Environmental Defenders Office

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Falling through the cracks:

Issues with integrity in environmental assessment of gas activities in Queensland

There is significant public interest in the assessment and decision making around gas activities in Queensland, not only from the landholders and First Nations impacted by the activities directly, but also the many members of the public concerned with the impacts to ground and surface water, agricultural land and climate change through both direct and fugitive emissions from this industry.

Queensland is one of the few states in Australia which has not had a moratorium on gas activities. The moratoriums undertaken in other states and territories have allowed those jurisdictions to revise and strengthen their laws regulating gas activities and to have open public discussion around the impacts of the gas industry on their environment, communities and economies. In Queensland gas activities have instead grown significantly in the state over the past decade without much transparent public debate and scrutiny over the industry's regulation and impacts.

In contrast to the significant public interest in gas activities, in Queensland there is very limited transparency or accountability to the public around the assessment process for gas related environmental authorities, the key environmental permit regulating the impacts of petroleum and gas exploration and production activities.

Gas activities have the largest footprint of any industry projects applied for in Australia, yet in Queensland gas proponents are generally not required to state where specifically on the landscape they will be undertaking their activity in their assessment materials, nor is this generally provided for in conditions. This lack of specificity greatly reduces the ability of communities to understand what the impact will be on their communities, livelihoods, cultural activities, land and water, and reduces the ability to hold proponents to account on their approved activities, let alone reducing the ability for meaningful environmental and social impact assessment to be undertaken.

Tenure for petroleum and gas exploration (authority to prospect) and production (petroleum lease) are regulated under the *Petroleum and Gas (Production and Safety) Act 2004* (Qld) and the *Petroleum Act 1923* (Qld). The *Environmental Protection Act 1994* (Qld) (**EP Act**) regulates the necessary environmental authority required for exploration and production. Our analysis has shown that gas projects are moving through our regulatory framework without sufficient scrutiny nor accountability and transparency to the public.

This report identifies 7 key issues with the assessment process below and makes 6 recommendations for improving the integrity of the Queensland regulatory frameworks.

1. **Environmental authority applications for authority to prospect tenures are typically not assessed by Department officers and must be approved if broad criteria are met**

   Environmental authority (**EA**) applications for authorities to prospect (**ATPs**) are often processed as 'standard applications', the weakest form of assessment under the EP Act. Standard applications are not assessed by Department officers, they are **self-assessed** by proponents in filling out the eligibility criteria form checklist.[1]

   Further, standard applications are **unable to be refused** by the Department, as there is an obligation to approve if the application meets the broad eligibility criteria for the industry under the EP Act.[2]

2. **Transitioning from an ATP to a petroleum lease can be undertaken by simply amending the EA for the ATP, rather than having to apply for a new petroleum lease EA. This amendment application is not always publicly notified.**

   When a proponent is seeking to transition from an exploration activity under an ATP to a petroleum lease for production, an EA must be provided for the production activities. From our investigations, most proponents obtain this production EA by applying to amend the EA for the ATP activities, rather than applying for a new EA.

   This is concerning because there is very little scrutiny around the assessment of applications to amend an EA, whether they are via minor or major amendment.

   - Minor EA amendment applications are not open to public scrutiny, they are not published on a website and they are not open to submissions by the public.[3]
   - Major EA amendment applications are only open for public submissions if the Department chooses, in its discretion, to require that the application be notified. This is not mandatory. Therefore, major amendment applications may also be assessed and approved without any public scrutiny.[4]

   EAs for petroleum leases can be extended to cover additional areas, often geographically far distant, without being classified as major amendments, for example as occurred for the Mahalo project in Central Queensland. See the case study below and **Appendix** to this report for more information.

[1] *Environmental Protection Act 1994* (Qld), ss 122, 125(1)(j), 170(2)(a).
[2] *Environmental Protection Act 1994* (Qld), s 170(2)(a); https://environment.des.qld.gov.au/__data/assets/pdf_file/0039/88977/rs-es-petroleum-exploration.pdf.
[3] *Environmental Protection Act 1994* (Qld), ss 223, 240.
[4] *Environmental Protection Act 1994* (Qld), ss 230, 232(2)(b).

Case study example: Mahalo Gas Project

Mahalo gas project, north of Rolleston, Central Queensland, is a CSG project by Comet Ridge, Santos and, reportedly until recently, Australia Pacific LNG Pty Limited.[5] It has never been subject to an EIS requirement. In 2020 the proponents applied for an amendment to their petroleum lease EA to add 190 wells to the project, changing from a total well count of 193 to 383 wells. This application also added two tenures to the EA which are geographically located hundreds of kilometres from the previously approved EA tenures. This was assessed via major amendment however DES used their discretion not to notify this amendment to the public. No EIS was required. The **Appendix** provides a comparison of the pre and post amendment EA authorisations, along with a table of their application history, both prepared by DES in November 2020. This project is located on strategic cropping land and priority agricultural areas upon which resource activities are supposed to be regulated under the RPI Act, however to our knowledge the proponent has not applied for assessment under the RPI Act.

3. Environmental assessment for gas projects in Queensland has become minimal, often inadequate and often devoid of public transparency and accountability.

Environmental assessment for gas activities is typically not undertaken by the Department for an ATP, since the ATP EA application is typically self-assessed. The self-assessment of environmental impacts may be revised by compliance officers after the activity has been approved and possibly commenced, as part of compliance checks occasionally undertaken by the Department, however impacts would likely have already occurred once this assessment takes place.

Environmental assessment is unlikely to be extensive for either minor or major amendment applications, nor possibly new site-specific EA applications for gas activities as these activities would not typically meet the high threshold for an environmental impact statement to be required, set out **below** for petroleum and gas activities specifically.[6] This threshold is provided in the Department guideline '*Criteria for environmental impact statements for resource projects under the Environmental Protection Act 1994'*. Only major EA amendment applications or site-specific applications for new resource activities require a decision to be made on whether an EIS is required under the EP Act.[7] Various factors are considered in making this decision, including the standard criteria, EIS triggers, the relative magnitude (scale and risk) of impacts, the public interest, uncertainty about possible impacts, any significant issues with another Queensland Government/ Australian Government authority (e.g. matters of national

[5] See: MSN News, 'Comet Ridge's increased Mahalo stake to drive gas development', 3 August 2021: https://www.msn.com/en-au/money/markets/comet-ridges-increased-mahalo-stake-to-drive-gas-development/ar-AAMTXwg

[6] Queensland Government, Guidelines 'Criteria for environmental impact statements for resource projects under the Environmental Protection Act 1994' (November 2020) https://environment.des.qld.gov.au/__data/assets/pdf_file/0025/208078/eis-gl-eis-criteria.pdf .

[7] *Environmental Protection Act 1994* (Qld), ss 143, 232(1)(b).

environmental significance under the *Environment Protection and Biodiversity Conservation Act 1999,* agriculture, fisheries, transport), social and economic impacts, and cumulative impacts.

For petroleum and gas activities the specific threshold considerations for whether an EIS should be required are:

a) '*Would the application involve a total disturbance area of greater than 2000 hectares at any one time during the life of the proposed project? This includes areas occupied by well pads (single or multi-directional), access tracks and roads, water storages, and process plants?*
b) *Would the application involve the construction of a high pressure pipeline over a distance of 300 kilometre or greater?*
c) *Would the application involve the construction of a liquefied natural gas plant?'*[8]

This threshold effectively means many gas and petroleum applications are not required to undertake an EIS to assess their environmental and social impacts. Particularly, by requiring a 'total disturbance area of greater than 2000 hectares at any one time during the life of the proposed project', significant areas of environmental value may be cleared without this threshold for an EIS ever being triggered for ongoing gas and petroleum activities.

Further, any environmental assessment required of applicants, even for major amendment applications, is **very rarely subject to the scrutiny of the local community and general public**, given the discretion around notification of major amendment applications. This raises serious concerns around the integrity of environmental assessment being undertaken for petroleum and gas projects in Queensland, as well as raising corruption risks through the lack of accountability in process around the assessment of these applications.

4. The failure to require adequate environmental assessment threatens Queensland's ability to meet emissions reductions targets

The lack of integrity around environmental assessment of petroleum and gas applications is particularly concerning given the significant greenhouse gas emissions created by this industry, through both direct, migratory (released through underground fissures) and fugitive (losses and leaks throughout production process) emissions. The most recent State of the Environment Report in Queensland states that 'total fugitive emissions increased 79% between 2005 and 2016 in line with growing coal and gas production.'[9]

Currently, fugitive emissions are very poorly regulated for the resource sector. The actual emissions created by Queensland and Australia's gas industry are poorly understood,[10] due

[8] Queensland Government, Guidelines 'Criteria for environmental impact statements for resource projects under the Environmental Protection Act 1994' (November 2020), 7, https://environment.des.qld.gov.au/__data/assets/pdf_file/0025/208078/eis-gl-eis-criteria.pdf .
[9] Queensland Government, 'Fugitive Emissions Sector Greenhouse Gas Emissions', State of the Environment (Web Page) <https://www.stateoftheenvironment.des.qld.gov.au/pollution/greenhouse-gas-emissions/fugitiveemissions-sector-greenhouse-gas-emissions>.
[10] Heinz Schandl et al, 'Whole of Life Greenhouse Gas Emissions Assessment of a Coal Seam Gas to Liquefied

predominately to weak regulation around monitoring and reporting of methane emissions along the production and transportation pipelines. Queensland does not generally require accurate monitoring and reporting of fugitive emissions released by the gas industry along the supply chain, nor are leaks required to be monitored and capped as part of standard regulatory practice. Emissions reported are generally modelled rather than based on real data of the industry's emissions.

5. There is no public accountability around petroleum tenure applications

Tenure applications are not required to be published nor are they on a public register, which would require them to be made available to members of the public. To obtain a copy of the application it is necessary to make an application under the Right to Information Act framework, which can take a significant amount of time, if it is approved.

Petroleum tenure applications are **not subject to any public notification** under the *Petroleum and Gas (Production and Safety) Act 2004* (Qld) and the *Petroleum Act 1923* (Qld).

The tenure for a petroleum and gas application provides information on where the proponent is able to operate. This information is in the public interest, particularly given the proponent is generally operating on property they do not own and therefore the tenure is part of the framework of permits allowing impacts on the interests of First Nations and other landholders.

6. The *Regional Planning Interests Act 2014* (Qld) (RPI Act) is not functioning to ensure that areas of regional interest, including Queensland's healthy rivers, best agricultural land and townships, are protected from gas and mining activities

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 rivers, townships and best quality agricultural land are protected from inappropriate development.

In summary, the key concerns are that:

- the purpose of the RPI 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, it is solely based around managing competing interests;
- there is a disconnection from major approvals, impacts to areas of regional interest are not considered in the assessment of any needed EA or tenure consideration, and many proponents leave their application under the RPI Act until after they have secured their EA and tenure which creates significant momentum towards approval of the activity;
- there are significant exemptions, inconsistency, uncertainty and discretion in decision making;

Nautral Gas Project in the Surat Basin, Queensland, Australia', CSIRO Energy (Report, July 2019) 1 <https://gisera.csiro.au/wp-content/uploads/2019/07/GISERA_G2_Final_Report-whole-of-life-GHGassessment.pdf>.

- there is inadequate accountability and independent oversight, with public notification of proposed impacts to priority agricultural areas, strategic cropping land and strategic environmental areas being at the discretion of the government decision-maker; and
- there has been inconsistent application of regulations across Queensland. Priority living areas (**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 updated in Sept 2011, prior to the RPI Act, and therefore has no provision for PLAs to be mapped for that region; and
- no application for a regional interest development approval has ever been refused, and concern exists that conditions placed on these approvals are often minimal.

7. **Compliance and enforcement activity around petroleum and gas activities is not sufficiently transparent both for public confidence and industry awareness that the law is enforced**

   There is very little transparency in Queensland around compliance of companies with their conditions, both because the Department of Environment and Science (**DES**) does not publish when Penalty Infringement Notices are imposed upon companies (which are the most commonly used enforcement tool) and companies are not required to provide published detail of their compliance with their conditions in their annual reports. In contrast, proponents in NSW generally have to produce annual reports each year as to how they have complied with their conditions, and then they are subject to regular Independent Environmental Audits.

   Transparency around compliance and enforcement activities increases efficiency by encouraging proponents to take their compliance requirements seriously, reducing breaches and the need for communities to complain about breaches, and reducing the need for DES to respond to breaches. Transparently providing this information to regulators and the community also reduces the burden on DES and the community to assess compliance and reduces the need for RTI's by the community to understand the environmental impacts that are occurring in their communities.

Steps to improve the integrity of gas project assessment in Queensland

In order to bring integrity back into the assessment of gas projects in Queensland, we recommend the following amendments be made to the EP Act and RPI Act.

Recommendations

1. **Remove discretion around public notification so that all major amendments are publicly notified and secure appeal rights**

   This would reduce uncertainty for all stakeholders and reduce government resources expended on deciding the applicability of public notification in each case. It would also strengthen accountability and integrity in the assessment of major amendment applications. Public submissions must also secure appeal rights on decisions.

Ideally, email subscription services should be implemented to alert people of applications and notifications; and a central database for all new EA and major amendment applications so that they can be tracked across the various applications more easily.

2. **Require that public environmental and social impact assessment is always undertaken for gas exploration and production activities, and the threshold for a full EIS is triggered for all but the very smallest of production activities**

   Environmental impact statements provide a clear and robust framework for transparently documenting proposed impacts to the environment, community and economy of a project. They can be tailored to the particular project and the receiving environment and community of that proposed project. We understand that the Northern Territory currently requires an environmental management plan be undertaken for even one well being proposed. Requiring an EIS be completed ensures that the proponent has undertaken sufficient investigation into the proposed project's likely impacts, and that the outcomes of these investigations are made known to the government assessing their application, so that these impacts can be appropriately considered for informed assessment. Further it ensures that there is transparency to the community - both those directly impacted and those more broadly concerned - as to what is proposed, what the likely impacts of the activities may be and whether all relevant considerations have been taken into account.

   Along with EISs being required for applications more often, there is a need for more integrity in the development of EIS materials, ensuring they are based on sufficient, reliable, correct, site-specific and unbiased data and interpretation. This would build greater public trust in the assessment process, and decrease need for the public to point out extensive flaws in these essential documents and lower likelihood of projects being challenged in Court – leading to a better outcome for all involved.

3. **Place petroleum and gas ATPs and leases and associated applications on the public register and make them easily available online, as a public interest document.**

   As stated above, the tenure for a petroleum and gas application provides information on where the proponent is able to operate. This information is in the public interest, particularly given the proponent is generally operating on property they do not own and therefore the tenure is part of the framework of permits allowing impacts on the interests of First Nations and other landholders.

4. **Amend the RPI Act to prevent gas and petroleum activities in the most sensitive areas of regional interest, such as our prime agricultural land and vulnerable strategic environmental areas, and to provide for:**

   a. **guaranteed public notification and appeal rights of regional interest development approval (RIDA) applications; and**

   b. **connection of the RIDA assessment process to other major approvals for activities, to ensure it is not a last-minute consideration.**

For the RPI Act to function in a way that meets public expectation of the protection of areas of regional interest, it must be amended to strengthen its oversight of impacts posed to these areas of regional interest. At present the RIDA process is not connected even to major approvals, meaning that proponents can strategically leave applications for a RIDA to the last minute of their assessment staging, making it highly unlikely that a RIDA would be refused.

5. **Improve clarity and certainty in decision-making criteria and align with government policy to reduce greenhouse gas emissions**

Removing subjectivity in assessment through objective decision-making criteria will assist all stakeholders by providing greater certainty as to what will be required of the assessment process and that the criteria will be fairly applied with weight placed on all aspects of the principles of ecologically sustainable development, as required under the EP Act. Congruency is particularly needed between government policies to reduce greenhouse gas emissions[11] and decision-making criteria for major developments. Clearer decision-making could be achieved by:

a) providing clearer guidance to decision makers on how principles of ESD should be applied;
b) providing for clarity in the assessment of scope 1, 2 and 3 emissions and how they are to be assessed given our climate emission reductions commitments; and

c) undertaking transparent planning for what the government wants to prioritise going forward in land and resource management and how they will do that – with decision-making criteria and tender processes that transparently provide for this. This would ensure resources aren't wasted by companies in applying in areas that are not prioritised for resource activities, and would avoid the wasted resources of community and government in responding to applications in areas that are clearly inappropriate.

6. **Improve transparency around compliance and enforcement activities, to build public and industry confidence that the government is upholding the law**

Compliance and enforcement activities by Government are necessary to ensure that proponents respect and follow the conditions of approval they are granted. Such activities also strengthen protection of the public interest in ensuring that industry operators do follow the conditions placed on them to avoid and mitigate harm to the environment and communities. Transparency in compliance and enforcement activities promotes public and industry confidence that the law is being upheld. We recommend:

a) Proponents should be required to annually report on their compliance against conditions;
b) PIN issuance should be reported to the public transparently;
c) Conditions should not rely on communities to report breaches, which inefficiently puts the onus on communities without the resources to detect non-compliance; and
d) DES must take complaints and compliance and enforcement activities seriously, to create a culture of respect for the law and to reduce inefficiencies that come from non-compliance with conditions.

[11] As set out in the Queensland Government's 'Queensland Climate Transition Strategy' available here: https://www.qld.gov.au/environment/climate/climate-change/transition/queensland-climate-transition-strategy.

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Appendix: Case study – Mahalo Gas Project assessment and approval process

The tables below document the approval process undertaken for the Mahalo Gas Project in Central Queensland. This project has not been subject to an EIS since commencing, nor have any applications to undertake major amendments to the EA been required to publicly notify any applications to amend an EA to increase its area covered and the amount of wells allowed to be constructed.

Pre-amended 2020 EA		**Post-amended 2020 EA** ***(EA amended via major amendment application that was <u>not</u> required to be publicly notified)***		**Difference**
Location	ATP337/1191, PL450, PL451, PL457, PL1012	**Location**	ATP337/1191, PL450, PL451, PL457, PL1012, PL1082, PL1083	**Addition of 2 new PL areas that were not included in the original EA.**
Scope of activities	Approval for: • Stimulation of 131 CSG wells (165ha) • Stimulation of 62 (94ha) conventional gas wells • 10 STPs at all locations	**Scope of activities**	Approval for: • Stimulation of 131 CSG wells (165ha) • Stimulation of 62 (94ha) conventional gas wells • 10 STPs at all previously approved locations • 190 (228ha) CSG wells	**Addition of 190 CSG wells on the two new PLs.**
Total Well Count	193	**Total Well Count**	383	As above.

A comparison of the pre and post 2020 amendment EA authorisations. Prepared on the basis of information provided by DES, November 2020.

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Mahalo application history.

Date	Action	Comments
1983	Authority to Prospect ATP337 granted under the *Petroleum Act 1923*	• Predates EP Act and any requirement for an EIS. • Exploration authorised only (ATP tenure)
Late 1990's	EA issued to cover area subject to ATP 337. Level 2 ERA of Schedule 1 of the EP Reg 1998 authorised.	• Exploration authorised only (ATP tenure) • EIS not required due to authorisation of exploration activities only.
2010	Santos was granted a new EA for activities on ATP337 (*due to upcoming expiry on tenure*).	• Exploration authorised only (ATP tenure)
2015	Amendment by agreement approved to add ATP 1191.	• Exploration authorised only (ATP tenure)
2015	EA amendment approved to add Petroleum Leases (PL) 450, 451, 457 and 1012. **Major amendment without public notification**.	• Despite proposing significant amendments to the EA and adding multiple PLs, the applicant satisfied the department that an EIS was not required as the proposed amendment did not trigger any of the criteria outlined in the '*Guideline: Triggers for environmental impact statements under the* Environmental Protection Act 1994' for mining and petroleum activities. • https://environment.des.qld.gov.au/__data/assets/pdf_file/0025/208078/eis-gl-eis-criteria.pdf • Petroleum production authorised (pending grant of tenure).
2017	PL 450 and PL 451 granted.	• Granted by the former Department of Natural Resources, Mines and Energy.
2020	EA amendment approved to add PLs 1082 and 1083. **Major amendment without public notification.**	• Both PLs are within the area covered by ATP 1191. • As above, the amendment application did not trigger any criteria that required an EIS.