Resourcing Queensland's future

7 July 2017

Mr Rob Hansen
Committee Secretary

Agriculture and Environment Committee
Parliament House
George Street
Brisbane QLD 4000
aec@parliament.qld.gov.au

Re: Nature Conservation (Special Wildlife Reserve) and Other Legislation Amendment Bill 2017

Dear Mr Hansen,

The Queensland Resources Council (QRC) welcomes the opportunity to provide a submission on the *Nature Conservation (Special Wildlife Reserve) and Other Legislation Amendment Bill 2017* (the Bill) to the Agriculture and Environment Committee (AEC).

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.

This submission largely focuses on the consideration of land use interests, other than conservation, and how it relates to the key Special Wildlife Reserve (SWR) amendments to the *Nature Conservation Act 1992* (NC Act) as set out in the Bill. Other minor issues relating to the NC Act and the *Environmental Protection Act 1994* are also discussed. QRC makes no further comment on the other Act amendments in the Bill.

QRC does not oppose the introduction of SWRs and Government's intent to increase the State's protected area estate, however, we have long stated that any current or future land use interest, where conservation of existing natural and cultural values is not the sole outcome, must be adequately and fairly considered (as part of the State's interests) by Government prior to proceeding with any SWR declaration. This includes not only the resources sector, but agriculture, urban and other industrial development, forestry, and services.

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Since early engagement with the Department of Environment and Heritage Protection (EHP) in mid-2016, QRC has raised concerns that if the legislation was not well provisioned and sensible boundaries to the proposal were not established there was a risk that land use interests, other than conservation, could potentially be blocked by individuals or groups who felt that an SWR was a mechanism to do so without due consideration of:

- The existing activity's economic, community and environmental contributions;
- The holder's rights under an existing lease, licence, permit or other authority; or
- Prospectivity or feasibility testing for a future activity.

Overall, the resources sector (and land uses other than conservation) needs certainty of process and additional safeguards to avoid being blocked by vexatious SWR proposals through:

- Referencing in legislation the inter-department Memorandum of Understanding to ensure that Government follows due process in assessing the interests of the land as suitable to become an SWR;
- The facilitation of existing and future land use interests, other than conservation, where valid and justified, over a SWR proposal; and
- Accommodation of existing land use interests, other than conservation, in the transition to a SWR, where the Government and Minister has determined a SWR to be in the State's best interest.

QRC therefore seeks recommendations from the AEC, in consideration of the issues raised in this submission, which will minimise conflicts with the intent of a SWR.

QRC would welcome the opportunity to discuss our submission further with the AEC during its consideration of the Bill and would be happy to participate in the public hearing. QRC's Policy Manager, Environment, Chelsea Kavanagh, and Policy Director, Environment, Frances Hayter have carriage of environment policy matters and can be contacted at [redacted] and [redacted].

Yours sincerely

Frances Hayter
Policy Director, Environment

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QRC Submission

Nature Conservation (Special Wildlife Reserve) and Other Legislation Amendment Bill 2017

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1 Introduction

The Queensland Resources Council (QRC) welcomes the opportunity to provide a submission to the Agriculture and Environment Committee (AEC) on the *Nature Conservation (Special Wiidiife Reserve) and Other Legislation Amendment Biii 2017* (the Bill) as introduced to Parliament by the Minister for Environment and Heritage Protection and Minister for National Parks and the Great Barrier Reef, the Honourable Steven Miles, on 14 June 2017.

The 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.

QRC does not oppose the introduction of Special Wildlife Reserves (SWR) and Government's intent to increase the State's protected area estate, however, we have long stated that any current or future land use interest, where conservation of existing natural and cultural values is not the sole outcome, must be adequately and fairly considered (as part of the State's interests) by Government prior to proceeding with any SWR declaration. This includes not only the resources sector, but agriculture, urban and other industrial development, forestry, and services.

This submission largely focuses on the consideration of land use interests, other than conservation, and how it relates to the key SWR amendments as set out in the Bill. Other minor issues relating to the *Nature Conservation Act 1992* (NC Act), including administrative drafting and subjective references in the Explanatory Notes to the Bill, and the *Environmental Protection Act 1994* (EP Act) are also discussed.

QRC makes no further comment on the amendments to the *Mineral Resources Act 1989*, *Land Act 1994*, *Land Title Act 1994*, *Forestry Act 1994*, *Fossicking Act 1994*, *Vegetation Management Act 1999*, *Biodiscovery Act 2004*, or *Environmental Offsets Act 2014*.

2 Background

Since mid-2016, the Department of Environment and Heritage Protection (EHP) has proactively engaged with QRC on the SWR proposal, and for that we commend the Department on their efforts. During this time, QRC has raised concerns that if the legislation was not well provisioned and sensible boundaries to the proposal were not established there was a risk that land use interests, other than conservation, could potentially be blocked by individuals or groups who felt that an SWR was a mechanism to do so without due consideration of:

- The existing activity's economic, community and environmental contributions;
- The holder's rights under an existing lease, licence, permit or other authority; or
- Prospectivity or feasibility testing for a future activity.

In draft consultation information presented to QRC on 7 July 2016, EHP provided the following policy intent for the proposal:

> "*The PPA mechanism* [then known as a Private Protected Area (PPA), now SWR] *would only be applied on a case-by-case basis with key consideration of the area's conservation significance, the relative significance of other state resource interests (such as mining, petroleum, agriculture and state-owned forest products and quarry material) and the degree of surety of perpetual high level management.*

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> *The selection and assessment of a potential PPA will be undertaken in a measured and transparent process which will include initial consultation with interested government departments, including DNRM and DAF, before negotiation with potentially interested groups or individuals. It may be possible to exclude areas containing other interests from a proposal area at an early stage.*
>
> *It is anticipated that some landholders may approach the state expressing an interest in a PPA declaration. Consideration of the potential for the land to become a PPA will follow the same process and be subject to the same considerations as those areas identified proactively by EHP…*
>
> *Where an interest exists on an area proposed for a PPA, the interest will continue over the land until it is resolved or expires under its terms. The interests of relevant parties will be considered through a legislated notification and consent process…*
> *It is proposed that provisions that allow for petroleum and gas activities on national parks (for instance in relation to authorised activities for pipeline licences under s.27 of the NCA) will also apply to PPAs.*
>
> *In addition to the consideration of existing interests, the prospectivity of a proposed PPA will be assessed by DNRM and considered when determining an area's suitability for declaration as a PPA…*
>
> *A procedure* [which is reflected in the Government's inter-department draft memorandum of understanding (MoU)] *is being developed by EHP, DNRM and DAF that will outline the inter-agency administrative and decision-making processes associated with consideration of state interests in areas proposed for declaration as a new PPA. Interests that will be assessed include natural values/protected area interests and other interests, including mining, petroleum, forestry and agriculture…*
>
> *However, in the case of a PPA, **it is the intention not to declare a PPA over an area of land that is subject to a mining or petroleum lease or exploration permit, and therefore this process is not likely to be applicable to the resources sector**…*
>
> *Government will be the decision maker for all PPA declarations".*

Noting that with the Bill not yet drafted at this stage, the above generally provided QRC confidence in Government's direction for the proposal.

In March 2017, EHP released a copy of the draft Bill for key stakeholder consideration along with supporting documents, including a draft MoU, Conservation Values Assessment, and Landholder Suitability Assessment, for early targeted consultation. QRC was concerned that the above policy intent had not been adequately captured in the draft Bill as it had been in the associated draft MoU and previous correspondence. Further, no statements were made to highlight that that it is not Government's intent to propose or declare a SWR over land with existing resource interests. As such, QRC provided a submission to EHP outlining this concern and others, including lack of appropriate transitional provisions for a 'previous use' on 31 March 2017 (see **Attachment 1**).

In a response to QRC's submission on the draft Bill and supporting documents, dated 19 May 2017, EHP relied on the policy intent and defence that if a SWR proposal proceeds to the notification process, all parties whose rights or interests are materially affected by the conservation agreement for the proposed SWR would need to consent, or the conservation agreement cannot be entered into by the Minister under section 43B(2) of the draft and tabled Bill. Without a conservation agreement, the declaration of a SWR cannot proceed. For QRC, this is the cornerstone protecting all parties whose rights or interests are affected by a SWR proposal.

As provided in correspondence to EHP on 9 June 2017, QRC advised that so long as the policy intent for the SWR proposal, as stated in the Department's correspondence dated 19 May 2017, was made clear in the Explanatory Notes to the Bill, we would accept that the resources sector should not be adversely impacted, although additional safeguards including reference to the MoU in the Bill would be welcomed (see **Attachment 2**). EHP's subsequent response, dated 14 June 2017, suggested that the draft (and that day tabled) Bill adequately addressed QRC's concerns to the extent the Department felt appropriate and no further changes would be made.

However, upon release of the Bill and the Explanatory Notes, QRC was pleased that EHP had in fact amended the Explanatory notes to state that:

> *"the new section 43B (Making conservation agreement for speciai wiidiife reserve) describes when the Minister must enter into a conservation agreement for a speciai wiidiife reserve. The Minister and iandhoiders must agree that the deciaration of the area as a speciai wiidiife reserve shouid occur, agree to the terms of the conservation agreement for the speciai wiidiife reserve and there must be an approved management program for the speciai wiidiife reserve.*
>
> ***However, the Minister must not enter into a conservation agreement, <u>the precursor to a special wildlife declaration</u>, without the written consent of persons mentioned in 43A(5) whose rights or interests will be materially affected by the agreement****".*

No further changes to the Bill were made to include additional safeguards as requested.

For QRC there are some concerns still to be resolved, although we value EHP's consideration of our other issues and recommendations, which are now reflected in the Bill or supporting documents, including:

- Ability to use the SWRs as a mechanism for securing offsets;
- Formal external nomination process of a proposed Special Wildlife Reserve;
- Assessment criteria for a SWR, which is provided in the Conservation Values Assessment supporting the Bill;
- Assessment of landholder capability to manage a SWR, which is provided in the Landholder Suitability Assessment supporting the Bill; and
- Generally, good consideration of other land uses, and ultimately State interests when assessing the proposal for a SWR through the Government's inter-department MoU.

Notwithstanding the above, QRC suggests that the Committee seek written advice from EHP as to how the Department will prevent the potential for mis-use of the SWR nomination process from parties wishing to restrict alternative uses of the area (other than conservation).

3 Nature Conservation Act 1992 amendments – Special Wildlife Reserve

The following section provides comment on the proposed amendments pertaining to SWRs, as outlined in the Bill, Explanatory Notes to the Bill and briefing paper to the AEC on the Bill, and where applicable, how this relates to the issues raised in **Section 2**.

3.1 DEFINITION AND REFERENCING OF MINING INTEREST

Section 27 of the NC Act outlines circumstances whereby a 'mining interest' is prohibited in listed protected areas. In this section a mining interest means:

> "*any activity authorised under –*
>
> *(a) the Mineral Resources Act 1989; or*
>
> *(b) the Petroleum Act 1923; or*
>
> *(c) the P&G Act* [Petroleum and Gas (Production and Safety) Act 2004]."

However, in the Dictionary (Schedule) of the NC Act a 'mining interest' means:

> "*(a) a mining claim, mineral development licence or mining lease granted under the Mineral Resources Act 1989; or*
>
> *(b) a petroleum lease granted under the Petroleum Act 1923 or Petroleum and Gas (Production and Safety) Act 2004*".

While not a proposed amendment to the NC Act, as provided in the Bill, QRC recommends amending the definition of 'mining interest' to 'mining and petroleum interest' to better recognise petroleum and gas activities and allow the term to be more prominent in the legislation. Further, QRC recommends that the definition in the Dictionary (Schedule) be amended to reflect that in section 27 of the NC Act to clarify expectations, minimise the risk of misinterpretation and remove duplication in the new section 43A(5) (see **Section 3.2** for further details).

3.2 NOTIFICATION OF PROPOSED SPECIAL WILDLIFE RESERVE PROPOSAL

The new section 43A(5) of the Bill outlines who the Minister must provide written notification to regarding the SWR proposal, including:

> "*(a) each person who has an interest in land in the proposed reserve area; and*
>
> *(b) each holder of an exploration permit under the Mineral Resources Act 1989 for land in the proposed reserve area; and*
>
> *(c) each holder of an authority to prospect under the Petroleum Act 1923 or the Petroleum and Gas (Production and Safety) Act 2004 for land in the proposed reserve area; and*
>
> *(d) each holder of a mining interest, geothermal tenure or GHG authority to which land in the proposed reserve area is subject*".

Section 43A(5)(b) and (c), which specifically call out mining exploration and petroleum prospecting, were added following stakeholder comments on the draft Bill.

As described in **Section 3.1**, there is a discrepancy in the definition of 'mining interest' in the NC Act. Should the definition be amended throughout the NC Act to reflect that in section 27, then section 43A(5)(b) and (c) are redundant as both mining exploration and petroleum prospecting activities can be readily captured under what is currently 43A(d) of the Bill.

3.3 CONSIDERATION OF OTHER LAND USE INTERESTS PRIOR TO DECLARATION

As outlined in **Section 2**, QRC recommended that the Government inter-departmental MoU between EHP, the Department of Natural Resources and Mines, and the Department of Agriculture and Fisheries be referenced in the Bill as a safeguard, in addition to section 43B and D, for land uses other than conservation. However, EHP is of the view that section 43B and D of the Bill adequately protects the rights of other land use interests consistent with the policy intent.

While QRC understands EHP's perspective, we maintain the view that reference to the MoU should appear in the Bill to ensure that Government follows due process in assessing the interests of the land, particularly in the early stages of a SWR proposal ahead of notifying potentially affected parties.

Only once the Government has applied its own processes in the MoU, and the Departments have agreed that the land or part of it is suitable for a SWR, should next steps occur (i.e. seek interest from the landholder and negotiate with other affected parties with rights or interests in the land). This avoids unnecessarily alarming potentially affected parties, particularly where Government does not see value in progressing a SWR proposal.

In addition, early consultation material, provided by EHP, on the SWR proposal stated that "*…it is the intention not to declare a PPA over an area of land that is subject to a mining or petroleum lease or exploration permit, and therefore this process is not likely to be applicable to the resources sector…*" (see **Section 2**). While Government's intent was not reflected in the Explanatory Notes to the Bill to the extent described above, the briefing paper to the AEC (see response to question five) reinforced EHP's position that "*special wildlife reserves will not be declared where there is an active* [exploration, prospecting and resource extraction] *interest (unless by consent which is unlikely)*". Having these kinds of statements in the Explanatory Notes to the Bill will afford the resources sector comfort and certainty in their operations and investments.

As such, QRC recommends that the Explanatory Notes to the Bill be amended to reflect EHP's position that SWRs will not be declared over land where there is an active exploration, prospecting and resource extraction interest unless granted by consent.

Native Title

QRC would also like to raise an issue that has been expressed to us in regards to the terms 'materially affected' and 'interest in land' as it relates to Native Title. QRC understands that Native Title holders have concerns that this nomenclature does not sufficiently protect their rights, regarding themselves as equivalent to a 'landholder'.

While QRC is not advocating directly for a change in the definition of 'landholder' we encourage the AEC to reflect on whether the restrictions on non-conservation actions inherently part of a SWR, adequately considers the future interests in the use of the land (e.g. forestry that a Native Title party may seek). Given that the status of a SWR is as a private 'national park', one suggestion could be to use the Indigenous Land Use Agreement arrangements that currently apply to the declaration of new national parks.

3.4 PREVIOUS USE AUTHORITIES

In the case of a SWR declaration over an existing land use interest, other than conservation, Government should afford the proponent/operator appropriate transitional provisions to either allow authorised activities to be undertaken and/or decommissioned within a reasonable timeframe and in accordance with any compliance conditions.

New section 43H of the Bill, provides that existing activities, such as resource extraction, may continue on the land through to the allowable term (that is the unexpired term of the authority or three years after the declaration of a SWR) if the Chief Executive, at his/her discretion, grants a previous use authority. However, depending on the existing land use, it may not be possible to transition or cease operations and complete the relevant of compliance activities (e.g. decommissioning and rehabilitation as specified in an Environmental Authority) by the allowable term. The same outcome may also arise, should the Chief Executive refuse to issue a previous use authority in the first instance.

QRC recommends that the drafting of the new section 43H of the Bill be amended to allow for the grant of, or extension to a previous use authority beyond the allowable term, if required and requested by the proponent, to assist in the transition or cessation of operations and, for example, completion of relevant rehabilitation activities.

Further, the new section 43H of the Bill also has the potential to cause significant implications for exploration activities, which by nature are periodic or sporadic. In accordance with the Bill, a holder of a resource tenure to which the SWR declaration applies will not be eligible for a previous use authority unless that use started immediately before the declaration was made. Even then, that use can only continue thereafter if approved by the Chief Executive under a previous use authority for a limited period. This proposed action does not afford the exploration (and resources) sector confidence or certainty in undertaking current business or investing further in Queensland.

QRC recommends that exploration activities be considered under the new section 43H of the Bill as a previous use, particularly where the proponent is able to demonstrate intent to undertake activities within the unexpired term.

3.5 GENERAL COMMENTS IN THE EXPLANATORY NOTES AND BRIEFING PAPER

The Explanatory Notes to the Bill and the briefing paper to the AEC on the Bill calls out specific examples of incompatible land uses to conservation, including mining, resource activities, and forestry. QRC finds that these references do not afford a balanced view and unfairly targets the resources and forestry sectors.

QRC recommends that, where examples of incompatible land use to conservation are to be provided in the Explanatory Notes and other supporting documents, EHP take a holistic and impartial approach, and lists a more diverse range of incompatible land uses, including resources activities, agriculture, urban and other industrial development, forestry, and services. Alternatively, the examples should be removed.

4 Environmental Protection Act 1994 amendments – Regulation of Environmentally Relevant Activities in the Great Barrier Reef Marine Park

The following section provides comment on the proposed amendments pertaining to the EP Act as outlined in the Bill and Explanatory Notes to the Bill.

The briefing paper to the AEC on the Bill states that:

> *"the **Government has made a commitment to not support trans-shipping activities adversely affecting the Great Barrier Reef**. To enable implementation of this commitment, the Bill also proposes an **amendment to** the Environmental Protection Act that will **enable activities that occur in the Great Barrier Reef Marine Park but partially in Queensland waters, to be regulated under the Environmental Protection Regulation 2008**. The amendment will ensure that risks to the Great Barrier Reef can be managed consistently regardless of whether potentially harmful activities are conducted wholly within Queensland waters or partly within Queensland waters and partly in adjacent Commonwealth waters, within the Great Barrier Reef Marine Park".*

While the Explanatory Notes to the Bill state that:

> *"Amendments are proposed to the Environmental Protection Act to ensure that risks to the Great Barrier Reef can be managed consistently regardless of whether potentially harmful activities are conducted wholly within Queensland waters or partly within Queensland waters and partly in adjacent Commonwealth waters, within the Great Barrier Reef Marine Park…*
>
> *The proposed amendment will provide a head of power under the Environmental Protection Act to allow a regulation to prescribe 'environmentally relevant activities' which are conducted partly within Queensland waters and partly within Commonwealth waters, within the Great Barrier Reef Marine Park".*

The intent of the proposed amendments to the EP Act, as described in the briefing paper, is only partly outlined in the Explanatory Notes to the Bill. As such, QRC recommends that the Explanatory Notes to the Bill be amended to capture the full context behind the intent of the proposed amendments to the EP Act.

Given that no consultation with the resources sector has been undertaken with regards to this proposed amendment, QRC also recommends that the AEC ask EHP to clarify:

- Which Environmentally Relevant Activities (ERAs) the proposed *Environmental Protection Regulation 2008* (EP Regulation) amendments are to apply to; and
- How these ERAs will be further regulated under the EP Regulation.

In the absence of the above information, QRC can only assume, based on Government's intent to restrict certain trans-shipping activities, that further regulatory prescription is proposed for ERA50 Bulk material handling. However, not all operations assigned under ERA50 are active in the Great Barrier Reef Marine Park. EHP needs to afford greater consideration of how any proposed changes to ERAs may impact activities not related to the Great Barrier Reef Marine Park but still operating under the same ERA.

5 Recommendations

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

- **Recommendation 1:** The Committee seek written advice from EHP as to how the Department will prevent the potential for mis-use of the SWR nomination process from parties wishing to restrict alternative uses of the area (other than conservation).
- **Recommendation 2:** The Committee recommend amending the definition of 'mining interest' to 'mining and petroieum interest' in the NC Act to better recognise petroieum and gas activities and allow the term to be more prominent in the legislation.
- **Recommendation 3:** The Committee recommend that the discrepancy in the definition of 'mining interest' in the Dictionary (Schedule) of the NC Act be amended to reflect that in section 27 to clarify expectations, minimise the risk of misinterpretation and remove duplication in the new section 43A(5).
- **Recommendation 4:** Pending the outcome of Recommendation 2, the Committee recommend that the new section 43A(5)(b) and (c) be omitted as both mining expioration and petroieum prospecting activities can be readily captured under 43A(d) of the Biii.
- **Recommendation 5:** The Committee recommend that the MoU be referenced in the Biii to ensure that Government follows due process in assessing the interests of the iand as suitable to become an SWR.
- **Recommendation 6:** The Committee recommend that the Expianatory Notes to the Biii be amended to reflect EHP's position that SWRs wiii not be deciared over iand where there is an active expioration, prospecting and resource extraction interest uniess granted by consent.
- **Recommendation 7:** The Committee recommend that the drafting of the new section 43H of the Biii be amended to allow for the grant of, or extension to a previous use authority beyond the allowable term, if required and requested by the proponent, to assist in the transition or cessation of operations and, for example, completion of relevant rehabilitation activities.
- **Recommendation 8:** The Committee recommend that expioration activities be considered under the new section 43H of the Biii as a previous use, particularly where the proponent is able to demonstrate intent to undertake activities within the unexplred term.
- **Recommendation 9:** The Committee recommend that, where examples of incompatible iand use to conservation are to be provided in the Expianatory Notes, a more diverse range of incompatible iand uses are to be listed, inciuding resources activities, agriculture, urban and other industrial deveiopment, forestry, and services. Aiternativeiy, the examples shouid be removed from the Expianatory Notes.
- **Recommendation 10:** The Committee recommend that the Expianatory Notes to the Biii be amended to capture the full context behind the intent of the proposed amendments to the EP Act as is described in the briefing note to the Biii.
- **Recommendation 11:** The Committee recommend that EHP clarify:
    - Which ERAs the proposed EP Regulation amendments under the are to apply to; and
    - How these ERAs wiii be further regulated under the EP Regulation.

6 Conclusion

Overall, while QRC does not oppose the Biii, we emphasise that the amendments and Explanatory Notes need to offer the resources sector (and land uses other than conservation) certainty of process and additional safeguards to avoid being blocked by vexatious proposals. QRC therefore seeks recommendations from the AEC, in consideration of the issues raised in this submission, which will minimise conflicts with the intent of a SWR and facilitate existing and future land use interests, other than conservation, where valid and justified.

QRC would welcome the opportunity to discuss our submission further with the AEC during its consideration of the Biii and would be happy to participate in the public hearing.

QRC's Policy Manager, Environment, Chelsea Kavanagh, and Policy Director, Environment, Frances Hayter have carriage of environment policy matters and can be contacted at [redacted] and [redacted]

Attachment 1

QRC submission on draft Nature Conservation (Special Wildlife Reserve) and Other Legislation Amendment Bill 2017 and supporting documents, 31 March 2017

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Working together for a shared future

31 March 2017

Protected Area Strategy
Department of Environment and Heritage Protection
ProtectedArea.Strategy@ehp.qld.gov.au

Re: Draft *Nature Conservation (Special Wiidiife Reserves) and Other Legisiation Amendment Biii 2017* and supporting documents

To whom it may concern,

The Queensland Resources Council (QRC) welcomes the opportunity to provide a submission to the Department of Environment and Heritage Protection (EHP) on the consultation draft of the *Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2017* (the draft Bill) and supporting documents, including:

- Explanatory notes for the draft Bill;
- Operational Policy;
- Conservation Values Assessment;
- Landholder Suitability Assessment; and
- Memorandum of Understanding (MoU) between EHP, the Department of Natural Resources and Mines (DNRM) and the Department of Agriculture and Fisheries (DAF).

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.

QRC appreciates EHP's ongoing engagement since mid-2016 on the Special Wildlife Reserve (SWR) proposal and is supportive of Government continuing to undertake best practice stakeholder consultation in developing new legislation. QRC also commends EHP in addressing some of our outstanding issues raised in 2016, as part of the release of the draft Bill and supporting documents, including:

- Assessment criteria for a SWR, which is now provided in the Conservation Values Assessment;
- Assessment of landholder capability to manage a SWR, which is now provided in the Landholder Suitability Assessment; and
- Generally, good consideration of other land uses, and ultimately State interests when assessing the proposal for a SWR through the Government's inter-department MoU.

While QRC is generally supportive of the above aspects of the SWR proposal, our greatest concern is that the draft Bill and some clauses within the MoU do not go quite far enough to address the current and future interests of the resources sector and other land uses in the assessment of a SWR. This along with other issues is outlined further in this submission.

Consideration of other land use interests (MoU and draft Bill – NC Act amendments)
The most fundamental concern arising from the early consultation between QRC and EHP on the SWR proposal (and continues to be) is the potential land use conflict between conservation and resource activities, and how current and future rights and interests of the resource sector are fairly considered in the assessment process.

In the draft consultation paper developed with QRC and APPEA in late 2016, EHP stated that "*it is the intention not to declare a PPA* [Private Protected Area now known as a SWR] *over an area of land that is subject to a mining or petroleum lease or exploration permit, and therefore this process is not likely to be applicable to the resources sector*".

Clause 16 of the MoU attempts to integrate the above key message with the latest supporting documents by stating "*As a general rule, acquisition of land for conversion to national park (all classes), private protected area and conservation park should not occur in areas where resource tenures exist under the Mineral Resources Act 1989 (MRA) and the Petroleum and Gas Act (Production and Safety) Act 2004 (PGA), or where the areas are subject to sales permits and other authorities relevant to the Forestry Act 1959 (FA)*". However, the use of the phrase "as a general rule… should not" suggests that EHP or its Minister has discretion to proceed with a SWR despite considering the current and future rights and interests of resource activities in consultation with other Government departments. There needs to be greater certainty for companies investing in the State that tenures or, more progressively, operations will not be halted and overturned simply because of political agendas as opposed to valid reasons arrived at through the transparent assessment and rights to objection process outlined in the MoU.

QRC recommends that the drafting of clause 16 of the MoU be amended to read:
Acquisition of land for conversion to national park (all classes), private protected area and conservation park will not occur in areas where resource tenures exist under the Mineral Resources Act 1989 (MRA) and the Petroleum and Gas Act (Production and Safety) Act 2004 (PGA), or where the areas are subject to sales permits and other authorities relevant to the Forestry Act 1959 (FA) unless there are valid reasons to do so, as determined by Government in consultation (consistent with the process outlined in this MoU) with the relevant Department head for resources (DNRM).

Further, QRC is of the view that Government's intent to avoid declaring SWRs on land where a resource tenure exists **and** the assessment of current and future State interests, including resource extraction, by relevant Department heads is **not at all conveyed in the draft Bill as it is in the MoU**. QRC recommends that a clause be inserted in the draft Bill recognising Government's position and key processes for the consideration of other land uses in the assessment of a SWR similar to that provided in the MoU.

While the **Explanatory Notes** state that "*establishment of special wildlife reserves, through introduction of the Bill, is not considered controversial as negotiation and declaration of a reserve is entirely voluntary*" this is not correct. Rather a proposal for the declaration of a SWR is made by the Minister, as provided in **proposed section 43A(2) of the draft Bill**, not the landholder or persons who have interest in the land. Having regard to the lack of relevant provisions in the draft Bill to adequately consider the rights of persons who have interest in the land, as outlined above, it further highlights that aspects of the nomination process are not voluntary. QRC recommends that the Explanatory Notes and any other supporting documents that make reference to the apparent voluntary nature of a SWR declaration be amended, given the inconsistency with the draft Bill, to accurately describe what aspects of the broader SWR process are truly voluntary.

Where a SWR is determined to take priority over an existing resources interest, **proposed section 43B(2) of the draft Bill** to be inserted under the *Nature Conservation Act 1992* (NC Act), states that "*if the rights or interests of a person mentioned in section 43A(4)(a) or (b)* [that is the holder of a resource tenure or authority] *will be materially affected by the conservation agreement, the Minister must not enter into the conservation agreement without the person's written consent*".

QRC supports the need for the Minister to consider holders of a resource tenure or authority affected by the SWR declaration, as a whole, not only the conservation agreement as prescribed in the draft Bill, particularly if the company holding the tenure does not agree with the determination made by Government in consultation with DNRM. However, it is unclear what is deemed to be 'materially affected' and whether such holders would be considered as being affected. This term therefore requires a definition given it is not provided in the Act.

If not all resource activities are captured by the term 'materially affected' because of a proposed SWR declaration and the company holding the tenure does not agree with the determination made by Government in consultation with DNRM, there should be a fair objection and appeal process provided in the draft Bill for the Minister's consideration.

Where the holder of a resource tenure can no longer exercise the rights under that tenure, which it could before the declaration, Government should offer compensation. This should be the case given the State gains the preservation of "*economic, environmental or interests*", that is land with outstanding conservation value, through the removal of the existing tenure at a loss ultimately to the proponent. Further, this approach would be consistent with the current requirements under the NC Act for nature refuges (section 67), whereby if the holder is materially (or injuriously) affected by a SWR declaration compensation is afforded.

QRC therefore recommends that the term 'materially affected' be defined having regard to a SWR declaration, as a whole, and not only the conservation agreement component as provided in section 43B(2) of the draft Bill. Further, where the person is deemed to be materially affected, relevant compensation measures and objection/appeal processes be included in the draft Bill.

Further, in the case of a SWR declaration over an existing resource interest, Government should afford the proponent appropriate transitional provisions to either allow authorised activities to be undertaken and/or decommissioned within a reasonable timeframe and in accordance with any compliance conditions. **Proposed section 43H of the draft Bill**, provides that existing activities, such as resource extraction, may continue on the land through to the allowable term (that is the unexpired term of the authority or three years after the declaration of a SWR) if the Chief Executive, at his/her discretion, grants a previous use authority. However, depending on the existing land use, it may not be possible to transition or cease operations and complete the relevant of compliance activities (e.g. decommissioning and rehabilitation as specified in an Environmental Authority) by the allowable term. The same outcome may also arise, should the Chief Executive refuse to issue a previous use authority in the first instance.

QRC recommends that the drafting of proposed section 43H of the draft Bill be amended to allow for the grant of, or extension to a previous use authority beyond the allowable term, if required and requested by the proponent, to assist in the transition or cessation of operations and, for example, completion of relevant rehabilitation activities.

Proposed section 43H of the draft Bill, and more broadly any declaration of a SWR, also has the potential to cause significant implications for exploration activities, which by nature are periodic or sporadic. In accordance with the draft Bill, no use can be made by the holder of a resource tenure to which the SWR declaration applies unless that use started before the declaration was made. Even then, that use can only continue thereafter if approved under a previous use authority for a limited period. This proposed action does not afford the exploration (and resources) sector confidence or certainty in undertaking current business or investing further in Queensland.

Outstanding conservation value

The **Explanatory Notes**, consistent with the draft Protected Area Strategy and other supporting documents, provides that privately managed lands of 'outstanding conservation value' can be afforded a high-level of protection by means of a SWR declaration. However, the **draft Bill** does not specify that the land must, at a minimum, represent outstanding conservation value nor does it define what outstanding conservation value is by reference to the draft Conservation Values Assessment.

In the absence of such a provision, there is the potential for Government, including by means of landholder interest, to nominate and declare upon discretion land that fails to represent outstanding conservation value, which consequently fails to achieve the intent of the proposed legislation. QRC recommends that the draft Bill be amended to allow for a provision, which includes a clear definition of and captures the requirement for land to meet the criteria of outstanding conservation value.

Nomination of a proposed Special Wildlife Reserve

While the process for the assessment through to the declaration of a SWR is well stated in the Operational Policy and the draft Bill, it remains unclear as to how Government or a third-party landholder is to initiate the nomination of land for consideration as a SWR. From early consultation in 2016, QRC understands that EHP is of the position that any nomination of a SWR will be processed on an adhoc basis in the absence of a formal process as is done for nature refuges. However, QRC recommends that a documented process be established for a SWR (and nature refuge) in the Operational Policy and draft Bill to enable a clear and consistent approach to nominations / expressions of interest from interested parties. This will also make it easier for EHP to consider such requests. Government also needs to set out its triggers for commencing consideration of an area of land as a SWR.

Administrative

For completeness, any reference to the *Petroleum and Gas Act (Production and Safety) Act 2004* in the legislation or supporting documents should be accompanied by the *Petroleum Act 1923*.

Summary of recommendations

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

- **Recommendation 1:** Drafting of clause 16 of the MoU be amended to:
  Acquisition of land for conversion to national park (all classes), private protected area and conservation park will not occur in areas where resource tenures exist under the Mineral Resources Act 1989 (MRA) and the Petroleum and Gas Act (Production and Safety) Act 2004 (PGA), or where the areas are subject to sales permits and other authorities relevant to the Forestry Act 1959 (FA) unless there are valid reasons to do so, as determined by Government in consultation (consistent with the process outlined in this MoU) with the relevant Department head for resources (DNRM).
- **Recommendation 2:** A clause be inserted in the draft Bill recognising Government's position to avoid declaring SWRs on land where a resource tenure exists and key processes for the consideration of other land uses in the assessment of a SWR similar to that provided in the MoU.
- **Recommendation 3:** The Explanatory Notes and any other supporting documents that make a reference to the apparent voluntary nature of a SWR declaration be amended, given this is inconsistent with the draft Bill, to accurately describe what aspects of the broader SWR process are truly voluntary.
- **Recommendation 4:** The term 'materially affected' be defined having regard to a SWR declaration, as a whole, and not only the conservation agreement component as provided in section 43B(2) of the draft Bill.
- **Recommendation 5:** Where a person is deemed to be materially affected, relevant compensation measures and objection/appeal processes be included in the draft Bill.
- **Recommendation 6:** The drafting of proposed section 43H in the draft Bill be amended to allow for the grant of, or extension to a previous use authority beyond the allowable term, if required and requested by the proponent, to assist in the transition or cessation of operations and, for example, completion of relevant rehabilitation activities.
- **Recommendation 7:** The draft Bill be amended to allow for a provision, which includes a clear definition of and captures the requirement for land to meet the criteria of outstanding conservation value.
- **Recommendation 8:** A documented process be established for nomination of a SWR (and nature refuge) in the Operational Policy and draft Bill to enable a clear and consistent approach from interested parties. In line with this, Government should also make clear its triggers for commencing consideration of an area of land as a SWR.

We look forward to a receiving a response on our submission and being involved in future consultation on the draft Bill and the SWR proposai, more broadly. Shouid you have any further queries, please do not hesitate to contact me via telephone number [redacted] or emai[redacted] or QRC's Poiicy Manager, Environment Chelsea Kavanagh at [redacted] or on[redacted]

Yours sincerely

Frances Hayter
Policy Director, Environment

cc:
Linda Lee, A/Director | Landscape Conservation Unit | Nature Conservation Services| EHP

Attachment 2

QRC submission on draft Nature Conservation (Special Wildlife Reserve) and Other Legislation Amendment Bill 2017 and supporting documents, 9 June 2017

QUEENSLAND
resources
COUNCIL

9 June 2017

David Shevill
Acting Director – Conservation Operations
Conservation & Biodiversity Operations | Conservation & Sustainabiiity Services
Department of Environment and Heritage Protection

cc
Brett Kerr

Protected Area Strategy

Dear David,

Re: Government response to QRC submission on draft *Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Bill 2017* and supporting documents

The Queensiand Resources Counci (QRC) thanks the Department of Environment and Heritage Protection (EHP) for the response, dated 19 May 2017, to our submission on the draft *Nature Conservation (Special Wiidiife Reserves) and Other Legisiation Amendment Biil 2017* (the draft Biii) and supporting documents.

QRC is generaiiy satisfied with EHP's response and is pieased the Department has:

- Inserted a new section 43A to expressly inciude expioration permit holders and holders of authorities to prospect for minerai resources and petroieum, respectively, as parties who must now be notified of Speciai Wiidiife Reserve (SWR) proposals; and
- Recognised the need for, and is developing, a nomination process for iandhoiders wishing to initiate a proposai for a SWR.

QRC also appreciates EHP providing written clarification of the poiicy intent for notification and deciaration as provided in the draft Biii, having regard to existing and future rights and interests in the iand, whereby, "*if a SWR proposai proceeds to the notification process, aii parties whose rights or interests are materiaiiy affected by the conservation agreement for the proposed SWR (inciuding resource tenures holders which includes expioration tenements) wouid need to consent, or the conservation agreement could not be entered into by the Minister. Without a conservation agreement, the deciaration of a SWR cannot proceed*".

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Many of QRC's concerns, as outlined in our submission, related to what was interpreted as a lack of consideration for existing and future interests or land uses in the assessment of a SWR. However, as EHP has highlighted the above policy intent (as reflected in s43B(2) of the draft Bill) is a cornerstone protecting all parties whose rights or interests are affected by the SWR proposal, which in turn minimises vexatious proposals to block the resources sector; a significant concern for the industry. So long as this intent is made clear in the Explanatory Notes, QRC accepts that the resources sector should not be adversely impacted.

The Explanatory Notes accompanying the draft Bill already go some way to describe the above policy intent with the following statements:

- *"… as negotiation and declaration of a reserve is entirely voluntary and a conservation agreement does not impact on the rights and/or interests of other relevant parties, including Native Title holders, without consent;*
- *Government is committed to applying this mechanism on a case-by-case basis, in full consideration of all interests (including state interests in resources, forestry and agriculture) relevant to the proposal area;* and
- *The new section 43B… The Minister and landholders must agree that the declaration of the area as a special wildlife reserve should occur and agree to the terms of the conservation agreement for the reserve. However, the Minister must not enter into a conservation agreement without the written consent of persons mentioned in 43A(4) whose rights or interests will be materially affected by the agreement, nor can the Minister enter into an agreement that is not consistent with the management principles for the reserve".*

However, QRC would find greater confidence in the Explanatory Notes if it more closely reflected the policy intent as provided by EHP, including a call out of specific examples of other interests and the statement "*Without a conservation agreement, the declaration of a SWR cannot proceed*".

As provided in QRC's submission, it was recommended that the Government inter-departmental Memorandum of Understanding (MoU) between EHP, the Department of Natural Resources and Mines, and the Department of Agriculture and Fisheries be referenced in the draft Bill. In response, EHP has stated that "*clause 16 of the MoU simply acknowledges that the State may choose to proceed with the early stages of an SWR proposal, even if interests may exist on the proposal area*", however, given that there is a reliance on s43B(2) of the draft Bill, "*parties with rights and interests who would be materially affected by an SWR will need to consent to the conservation agreement*" as such protecting those rights and interests (as described further in the sections above) and removing the risk for the resources sector.

QRC understands EHP's perspective, however, maintains the view that reference to the MoU (or other equivalent term) should appear in the draft Bill to ensure that Government follows due process in assessing the interests of the land, particularly in the early stages of a SWR proposal ahead of notifying potentially affected parties.

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Only once the Government has applied its own processes in the MoU, and the Departments have agreed that the land or part of it is suitable for a SWR, should next steps occur, i.e. seek interest from the landholder and negotiate with other affected parties with rights or interests in the land. This avoids unnecessarily alarming potentially affected parties, particularly where Government does not see value in progressing a SWR proposal.

QRC would appreciate EHP considering the concerns raised in this response prior to the finalisation of the draft Bill and supporting documents for Parliament.

We look forward to being involved in future consultation on the draft Bill and the SWR proposal later this year. Should you have any further queries, please do not hesitate to contact me via [redacted] or QRC's Policy Manager, Environment Chelsea Kavanagh via [redacted]

Yours sincerely

Frances Hayter
Policy Director, Environment

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