.'* There are significant concerns that the Act as drafted does not provide for a transparent or accountable process for managing development impacts on areas of regional interest.

Transparent and accountable laws are clear and certain, in a way that all stakeholders can understand the process and criteria to be applied in decision making; and provide little discretion, or at least discretion subject to independent oversight/community accountability, to avoid corruption of decision making and to ensure good quality decisions. As outlined below, the significant discretions, and the inadequate opportunities for meaningful public involvement and independent oversight mean that the RPI Act is not meeting the achievement of its purpose defined above.

2. Disconnection from major approvals likely weakens application of the Act

There is no connection currently between the major approvals for developments, such as the environmental authority, a development permit or the tenure, and the RIDA process or RPI Act in general. A proponent can apply for a RIDA at any time in the assessment and approval process. This leaves open the ability to apply for and obtain all major approvals prior to applying for a RIDA; meaning there is significant momentum towards approval which could impact the RIDA assessment process. The environmental impact assessment undertaken for the major approvals could assist with the assessment of a RIDA application, however the impact assessment for the major approvals would not have had the same criteria invoked as the RIDA application. The RIDA and RPI Act criteria should be linked in some way to the major approvals, either in parallel or as part of the same process.

3. There are significant exemptions, inconsistency, uncertainty and discretion

The Act provides numerous exemptions and has not been applied consistently across Queensland, creating unnecessary uncertainty and significant discretion of decision makers. Discretion in decision making processes increases risks of corruption, creates uncertainty, potentially wastes the resources of stakeholders involved in seeking to clarify how the law should be applied and weakens the effective operation of the framework.

(a) Public notification is discretionary

Public notification of proposed impacts to PAA, SCL and SEA is at the discretion of chief executive **(DG DES).** The proponent will be exempt from notification if the chief executive is satisfied '*sufficient notification under another Act or law of the resource activity or regulated activity to the public.'* The problem is that the other notification may have been under another law that may not have applied the same criteria, nor provided for the same legal rights – not all community legal rights to be involved are created equal. Further, the community may understand that the RPI Act is the appropriate time to consider impacts to regional interest and therefore did not raise concerns under the other process. This uncertainty can waste the resources of the community and the proponent in seeking confirmation around whether the application will be open to community input, and also of the government in needing to make case by case decisions as to whether the application should be notified.

(b) Inconsistent application of regulations across Queensland

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 Sept 2011, prior to the RPI Act, and therefore has no provision for PLAs to be mapped for that region. This region includes Kingaroy which is facing a potential mine 6km 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. This raises serious concerns of injustice between those towns which have had the benefit of their regional plan being updated since the commencement of the RPI Act and therefore the mapping of their townships as PLAs, compared with those towns without this benefit through no other reason except timing.

(c) Uncertain application of laws with discretion of decision makers - SEAs

Under the RPI Act, RIDA applications which may impact SEAs must either demonstrate:

(a) the activity will not, and is not likely to, have a direct or indirect impact on an environmental attribute of the strategic environmental area; **or**
(b) all of the following**—**
    (i) activity is not an unacceptable use in a designated precinct;
    (ii) the construction and operation footprint of the activity on the environmental attribute is minimised to the greatest extent possible;
    (iii) the activity does not compromise the preservation of the environmental attribute within the strategic environmental area;
    (iv) if in an SEA identified in a regional plan—the activity will contribute to the regional outcomes, and be consistent with the regional policies, stated in the regional plan.[2]

The key problem with the application of the prescribed solutions is that they are provided in the alternative - either there is a requirement to not have a direct/indirect impact*, or* if you're not an unacceptable activity in a designated precinct, you are subject to broad application of subjective criteria which only require minimisation of impacts and, in many instances, only avoidance of 'significant adverse outcomes' for the environmental attributes. This brings in uncertainty as to how the assessment will actually be applied.

[2] *Regional Planning Interests Regulation 2014* (Qld), sch 2, s15.

There is no mention of the quality or health generally of the environmental attribute not being impacted, only a requirement that it is in some way preserved as an attribute. The statutory guideline provided to assist in the interpretation of this section provides some assistance however it remains in need of revision for more clarity and coherency.[3] This seems at odds with a strict reading of the first option, that there be no direct or indirect impacts at all. These provisions could be read strictly, such that no impact at all is allowed, therefore effectively prohibiting the activity in the SEA area, or they could be read broadly ie. a proponent may argue that rehabilitation of the site after the activity will mean that the activity will not have a sufficient impact to warrant a RIDA and the exemption should be allowed. This creates more uncertainty for all stakeholders and threatens to waste resources in seeking to understand how the Act will be applied in each case by case scenario.

(d) Exemptions mean that the laws do not adequately consider future generations

There are various exemptions which may apply such that a proponent is not required to obtain a RIDA to operate on an area of regional interest. These exemptions include where:

- a landowner has entered into a conduct and compensation agreement, other than because of a court order, or a voluntary agreement has been entered with the landowner, and the activity is not likely to have a significant impact on the PAA or SCL, or on land owned by a person other than the land owner (s22). What is a 'significant impact' will be determined on a case by case basis with regard to whether it is 'important, notable or of consequence, having regard to its context or intensity';[4]
- where a resource activity will be carried out for less than 1 year on priority agricultural area or area in the strategic cropping area (s23). This means that most exploration activities could be exempt, and even production activities could be exempt if they are able to be completed on a site within one year as some gas and petroleum activities may be;
- there is a pre-existing resource activity (s24), being where immediately before the land becomes land in an area of regional interest, the activity may be carried out lawfully on the land.

Further, even though the activity is not exempt, a proponent may more easily obtain a RIDA where PAA land has not been used for a prime agricultural land use (PALU) within 3 of the previous 10 years.[5] This exemption may apply particularly where resource operators own the land and can deliberately ensure the land has not been used for a PALU. There is a question around the policy rationale for this exemption - why are we undervaluing Queensland's prime agricultural land just because it has not been used for an agricultural purpose recently? That there are statutory guidelines which provide assistance for removing SCA designation over land but none to allow for addition of new land further suggests the priority is facilitating development and not protecting our best agricultural land.

There is also a provision allowing impacts in Strategic Cropping Areas even if they can't be remediated if a proponent simply makes a contribution to a mitigation fund. This effectively allows a proponent to pay for activities on our best quality soil which cannot be remediated. There

[3] https://dilgpprd.blob.core.windows.net/general/rpi-guideline-05-14-carrying-out-activities-in-sea.pdf
[4] http://www.dlgrma.qld.gov.au/resources/guideline/rpi-guideline-02-14-carrying-out-activities-in-a-paa.pdf, 2.
[5] http://www.dlgrma.qld.gov.au/resources/guideline/rpi-guideline-02-14-carrying-out-activities-in-a-paa.pdf, Table 1, Guidance on how to meet prescribed solution 1 for required outcome 1

is very little transparency or accountability around this mitigation fund, and given that the impacts to the soils is irreversible, the funds can only be used for activities such as research into how agricultural activities can better operate on poorer quality soils.

(e) <u>There is inadequate accountability / independent oversight</u>

Under current arrangements, there are limited opportunities for the public to participate in the assessment of RIDA applications or the declaration of areas of regional interest. There is no ability for third parties to appeal these public interest decisions. Only the applicant, owner of land or affected landowners may appeal a decision under the RPI Act. There is no provision for public interest or community appeals. This omission fails to recognise that the RPI Act is a public interest act in the management of impacts on areas of regional interest. It further limits independent oversight of the Court, which provides an important role in development laws to reduce the risks of corruption and to improve the quality of decision making.

<u>Recommendations</u>

There are always going to be competing interests seeking to use our land – which is even more reason why we need clear laws to help move through these disputes, that ideally provide:

- **Clearer laws which provide for no go zones on prime areas of regional interest** – no go zones are needed for certain prime agricultural areas and high quality environments and townships; at least to provide minimum protections over the most sensitive or prime areas;
- **Connections with protections of areas of regional interest and RIDA assessment with major approvals and other relevant laws -** to ensure the RIDA is not a last minute process after all major approvals are received;
- **Limited discretion and increased certainty and consistency in application of the laws -** removing discretions such as around public notification to ensure notification is required for all RIDA applications;
- **Opportunities for independent/ public oversight of decision making -** to ensure decisions are made in the public interest and the risks of corruption and poor quality decisions are reduce; and
- **Improved consistent mapping -** including a requirement for all regional plans to provide updated maps identifying each relevant area of regional interest that qualifies in their region, and removing the ability to remove SCL from the trigger map.

1. Introduce strict, clear, non-discretionary prohibitions on inappropriate activities, including mining and gas, in all key areas of regional interest – remove exemptions

The broad ranging exemptions allowing resource activities on PAA and SCL greatly reduce the power of the RPI Act framework to protect these areas of regional interest from inappropriate development. These exemptions should be removed to ensure consistent, certain application of the Act across all areas of regional interest in Queensland.

Further, as the framework is currently drafted, the granting of a RIDA is open to the discretion of the assessing officers which could lead to inappropriate development in areas intended to be protected by the framework. Criteria are vague and key provisions and criteria are provided for in

the Regulation or Statutory Guidelines rather than in the Act. Under poor governance this discretion and confusing drafting is open to be abused.

To ensure our healthy river catchments, townships and best farming lands are protected, the RPI Act must be amended to include provisions that prohibit mining and gas activities in all key areas of regional interest, at least within clear boundaries of the most sensitive areas of regional interest.

We note that to date no applications for RIDAs have been refused per the government's website, pointing to concerning failings in this legislation in achieving the protection of areas of regional interest from inappropriate regulated activities.

Further, the priority of the Act should be the protection of our areas of regional interest, not facilitating development; this should be made clearer in its purpose and operation.

2. Require proponents of proposed projects in areas of regional interest to obtain a RIDA before applying to obtain other major approvals – or integrate this criteria into major approvals

Under existing arrangements, a proponent for a development project proposed to be located within an area of regional interest may apply for a RIDA at any time, including after all other approvals have been obtained. Once all approvals are obtained it is highly unlikely the broad terms of assessment for a RIDA will stop the proposed development from going ahead.

To provide certainty, the RPI Act and other relevant legislation must be amended to include provisions requiring proponents of proposed projects within areas of regional interest to obtain a RIDA before applying to obtain other necessary approvals. Rejection of a RIDA application would effectively halt the proposed development in areas of regional interest from proceeding any further.

3. Remove discretions and uncertainty, including around public notification

Ensure that all RIDA applications must be publicly notified, in at least the same way as notifiable development applications under the *Planning Act 2016* (Qld) must be notified - via:

(a) publishing a notice at least once in a newspaper circulating generally in the locality of the premises the subject of the application; and

(b) placing notice on each side of the premises the subject of the application, that must remain on the premises for the period of time up to and including the stated day; and

(c) giving notice to the adjoining owners of all lots adjoining the premises the subject of the application.[6]

Ideally citizens should be able to sign up for email notifications for regions of particular interest to them, such that they can receive notifications via email for any application registered in that region.

[6] Development Assessment Rules, under the Planning Act 2016, section 68(1) http://betterplanning.qld.gov.au/resources/planning/better-planning/da-rules.pdf.

Removing the discretion around public notification will ensure that all stakeholders have more certainty as to the process for RIDA applications and the ability of the community to be involved, reducing the need for case by case assessment by the Department of this decision which is open to misapplication.

4. Introduce meaningful public consultation processes and third party appeal rights

To increase transparency, the RPI Act must be amended to include provisions that enable the public to meaningfully participate in processes associated with assessing RIDAs, along with establishing third party appeal rights, which are key to reducing the risk of corruption by the ability to hold decision makers to account. Third party merits appeal powers must be introduced, in line with impact assessment processes under the Planning Act, to ensure independent court oversight over the public interest decisions of the RPI Act. The RPI Act is by nature an instrument that regulates matters in the public interest, being how we manage (and protect) areas of regional interest. It therefore must provide meaningful community involvement and independent scrutiny.

5. Improved consistent mapping

Ensure mapping and designation of areas of regional interest is consistent in application across the state. For example, ensure that all regional plans are required to provide updated maps identifying each relevant area of regional interest that qualifies in their region. This will ensure fair and consistent application of the measures provided under the RPI Act to protect and manage impacts on areas of regional interest, rather than delaying the application of the Act in each region as each regional plan is slowly updated.