Submission No. 291

QUEENSLAND resources COUNCIL

Working together for a **shared future**

22 April 2016

Mr Rob Hansen
Research Director
Agriculture and Environment Committee
Parliament House
George Street
BRISBANE QLD 4000

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Dear Mr Hansen

The Queensland Resources Council (QRC) welcomes the opportunity to provide a submission to the Agriculture and Environment Committee (AEC) on the *Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016* (the Bill).

QRC is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses minerals and energy exploration, production, and processing companies, and associated service companies. QRC works on behalf of members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

The key amendments to the *Vegetation Management Act 1999* (VM Act) for the reinstatement of a vegetation management framework to more effectively manage vegetation clearing in Queensland, particularly in the catchments of the Great Barrier Reef, demonstrates the Government's aim to capture more of the impacts associated with agricultural activities. However, the Bill has without any prior warning to the resources sector strayed beyond its intent of amending the VM Act, to revising the *Environmental Offsets Act 2014* (EO Act) and other legislation. This will have a major, direct impact on the resources industry (as per the case studies provided in our submission), and because of this QRC is **not** able to support the Bill in its current form.

The rush of the Bill into Parliament in the absence of proper consultation has resulted in a missed opportunity for what could have been a sensible approach to address Government's intent of creating accountability for agricultural impacts, without the unintended consequences for the resources industry. Further, the Government has not undertaken any assessment on the impacts of the Bill to industry.

QRC does not support the Bill in its current form for the reasons set out in our submission. QRC's key concerns relate to the following provisions:

- Removal of the 'significant' residual impact threshold and how this directly impacts industry;
- Interactions of the new Part 11A with existing policy and systems;
- Changes to vegetation mapping; and
- Riverine Protection Permit requirements.

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The most fundamental concern arising from the Bill is the removal of the 'significant' threshold in the context of residual impact as provided under the EO Act. The removal of a tested and Commonwealth adopted, risk-based methodology has the potential to require any minor modification to an approved development to be reassessed despite it having been previously determined to not have a 'significant' residual impact on a Matter of State Environmental Significance. This will subsequently trigger a review and changes to a development's environmental authority to capture any residual impact and offset accordingly.

Driving industry down the path of accounting for any residual impact will be an extremely costly exercise for both companies and tax payers, who will ultimately fund the unnecessary reassessment of developments. At a time when industry can least afford it, the introduction of the Bill and its requirements for any residual impact to be offset has the real potential to cease operations.

The solution to the main industry concern is simple. That is, the Bill's proposed provisions to omit the word 'significant' from the threshold of residual impact under the EO Act be removed. If it is Government's intent to only focus regulatory change to agricultural development, then there are far better options available (as provided in our submission) than removing the term 'significant' and adversely impacting other industries.

The Bill has not only overstepped the mark with regards to offsets, it also has the potential to further exacerbate existing State vegetation mapping issues and impose impractical constraints for exempt activities undertaking works in a watercourse, lake or spring.

QRC again emphasises our serious concerns with the unintended consequences of the Bill on industry as currently drafted. Any additional unnecessary cost imposts on the resources sector in the current economic context and pricing constraints must be recognised as potentially having consequences for jobs and the economic return to the people of Queensland.

QRC therefore seeks recommendations from the AEC, which will see a much fairer outcome for the resources industry, in consideration of the major, direct impact that will result should the Bill be passed in its current form.

QRC would be happy to discuss this submission further with the AEC and appear at the next hearing on the Bill. The QRC lead is Frances Hayter – Director, Environment Policy [redacted]
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Yours sincerely

[redacted]

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QRC Submission

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Introduction and background

The Queensland Resources Council (QRC) welcomes the opportunity to provide a submission to the Agricultural and Environment Committee (the Committee) on the *Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016* (the Bill) as introduced by the Deputy-Premier, Hon. Jackie Trad on 17 March 2016.

The Queensland Resources Council (QRC) is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses minerals and energy exploration, production, and processing companies, and associated service companies. QRC works on behalf of members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

Following changes to the *Vegetation Management Act 1999* (VM Act) in 2013 under the previous Government, the Government has introduced the Bill in order to meet its election commitments of reinstating vegetation management protection provisions consistent with former Labor policy. This Bill is also Government's attempted way of achieving its commitments for the Reef 2050 Long-Term Sustainability Plan and a reduction in carbon emissions to support Australia's international climate change agreements.

The key amendments to the VM Act for the reinstatement of a vegetation management framework to more effectively manage vegetation clearing in Queensland, particularly in the catchments of the Great Barrier Reef (GBR), demonstrates the Government's aim to capture more of the impacts associated with agricultural activities. QRC does not want to participate in any debate on the Bill, which is really between the agricultural sector and the Government. However, the Bill has, without any prior warning for the resources sector, strayed beyond its intent of amending the VM Act, to revising the *Environmental Offsets Act 2014* (EO Act) and other legislation. This will have a major, direct impact on the resources industry, which the QRC does not support.

Further, the lack of consultation on the Bill beyond initial consultation in mid-2015 with the agricultural and environment sectors, prior to it being introduced to Parliament is disappointing. Although QRC appreciates the briefing offered by the Department of Natural Resources and Mines (DNRM) and Department of Environment and Heritage Protection (EHP) on 5 April 2016 and the meetings with the Minister for Environment and Heritage Protection and Minister for National Parks and the Great Barrier Reef, Hon. Steven Miles, on 21 March and 12 April 2016, engagement with Government has come too late. The rush of the Bill into Parliament in the absence of proper consultation has resulted in a missed opportunity for what could have been a workable approach to address Government's intent of creating accountability for agricultural impacts, without the unintended consequences for the resources industry.

Executive summary

QRC does **not support** the Bill in its current form given that it extends well beyond the Government's stated primary objectives of minimising vegetation clearing, and reducing associated emissions resulting from agricultural activities in the vicinity of the GBR. The Bill does not offer the best avenue for regulating such activities without inadvertently affecting a number of existing and future environmentally relevant activities state-wide, including that of the resources industry.

The most fundamental concern arising from the Bill is the removal of the 'significant' threshold in the context of residual impact as provided under the EO Act. The removal of a tested and Commonwealth adopted, risk-based methodology has the potential to require any minor modification to an approved development to be reassessed, despite it having been previously determined to not have a 'significant' residual impact on a Matter of State Environmental Significance (MSES). This will subsequently trigger a review and changes to a development's environmental authority (EA) to capture any residual impact and offset accordingly.

Driving industry down the path of accounting for **any** residual impact will be an extremely costly exercise for both companies and tax payers, who will ultimately fund the unnecessary reassessment of developments. At a time when industry can least afford it, the introduction of the Bill and its requirements for any residual impact to be offset has the real potential to cease operations.

The solution to the main industry concern is simple. That is, the Bill's proposed provisions to omit the word 'significant' from the threshold of residual impact under the EO Act be removed. If it is Government's intent to only focus regulatory change to agricultural development, then there are far better options available (as discussed below) than removing the term 'significant' and adversely impacting other industries.

The Bill has not only overstepped the mark with regards to offsets, it also has the potential to further exacerbate existing State vegetation mapping issues and impose impractical constraints for exempt activities undertaking works in a watercourse, lake or spring.

With proper consultation on the Bill prior to its re-introduction, it is still possible that many of the concerns outlined in this submission may yet be addressed with targeted and pragmatic outcomes achieved for all affected parties.

Lack of consultation

QRC finds itself once again disappointed in the lack of consultation undertaken on the Bill, in particular the amendments to the EO Act.

In the explanatory speech[1] to the Bill, the Deputy Premier stated that "*The introduction of this bill into parliament has not been a secret. So it should not come as a surprise to anyone*". However, the explanatory notes[2] to the Bill specifically outline that "*Limited consultation was undertaken in the development of the Reinstatement Bill*" and "*No consultation was undertaken in relation to the changes to the Environmental Offsets Act*". The Government's decision not to consult particularly with affected industries is puzzling.

[1] http://www.parliament.qld.gov.au/documents/tableOffice/BillMaterial/160317/Vegetation.pdf
[2] https://www.legislation.qld.gov.au/Bills/55PDF/2016/B16_0035_Vegetation_Management_(Reinstatement)_and_Other_Legislation_Amendment_Bill_2016E.pdf

The transcript of proceedings[3] from the Committee Public Briefing held on 22 March 2016 further demonstrates the lack of consultation undertaken by Government. The transcript reads "*While the government has continued to communicate and consult with stakeholders on its policy commitments, no consultation could be taken by the department on the provisions of the bill itself. Consultation by ministerial officers on the bill was undertaken with key stakeholders prior to cabinet consideration of the reinstatement bill. Stakeholders included AgForce, the Wilderness Society, the WWF and the Environmental Defenders Office.*"

It is unfair of Government to engage only with agricultural and environmental special interest groups and consider that adequately represents the key stakeholders, when the resources sector has been most affected by offset requirements under the EO Act and now this Bill. For Government to not have (at a minimum) engaged with QRC, who is the peak representative organisation of the Queensland minerals and energy sector, is unacceptable.

The aforementioned statements provide a very different story to that previously stated by EHP in April 2015 when QRC was informed that "*No significant changes to the offsets framework are being considered by the Government. This is in the interests of ensuring stability, which will allow the business community to invest with confidence. However, the Queensland Government intends to make some further clarifications and refinements to the existing framework to improve its operation. This process will be undertaken in a manner consistent with development of the offsets framework, and will involve consultation with QRC and other key stakeholders*". Further it was suggested that "*…should amendments to the framework or guidance material be processed, EHP will continue to consult with QRC and other key stakeholders in this process*"[4]; commitments which have clearly not eventuated.

Further, the Government has failed to follow procedure and best practice principles for developing regulation. As provided in the transcript of proceedings from the Committee Public Briefing held on 22 March 2016, DNRM confirmed that no Regulatory Impact Statement (RIS) had been completed.

Instead, upon discovering the introduction of the Bill, QRC had to initiate discussions with the Minister for Environment and Heritage Protection, the Hon. Steven Miles, and his Department's senior officers on 21 March 2016 to gain any clarity into the intention and the content of the Bill.

Even once approached, there was clear confusion within EHP as to the potential impacts of the Bill on the resources industry. The Minister's assurances that his Department had advised him that there would not be any impact on the resources sector as a result of the Bill, would seem to be inaccurate. It was suggested that the proposed amendments were all about creating a tool to reduce clearing and having the agricultural sector undertake offsets given that there has been barely any created by the agriculture and development industries since the commencement of the EO Act. QRC was clear that this advice to the Minister was incorrect.

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[3] http://www.parliament.qld.gov.au/documents/committees/AEC/2016/11-VegetationMangt/11-trns-pb22Mar2016.pdf

[4] Department of Environment and Heritage Protection (2015, 21 April) *EHP/QRC meeting agenda paper – Agenda item 3: Implementation of the new environmental offsets framework*

The disconnect in views on the Bill was further exacerbated when DNRM and EHP met with QRC and its members on 5 April 2016. Officers provided the Departments' positions on the proposed amendments, which saw the removal of the 'significant' threshold across all development in addition to other changes under the VM Act and the *Water Act 2000* (Water Act), as discussed further below. It was however indicated that there would be some type of unknown and unquantified 'non-trivial' threshold as a replacement for the term 'significant'.

Removal of the 'significant' residual impact threshold

IMPACT TO THE ASSESSMENT AND DELIVERY OF OFFSETS

QRC's most fundamental concern with the Bill is the amendment to Clauses 21 to 30 of the EO Act, which removes the term 'significant' in the context of residual impact. The proposed amendments came as a complete surprise to QRC, as under the Deputy Premier's dissenting report[5] on the EO Act in 2014, only the following issues were raised:

- Arbitrary limit on offsets – cap on offset ratios at 1:4;
- Consistency – namely the exclusion of the Coordinator General from the EO Act; and
- Lack of regulation of offset brokers.

The report did **not** outline any issue in relation to the term 'significant' having regard to residual impact, as noted above.

Regarding the issue on the need for consistency, QRC was supportive of the now Government's position. QRC's submission on the EO Bill strongly recommended that the Coordinator General should not be exempt from the offsets framework, particularly in the context of gaining accreditation of the new Queensland offsets framework by the Commonwealth Government under the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The Bill's explanatory notes fail to recognise the critical impact the proposed amendments will have to the assessment and delivery of offsets for industry. This becomes further evident when EHP stated at the Committee's public hearing on 22 March 2016 that "*the proposed amendments in the Bill with respect to offset requirements do not introduce any offset obligation that did not exist prior to the amendments made by the previous government*".

In consultations with the Minister on 21 March 2016, QRC was informed that there were differences in the way the 'significant' threshold was being applied across development types. It was apparently Government's intent to remove the threshold only in the context of agricultural development.

As suggested by the Minister, the 'significant' threshold operates differently under Significant Residual Impact Guideline (SRIG) for the *Environmental Protection Act 1994* (EP Act) and the *Sustainable Planning Act 2009* (SP Act). For example, the criteria under the SP Act SRIG triggers a significant residual impact and consequently an offset when a prescribed activity results in clearing of more than 5 hectares of an 'endangered' or 'of concern' regional ecosystem vegetation whilst the EP Act calls for an area greater than 0.5 hectares where in a dense to mid-dense (structural category) regional ecosystem. The different criteria in the two Guidelines causes inconsistencies in the way offsets are applied.

[5] http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2014/5414T5077.pdf

In 2014 and since that time, QRC raised with Government the need for only one SRIG so as to avoid conflicts in offset requirements. Despite being assured that the issue of combining the two guidelines would be reconsidered in 2015, this did not occur. There is little doubt that this matter has had a strong influence on the Bill in attempting to find commonalities between the guidelines. Nevertheless, the inconsistencies in the SRIGs do not provide reason to completely remove the 'significant' threshold without consulting with affected parties and reviewing the consequences on other development to which the EO Act applies.

It is the resources industry which has most been affected by the introduction of the EO Act. Although QRC is generally supportive of the Act, this was contingent on the concept of 'significant' residual impact. When DNRM and EHP consulted with QRC and its members on 5 April 2016, officers confirmed **no assessment had been undertaken by Government on the impact of removing the 'significant' threshold to industry**, or indeed any assessment of the impacts of the Bill. To remove this threshold without such an assessment is not supported by QRC. It is difficult for industry to plan their business with certainty and deliver effective environmental outcomes when Government keeps shifting the goal posts.

When the EO Act was developed, one of the key aims was to establish a State offsets system that was consistent with the Commonwealth. The proposed amendments do **not** align with the principles of the EPBC Act and its demonstrated testing of 'significant' residual impact. The principle of biodiversity offsetting is to achieve no net loss of irreplaceable and vulnerable biodiversity. There is no conservation value in offsetting biodiversity which is not vulnerable or where much remains / is not degraded.

The Bill seems to show a lack of understanding for the operation of environmental offsets, particularly at a federal level where the term 'significant' has been utilised for over 17 years. Should the Bill be passed it will dilute the objectives and effectiveness of biodiversity offsets.

By defining a 'significant' threshold it allows Government to effectively manage and condition development with the highest residual impact on the environment. This approach focusses on the value offsets can provide in achieving no net loss of irreplaceable and vulnerable biodiversity. It also enables the allocation of resources for minimising environmental impact where it is most needed, while at the same time providing the community with the financial and social benefits of development.

The removal of what is a risk-based methodology has the potential to require any minor modification to an approved development to be reassessed, despite it having been previously determined to have no 'significant' residual impact on a MSES. This has the real capacity to result in the requirement for a review and changes to a development's EA to capture any residual impact and offset accordingly.

In consultation with DNRM and EHP on 5 April 2016, officers confirmed that the 'significant' threshold is to be removed and replaced with a different 'non-trivial' threshold; the definition of which has not yet been determined, and a process for doing so, not defined. Without a clear understanding of what this new threshold will require and how low the Government intends to set the 'residual' impact bar, QRC is in a position where it can only assume a scenario where all residual impacts will trigger offsets.

Whilst QRC has been advised that because EHP has power under the EP Act to decide if an offset is required or not, the removal of 'significant' should not be a concern, this approach does not lend itself to consistency. This could lead to some developments (whether resources or agriculture) being arbitrarily conditioned for offsets based on the regulator present on the day. Taking this approach cannot offer confidence in the offsets framework, particularly in how it can be changed to suit individual cases, and most importantly it is unlikely to provide additional environmental benefit.

Driving industry down the path of accounting for any residual impact (applicable to brownfield and greenfield developments) will be a costly exercise for tax payers and companies; who will ultimately fund the unnecessary reassessment of developments, even where a change may be a result of the company wanting to minimise their impact. At a time when industry can least afford it, the introduction of the Bill and its requirements for any residual impact to be offset has the real potential to cease operations.

If the aim was to capture more agricultural impacts as suggested by Government, there are far better options available to regulate such development without the need to remove the term 'significant', including:

- removal of the SP Act SRIG or amalgamate it with the EP Act SRIG to allow one consistent approach rather than making the legislative changes; or
- amending what is considered to be an environmentally relevant activity under the *Environment Protection Regulation 2008* (EP Regulation).

Attachment 1 provides case studies, which describe the impact to resources industry businesses in the event the proposed removal of the 'significant' threshold under the EO Act had been in existence at the time prior to current project approvals.

Recommendation 1: The Committee recommend against the removal of the term 'significant' in the context of residual impact under the EO Act and that it should be retained as per the current legislation.

Recommendation 2: Government should remove the SP Act SRIG or amalgamate it with the EP Act SRIG to allow one consistent approach rather than making the legislative changes.

Recommendation 3: Whilst QRC does not agree to the removal of the 'significant' threshold, Government should, with full consultation, define its proposed alternative residual impact threshold prior to the Bill being reintroduced into the house.

ABILITY TO ACQUIRE OFFSETS

If industry and other affected parties were required to account for any residual impact through offsets, as proposed under the Bill, the ability for proponents and State Government to deliver on the quantum of land required to fulfil assessed offset conditions would be in doubt. There is simply not enough land with like for like (for proponent-driven offsets) or strategic value (financial offsets to the State) available to account for all residual impacts of broad scale development, including that of other industries.

The limited availability of land to satisfy offset conditions brings to the forefront issues relative to forestry activities. The Defined Forest Area maps[6] delineate the area of State-owned native forest over which the Queensland Government's Forest Products unit applies. Within the Brigalow Belt North Bioregion, the maps show:

- 30.9% is covered by some form of forestry declaration;
- 81.2% is covered by either non-remnant vegetation, protected areas or some form of forestry declarations; and
- 45.7% of the Queensland Government's strategic offset corridors are also encumbered by forestry declaration areas.

Whilst a substantial proportion of the Brigalow Belt North Bioregion (a Commonwealth and State recognised area of biodiversity value) is dedicated Defined Forest Area, the figures provided above do not definitively quantify the area of land that may be subject to requirements under the *Forestry Act 1959* (Forestry Act). The Defined Forest Area maps state that *"Other state land not shown as a Defined Forest Area on this map is subject to the provisions of the Forestry Act 1959. The fact it is not a Defined Forest Area at this point in time is not intended to indicate there is no State interest in the forest products or quarry material, which are still administrated under the provisions of the Forestry Act 1959"*.

The land dedicated as Defined Forest Areas under the Forestry Act and other State land currently locks up large areas that hold sought after biodiversity values for offsets. If the proposed amendments under the Bill were passed, although QRC strongly disagrees with such a motion, the State will impede its own plans and that of others to establish greater offset areas. The related issue is the fact forestry clearing is not subject to provisions under the EO Act.

Recommendation 4: The Committee recommend that the extent of Defined Forest Areas be reviewed to enable their consideration for use as meeting offset requirements.

OVERSTEPPING CHANGE FAR BEYOND THE GREAT BARRIER REEF

In the explanatory speech to the Bill, the Deputy Premier stated that the Bill will *"reinstate the regulation of clearing of 1.18 million hectares of high-value regrowth on freehold and Indigenous land… That is regrowth that has had 25 years to grow and form regional ecosystems that contribute to the biodiversity of this state, regrowth that prevents sediment from being washed out into our reef and regrowth that absorbs carbon dioxide from our atmosphere…*

A key action of the Reef 2050 Long-Term Sustainability Plan, also known as the Reef 2050 Plan, is to strengthen the Queensland government's vegetation management legislation to protect remnant and high-value regrowth native vegetation including in riparian zones. The Reef 2050 Plan was developed by the Queensland and Commonwealth governments acknowledging the action required to ensure our reef does not become endangered".

The Deputy Premier has provided that the Bill aims to protect the health of the GBR and reduce carbon emissions. QRC accepts that this key message is consistent with the Reef 2050 Plan, which identifies the greatest threats to the GBR as Crown of Thorns Starfish, sediment and nutrient runoff from agricultural development within the catchment, and climate change. However, whilst QRC is supportive of implementing focussed measures to combat these impacts on the GBR, the proposed amendments to remove the 'significant' threshold under the EO Act drastically oversteps the mark of the Government's apparent intent and does little in affecting beneficial environmental change.

[6] https://www.business.qld.gov.au/industry/forests-and-wood/native-forests/defined-forest-area

Firstly the amendments will extend and affect development far beyond that associated with agriculture and the GBR catchment. Rather it will impact a number of existing and future environmentally relevant activities State-wide. For example, the resources industry, which is already heavily regulated with regards to offsets, will be subject to unworkable conditions regardless of impact and proximity to the GBR. Further, the removal of the 'significant' threshold will detract from the focus of directing funds and actions to addressing the key threats affecting the GBR or more broadly the region to which the development applies where not in the locality of the Reef.

As recommended above, there are far better options available to regulate development, in particular agriculture, without the need to remove the term 'significant'.

LACK OF TRANSITIONAL ARRANGEMENTS

Seeking consent for a proposed resources development through the regulatory approvals pathway is a time consuming and expensive process. The preparation, assessment and determination of an Environmental Impact Statement (EIS) alone generally takes a number of years at a cost of multiple millions of dollars. Should the Bill be passed and the 'significant' threshold removed, the point at which developments will be effected is unclear. The Bill in its current form does not provide transitional arrangements; whereby a point in the process is defined as being the trigger for a review of the impact assessment or offset requirements. Without such provisions, proponents may be forced to revise their offsets despite how far progressed the development may be in the approvals pathway (e.g. EIS determined, EA issued). The reassessment of developments simply due to the lack of transitional arrangements will be a costly exercise for tax payers and companies.

Whilst the Bill does not provide transitional arrangements, EHP advised on 5 April 2016 that proposed developments, which have a Notice of Election submitted for their offsets will not be subject to the amendments. However, this suggested provision does not adequately consider the significant impacts to those proponents with developments committed to staged offsets, whereby a Notice of Election is only submitted prior to works being carried out for that upcoming stage. Any such restriction could rule out the option for proponents to nominate staged offsets.

It also doesn't recognise that a proponent may have an EA but not its tenure, or may have both but do not need offsets in the first year/s of operations due to conditions, which allow a set timeframe for acquisition.

Whilst QRC strongly disagrees with the removal of the 'significant' threshold, the Government should establish transitional arrangements, in consultation with industry, for developments currently progressing through the approvals pathway in the event the Bill is passed. This will avoid the issues such as those encountered when implementing the EO Act, where transitional provisions did not adequately provide for existing approvals.

As such, when making a future decision under the Act about whether to impose an offset condition, the Government must consider any offset condition imposed on an authority under another Act or offsets policies applicable at the time of the approval for the same, or substantially the same, impact or activity.

In fact, the current transitional provisions in the EO Act already fall short of making the above clear. If the Government is already considering amendments to the EO Act, QRC would like to discuss these issues further so that the relevant amendments can be made through the Bill.

Recommendation 5: Whilst QRC strongly advises that the 'significant' threshold be retained, the Committee should recommend the inclusion of transitional arrangements in the Bill for development currently progressing through the approvals pathway.

CHANGES TO REGULATORY DOCUMENTATION

Whilst the aim is to remove the proposed amendment omitting the 'significant' residual impact threshold, the sheer quantity of guidance and regulatory material that would have to be amended as a flow-on effect, should the change go forward, needs to be understood by the Committee.

The following documents and tools will require amendment should the Bill be passed:

- *Environmental Offset Regulation 2014*;
- Queensland Environmental Offsets Policy 2014 Version 1.1;
- Significant Residual Impact Guideline;
- General Guide;
- Financial Settlement Offset Calculator;
- Combined Offset Calculator;
- Offset Delivery Plan Template;
- Guide to Determining Terrestrial Habitat Quality;
- Land-based Offset Multiplier Calculator;
- Habitat Quality Scoring;
- EOD1 – Environmental Offsets Delivery Form 1: Notice of Election and Advanced Offset Details;
- EOD2 – Environmental Offsets Delivery Form 2: Offset Delivery Plan Details;
- EOD3 – Environmental Offsets Delivery Form 3: Offset Area Details;
- EOD4 – Environmental Offsets Delivery Form 4: Financial Settlement Details;
- EOD5 – Environmental Offsets Delivery Form 5: Habitat Quality Details; and
- EOD6 – Environmental Offsets Delivery Form 6: Staged Offset Details.

Applicability of Part 11A

INTERACTIONS WITH COMMONWEALTH OFFSET CONDITIONS

Clause 31 of the Bill provided for a new Part 11A under the EO Act, which effectively allows the State involvement in determining and managing Commonwealth matters. Due to the lack of consultation and the limited information provided in the Bill's explanatory note, the intent and interactions with Commonwealth offset conditions was initially unclear.

The new Part 11A, section 89B of the Bill appears to allow financial offsets contributing to a Commonwealth offset package (10% indirect component) to be handled by the State in the offset account. If this is the intent, QRC supports the position that State Government is able to hold and manage the funding offered to compensate for a Commonwealth prescribed environmental matter. This should be the extent of the State government's role, however, as currently drafted, together with the lack of detail in the Explanatory Note, this provision also appears to allow for section 89D as described below.

The intent of the original EO Act was to remove the problematic duplication of Commonwealth and State Government offset requirements. The Act recognises that where an offset had been provided for a prescribed environmental matter, whether the Commonwealth or the State Government holds the offset, the proponent should only be required to account for that offset once. The Bill's proposed amendments appear to negate the previous position and allow the State Government to control what payment will be accepted in relation to Commonwealth offset conditions.

The new Part 11A, section 89C looks to develop a basis for which it can achieve 89D(1) and (2). For example, section 89C(a) provides for what a conservation outcome is and how it is to be achieved. This links to sections 89D(1) and (2) of the Bill, which appears to give the State Government power to seek additional monies should it deem that funds received for a Commonwealth prescribed environmental matter are not sufficient to achieve a conservation outcome required under the Queensland environmental offsets framework. This approach potentially forces the proponent to pay twice for an offset associated with a single prescribed environmental matter and is not agreed with by the resources sector. Further, there are no provisions that suggest how the State Government proposes to assess and determine what is deemed to be sufficient under the Queensland offsets framework.

In consultation with EHP on 5 April, it was confirmed that the new Part 11A is only intended to provide an avenue for Commonwealth Government financial payments to be paid into the State Government's offset account. EHP also added that the State Government would be willing to accept payments beyond the 10% indirect contribution should the Commonwealth Government choose to support a full or a greater proportion of finance for Matters of National Environmental Significance (MNES). Whilst the State Government has put forward this proposal, it did not appear that EHP consulted the Commonwealth Government on the amendments, which have the potential to make them ineffective.

In industry's recent experience, the Commonwealth Government will not accept financial offsets, beyond the existing 10% indirect amount, to compensate for direct impacts to prescribed environmental matters. It has been suggested that this is largely a result of the State not being committed to providing an annual report to the Commonwealth on its progress of funding suitable offsets from the pooled finances sourced primarily from the resources sector. This means that the only way the resources sector can compensate for direct impacts on Commonwealth prescribed environmental matters is through proponent-driven offsets. In this case, use of the State's offset account by the Commonwealth will be underutilised.

Without the alignment of the State and Commonwealth Governments' offsets frameworks and the added conflicts proposed in the Bill, the goal of a bilateral approach to offset conditioning is pushed even further out of reach.

EHP has further advised that it was not State Government's intent to ask for additional monies beyond that assessed as being appropriate by the Commonwealth Government under the EPBC Act. QRC is supportive of this position and does not believe the State Government should have the power to seek a 'top up' offset for MNES. QRC also recommends that the wording of Part 11A in the Bill and Explanatory Notes be revised to better reflect this commitment.

Recommendation 6: Part 11A of the Bill should be amended to reflect that the State Government will not seek additional monies beyond that assessed as being appropriate by the Commonwealth Government under the EPBC Act. The explanatory notes should also be suitably amended.

Recommendation 7: The State Government consult with Commonwealth Government on the Bill and its interactions with current joint policy and processes.

ENVIRONMENTAL OFFSETS COMMITTEE

At the briefing with QRC members on 5 April 2016, EHP advised that the Environmental Offsets Committee would be responsible for determining whether a payment provided under an EPBC Act condition is adequate to deliver on an environmental offset, which achieves conservation outcomes, as required under the Queensland offsets framework. However, EHP did not expand on the assessment process or scope by which the Environmental Offsets Committee would make this assessment. Whilst the detail may not sit in the EO Act, it is essential that this information appear in the regulation or a statutory guideline, along with role and responsibilities of the Environmental Offsets Committee, and any subsequent action that may be taken in the event an offset payment is not deemed to be sufficient. The development of this process should be undertaken in consultation with stakeholders, including industry.

The Committee should be cognisant that if the Bill was passed, the 'significant' threshold removed, and the need for all residual impacts to be offset, the Environmental Offsets Committee may find themselves in a similar scenario to industry, where despite the funds being available there may not be enough land to fulfil the quantum and type of offsets required.

Recommendation 8: The assessment process and scope of the Environmental Offsets Committee should be developed, in consultation with stakeholders, and stipulated under a regulation or a statutory guideline.

Changes to mapping

HIGH VALUE REGROWTH

The Bill has introduced amendments to allow for the protection of High Value Regrowth (HVR) (Category C and R) on freehold and Indigenous land, in this case returning to the pre-2014 amendments to the VM Act, and in watercourse areas of all six GBR catchments under the VM Act. In consultation with DNRM and EHP on 5 April 2016, officers confirmed that approximately 1.2 million hectares of HVR (Category C) and 370,000 hectares of HVR (Category R) will be safeguarded therefore increasing the area provided on the existing VM Act mapping.

As discussed previously, the ability for proponents to acquire offsets will become increasingly difficult pending the removal of the 'significant' threshold. If HVR is protected under the VM Act, this will further limit the available pool of offsets from which to select.

Although QRC does not object to the return of the protection of HVR on freehold land, the interaction with the limitations on the availability of offsets needs to be acknowledged by Government and consideration given as to a range of solutions.

INCONSISTENCY WITH OTHER MAPPING

QRC has long highlighted inconsistencies in the State vegetation mapping, particularly the VM Class mapping regulated under the VM Act, the Biodiversity (BD) Status mapping and the Environmentally Sensitive Area (ESA) mapping referred to under the *Environmental Protection Regulation 2008*. The VM Act, which governs the need for offsets under the EO Act, often places a different status level to that of other mapping (e.g. BD Status mapping) over the same area of vegetation. In this event, conditions may apply to the development without the need for an offset or vice versa.

In consultation with DNRM and EHP on 5 April 2016 regarding the Bill and changes in the mapping, QRC noted further inconsistencies in the terminology (e.g. two types of Category C) and colours, and differences in classification over the same area of vegetation when using the VM Act and BD Status maps (which have a flow on effect to the ESA maps). In this regard, QRC encourages Government to use the Bill as an opportunity to collaboratively consolidate and streamline the vegetation mapping in Queensland, in part through this Bill, to remove inconsistencies and allow for a more efficient and transparent system.

Recommendation 9: Government should collaboratively consolidate and streamline the vegetation mapping in Queensland, in part through this Bill, to remove inconsistencies and allow for a more efficient and transparent system.

Riverine Protection Permit Requirements

The Bill provides for amendments to the Water Act for the reinstatement of the riverine protection framework for the destruction of vegetation in a watercourse, lake or spring as the current provisions, as amended in 2014, only apply to activities that involve the excavation or placing of fill. The Bill will allow for provisions as they were prior to amendments that were made through the *Land, Water and Other Legislation Amendment Act 2013*.

In consultation with DNRM and EHP on 5 April 2016, officers suggested that there would be no changes to the exemption for mining currently provided under the *Water Regulation 2002* (Water Regulation) for the excavation and fill of a watercourse, lake or spring as a result of amendments to the Water Act. Whilst no change is anticipated, QRC is concerned that the reinstatement of the riverine protection framework will potentially constrain proponents from undertaking vegetation clearing in a watercourse, lake or spring given the current wording of the Water Regulation and the *Riverine Protection Permit* (RPP) *Exemption Requirements* guideline (Exemption Guideline). More detail on this matter is set out below.

Section 50(e) of the Regulation refers to the Exemption Guideline (dated 2014). This document does not consider vegetation clearing in relation to RPPs. The former '*Guideline – Activities in a watercourse, lake or spring associated with a resource activity or mining operations*' (WAM/2008/3435) addressed all three aspects – excavation, placement of fill and vegetation clearing, but was superseded by the current exemptions document when the 2013 amendments to the Water Act were implemented.

It is important that if the Bill is passed, the Exemption Guideline be amended to include vegetation clearing as an exempt activity, i.e. reinstating the pre-2013 exemptions, as this document provides exemptions under Section 50 of the Regulation that are not specifically captured in the Regulation.

Section 50 of the Regulation refers only to excavating or placing fill in a watercourse, lake or spring. Amendments to the Regulation to include vegetation clearing activities is necessary to reinstate the pre-2013 exemptions for all three activities – excavation, placement of fill and vegetation clearing. This is also important to ensure the abovementioned exemptions document can be used for vegetation clearing activities, once it is amended.

If the Regulation and Exemption Guideline document are not updated, or there is a lag between amendments to the Act and these secondary documents, industry will have a situation where proponents are exempt from needing an RPP for excavation and the placement of fill, but will still need an RPP for any vegetation clearing associated with these same activities.

Such amendments for all three activities would be consistent with the pre-2013 exemptions under the previous ALP government. Without all three aspects considered collectively, the exemption is impractical and meaningless to industry. Furthermore, if the Water Regulation does not present a standardised position on vegetation clearing in a watercourse, lake or spring then the Exemptions Guideline cannot be effectively implemented.

Recommendation 10: Section 50 of the Water Regulation be amended to facilitate vegetation clearing in a watercourse, lake or spring.

Recommendation 11: The Exemption Guideline should allow mining to clear vegetation in addition to the provisions for excavation and fill of a watercourse, lake or spring as per the 2013 guideline.

List of recommendations

The QRC submits to the Committee the following recommendations as detailed in the body of this submission:

Recommendation 1: The Committee recommend against the removal of the term 'significant' in the context of residual impact under the EO Act and that it should be retained as per the current legislation.

Recommendation 2: Government should remove the SP Act SRIG or amalgamate it with the EP Act SRIG to allow one consistent approach rather than making the legislative changes.

Recommendation 3: Whilst QRC does not agree to the removal of the 'significant' threshold, Government should, with full consultation, define its proposed alternative residual impact threshold prior to the Bill being reintroduced into the house.

Recommendation 4: The Committee recommend that the extent of Defined Forest Areas be reviewed to enable their consideration for use as meeting offset requirements.

Recommendation 5: Whilst QRC strongly advises that the 'significant' threshold be retained, the Committee should recommend the inclusion of transitional arrangements in the Bill for development currently progressing through the approvals pathway.

Recommendation 6: Part 11A of the Bill should be amended to reflect that the State Government will not seek additional monies beyond that assessed as being appropriate by the Commonwealth Government under the EPBC Act. The explanatory notes should also be suitably amended.

Recommendation 7: The State Government consult with Commonwealth Government on the Bill and its interactions with current joint policy and processes.

Recommendation 8: The assessment process and scope of the Environmental Offsets Committee should be developed, in consultation with stakeholders, and stipulated under a regulation or a statutory guideline.

Recommendation 9: Government should collaboratively consolidate and streamline the vegetation mapping in Queensland, in part through this Bill, to remove inconsistencies and allow for a more efficient and transparent system.

Recommendation 10: Section 50 of the Water Regulation be amended to facilitate vegetation clearing in a watercourse, lake or spring.

Recommendation 11: The Exemption Guideline should allow mining to clear vegetation in addition to the provisions for excavation and fill of a watercourse, lake or spring as per the 2013 guideline.

Conclusion

In conclusion, QRC again emphasises our serious concerns with the unintended consequences of the Bill as currently drafted. Whilst it is Government's intent to minimise vegetation clearing associated with agriculture, particularly in the vicinity of the GBR, the Bill does not offer the best avenue for regulating such activities without inadvertently affecting others, including the resources industry, and the delivery of their offsets.

The solution to the main industry concern is simple. That is, the Bill's proposed provisions to omit the word 'significant' from the threshold of residual impact under the EO Act should be removed.

The Bill oversteps the Government's announced intentions with regards to offsets. It also has the potential to further exacerbate existing State vegetation mapping issues and impose impractical constraints for exempt activities undertaking works in a watercourse, lake or spring.

QRC again emphasises our serious concerns with the unintended consequences of the Bill on industry as currently drafted. Any additional unnecessary cost imposts on the resources sector in the current economic context and pricing constraints must be recognised as potentially having consequences for jobs and the economic return to the people of Queensland.

QRC therefore seeks recommendations from the AEC, which will see a much fairer outcome for the resources industry, in consideration of the major, direct impact that will result should the Bill be passed in its current form.

QRC would be happy to discuss this submission further with the Committee. The QRC lead is Frances Hayter – Director Environment Policy (07) 3316 2517; francesh@qrc.org.au.

Greg Lane
A/Chief Executive

Attachment 1 – Impact to business case studies

The following section provides case studies, which describe the impact to resources industry businesses in the event the proposed removal of the 'significant' threshold under the EO Act had been in existence at the time prior to current project approvals.

Case study 1

Company A conducted an ecological in field survey during 2012 for a proposed pipeline corridor to determine the extent of the development's impact on prescribed MSES. The survey was then used to determine whether the impact was significant using the EP Act SRIG.

Based on the survey and review against the guideline, Company A undertook an analysis using the EHP Financial Settlement Calculator for prescribed environmental matters to understand the consequences to business plans should the proposed removal of the 'significant' threshold have been in place at the time.

In other words, Company A compared the cost associated with significant residual impacts (existing requirements) and any residual impacts (as per the Bill amendments). The variance in cost was drastic. The significant residual impacts for an area of 478 ha equated to a cost of $9.08 million whilst the **non-significant residual impacts** for an area of 1,407 ha **equated to a cost of $24.5 million**. Therefore, when non-significant residual impacts were factored into the impact determination, it resulted in a **total payment of $33.6 million** for the delivery of the company's offsets as opposed to the current $9.08 million costing.

It is important to note that under the *Queensland Environmental Offsets Policy Version 1.1*, "*the offset must be of a size and scale proportionate to the significant residual impact on a prescribed environmental matter*". By removing the 'significant' threshold the size of the offset required would be disproportionately large. The issue then arises as to how the company would be able to acquire and afford the sheer quantum of land required to deliver on the offset condition.

The situation does not improve if the company chooses to monetise its offsets obligations into the State offset account (or a combination of both), as the Government has clearly stated that they will only accept the payment option if it also has enough offsets available for purchase.

Case study 2

The EP Act SRIG states clearing greater than 20m wide or an area greater than 2ha for non-linear infrastructure in a sparse (structural category– e.g. RE11.9.7 and RE11.3.2) regional ecosystem (RE), that is endangered or of concern, triggers the 'significant' threshold and requires such residual impact to be offset. Clearing less than this specified width or area in the same RE does not trigger an offset.

Company B undertakes approved coal seam gas extraction and downstream processing in accordance with its EAs, which authorise essential gas gathering (or otherwise defined, limited petroleum) activities (e.g. wells, flowlines, access tracks, power and communication lines) within endangered or of concern REs as described above, subject to infrastructure land disturbance size limits (e.g. single wells up to 1 ha).

Company B was able to minimise its environmental impact on prescribed matters as far as practicable, for the purposes of constructing much of the necessary linear infrastructure required for essential gas gathering activities, by restricting the extent of its disturbance footprint within a right-of-way less than 20m wide. Further, a vast majority of wells drilled utilise a pad less than 2ha in area. As a result, these activities do not constitute a significant residual impact and as such Company B is not required to offset the prescribed environmental matter.

Should the requirement to account for any residual impact have been enforced (as per the Bill) as opposed to the significant threshold, all essential gas gathering activities undertaken by Company B would be subject to an offset given that sparse REs represent a significant proportion of land within the Brigalow Belt Bioregion where the Company operates. This increase in offset liability would cost Company B an **additional $41,618 per 1km or $49 million in total** (assuming a 20% intersection) **for linear works** and an **additional $20,809 per well or $25.4 million in total** (assuming a 20% intersection) **for extraction works** within the in endangered or of concern sparse (structural category) RE alone.

Case study 3

The *Environmental Offsets Regulation 2014* stipulates that "*a habitat for an animal that is endangered wildlife or vulnerable wildlife or a special least concern animal is a matter of State environmental significance*". Under the Regulation, a special least concern animal means least concern wildlife listed under the *Nature Conservation Act 1992*, including the koala, echidna and platypus. Further, the EP Act SRIG states significant impact criterion / threshold for special least concern (non-migratory) animal wildlife habitat to be offset where it is likely that an action will result in:

- a long-term decrease in the size of a local population; or
- a reduced extent of occurrence of the species; or
- fragmentation of an existing population; or
- result in genetically distinct populations forming as a result of habitat isolation; or
- disruption to ecologically significant locations (breeding, feeding or nesting sites) of a species.

The extent of habitat associated with special least concern animals, particularly the koala and echidna and the concept of 'resting place', is wide spread throughout most of Queensland.

Company C undertakes approved coal seam gas extraction in accordance with its EAs, which authorise essential gas gathering activities within echidna habitat, subject to infrastructure land disturbance size limits. Due to the disturbance restrictions, these activities do not constitute a significant residual impact and as such Company C is not required to offset the prescribed environmental matter.

In the absence of a 'significant' threshold test, Company C would be liable for any residual impact on the echidna's habitat. Given the large extent of this habitat in relation to Company C's operations, the majority of gas gathering activities will attract offsets. This increase in offset liability would cost Company C an **additional $20,809 per hectare for well construction activities**.

Further, it is important to note that removal of the 'significant' threshold having regards to special least concern animals will affect a vast number of developments more broadly than just those associated with industry based on the sheer extent of the animals' habitat across the State alone. This will result in excessive and unnecessary offsets which detract from achieving no net loss for irreplaceable and vulnerable biodiversity.

Case study 4

Company D developed a proponent-driven offset strategy in 2012 to compensate for unavoidable 'significant' residual impacts resulting from its well to liquefied natural gas processing development on prescribed environmental matters. Should the requirement to account for any residual impact have been enforced (as per the Bill) as opposed to the significant threshold, Company D could have be subject to a 50% **increase in offset requirements** for the first phase of the project, which would equate to **approximately $52 million**.

Case study 5

Company E undertakes approved underground mining operations in accordance with its EA, which authorises clearing for expansion of surface activities (1 ha) within three stands listed as of concern, endangered and of least concern RE (11.4.2, 11.4.9 and 11.3.25). In accordance with the EP Act SRIG, the development was determined not to have a significant residual impact on the REs and as such Company E was not required to offset the prescribed environmental matters.

Should the requirement to account for any residual impact have been enforced (as per the Bill) as opposed to the significant threshold, Company E would be liable to offset the REs to be cleared for surface activities, which would cost an **additional $100,000 to account for the 1 ha of vegetation lost**. Of note, is that the total cost of the offset is dependent on the regional ecosystems (which is variable across the State) to be impacted.

Case study 6

Company F undertakes approved underground mining operations in accordance with its EA, which authorises clearing for surface infrastructure (~2 ha) within REs listed as endangered and least concern (11.4.8 and 11.5.3). In accordance with the EP Act SRIG, the development was determined not to have a significant residual impact on the REs and as such Company F was not required to offset the prescribed environmental matters.

Should the requirement to account for any residual impact have been enforced (as per the Bill) as opposed to the significant threshold, Company F would be liable to offset the REs to be cleared for infrastructure, which would cost an **additional $100,000 to account for the 2 ha of vegetation lost**. Of note, is that the total cost of the offset is dependent on the regional ecosystems (which is variable across the State) to be impacted.

Case study 7

Company G undertakes mining operations in accordance with its EA, which authorises clearing of 1,540 ha in habitat where listed MSES fauna are known or likely to occur. In accordance with the EP Act SRIG, the development was determined not to have a significant residual impact on the habitat of all but one MSES; the Squatter Pigeon. As such, Company G was only required to provide an offset, which provides habitat for the Squatter Pigeon.

In the absence of a 'significant' threshold test, Company G would be liable for any residual impact on other MSES. Company G's operations span across habitat where other MSES fauna are known or likely to occur, including that of the Collared Delma, South-eastern Long Eared Bat and the Short-Beaked Echidna, and would subsequently attract offsets. In some instances, MSES coincide within the same vegetation communities and habitat values, which can be offset accordingly by the same means at the calculated equivalent. An increase in offset liability of 2,297 ha would cost Company G an **additional $3.5 million in land-based acquisition and on-going operational finance for monitoring and management**.

Case study 8

Company H undertakes mining operations in accordance with its EA, which authorises clearing of 982 ha in habitat where listed MSES fauna are known or likely to occur. In accordance with the EP Act SRIG, the development was determined not to have a significant residual impact on the habitat of all but one MSES; the Squatter Pigeon. As such, Company H was only required to provide an offset, which provides habitat for the Squatter Pigeon.

In the absence of a 'significant' threshold test, Company H would be liable for any residual impact on other MSES. Company H's operations span across habitat where other MSES fauna are known or likely to occur, including that of the Black-throated Finch, Red Goshawk, Yakka Skink and Ornamental Snake, and would subsequently attract offsets. In some instances, MSES coincide within the same vegetation communities and habitat values, which can be offset accordingly by the same means at the calculated equivalent. An increase in offset liability of 2,520 ha would cost Company H an **additional $3.8 million in land-based acquisition and on-going operational finance for monitoring and management**.