QUEENSLAND resources COUNCIL

Working together for a shared future

29 September 2014

The Hon Ian Rickuss MP
Chair of the Agriculture, Resources and Environment Committee
Member for Lockyer
C/o the Research Director
Agriculture, Resources and Environment Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: AREC@parliament.qld.gov.au

Dear Mr Rickuss

RE: Queensland Resources Council submission on the Environmental Protection and Other Legislation Amendment Bill 2014

The Queensland Resources Council (QRC) welcomes the opportunity to provide a submission on the Environmental Protection and Other Legislation Amendment Bill 2014 (EPOLA) (the Bill).

As you are aware, QRC is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses mineral 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 promotion of leading environmental regulation is a key goal of QRC and we welcome opportunities to participate in processes to improve environmental regulation, particularly to reduce duplication in processes and streamline regulatory arrangements. It therefore follows that as the *Environmental Protection Act 1994 (Qld)* (**EP Act**) is one of the three most important legislative instruments for the resources sector, and as such QRC have a particular interest in improvements to this piece of legislation.

Firstly QRC appreciates the previous opportunities afforded to us by the Department of Environment and Heritage Protection (**EHP**) to provide feedback on some aspects of the proposed changes and some parts of a draft of the Bill, but nevertheless we have some concerns about the quality of the consultation process.

While supportive of the intent of some aspects of the Bill, QRC continues to have concerns about sections which fail to address concerns raised in our submission on the draft Bill and unfortunately in some cases actually undo some of the key matters we supported such as the amendments to the *Waste Reduction and Recycling Act 201*.

ABN 59 050 486 952
Level 13 133 Mary St Brisbane Queensland 4000
T 07 3295 9560 F 07 3295 9570 E info@qrc.org.au
www.qrc.org.au

In relation to the *Environmental Protection Act 1994*, QRC was consulted initially on a discussion paper in May 2014 and we provided a submission dated 12 June 2014. On 19 June EHP met with us to discuss our concerns about the Discussion Paper, in particular, the series of issue we had raised because the Discussion Paper was expressed too vaguely to explain what amendments were actually intended in relation to many of the topics listed. QRC then received a separate exposure draft of the Bill for part of the proposed amendments to the *Environmental Protection Act 1994* (other than the contaminated land amendments) and then received a draft of the contaminated land amendments two weeks later. Neither of these two drafts included some of the key amendments that have been inserted in the version introduced to Parliament, such as 'enforceable undertakings'. It is also unfortunate that we were not able to see draft Explanatory Notes other than for the contaminated land provisions, to assist with more comprehensive feedback on the proposed amendments.

The timeframe to review the two parts of the exposure draft Bills was very rushed. We sympathised with EHP officers about the pressure they were under to progress the draft Bill, but it was not clear to QRC why there was such a rush in the first place to introduce a Bill with so many remaining problems.

We should note that initially, QRC was much more impressed with the quality of the consultation process about the amendments to the *Waste Reduction and Recycling Act 2011*. However, ultimately the version of this part of the Bill introduced to Parliament is radically different from the exposure draft. This is a great shame as the amendments were generally supported during the consultation process with only some relatively minor drafting issues remaining to be corrected at the exposure draft stage.

QRC raised its key concerns regarding the WRR Act amendments with EHP at a meeting on 25 September 2014, and received indications that EHP appreciated the concerns of industry, and that a number of the changes had been a result of unintentional drafting (such as the requirement for users of a product to register under an end of waste code) and that they would be looked at again prior to the Bill's debate. Despite this, QRC finds itself in the unfortunate position where it is not possible for us to give overall support for the Waste Act changes at this time, unless a number of our suggested amendments are made.

In summary, QRC generally supports the stated policy intent for the Bill, as outline in the Objectives section of the Explanatory Notes and also in the Minister's speech introducing the Bill vis a vis:

- greentape reduction reforms to reduce costs to business and government while maintaining environmental standards;
- firm but fair environmental regulation; and
- the recovery and use of waste within the economy.

However, our concern is that, overall, not one of the above objectives is fully achieved by the Bill as it currently stands and this submission sets out the details of those concerns.

It is important that QRC indicates our support for a number of the initiatives proposed in the draft Bill which are consistent with recommendations that have previously been raised by QRC or by our members individually, for example, the ability to extend an EIS timeframe; and the ability to 'de-amalgamate' an environmental authority (EA). We are pleased to see these long-standing problems finally being addressed.
We also recognise the intent of the substantial work in the restructuring of the Beneficial Use Authority (BUA) framework and the associated EPOLA amendments.
The Bill also adopts two previous QRC proposals:

- relating to the interface between the standard approval framework with coordinated projects; and
- recognition of State Development and Public Works Organisation Act (SDPWO Act) EISs in the EP Act environmental authority process.

QRC appreciates that these amendments have been included in the Bill.

In summary, the key points of the QRC submission are:

- A number of the proposed changes appear to conflict with government policy because they increase greentape and increase ambiguity, rather than reducing greentape and providing greater clarity. Examples include the proposed changes to assessment timeframes and the requirement for Environmentally Relevant Activities (ERAs) that are ancillary to a resource project to be individually listed at the front of an environmental authority (with the deliberate objective of generating the greentape of an amendment application every time a minor ancillary ERA (such as nature, scale or an additional activity) is changed, notwithstanding that there is no environmental impact beyond that authorised by existing conditions).
- Some of the proposed changes do not go far enough to fix the current drafting problems that we have previously raised in relation to existing provisions (for example, in relation to Temporary Emission Licenses). If those provisions are going to be touched at all at this stage, the existing drafting problems should be rectified as one package
- In some instances, we could only support the proposed changes if associated or consequential changes are made at the same time (for example, we would only support increasing penalties for offences, if the elements of the offences are made less ambiguous so that it is clear that the offences are indeed serious). The proposed increases are significant, not minor adjustments.
- The proposal to impose the same duty on auditors as on landowners and occupiers to give notifications to EHP of events or changed conditions that they believe either cause or threaten serious or material environmental harm and the related amendments which provide for auditors to bypass having to tell the landowner/occupier about this concern, unlike any other employee or contractor, is a notable issue.
- QRC is concerned that the amendments to the WRR Act unnecessarily capture users of resources refined under an end of waste code, which could include third parties such as farmers. This has the potential to lead to the unintended outcome of driving users and producers away from reuse towards disposal, which is contrary to the objects of the WRR Act. QRC was also disappointed to see a number of proposed reforms to the WRR Act contained in the Discussion Paper and the draft Bill, were not included in the final Bill, such as the ability for industry to trigger the consideration of the development of an end of waste code.

QRC would welcome the opportunity to discuss the matters contained in this submission further with the Committee.

If you have any questions about any matters raised in this submission, QRC's contact is Frances Hayter, QRC's Director Environment Policy on 0417 782 884 or at francesh@qrc.org.au .

Yours sincerely

Michael Roche
Chief Executive

QRC

submission

Working together for a shared future

To the Agriculture, Resources and Environment Committee

Environmental Protection and Other Legislation Amendment Bill 2014

29 September 2014

ABN 59 050 486 952
Level 13 133 Mary St Brisbane Queensland 4000
T **07 3295 9560** F 07 3295 9570 E info@qrc.org.au

www.qrc.org.au

1 Table of Contents

2 Executive Summary

The Queensland Resources Council (**QRC**) welcomes the opportunity to provide a submission to the Agriculture, Resources and Environment Committee (AREC) on the Environmental Protection and Other Legislation Amendment (EPOLA) Bill 2014 (Qld) (**the Bill**).

2.1 About 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.

The promotion of leading environmental regulation is a key goal of QRC, and is vital to ensuring the Queensland resources sector remains environmentally responsible and continues to meet community expectations.

2.2 Parts of the Bill covered by this submission

This submission covers only the amendments to:

- The *Environmental Offsets Act 2014*;
- The *Environmental Protection Act 1994*;
- The *Waste Reduction and Recycling Act 2011*.

As QRC was not consulted in relation to amendments to other legislation included in the Bill, we are not in a position to assist with comments on those other amendments.

2.3 Consultation Process

QRC appreciated the previous opportunities afforded to us by the Department of Environment and Heritage Protection (**EHP**) to provide feedback on some aspects of the proposed changes and some parts of a draft of the Bill, but nevertheless we have some concerns about the quality of the consultation process.

In relation to the *Environmental Protection Act 1994*, QRC was consulted initially on a discussion paper in May 2014 and we provided a submission dated 12 June 2014. On 19 June EHP met with QRC to discuss our concerns about the Discussion Paper, in particular, the series of issues QRC had raised because the Discussion Paper was expressed too vaguely to explain what amendments were actually intended in relation to many of the topics listed. QRC then received a separate exposure draft of the Bill for part of the proposed amendments to the *Environmental Protection Act 1994* (other than the contaminated land amendments) and subsequently received a draft of the contaminated land amendments two weeks later. Neither of these two drafts included some of the key amendments that have been inserted in the version introduced to Parliament, such as 'enforceable undertakings'.

Although we were able to provide comments on both of these parts separately, we have three major concerns with the consultation process:

- The May discussion paper was exceptionally ambiguous and failed to mention numerous topics which ended up being included in the Bill (such as 'enforceable undertakings'),

- We had difficulty working out what was the true purpose of the consultation process, given that even when we pointed out amendments that were directly in conflict with the stated policy intent of the Bill, or apparent clerical errors, most of these issues were not corrected in the version introduced to Parliament; and
- The timeframe to review the two parts of the exposure draft Bills was very rushed. We sympathised with EHP officers about the pressure they were under to progress the draft Bill, but it was not clear to QRC why there was such a rush in the first place to introduce a Bill with so many remaining problems.

We should note that initially, QRC was much more impressed with the quality of the consultation process on the amendments to the *Waste Reduction and Recycling Act 2011*. However, ultimately the version of this part of the Bill introduced to Parliament is radically different from the exposure draft. This is a great shame as the amendments were generally supported during the consultation process with only some relatively minor drafting issues remaining to be corrected at the exposure draft stage.

QRC raised its key concerns regarding the WRR Act amendments with EHP at a meeting on 25 September 2014, and received indications that EHP appreciated the concerns of industry, that a number of the changes had been a result of unintentional drafting (such as the requirement for users of a product to register under an end of waste code) and that they would be looked at again prior to the Bill's debate. Despite this, QRC finds itself in the unfortunate position where it is not possible for us to give overall support for the Waste Act changes at this time, unless a number of our suggested amendments are made. This is very disappointing, as QRC has championed these reforms from an early stage.

The amendments to the *Environmental Offsets Act 2014* are relatively minor. QRC appreciated that EHP contacted us before the Bill was introduced to Parliament to advise the nature of the proposed amendments.

2.4 Support for overall policy intent, but concerns that the Bill generally does not implement the intent

In summary, QRC generally supports the stated policy intent for the Bill, as outline in the Objectives section of the Explanatory Notes and also in the Minister's speech introducing the Bill vis a vis:

- greentape reduction reforms to reduce costs to business and government while maintaining environmental standards;
- firm but fair environmental regulation; and
- the recovery and use of waste within the economy.

However, our concern is that, overall, not one of the above objectives is fully achieved by the Bill as it currently stands and this submission sets out the details of those concerns.

2.5 Support for particular elements of the Bill

It is important that QRC starts with indicating our support for a number of the initiatives proposed in the draft Bill which are consistent with recommendations that have previously been raised by QRC or by our members individually, for example, the ability to extend an EIS timeframe; and the ability to 'de-amalgamate' an environmental authority (EA). We are pleased to see these long-standing problems finally being addressed.

We support the amendments to the *Environmental Offsets Act 2014*. We do not have detailed comments on those amendments.

We also recognise the intent of the substantial work in the restructuring of the Beneficial Use Authority (BUA) framework and the associated EPOLA amendments, however we have major concerns about the drafting.

The Bill also adopts two previous QRC proposals:

- relating to the interface between the standard approval framework with coordinated projects; and
- recognition of State Development and Public Works Organisation Act (SDPWO Act) EISs in the EP Act environmental authority process.

QRC appreciates that these amendments have been included in the Bill.

3 Amendments of Environmental Protection Act 1994

We have structured this Part of our submission on a topic-by-topic basis, rather than completely clause-by-clause, to avoid significant duplication where various sections on each topic are scattered throughout Part 5 of the Bill. However, we have included clause references throughout, for ease of reference.

3.1 Greentape increases – increases in assessment timeframes

QRC has welcomed this government's focus on trying to achieve greentape reduction in principle, but we have a concern that this Bill actually creates significant greentape increase in a number of areas, particularly by increasing timeframes for processing applications.

All of the below extensions of timeframes, other than extensions by agreement, are opposed by QRC; in addition, we have concerns that existing errors in the same sections have not been corrected in this Bill.

3.1.1 Extension of timeframe for assessing whether the proponent has adequately responded to submissions

Below is our first example in the Bill where there would have been considerable room for reducing greentape but instead the Bill increases assessment timeframes. This is at the stage of an EIS where an applicant responds to submissions, then EHP considers whether to allow the EIS to proceed to assessment and completion, under Sections 56 and 56A of the EP Act. There are numerous other examples in this Bill (listed at section 1.2 of this submission below), but we have selected this one to address in the most detail, so as to explain for the Committee how this Bill increases greentape without addressing actual instances of greentape within the same section that have not been fixed, or not fixed properly.

Those sections of the EP Act currently provide:

56 Response to submissions

(1) The chief executive must, within 10 business days after the submission period ends, give the proponent a copy of all submissions accepted by the chief executive.

(2) The proponent must, within the relevant period, consider the submissions and give the chief executive—

(a) a summary of the submissions; and

(b) a statement of the proponent's response to the submissions; and

(c) any amendments of the submitted EIS because of the submissions, together with an EIS amendment notice under section 66 for the amendments.

(3) In this section—

relevant period means—

(a) generally—20 business days after the proponent is given a copy of all submissions accepted by the chief executive; or

(b) if the chief executive and the proponent have, within the 20 business days, agreed to a different period—the different period.

56A Assessment of adequacy of response to submission and submitted EIS

(1) This section applies only if, under section 55, a submission has been accepted by the chief executive.

(2) The chief executive must, within 20 business days after the relevant period under section 56—

(a) consider the submitted EIS and the documents given under section 56(2); and
(b) decide whether to allow the submitted EIS to proceed under divisions 5 and 6.
(3) The chief executive may allow the submitted EIS to proceed only if the chief executive considers—
(a) the proponent's response to the submission is adequate; and
(b) the proponent has made all appropriate amendments to the submitted EIS because of the submission.
(4) The chief executive must, within 10 business days after the decision is made, give the proponent written notice of the decision.
(5) If the decision is to refuse to allow the submitted EIS to proceed, the notice must also state—
(a) the reasons for the decision; and
(b) that the proponent may, under section 56B, apply to the Minister to review the decision; and
(c) how to apply for a review.

As set out in the box below for ease of reference, the EPOLA Bill proposes to change this step in the process by **increasing the timeframe** available in Section 56A for EHP to decide whether to allow the application to progress to assessment, i.e. this is not the assessment stage itself, but just a decision whether the respondent has or has not adequately responded to submissions and made any necessary consequential amendments to the EIS. EHP already has 20 business days (i.e. normally 4 weeks, or longer when there are public holidays) to check this but this Bill is adding an extra automatic right to make this 8 weeks.

After seeking an explanation of this greentape increase from EHP to assist with expressing the issue in this submission, we received an explanation and commitment from the Deputy Director-General, Environmental Services and Regulation, on 19 September 2014, that:

> *The intention of the changes was to make it possible for the proponent to have time to respond to any information requests from EHP within the decision period – otherwise the decision maybe to refuse.*
>
> *We have reviewed this provision and will propose an amendment in committee so that the extension will only happen with the agreement of the applicant.*

Accordingly, 56A subsections (2A) and (2B) below **should be deleted**. In addition, there should at least be an Explanatory Note that the intent is that extension by agreement is normally only anticipated to be necessary in the event of an information request. There may be other possible circumstances, such as the illness of the assessing officer, but we would be concerned about making extensions a normal feature of this step in the process.

We note that a simpler approach to managing information requests under the *Sustainable Planning Act 2009* for non-resource projects may be worth considering for further greentape reduction in the future.

Clause 27 - Amendment of s 56A (Assessment of adequacy of response to submission and submitted EIS)
(1) Section 56A—
insert—
(2A) The chief executive may, by written notice given to the proponent before the end of the period

mentioned in subsection (2), **extend the period by no more than 20 business days**.
(2B) Only 1 extension may be made under subsection (3).
(2C) However, the period may be further extended if, at any time before the decision is made, the proponent has agreed in writing to the extension.
(2) Section 56A(5)—
insert—
(d) that the proponent may, under section 56AA, resubmit the EIS and the proponent's response to the submissions.
(3) Section 56A(2A) to (5)—
renumber as section 56A(3) to (8).

In the meantime, the Bill has not fixed these problems with the existing sections:

(a) EHP can take 2 weeks just to send the submissions to the applicant (Section 56(1)). In this electronic age, it should not take 2 weeks to do that. We would suggest 5 business days.
(b) The time for EHP to start its consideration under Section 56A is not at the moment that the applicant has submitted the response to submissions, but at the end of the 'relevant period' (Section 56A(2)). So, if the applicant only had one submission to address and did this in 24 hours, EHP does not even have to open up the document for another 3 weeks and 6 days. The chief executive's period should commence under Section 56A(2) upon receipt of the proponent's response under Section 56(2).
(c) In Section 56(3), if the applicant has a lot of submissions to address and perhaps some further modelling or other work to do as a result, there is an opportunity to agree a longer period to lodge the response, and that longer period can be whatever timeframe EHP and the proponent think is likely to be necessary. However, there is only an opportunity to make this agreement once, before the end of the first 20 business days. So, if EHP and the applicant make a mistake upfront about how long the further work will take, e.g. if there is a cyclone and the monitoring takes longer than expected, there is no opportunity to reach another agreement. In Section 56(3), after the words 'within the 20 business days' insert 'or within any previously extended period'.
(d) Once EHP decides whether or not the assessment can proceed, EHP can take another 10 business days (2 weeks) just to give notice of that decision. Again, there is no reason why notification should not be immediate in this day and age. Compare this with notifications by local governments under the *Sustainable Planning Act 2009*. A local government (or other assessment manager) has 5 business days to notify even a final decision (Section 334(2) of the Sustainable Planning Act 2009) – half the time it takes EHP. Notification by EHP should be brought in line with the position for local governments, that is, 5 business days.
(e) The same reduction from 10 business days to 5 business days for notification of a decision should be made in Section 49(5). That would be an actual greentape reduction.

In addition, while QRC appreciated the intent of the new Sections 56A(5) and 56AA (Clauses 27 and 28) allowing an opportunity for re-submission of a corrected EIS where something had been missed in the first version, it was not apparent to us why this should only be allowed only once. There can be legitimate questions of professional judgment between EHP officers and environmental consultants about how much information or what types of information are 'adequate' to respond to a submission. At the very least a further extension period could be done by agreement. The same question arises in relation to the new Section 49A (Clause 23).

3.1.2 Other extensions of timeframes

Other examples of clauses that propose to increase assessment timeframes are listed below:

- Clause 22 Section 49 (1A) – Extension of the period for deciding whether an EIS may proceed to the next stage, after considering whether it has addressed the terms of reference – again, it should not take an automatic 8 weeks for an EHP officer just to check whether each item of the terms of reference has been addressed or not, particularly as this is normally summarised in a cross-referencing table in the EIS itself;
- Section 398(2) (located within clause 135) – Extension of the time for deciding whether to approve a site management plan (for contaminated land), again by an extra 4 weeks, compared with the existing Section 412 of the EP Act;
- There are also some examples in the amendments to the Waste Reduction and Recycling Act 2011, e.g. section 173U.

The reason given to QRC by EHP officers for the extension to Section 49, at a meeting on 19 June 2014, was that EHP would like to see all the assessment processes throughout the Act in the same format as the extension process for actually deciding an EIS. While we can see that this approach would have a certain elegant drafting symmetry for the purposes of triplication of provisions throughout an Act through the copying and pasting process, there is obviously more actual work that needs to be done by EHP at the end of an EIS process (when working out conditions) than needs to occur at various steps along the way, so there is no apparent substantive logic in this argument.

It is suggested that the same change outlined by the Deputy Director-General, Environmental Services and Regulation, in relation to Section 56A, should be applied to Section 49.

3.1.3 Problems with the consultation process on this topic

The May discussion paper said (in relation to Section 49): '*The Environmental Impact Statement (EIS) process will be improved to avoid unnecessary costs and project delays. The EIS submission timeframe will be clarified. The Bill will also align EIS decision making timeframes on whether an EIS should proceed to the next step with similar timeframes in the Act.'* In QRC's submission, we asked: 'Improved in which ways? Which timeframes? Clarified how? Aligning with which 'similar timeframes'?'

The discussion paper did **not** say that EHP was proposing to give the chief executive an automatic right to extend a series of decision periods beyond the initial period of 4 weeks, for another 4 weeks (total 8 weeks), plus another indefinite extension period by agreement beyond that, in relation to both the decision whether to allow an EIS to proceed to public notification and the decision whether a proponent's response to submissions is adequate.

Recommendation 1:
That the timeframe extension in Clause 22 (inserting new subsections (1A) and (1B)) in Section 49 should be omitted, but new subsection (1C) should be retained and re-numbered; that the timeframe extension in Clause 27 (inserting new subsections (2A) and (2B) should be omitted, the new subsection (2A) and (2B) in Section 56A should be omitted, but the new subsection (2C) should be retained and re-numbered; in Clause 135 (Section 398(2)(a) the additional period should only be for the period of the submitter's response to the requirement under Section 397 and (2)(b) should be replaced with an extension by agreement provision similar to Section 49(1C). In addition, the Bill should make the clerical and greentape reduction amendments set out above in Section 1.1 (a) to (e) of this submission.

3.2 Greentape increase - relationship between resource activities and prescribed ERAs Clauses 18-20 EPOLA Bill –amendment of s18 and 19 EP Act and insertion of new 19A

These amendments are **opposed** by QRC. In addition, there is a current operational practice within EHP, as if the amendments had been already in place, and that practice should stop.

The explanation for this amendment was expressed in somewhat obscure terms in the original EHP discussion paper and so QRC enquired about it in our submission to EHP as follows:

> '*QRC is puzzled why EHP is under the impression that a resource activity (such as a mining project) does not cover a range of ERAs such as chemical storage, because the definitions of terms such as 'mining activity' have certainly always been sufficiently broad to cover everything that was necessary to support the resource project (including, for example, any 'additional purposes' approved under the Mineral Resources Act 1989). This was always the case when it was normal for environmental authorities simply to describe the project as covering 'mining activities' (leaving the individual listing of associated ERAs to the plan of operations or EM Plan).*
>
> *What we think this proposed amendment is about is to provide a statutory underpinning for EHP's current drafting practice of listing not only the resource activity but also each individual 'prescribed ERA' on the front of an environmental authority, which is something that has been strongly resisted by a number of our members…Obviously, this is not supported by QRC. From our recollection, the reasons why EHP's predecessors used to be happy for 'mining activities' or 'Chapter 5A activities' (as they then were) simply to be described as such, without descending into the details of which incidental ERAs were present from year to year were:*
>
> - *This allowed flexibility for resources projects to add or delete incidental activities whenever appropriate as an operation gradually progressed, without the need for an environmental authority amendment application every time.*
> - *Fees could still be calculated from other documents, such as plans of operations, which could more easily be updated.*
> - *We are concerned that this is actually a proposal to increase greentape and we would appreciate a far clearer explanation of the purpose and intent behind the amendment.'*

At the meeting with EHP on 19 June, EHP confirmed that it was indeed the intent of the amendment to provide a statutory basis for EHP to continue its existing practice (commenced a couple of years ago) of not only listing the relevant resource activity on the front page of an EA but also listing each individual ancillary activity (the example given at the meeting being sewage treatment), which otherwise is already covered by the broad definition of the resource activity. In response to QRC's concern that this would increase greentape and reduce operational flexibility with no outcomes-oriented benefit in relation to environmental impacts, it was made clear by EHP that it was in fact the intent to reduce operational flexibility by requiring a full amendment application process every time a minor ancillary activity is altered. By reference to an example, EHP explained that this gave EHP an opportunity to impose an additional set of conditions for each ancillary activity.

We would like to make it clear at this point that QRC is fully supportive of outcomes-oriented conditions to manage the impacts of activities. That is a fundamental 'social licence to operate' issue and as

industry has been told on multiple occasions recently is a central platform of EHP's new regulatory strategy. However this approach is clearly not displayed when considering the examples described below.

The **practical difficulty** with the duplication of licensing the same project as both a resource ERA and a series of individual ancillary prescribed ERAs is as follows:

- Each environmental authority for a resource activity already has conditions imposing parameters for each type of environmental impact (e.g. noise, air, water etc.);
- If a resource project wants to change impacts, it is already necessary to apply for amendments to conditions to adjust the parameters for the impacts, both under the EP Act and under conditions, for example, in the *Model Mining Conditions* (as opposed to the *Streamlined Model Conditions for petroleum and gas* which are different and a significant example of inconsistent regulation across the resources sector), model condition A1 provides:

  '*This environmental authority authorises environmental harm referred to in the conditions. Where there is no condition or this environmental authority is silent on a matter, the lack of a condition or silence does not authorise environmental harm.*'
- With this condition in place (or a similar condition), it is obvious that a project would not be able to add an activity that has material new environmental impacts (such as a sewage treatment plant) or substantially increase the impacts of that activity, without applying for corresponding changes to conditions authorising those impacts. On the other hand, if a change in operational activities would make no difference to the actual impacts already authorised under the conditions, it is not apparent why EHP needs to generate a process, fees, delays, paperwork and a duplicate set of conditions, just so as to get involved in those operational matters. For example, if a condition already sets appropriate parameters for the water quality of effluent irrigated to land, it does not matter whether a sewerage treatment plant is small or large, the limits should still be correct from the perspective of protecting the environmental values of the land.
- In addition, if companies cause 'material' or 'serious' environmental harm or environmental nuisance that is not authorised by EA conditions or another instrument such as a TEP, this is 'unlawful environmental harm' which is an offence under the EP Act. (To some extent, model condition A1 does not do much more than re-state the law.) This is another incentive for companies to apply for conditions that authorise relevant impacts, in relation to any new or increased activities that cause new impacts.
- Location of infrastructure from time to time is also already covered by other documents, for example, a plan of operations secured by a financial assurance. The plan of operations is the right type of document to address the gradual relocation of infrastructure over the lifetime of a project, providing operational flexibility, while at the same time offering security to the State in terms of rehabilitation.
- A number of QRC members have already experienced occasions when EHP has utilised the 'operational practice' of requiring amendments to an EA for each ancillary ERA, so as to impose duplicate sets of conditions, overlapping conditions and inconsistent conditions, just because those sets of conditions are considered to be the 'pro forma' conditions for each individual ancillary ERA.

- EHP has been able to do this as an 'operational practice', even before the introduction of these statutory amendments, because proponents have had no option but to concede to the 'operational practice' in order to avoid the delays and associated costs that would be involved in legally challenging EHP's approach. This is how we know how badly it is already working in practice.

It should be noted that the streamlined model conditions for petroleum currently have a place holder re listing of individual ERAs. This is not the original way the conditions were drafted and again seems to be a way of stepping ahead of the EPOLA amendments.

So why is industry so concerned with this direction that EHP is taking?

Case study 1
Attachment 1 is a case study of precisely what we are talking about. The company identified that they would be undertaking some abrasive blasting during the construction period for a project. In their draft Environmental Authority (which authorised mining, processing and port operations), EHP included the standard conditions for abrasive blasting. The conditions of the EA for mining, processing and port operations already comprehensively addressed the required outcomes in relation to air and noise for the project and the standard conditions for abrasive blasting made no difference to those outcomes. However this outcomes-oriented approach does not appear to satisfy EHP which is a significant contrast with EHP's new regulatory strategy. The company did successfully argue that the yellow highlighted clause (see first attachment) should be removed because it was contradictory to existing conditions. As you can see, the remaining conditions that EHP insisted on for abrasive blasting did not add anything substantive in terms of outcomes, given that there are much stricter requirements (in terms of specific air quality and noise limits) already in the EA.

Case study 2
Attachment 2
In a letter from Hon. Andrew Powell, Minister for Environment and Heritage Protection dated 18 August 2014 in response to the QRC submission on the pre-tabled draft Bill, the Minister attempts to placate QRC by providing a 'more recent environmental authority ….which you will see contrasts with the example that was attached to the QRC submission' (as per the above). The first few pages of this EA are attached so that the Committee can see precisely the matters we are raising.

QRC does not agree that the example provided demonstrates this focus. The example provided (APLNG) was only 2.5 months after the Rio Tinto example (26/3/14 for the RTA EA and 6/6/14 for the APLNG ERA) and the two examples are actually quite similar, rather than demonstrating a shift. The APLNG example is 88 pages long. It includes numerous conditions which EHP has deliberately deleted from mining conditions, as part of the Model Conditions for Mining process, on the basis that they are either unnecessary or operationally prescriptive (as opposed to focussing on outcomes).

Most critically, unlike the model mining condition A1, the APLNG EA states:
(A1) This environmental authority authorises the carrying out of the following resource activities:
(a) the petroleum activities and specified relevant activities listed in Schedule A, Table 1 – Authorised Petroleum Activities to the extent they are carried out in accordance with the activity's corresponding scale or intensity or both (where applicable); and…
EHP's jurisdiction under the EP Act is supposed to be about addressing environmental impacts on environmental values, not about extreme prescription of the locations, design and exact size of each minor ancillary activity, within the boundaries of a large overall project. Even local governments (which do have a land use planning jurisdiction, unlike EHP) are normally less prescriptive in their conditioning of non-resource projects, allowing for development 'generally in accordance with' plans.

The APLNG example is also a case study in why QRC is right to be concerned about prescriptive conditioning overall and about how closely this relates to prescriptiveness and inflexibility about the locations of activities, for example:

- Condition A31 requires each individual item of infrastructure to be fixed permanently for the life of the project.
- Schedule E – Noise – is not outcomes-oriented but is based on a noise management plan, which is the opposite of the approach in the Model Conditions for Mining (focussed on setting parameters and standards rather than generating paperwork).
- B31 – Maintenance and Cleaning; D38 Chemical and Fuel Storage; D43 – Spill kit training – all examples of the types of conditions deliberately deleted from the Model Conditions for Mining because they are unnecessary, e.g. covered by other legislation;
- The sewerage treatment conditions starting at D57 are much more lengthy and prescriptive than those in the Model Conditions for Mining, which were instead designed to focus on environmental outcomes.

Case study 3

Attachment 3 is a detailed case study provided by a QRC Petroleum and Gas (P&G) member company of the practical difficulties (i.e. greentape increase) caused by EHP's existing 'operational practice' of requiring amendments for every minor update in ancillary infrastructure, which is what they are now trying to legitimise retrospectively through these amendments.

One of the many examples raised by the company about why this greentape is so unnecessary for the purpose of practical environmental protection is that as a matter of practicality, it is not unusual that at the time of applying for an EA, the applicant does not know the amount of fuel required or the number, capacity or appropriate location of the fuel tanks required to support the construction.

It should be possible to obtain an EA without those details being available. Sensibly this can be done, because specific conditions can be imposed which include a requirement for compliance with relevant Australian Standards.[8]

For example, conditions under the heading 'Fuel Storage′ imposed on each of the company's EAs[9] include a requirement for compliance with the 'relevant Australian standard′. In those circumstances there is simply no need for an EA to prescribe, by adoption of references to ERAs as described in Schedule 2 of the EP Regulation, an upper limit on the amount of fuel which may be stored as an incidental activity, or to regulate storage capacity of tanks used.

Further, the prescriptive approach to conditioning incidental activities by reference to intensity thresholds prescribed in Schedule 2 of the EPR, which is sought to be authorised by these legislative amendments, frequently triggers the requirement to amend the upfront 'scale and intensity'• conditions imposing that restriction, without any consequential change to conditions of the EA which regulate the level of harm authorised for those activities.

[8] For example, AS1940: The Storage and Handling of Flammable and Combustible Liquids; AS4452: The Storage and Handling of Toxic Substances.

Leaving aside the practical concerns outlined above, there is a legal concern about EHP's assertion that the proposed amendments will 'clarify' the interaction between different types of ERAs. Rather than 'clarifying' the interaction, the amendments will fundamentally shift the regime under resource legislation (*Petroleum and Gas (Production and Safety) Act 2004* (**P&G Act**) and the *Mineral Resources Act 1989* (**MRA**)) and the EP Act with respect to resources environmental authorities. The EP Act has, since 2003, differentiated between ERAs applying to general industrial activities and ERAs which are resource activities, being mining and petroleum activities.

For example, currently, on a proper interpretation and application of the relevant legal regime applying to the LNG-CSG industry (i.e. **not** in accordance with the current 'operational practice' of EHP), where an EA related to a petroleum authority is granted, it must be granted for all authorised petroleum activities for that authority, as defined in the P&G Act, and which are identified in the relevant EA application - not a collection of activities cobbled together from the EP Act and EPR.

The current regime requires DEHP to:

- assess an application for an EA, which must comply with requirements prescribed in the EP Act, including the details about proposed activities and their likely impacts on environmental values;[4]
- decide whether to approve or refuse the application;[5] and
- regulate the proposed petroleum activities for which any EA is granted by the imposition of conditions, but not prohibit or prevent or suppress the course of conduct to be regulated.[6]

The proposed amendments to the EP Act would however allow an EA to be granted for both petroleum activities and prescribed ERAs, and for petroleum activities to be conditioned as prescribed ERAs, for example, by restricting the type of petroleum activities which may be conducted under the EA.

This is important as, once an EA is granted for an activity, other than a petroleum activity (as defined), the holder of the EA is unnecessarily and inappropriately constrained in the carrying out of petroleum activities.[7]

Therefore, if passed into law, this change will have important practical implications for proponents of resource projects, and represents greentape increase. The assertion that these amendments merely 'clarify' the position would be misleading.

Recommendation 2:
That the amendments to s18 and s19 of the EP Act and the insertion of a new s19A should be omitted; and in addition EHP should be advised to stop their current operational practice of requiring ancillary prescribed ERAs to be listed in ERAs for resource projects.

3.3 Condition conversion - Clause 39 EPOLA and Section 223 of the EP Act

The series of provisions starting in Clause 39 appear to assume that only when an application is for a full set of standard conditions is the assessment decision 'minor'. Generally, those of our members

[4] See Chapter 5, Part 2 of the EP Act.
[5] See Section 172 in respect of site-specific applications.
[6] *Swan Hill v. Bradbury* (1937) 56 CLR 746 at 762; *Cox & Hazell Pty Ltd v. Gibney* [1981] 1 NSWLR 468 at 475D; *Davies v. Ku-ring-gai Municipal Council* (2003) 58 NSWLR 535 at [17].
[7] See section 426 of the EP Act.

looking to convert find that they need only a sub-set of the standard conditions for their tenures, and we believe that it is also reasonable in this case for a minor amendment assessment level to apply to the conversion.

Recommendation 3:
That the new definition 'condition conversion' in Clause 39 should be amended by inserting at the end '*or an amendment replacing part of the conditions of the authority with the corresponding part of the standard conditions'*.

3.4 Notification stage does not apply if EIS process complete – Clauses 115 – 118 EPOLA Bill; Section 150 and related sections of the EP Act

The amendments in relation to S150 are improved from the draft Bill as it is now clear that submissions will be limited to 'the environmental risks of the activity that have changed since the EIS was publically notified'. However, there is no boundary around what it means to a 'change in environmental risk'. As it currently stands it could include a positive change.

Recommendation 4:
That at clause 115, in Section 150 EPA Act(1)(ba), 'have not changed' be replaced with 'have not increased'.

3.5 Cancellation or suspension – Clause 51 EPOLA and new Section 278(2)(baa) EP Act

While the general intent of this proposed amendment is **not opposed**, QRC has concerns about the drafting and some recommended qualifications are set out below.

In summary, the proposed amendment would allow EHP to suspend or cancel an EA where an application made by the holder of an EA to increase Financial Assurance (FA) has been approved, and the amount of increased FA has not been given.

This issue was discussed with EHP at our meeting on 19 June. EHP explained that there has been an actual instance where a company had applied for and obtained an increased FA decision and had actually commenced operations on the basis of the increased disturbance which was the subject of the increase in FA, but the increased FA has not been paid, even after a lengthy delay. While QRC is not aware of the details of the practical example mentioned by EHP, in principle, QRC has no difficulty with EHP's concern to ensure that adequate enforcement mechanisms are available so that this situation can be dealt with.

However, the drafting solution here is just not the correct drafting solution and it needs some fine-tuning.

The wording of the current draft is as follows:

> *(baa) an application by the environmental authority holder under section 302 to increase the amount of financial assurance given for the authority has been approved but the amount of the increase in the financial assurance has not been given;*

The following are our concerns about this drafting:

(a) Just because an application for an increased financial assurance has been approved, this does not necessarily mean that at that point, there is any new risk to the State; the increased risk actually arises when the work that is the subject of the increase in FA is started. It would

obviously be wrong for EHP to have a power to cancel the EA for a project on the basis of a paperwork excuse, at a time when the actual disturbance has not occurred. This needs to be included in the draft.

(b) Second, if the work the subject of the increase has already commenced prior to the FA increase decision, an appropriate time should be allowed for the increased FA to be lodged bearing in mind the tedious processes required to obtain bank guarantees or whatever other form of financial assurance is required. These steps do not occur overnight, as a matter of normal commercial experience.

(c) Third, a more proportionate enforcement mechanism for securing the increased FA should first be required to be attempted by EHP. It would be patently disproportionate for EHP to cancel an EA instead of simply enforcing the condition that requires lodgement of the increased FA, particularly since the failure to pay an increased amount of FA is not tied to any imminent risk of harm being caused. It is difficult to imagine a scenario in which EHP has already asked a court to enforce the increased FA, obtained a court order to that effect, still not obtained the FA and EHP really has to resort to cancellation of the project's EA.

If all of these qualifications are included in the provision, then QRC could support the amendment.

Recommendation 5:
That the Committee find that the above improvements to the proposed new Section 278(2)(baa) EP Act be made.

3.6 Expansion of duty of notification to auditors – Clause 123 EPOLA and Section 320A(1) EP Act (and successive provisions)

QRC strongly opposes these amendments which allow auditors to by-pass having to advise their principals about any concerns they have about environmental harm, and instead report directly to EHP.

In summary, the amendment in section 320A(1) proposes to impose the same duty on auditors as on landowners and occupiers to give notifications to EHP of events or changed conditions that they believe either cause or threaten serious or material environmental harm and then Section 320B provides for auditors to bypass having to tell the landowner/occupier about this concern, unlike any other employee or contractor.

QRC can see the superficial attractiveness of this idea from EHP's perspective, but these are QRC's concerns:

(a) We note that, according to the Explanatory Notes (p64), EHP believes that it is fine for the statutory amendments to allow for auditors to by-pass communicating with landowners and principals before notifying EHP of any concerns they have because EHP suggests that it would be 'good practice' for the auditors voluntarily to notify their principals. If it is such good practice, we fail to see why the statutory by-pass provision is considered necessary.

(b) According to the Explanatory Notes, EHP is under the false impression that this would be covered by a contract in all cases. This shows EHP's lack of commercial experience. In fact the contract for an auditor is not necessarily between the auditor and each of the affected parties (landowner, tenant, holder of resource tenements, etc.) but is more likely to be between the auditor and just one of these parties, e.g. the contractor carrying out remediation or some other form of site management.

(c) As explained below in the section of this submission about penalties and also in our June submission to EHP, the current definitions of material or serious environmental harm have numerous flaws; the terms tend to mean whatever EHP officers think they mean from time to time; and in Section 320A, there is not even a qualification that the notification provisions should be restricted only to unlawful harm (i.e. not authorised under conditions of an environmental authority, transitional environmental program, etc.); this means that even for a landowner or occupier it can be a difficult call to work out whether, in the opinion of EHP, something should have been notified;
(d) For auditors, if EHP considers they are under-notifying they are in trouble, but conversely if they over-step the mark by giving incorrect notifications, there is a question of contractual liability to their principals, as well as professional negligence; we would be interested in EHP's legal advice on the insurance implications;
(e) An auditor is not an expert in everything. For example, an auditor who has been engaged by a landowner in relation to a contaminated land matter may be of the opinion that a tenant should probably be releasing less point-source emissions to air, but actually the question may be none of his or her business and also not within his or her expertise to assess.

As far as QRC is aware, these amendments are just unnecessary and do nothing more than increase greentape. We could not find anything in the Explanatory Notes justifying a different view.

Recommendation 6:
That the Committee rejects all of the amendments to Section 320A(1) EP Act (and successive provisions) relating to notification by auditors

3.7 'Change in the condition of the land'

QRC supports these amendments, but with the proviso that appropriate explanatory material is developed.

This new term appears in the following clauses:

- Clause 123 EPOLA – Section 320A EP Act;
- Clause 125 EPOLA – Section 320DA EP Act;
- Clause 125 EPOLA - Section 320DB EP Act;
- Clause 132 EPOLA – Section 363F EP Act.

By way of background, the current notification provisions in the EP Act relate to an 'event'; the Bill additionally requires notification to EHP of a 'change in the condition of the land'. This is a set of provisions which has improved substantially since the exposure draft of the Bill, because at that time, the new term was not only completely undefined, but also unrestricted, i.e. it was not previously explained that it related to a change in condition of contaminated land causing harm.
While we were pleased to see that our previous submissions did make a difference on this issue, we have a residual concern about the lack of a definition and we would at least like to see some guidance about what the legislation means by a 'change in the condition of the land'. Many types of changes in the condition of land can be gradual processes and the difficulty is that notification is required within 24 hours, and a penalty applies. Even some guidance in the explanatory notes would be helpful, such as examples about natural erosion of a gully leading to migration of contaminated water from another property.

Recommendation 7:
That the Committee recommends that the Explanatory Notes for Clause 123 should be amended and should provide guidance on examples of the types of changes in the condition of the land that EHP has in mind and, in the case of gradual changes, how EHP sees this as interfacing with a notification process within 24 hours. For subsequent reference to changes in the conditions of the land, a cross-reference to the initial explanatory information should be added. (This could then be re-published by EHP as a fact sheet on their website.)

3.8 Content of program - Clause 64 EPOLA; Section 331 EP Act

This amendment is **not** supported by QRC.

The proposed amendments seek to require that transitional environmental programs must be submitted in an approved form.

The scope of TEPs can vary so widely that a form is likely to generate over-the-top paperwork for some very minor issues (similar to the experience regarding EHP's forms that QRC has previously objected to in relation to notification of events under the Duty to Notify provisions, back in August 2011). Even the existing TEP guideline is over-the-top and we would like the opportunity to discuss this further with EHP.

QRC previously raised these concerns in our June and July submissions, but the EHP response has been to dismiss our concerns by noting that our issues are related to the design of the form rather than the requirement. Our concern that any new power to impose a form is likely to lead to yet another poorly designed form, which only increases greentape, based on our considerable experience with EHP forms. EHP has not justified the need for this greentape increase.

As an example, when a company wants to apply for a simple amendment of an existing environmental authority to adopt a schedule of model conditions from EHP's own guideline of Model Mining Conditions, it is necessary to fill out a 20 page form, with attachments. Nearly all the questions are irrelevant. Adding another form to EHP's form collection is really not a greentape reduction.

Recommendation 8:
That the amendment to Section 331 EP Act set out in Clause 64 should be omitted.

3.9 Increasing penalties, particularly in relation to a set of offences which still fail to make sense

These amendments are **not** supported by QRC, particularly without significant accompanying changes.

QRC's concern about the proposed increase in penalties is that this is being done without addressing our fundamental underlying concern that the drafting of the offences to which the penalties relate do not make internal sense and they have never made sense. This is an issue that QRC has raised repeatedly with EHP and we continue to believe that making suitable amendments to address these issues should be given priority. Not only did our submission go into considerable detail about how the current definitions of the offences do not make sense, but also, we received some acknowledgement from EHP both during our meeting on 19 June and also at a meeting in 2012, that they agree the definitions need to be tightened up. They just did not see this as a priority from EHP's perspective because they believe

industry should rely on the goodwill of government officers not to take enforcement actions for silly reasons. Unfortunately, that does not reflect the experience of industry over many years.

We have just given a few examples below, but this list of drafting problems is not intended to be a comprehensive list.

3.9.1 'Contaminants'

The term 'contaminant' is defined too broadly in Section 11 as:

> ***Contaminant***
> *A **contaminant** can be—*
> *(a) a gas, liquid or solid; or*
> *(b) an odour; or*
> *(c) an organism (whether alive or dead), including a virus; or*
> *(d) energy, including noise, heat, radioactivity and electromagnetic radiation; or*
> *(e) a combination of contaminants.'*

The term 'liquid' literally includes drinking water. The term 'gas' includes air. These are not terms of art.

The definition of 'contamination' is similarly not restricted to anything that is actually hazardous or harmful. Section 10 provides:

> ***Contamination** of the environment is the release (whether by act or omission) of a contaminant into the environment.*

Even irrigating a crop with water of drinking standard or better would literally be 'contamination' under this definition.

This has consequential problems for other sections that use these terms, for example:

- For resource projects, there is an unfortunate deeming provision for the demarcation between minor and major amendments that '*an increase of 10% or more in the quantity of a **contaminant** to be released into the environment' is taken to be a substantial increase in environmental harm*.[1] Diverting clean water so that it can be released into the environment, instead of being stored, would be an increase in the release of a contaminant to the environment.
- There is a series of offences including the words 'contaminants' or 'contamination', but with seriously inadequate definitions. An example is Section 443 – Offence to place contaminant where environmental harm or nuisance may be caused. Another example appears in the definition of environmental nuisance. Also, the words 'contaminants' or 'contamination' have often been used in conditions, with the intention that they have their ordinary dictionary meanings, but with unintended consequences in the context of the statutory definitions that are much broader than dictionary meanings.

- Looking at the new definition of 'contamination incident' to be inserted in Section 363F under Clause 132, this does not have the meaning that a non-lawyer would legitimately expect it to

[1] Section 230(3) *Environmental Protection Act* 1994 (Qld).

have because it relies on the existing terrible definitions of 'contamination' of the 'environment' causing 'serious or material environmental harm'. For example, 'contamination' could be an overflow of drinking water from a tap, causing flooding that creates something more than 'trivial' harm to property, which is the kind of plumbing incident that could happen to anybody. Or it could mean a lawful release of carbon dioxide to the air, which many people are concerned is causing global warming. It does not necessarily mean that there has been a release of actual hazardous contaminants to land or waters.

This concern is not just academic. QRC's members have actually experienced examples where district EHP officers have enforced provisions about 'contaminants' literally, for example, in relation to clean water diversions, true sediment dams and internal water transfers, under the previous government. We are disappointed by the dismissive response that we received in a letter dated 18 August from the Minister.

The other side of the coin is that, because the term 'contaminants' means almost anything, rather than being restricted to something harmful, it means that the list of offences does not address really serious contamination properly. For example, one would have thought that causing land or waters to become contaminated with hazardous contaminants, creating a health and safety problem for other people or animals (particularly if the impact on health or safety is severe, such as death or grievous bodily harm), would be set out clearly as one of the more serious offences. However, counter-intuitively, creating an 'unhealthy' condition 'because of contamination' is one of the alternative types of mere environmental nuisance,[2] which is excluded from the definitions of serious or material environmental harm.[3] Given the exclusion of contamination from the definitions of serious or material environmental harm because it is part of the definition of environmental nuisance, this also undermines the new definition of 'contamination incident' in Clause 132.

3.9.2 Serious and material environmental harm

The term **'material environmental harm'** is defined in Section 16 as follows:

> **16 Material environmental harm**
> (1) ***Material environmental harm*** is environmental harm (other than environmental nuisance)—
> (a) that is not trivial or negligible in nature, extent or context; or
> (b) that causes actual or potential loss or damage to property of an amount of, or amounts totalling, more than the threshold amount but less than the maximum amount; or
> (c) that results in costs of more than the threshold amount but less than the maximum amount being incurred in taking appropriate action to—
> (i) prevent or minimise the harm; and
> (ii) rehabilitate or restore the environment to its condition before the harm.
> (2) In this section—
> ***maximum amount*** means the threshold amount for serious environmental harm.
> ***threshold amount*** means $5000 or, if a greater amount is prescribed by regulation, the greater amount.

Problems with this definition:

[2] Section 15(b) EP Act.
[3] Refer to the words '(other than environmental nuisance)' in Sections 16 and 17 EP Act.

- Each of the paragraphs is expressed in the alternative (i.e. the word 'or' appears between them), so it is not necessary for harm to exceed a particular figure (as is sometimes mistakenly assumed), but rather EHP only has to show that harm was 'not trivial or negligible'. Not being 'trivial or negligible' is not enough to justifiably argue that it is a 'serious' offence with high penalties. It only just passes the 'de minimis' threshold below which it would have to be thrown out of court.
- The '$5,000' figure for costs of rehabilitation means that in practice, EHP has often simply required evidence of how much money landowners have spent on cleaning up any minor spills. As a result it could be suggested that landowners are obviously better off making sure they spend as little as possible on remediation, if this is the way the Act deals with EA holders who are acting responsibly in terms of remediation. A number of QRC's members have had practical experience of EHP having used evidence against them of the voluntary high standard of work that they have done in carrying out remediation of relatively minor issues, so as to prove the monetary threshold for 'material' or 'serious' environmental harm has been crossed. This means that EHP has discouraged companies from carrying out better quality remediation than they needed to carry out, by using evidence of their own expenditure against them, and as a result of this practice having become widely known. This was not an exceptional experience. We do not believe the answer is to say that, for the time being, the Minister will direct officers not to gather a type of evidence that the Act allows them to rely on; the answer is to fix the Act.
- The dollar values for the thresholds of material or serious environmental harm have not changed in the 20 years of the Act's existence.
- Material environmental harm is also taken to be caused even if $5000 is spent preventing any harm from happening, and almost unbelievably, paragraph (c)(i) makes it an offence to spend money to prevent harm.
- The interface between serious/material environmental harm on the one hand and environmental nuisance on the other hand is very unclear. For example, paragraph (b) of Section 15 Environmental nuisance deals with 'an unhealthy, offensive or unsightly condition because of contamination', then the definitions of material or serious environmental harm exclude environmental nuisance. It follows that if, for example, a spill to land or water makes the land or water 'unhealthy' or 'offensive' (which is probably the case), this logically cannot be the more serious offence of serious/material environmental harm, which was surely not intended.

Other than the fact that EHP does not see it as a priority to fix these errors, another explanation we were offered by EHP (at a meeting on 9 July 2014 and in a letter from Minister Powell dated 2 September 2014) was that the resources sector had been the only industry that highlighted the errors in the elements of the offences as an issue. Our understanding is that this is mistaken. However, even if it had been true, the response is just not logical. If there are errors, then they should be fixed, rather than excusing this by saying that other entities (who were also only given a short time to respond) should have given an answer on an issue that they were not asked about.

Further in the letter dated 2 September from Minister Powell he expressed the view that '…*the application of these definitions in the context of legal proceedings has not raised particular issues or concerns, and I do not therefore propose to review the thresholds at this time'*. This view is again mistaken. Our members have had experience of the above issues in legal proceedings. While it may not be a concern from EHP's perspective that EHP has been able to use evidence against companies of their own voluntary high expenditure; it has been a problem from the perspective of defendants.

Although we have been given some reluctant indication by EHP that they are prepared to have a discussion at some future stage about how to consider improvements to these definitions, these will clearly not occur prior to the Committee considering this submission. It would focus EHP's attention on getting the offences corrected if the Committee was to recommend that the penalties should not be increased unless EHP can first sort out what they mean by the offences.

If EHP invites a proper consultation process with stakeholders that have expertise in these legal issues (such as the Bar Association, the Queensland Environmental Law Association and the Queensland Law Society), it is suggested that this should not be a difficult task.

Recommendation 9:
That the penalty increases do not commence unless and until the corresponding supporting work has been done to place them in an equitable context; that is, until each of the elements of the corresponding offences have been defined clearly, internally consistently and so that each penalty is proportionate to the level of the offence for that penalty.

3.10 Environmental evaluation for contaminated land – Clause 128 and Section 326BA(1)

QRC has **a concern** with the 'serious or material environmental harm' trigger in Section 326BA(1)(b), for so long as EHP does not address the underlying problems that we have identified with the definitions of those terms above. For example, land might only have been recorded on the environmental management register (EMR) because a 'notifiable activity' has been carried on. The term 'serious or material environmental harm' is anything above the threshold of 'trivial', even if only very minor. People 'may' be exposed only in circumstances where they are trespassing. Animals include pests. The bar is set too low.

Recommendation 10:
That the Committee reject this amendment unless the definitions of serious and material environmental harm have been appropriately amended. In addition, the term 'animal' should be qualified so that it is restricted to stock, domestic pets and protected native fauna (not pests, passing insects etc.); and in relation to 'another part of the environment', this should also be qualified so as to protect the property of third parties and protected plants, not the landowner's own land or property. Trespassers should also be excluded.

3.11 Temporary emissions licences (TELs) - Clause 67 EPOLA and Section 357A EP Act

QRC **supports part** of the amendment (referring to overriding a TEP) but does not support the balance.

3.11.1 What is an applicable event – foreseeability

By way of background, the term 'applicable event' refers to the type of event which provides jurisdiction for EHP to grant a temporary emissions licence (TEL). The mechanism of a temporary emissions licence was introduced primarily for the purpose of attempting to fulfil one of the recommendations of the Queensland Floods Commission of Inquiry Final Report. The Final Report criticised the use of transitional environmental programs as a mechanism for authorising release of mine-affected water from mines, because the triggers under Section 330 of the EP Act for a Transitional Environmental Program (TEP) were (and still are) inadequate for this purpose and the report went so far as to describe Section 330(a) as 'Gilbertian'. The Final Report firstly recommended that if mine-affected water is proposed to be authorised to be released in similar circumstances again, then this should be done upfront by way of

conditions (which was consistent with QRC's submissions and evidence to the Inquiry). Secondly, if discharges of water are to occur again by way of 'relaxation of environmental authority conditions', this should be either by way of reforming the TEP provisions 'or otherwise' (Recommendation 13.11). At the time, EHP chose not to reform the TEP provisions and proposed the TEL mechanism as the 'or otherwise' solution. QRC has no problem in principle with an alternative mechanism, but the TEL provisions are inadequate to cover exactly the same kind of situation that the Commission was addressing in 2010-11.

The current definition in Section 357A restricts the jurisdiction of EHP to grant a TEL only if the event 'was not foreseen when particular conditions were imposed on an environmental authority'. The EPOLA amendment (clause 67) offers an alternative that the event: '*was foreseen but because of a low probability of occurring, it was not considered reasonable to impose a condition on the authority to deal with the event or series of events'.*

This is patently not enough. At the time of the Queensland Flood Event, which was the very situation that the Commission of Inquiry was referring to, there was written evidence that the event was not only foreseen by QRC's members and drawn to the attention of EHP's predecessor, but also there was plenty of evidence (including BOM forecasts) that cyclones and a heavy wet season were probable (not a 'low probability'). Former officers employed by the former Department of Environment and Resource Management (DERM) imposed conditions in 2009-10 which effectively created zero-release for a large proportion of coal mines in central Queensland, knowing that this was what they were doing and refusing to countenance amendments of exactly the kind that are now contained in EHP's Guideline for the Fitzroy model conditions. Voluminous written evidence of this was presented by QRC to the Queensland Floods Commission of Inquiry, in attachments to sworn statements such as minutes and correspondence.
Not only on the topic of water, but also on other topics, EHP does not always draft perfect conditions, even in full knowledge of the types of events which they are specifically designed to address. The practical reality is that conditions are sometimes drafted by people with less than perfect skills; they may have been accepted due to project timeframe pressures or anomalies may simply have been overlooked. If EHP doubts this, QRC has available plenty of examples from our members of conditions that have been drafted with major errors or miscalculations, notwithstanding that the information about the events they are designed to address has been correct.

If EHP tries to grant a TEL in these types of circumstances in the future, the validity of that decision will be open to legal challenge by third parties. QRC has advised its members accordingly. As QRC also pointed out in our submissions at the time that the TEL provisions were introduced, another perverse consequence is that companies would be better off seeking a TEL if issues have not been addressed properly at the EIS or application stage, because then there is less evidence that they were 'foreseen'.

3.11.2 TELs overriding TEPs

QRC **supports** the new reference to TELs as being able to override TEPs. We have been seeking that change ever since the original version of Section 357A was in draft.

3.11.3 Monitoring equipment

The amendments also still fail to deal with the point that we raised in our submissions of November 2012 that Section 357B(1) should not be restricted to relaxing conditions about the release of a contaminant to the environment, but should also allow for the possibility that the only conditions that need to be modified during a natural disaster might be conditions about monitoring or reporting, while the holder

continues to comply strictly with conditions authorising discharge. For example, in the aftermath of a cyclone, monitoring equipment may have been destroyed and communication systems may not be working. It would be illogical to require a company to have to 'relax' its discharge limits just in order to seek a relaxation of monitoring requirements. We have been unable to understand why EHP has been so determined to resist such a harmless addition to their jurisdiction for TELs, when similar relaxations are already available in some (but not all) model conditions.
EHP's recent explanation that the monitoring conditions generally apply to releases so can be covered through those events still does not seem like a reason to not make the above changes to ensure it is clear in law.

3.11.4 Amendments to TELs

We are also disappointed that EHP has still not corrected Section 357J in relation to amendments. This section does not allow the holder of a TEL to lodge an application for amendment to EHP for correction of a range of errors in the TEL, such as clerical errors or the situation where the anticipated event ends up being less severe than anticipated. The only situation other than amendment by agreement that is allowed is where EHP receives information that the effects of the release are greater than was envisaged and does not allow for the possibility that the effects may have been less than anticipated.

This is similar to our long-standing criticism of the TEP provisions, that the provisions about amendment are too restrictive, which only makes the task of both EHP and applicants more convoluted when trying to correct clerical errors in TEPs.

Recommendation 11:
That:

- **(a) The words 'that was not foreseen when particular conditions were imposed on an environmental authority' should be omitted from Section 357A EP Act;**
- **(b) Clause 67 should be omitted from the Bill;**
- **(c) In Section 357B(1) EP Act, omit 'that relate to the release of a contaminant';**
- **(d) Section 357J EP Act should be amended so as to insert a new paragraph (c) enabling the holder of an temporary emissions licence to apply for amendment of the TEL and for the criteria in Section 357D to apply to assessment of the amendment application to the extent relevant to the amendment.**

3.12 Prescribed responsible person – Clauses 133 and 134 – Sections 363G and 363M

It is acknowledged that all that is being done with this definition is to relocate the provisions about the responsible person from substantive provisions to the Dictionary, which is **supported** in terms of modern drafting practice.

However, it is suggested that EHP could take this opportunity to re-consider obvious drafting anomalies in the existing provisions, which have always been there. The most obvious anomaly is that the existing provisions have always assumed that the land that was contaminated was the same land on which the activity occurred. In reality, of course, it is often adjoining or neighbouring land that has been contaminated through no fault of the owner of that adjoining or neighbouring land. This works with the first paragraph (relating to the polluter), but the drafting does not work in relation to the local government approval or the landowner provisions.

- The local government may have given a negligent approval relating to the adjoining land, not the land that has ended up being contaminated.

- The landowner may have purchased land that was listed on the EMR but for an entirely different (and innocuous) notifiable activity than the one that caused the contamination of his or her land by his next door neighbour.

Also, the entity that gave the negligent approval might have been the State, not the local government.

Recommendation 12:
That the drafting anomalies listed in section 12 of this submission in relation to Sections 363G and 363M should be corrected, as explained.

3.13 Process for including land in relevant land register – Clause 135 EPOLA; Section 375 EP Act

A copy of the show cause notice issued to the owner should also be given to each registered occupier, including holders of resource tenements; and these occupiers should have an opportunity to be heard.

For QRC's members this is a fundamental concern, as resource companies are often not landowners. If a notification of a notifiable activity for the land has been given to EHP by the resource company as occupier, it is the resource company that should be responding to the notice of intention to record the land on the register. EHP may wish to limit the definition of 'occupier' for these purposes, to cover just the occupier registered on title (e.g. registered lessee) and resource tenement holders. Otherwise, it may be too difficult to track down unregistered occupiers.

In addition, in response to a show cause notice, the owner and the occupier should have an opportunity to confirm if they want the land to be recorded in the register, not just to object to the listing. Further, they should have an opportunity to address the particulars of the proposed notification (e.g. if the proposed listing is on mistaken grounds or there is a typo in the land description).

Another suggestion is that the terminology 'show cause' notice is misleading, if the owner and occupier have actually notified EHP that the land is being used for a notifiable activity so that it can be correctly recorded on a register. Maybe just a neutral 'notice', would be less confronting.

Recommendation 13:
That in Clause 135, Section 375 of the EP Act, should be amended by replacing the term 'show cause notice' with 'notice of proposed listing'; the notice should be given to the owner, registered occupiers and the holders of registered resource tenements, and the opportunity should be provided for each of the recipients to object or support the proposed listing and request any corrections to the description of the land or the description in the listing.

3.14 Notice of removal or amendment – Section 385 EP Act

Paragraph (b) is not sufficient for this purpose, because the person who gave the report may have been a consultant. (In passing, it is suggested that local governments should be kept in the loop not only with listings and removals from the register, but also amendments.)

Recommendation 14:
That in Section 385 EP Act a copy of the notice should be given to registered occupiers (including registered on title or resource tenement holders), not just owners.

3.15 Provisions about contaminated land investigation documents – Division 3

QRC's members have practical concerns about the proposed requirement for every type of 'contaminated land investigation document' to be accompanied by an auditor's certificate.

While we understand that the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* introduced a framework for the approval and regulation of 'auditors' and we were also aware that there had been a practice of utilising third party auditors before then, our members were not anticipating in 2012 that this would translate into a requirement that only these auditors could be used for certification of contaminated land reports.

According to the current list on the EHP website, there are only nine government accredited auditors.[4] This is quite a short list. The amendments would dramatically increase the workload of auditors. At present, auditors can be used to streamline the assessment process, but it is not the case that every document needs to have been officially signed off by an [approved by the Chief Executive] auditor. A suitably qualified person is also currently authorised. At the moment, without further explanation, it is not apparent to our members how EHP plans to address this practical problem. Specifically, as one of our members has commented in relation to the proposed benefits of the new system on page 70 of the Explanatory Notes:

- *Allow for further efficiencies to be achieved by facilitating involvement of the auditor at all stages of the project to fine tune the remediation and validation activities.* The current system already allows flexibility for the proponent to engage an auditor to assist with development and implementation of contaminated land assessment at all stages of the Project, if a proponent deems it necessary. Companies have done this to provide them with greater certainty around the outcomes (given complexity of our site), however this may not be necessary for all sites. The requirement for an auditor to be involved at all stages should be able to be assessed by the proponent on a case-by-case basis, as per the current system. The proposed system may also lead to inefficiencies associated with reduced availability of auditors.
- *Internalises the costs of the technical assessment of contaminated land reports in the development project (the user-pays principle) rather than those costs being born by the community at large*. The costs are currently internalised by the requirement for SQP involvement. The proposed system will increase those internalised costs due to increased demand of auditors and inevitable consequent increase in cost.
- *It allows for market flexibility in providing appropriately qualified and experienced technical staff in response to demand for the technical assessment of contaminated land investigation documents.* Mandatory certification by an auditor would constrain market flexibility due to increased demand of auditors and the fact that there are far fewer auditors than SQPs.

EHP has informed QRC that the reason for this strict requirement is that contaminated land is considered such a high risk that the only way to ensure the proper preparation of relevant materials is for this to be strictly controlled by accredited auditor. QRC notes that people with contaminated land expertise have previously been employed by the State Government.

Recommendation 15:

[4] Contaminated land auditors. EHP. 2014. http://www.qld.gov.au/environment/pollution/management/contaminated-land/auditing/

That the Bill should maintain the recognition of a Suitably Qualified and Experienced Person to undertake certain contaminated land auditing and documentation requirements.

3.16 Coordinated Projects

The Bill adopts two previous QRC proposals:

- relating to the interface between the standard approval framework with coordinated projects; and
- recognition of State Development and Public Works Organisation Act (SDPWO Act) EISs in the EP Act environmental authority process.

Some of our members already have EAs in place that they will seek to amend to incorporate additional activities approved under an EIS. In this situation, the Bill has addressed greentape reduction in relation to removing duplicated public notification criteria but the Bill has not removed the application information requirements, for example, if the activity has already been addressed under an EIS, then Section 226(k) should not apply. This could be corrected by making further amendments in Clause 40.

Recommendation 16:
That in Clause 40, at the end of Section 226(3), insert 'or to amend an application to incorporate additional activities in an existing environmental authority where the additional activities have been addressed through a completed EIS process'.

3.17 Explanatory notes error – financial assurance

QRC has no difficulty with Clause 54 (Amendment of Section 295) – Deciding amount and form of financial assurance (FA), but there is an error in the Explanatory Notes for this clause, as follows:

> Clause 54 amends section 295 of the Environmental Protection Act 1994 to make it clear that, in making the decision about the amount and form of financial assurance, the administering authority only needs to consider any relevant regulatory requirements, and does not need to consider every regulatory requirement in the Environmental Protection Regulation 2008.
>
> Currently, the regulatory requirements which are prescribed in the Environmental Protection Regulation 2008 are for decisions about managing the impacts of carrying out the activity. These requirements are not relevant to the decision about the amount and form of financial assurance. However, the Queensland government has been working with industry to develop a financial assurance calculator to streamline and clarify the amount of financial assurance to be given. If this calculator becomes operational, the intent is to prescribe the use of the calculator as the regulatory requirement for this section. Consequently, it is still necessary to include consideration of the regulatory requirements in this section.

Firstly the note is out of date as the calculator is operational and has been so for six months. Secondly, the explanatory notes appear to suggest that the regulator's intent is to prescribe the use of their calculator. This is not an accurate reflection of the Financial Assurance Guideline which the industry was consulted on. There is currently flexibility to have an EA holder's calculator certified.

Recommendation 17:
That the Committee seek a rewording of the Explanatory Notes in relation to Clause 54 of the EPOLA Bill to (1) acknowledge that the financial assurance calculator already exists and (2) it is made clear that EHP has the ability to certify a company's own FA calculator, as is already the case.

4 Amendment of Waste Reduction and Recycling Act 2011

When the draft EPOLA Bill was circulated for stakeholder feedback in July 2014, QRC was supportive of the general intent of the reforms to the Beneficial Use Approval (BUA) framework. The support for these amendments arose from the difficulties currently being experienced by QRC's members in managing resources that had been unnecessarily classified as a waste, and thus requiring a higher level of management.

As a result, the industry needed to demonstrate to government that the material should not be classified as a waste. The mechanism that currently exists under the *Waste Reduction and Recycling Act 2011* (WRR Act) for this process is the Beneficial Use Approval (BUA) process. A specific BUA is applied for by one proponent, whereas a general BUA has clear standards which, if complied with, do not require individual assessment by EHP. Anyone can operate under this latter type of approval provided they are conducting the use in accordance with the conditions of the general BUA.

Where there was a wide class of material requiring reclassification, it was redundant to require each proponent to have to go through the process of obtaining a specific BUA. However, there was no formal mechanism under the WRR Act allowing industry to bring a particular material to EHP that industry believed should be developed into a general BUA. Instead, under s165 of the WRR Act, the initiative is left to the Chief Executive of EHP to propose the development of a general BUA.

Given this problematic process, QRC was pleased to see in the draft Bill provided to stakeholders in July 2014, a new mechanism that would allow proponents to bring suggestions to the Chief Executive of EHP for potential development into a general BUA (now referred to as an 'end of waste code'). This was one, if not the main reason, that QRC supported the proposed amendments to the WRR Act, as it would break the deadlock that industry had experienced in the past, where, for example, it took two years to start the development of the *General Beneficial Use Approval – Irrigation of Associated Water (including coal seam gas water)*.

It was very disappointing then to see that the EPOLA Bill introduced into Parliament had amended this new process such that it was radically different to the one which industry had supported, namely that industry now has to again wait for the Chief Executive of EHP to trigger the development of an end of waste code. As a result, no reform on this matter has materialised as the new process, in essence, is the same system that currently exists.

As noted in the introduction to this submission, QRC discussed its key concerns regarding the WRR Act amendments with EHP on 25 September 2014, and received indications that EHP appreciated the concerns of industry, and a number of the changes had been a result of unintentional drafting (such as the requirement for users of a product to register under an end of waste code). Despite this, QRC finds itself in the unfortunate position where it is not possible for us to give overall support for the Waste Act changes at this time, unless a number of our suggested amendments are made. We therefore look forward to seeing the matters raised in the meeting with EHP result in amendments to the Bill in Committee.

While we have indicated our support in the submission for a number of the amendments, this does not change the opinion of the resources industry that the proposed new framework for end of waste codes and approvals are so different from the consultation EPOLA Bill and together with other components of the EPOLA Bill run the risk of such wide implications in terms of commercial contracts, that we cannot support the waste aspects of the EPOLA Bill unless our suggested changes are made.

In the first instance, QRC would also like to take this opportunity to raise some overarching points about the way waste is regulated and managed in Queensland.

4.1 Overarching issues with respect to the regulation of waste in Queensland

4.1.1 Definition of waste

The WRR Act provides that the definition of 'waste' is given under s13 of the *Environmental Protection Act 1994 (Qld)* (EP Act).

The definition of waste in Queensland is as follows:

> *'(1)* ***Waste*** *includes anything, other than a resource approved under the Waste Reduction Act, chapter 8, that is—*
>
> > *(a) left over, or an unwanted by-product, from an industrial, commercial, domestic or other activity; or*
> > *(b) surplus to the industrial, commercial, domestic or other activity generating the waste.*
> > *Example of paragraph (a)—*
> > *Abandoned or discarded material from an activity is left over, or an unwanted by-product, from the activity.*
>
> *(2)* ***Waste*** *can be a gas, liquid, solid or energy, or a combination of any of them.*
>
> *(3) A thing can be waste whether or not it is of value.*
>
> *(4) For subsection (1), if the approval of a resource under the Waste Reduction Act, chapter 8, is a specific approval, the resource stops being waste only in relation to the holder of the approval.*
>
> *(5) Despite subsection (1), a resource approved under the Waste Reduction Act, chapter 8, becomes waste—*
>
> > *(a) when it is disposed of at a waste disposal site; or*
> > *(b) if it is deposited at a place in a way that would, apart from its approval under that chapter, constitute a contravention of the general littering provision or the illegal dumping of waste provision under that Act—when the depositing starts.*
>
> *(6) In this section—*
> ***waste disposal site*** *see the Waste Reduction Act, section 8A.*
> ***Waste Reduction Act*** *means the Waste Reduction and Recycling Act 2011.'*

By framing waste in terms of being a surplus to an activity, this defines a waste at its point of generation (i.e. the conclusion of the activity) rather than at the point of disposal. This means that irrespective of

whether there is still a potential use or residual value of the material beyond the life of that generating activity, the material falls within the definition of waste under the EP Act.

The resources industry is of the opinion that this definition is too broad in scope and unnecessarily captures material that is still a resource with residual value. This leads to perverse outcomes as it only considers the use of the material at that generation point, rather than taking a holistic view of the material, and whether third parties could use or find value in the product.

Fundamentally, the resources industry believes that there needs to be a refocusing of the waste management framework in Queensland which better prioritises the application of the waste management hierarchy and the principles of ecologically sustainable development, and a commitment to building a regulatory framework that does not drive generators towards disposal as a first response.

It is disappointing that this definitional issue has not been recognised in the EPOLA Bill, as this would have been an ideal opportunity to progress this reform. QRC has raised this issue a number of times with EHP over the past 18 months, including in several submissions, and had this change been implemented it would change the way that waste is conceptualised and managed in the state. It also would have meant that the BUA reform process would not have been as high a priority as a number of materials would not have needed to be reclassified as a resource, as they would not have been defined as a waste in the first place.

Whilst QRC recognises that there are difficulties with shifting the definition of waste from the point of generation to the point of disposal, such as the potential to drive unwanted storage of waste, QRC believes that these issues can be resolved (as opposed to not being furthered at all) and would welcome the commencement of the earliest possible discussions with EHP on the definitions.

4.1.2 End of waste approvals and codes

Secondly, QRC would like to note that we are disappointed that the naming of the new system utilises ‘end of waste’ terminology, which the industry believes is clunky and does not align with the philosophy of the Queensland Waste Strategy. Instead, QRC recommends that the terminology in the Acts be changed to ‘resource recovery code’ and ‘resource recovery application’. Whilst QRC recognises that this may be seen as a cosmetic recommendation, it aligns with our earlier point about shifting the way the WRR Act and the EP Act frames the way Queenslanders think about waste.

4.2 Specific comments on the proposed amendments to the WRR Act

4.2.1 Priority Product Statement – Clause 146 and ors

QRC notes that in the draft EPOLA Bill, the amendments proposed to change the terminology from ‘Priority Waste Statement’ to ‘Priority Product of Waste Statement’. QRC believes that the terminology proposed in the EPOLA Bill, ‘Priority Statement’ is clearer that the previously proposed amendment, and by not specifying whether it is applicable to either products or wastes, achieves the intent of the amendment, namely that it can be applied to either, without the need for a lengthy and cumbersome title.

As such, QRC is supportive of these proposed amendments.

4.2.2 Strategic Waste Planning Option – Clause 153 EPOLA Bill and Section 76(1)(c) WRR Act

In the draft EPOLA Bill the proposed amendment to s76(1)(c) made reference to giving consideration to the management options for a proposed product under an end of waste code or an end of waste approval.

Instead, the EPOLA Bill now makes no reference to either an end of waste code or an end of waste approval. There is no reason given in the Explanatory Note for the exclusion, and QRC believes that the previous version helped to tie the various processes together in the WRR Act.

QRC also notes that the phrase 'strategic waste planning option' is a term undefined in the WRR Act and it is the only point in the Act where the term is used. It would be of benefit to utilise this opportunity to either remove the term, or define it.

4.2.3 Definition of product – Clause 164 EPOLA Bill and Schedule (Dictionary) WRR Act

The definition of *product* in the WRR Act is given as:

> ***product*** *includes any packaging for the product.*

QRC recognises that this definition is currently incomplete and problematic, and can understand the need for reform of the definition. However, the definition suggested in the EPOLA Bill does not make sense, when read together with the way the term 'product' is used in the body of the Act. For example, Clause 149 outlines the purpose as follows:

> *The purpose of this chapter is—*
> *(a) to encourage, and in particular circumstances to require, persons who are involved in the life cycle of a product to share responsibility for—*
> *(i) ensuring that, for the product, there is effective waste avoidance, reduction, re-use, recycling, recovery or treatment; and*
> *(ii) managing the impacts of the product throughout its life cycle, including end-of-use management*

The emphasis in this statement of purpose on the entire life cycle of a product is obviously inconsistent with the proposed definition of a 'product', which instead focuses on the 'end of its useful life":

> ***product—***
> *(a) means a product that has reached the end of its useful life; and*
> *(b) includes a product that has not been used and any packaging for the product.*

Based on the purpose of the Act, it appears that what EHP meant to say was that a product is an article or a substance that is manufactured refined or extracted for use, and not something that has reached the end of its useful life.

Recommendation 18:
That the Schedule be amended to read:

> ***Product includes an article or substance*** *—*
> *(a) that has been manufactured, refined or extracted for use (whether or not that intended use ever actually occurs); or*
> *(b) comprising any packaging for that article or substance.*

4.2.4 Unregistered end of waste code users – Clause 167 EPOLA Bill and Section 157 WRR Act

In the submission on the draft EPOLA Bill, QRC recommended that those activities which are already regulated under an environmental authority should be exempt from the requirement to register their use of an 'end of waste' code with the Department. This is because there are already extensive requirements to notify the Department with respect to the activities being undertaken under the Environmental Authority (EA), and there are appropriate monitoring and compliance checks attached to the issuing of an EA, which provide the Department with sufficient understanding of the waste streams being generated on site.

QRC is disappointed that this recommendation was not taken on board, and believes that the Department has failed to assess the dual regulation from a risk based perspective, notably that through the regulation under an Environmental Authority the risk of environmental harm is minimised. Further to this QRC believes it is counter to EHP's own Regulatory Strategy of focussing on environmental outcomes rather than duplicative and prescriptive regulation.

Recommendation 19:
That there be the ability for conditions under an end of waste code or approval to be able to 'speak to' any relevant waste conditions in an EA, without the need for a major amendment to the EA (this is particularly relevant in light of the significant increase to major EA amendment fees).

Further, s157 states that if "a person sells, gives away or uses a resource under an end of waste code" they must become a registered end of waste user for the material to be classified as a product instead of a waste.

This is concerning as it implies that both the user and the producer must register. This could have significant privacy issues for the resource industry where third party users may not want to register that they are receiving and using a resource that has gone through an end of waste code process, for example associated water. It would also attach a penalty for failure to register, making the process overly onerous and burdensome for third parties that may be receiving the resource for free as part of stakeholder negotiations e.g. landholders etc.

This could create another hurdle in convincing the community to use such resources and seems contrary to the intention of the WRR Act which is about encouraging re-use above disposal.

Recommendation 20:
That users of a resource from an end of waste code should not be required to register. If the resource has met the standards of the Code at the point of transfer there is no need for further regulation on the part of the Department.

4.2.5 Compliance with end of waste code – Clause 167 EPOLA Bill and Section 158 WRR Act

This section and thus the attached penalty would apply to anyone who uses a resource under an end of waste code. An example of this would be in the instance of treated associated water where this would often be landholders and particularly the farming community. This would create an unnecessary regulatory hurdle for the agricultural community to use treated water, and runs the risk of an unintended

consequence of driving users away from reuse, forcing generators to dispose of the resource as a waste rather than re-use which is counter to the waste hierarchy and the objects of the WRR Act.

4.2.6 Creation of end of waste code when end of approval is in place – Clause 167 EPOLA Bill and Section 159 WRR Act

In the draft Bill released for consultation in July, there was a subsection (3) in section 159 of the WRR Act (s160 in the draft Bill) which explicitly allowed for the creation of an end of waste code while there was an end of waste approval in place.
The section noted:

> *(3) The chief executive may make an end of waste code for a particular waste or in relation to a particular usable resource even if an end of waste approval relating to the waste or resource is in force.*

This section has been removed from the final version of the EPOLA Bill, and QRC is concerned that the removal creates uncertainty as to whether both a Code and an Approval can exist at the same time. In the opinion of industry it is critical that both can exist at the same time so as to enable appropriate transitional arrangements if proponents are switching across from an Approval to a Code, or alternatively, where site specific conditions would require specific regulation under an Approval that cannot be generalised under a Code. This is already allowed under the current BUA framework, where there is already the concurrent existence of both specific BUAs and a general BUA for associated water.

Recommendation 21:
That the above subsection (3) be reinserted back into the EPOLA Bill to ensure that there is clarity that both a Code and an Approval can exist concurrently.

4.2.7 Process for making end of waste codes – Clause 167 EPOLA Bill and Section 160 WRR Act

As noted in the overarching comments to the WRR Act amendments, one of the primary reasons for QRC supporting the draft EPOLA Bill, was the new mechanism that would allow proponents to bring suggestions to the Chief Executive of the administering authority for potential development into a general BUA (now referred to as an 'end of waste code').

Section 160 of the EPOLA Bill (s162 in the draft EPOLA Bill) has been significantly changed from the exposure draft to the EPOLA Bill introduced into Parliament, to remove the ability for a person to make a request to the Chief Executive of the administering authority to consider whether to make a new end of waste code.
The resources industry had experienced issues with the inability of proponents to suggest the development of a General BUA under the current WRR Act. Often industry are the first to recognise the need for the development of a uniform/codified method for undertaking activities.

The new section 160 now sets down the method for the creation of an end of waste code as such:

> *(1) The chief executive may, by notice, invite the public to make a submission about whether there is any particular waste or resource for which an end of waste code should be prepared.*
> *(2) The notice must—*

(a) state—

(i) that a person may make a submission to the chief executive about any particular waste or resource for which an end of waste code should be prepared; and

(ii) the period, of at least 28 days, (the submission period) during which the submissions may be made; and

(iii) how to make a submission; and

(b) be published on the department's website.

(3) A submission made under this section must be in the approved form.

There is no requirement for the Chief Executive to invite submissions/suggestions on new end of waste codes on any regular basis, or at all. If anything the regulatory burden has been increased by the need to go through an onerous submission period merely to kick start the development of an end of waste code.

QRC has interpreted the removal as arising from a Department concern that they may be inundated with suggestions for new End of Waste Codes. QRC feel that the chances of this occurring are very very low and does not warrant the replacement with the above additional regulatory burden.

QRC believes that there needs to be the ability for the public to trigger the consideration of the development of an end of waste code, noting that QRC still believes that the ultimate decision on whether or not to develop the Code should rest with the Department.

As such, QRC believes that section 162 in the draft Bill should be reinstated into the EPOLA Bill. As an alternative, at the very least, the Chief Executive should have a legislative requirement to invite submissions on end of waste codes on a regular (i.e. annual) basis. This would at least provide stakeholders with a certainty that they would have the opportunity to make suggestions to the Department on areas for reform, without having to wait for the Chief Executive to exercise his or her discretion as to when to invite submissions. This would also counterbalance any risk of inundation by the Department, and allow for appropriate budgeting of resources for the Department.

Recommendation 22:
That the section 162 (from the draft EPOLA Bill) be reinserted into the EPOLA Bill to provide the ability for the public to trigger the consideration of the development of an end of waste code. Failing this, in the alternative, QRC recommends that the Chief Executive should have a legislative requirement to invite submissions on end of waste codes on an annual basis.

4.2.8 Advice from technical advisory panel – Clause 167 EPOLA Bill and Section 162 WRR Act

QRC would like to note that we support the amendment from the draft Bill to the EPOLA Bill, whereby the advisory technical panel can now provide advice to the Chief Executive on whether or not the draft end of waste code should be prepared.

QRC supports this change as it widens the advisory powers of the Technical Panel.

4.2.9 Matters to be considered in preparing an end of waste code – Clause 167 EPOLA Bill and Section 163 WRR Act

QRC would like to seek clarification with respect to the term 'use' in s163(1)(b) of the EPOLA Bill, and whether use could also be interpreted in the plural? This is particularly relevant as the General Beneficial Use Approval – Associated Water (including coal seam gas water) currently authorises associated water for a number of uses. Given that this General BUA will be transitioned to an end of waste code under the transitional provisions, it is critical that the legislative framework allows for the authorisation of multiple uses in one code.

Recommendation 23: QRC recommends that the section 163(1)(b) be amended to clarify that an end of waste code can authorise multiple uses in the one Code.

4.2.10 Material environmental harm – Clause 167 EPOLA Bill and Section 163 WRR Act

As noted previously in this submission, QRC has a fundamental issue with the definitions of serious environmental harm and material environmental harm under the EP Act.

In section 163 of the EPOLA Bill, it is proposed that the Chief Executive must give consideration to whether the proposed use (or uses) may, or is likely to cause any serious environmental harm or material environmental harm.

While QRC can see the benefit of tying the WRR Act to the EP Act through the linking of these concepts, as explained below in the section of this submission about penalties and also in our July submission, the current definitions of material or serious environmental harm have numerous flaws; the terms tend to mean whatever EHP officers think they mean from time to time.

Recommendation 24:
That EHP to consider amending the definition of serious and material environmental harm, and until such time as they are appropriate refrain from linking the terms in the EP Act to the WRR Act.

4.2.11 Timeframes for decision on whether to make an end of waste code – Clause 167 EPOLA Bill and Section 166 WRR Act

Under the draft Bill (section 163 of the draft Bill), the Chief Executive is required to make a decision on whether to create a new end of waste code within 20 business days. This timeframe has been removed from the current Bill, giving the Chief Executive complete discretion on when to make a decision on whether to create a new Code.

QRC's overarching point regarding the development of the new end of waste code process is centred on certainty of process. Certainty that if industry has a concern with a specific product that they can trigger the process, and certainty that the decision on whether to create a Code will be made within a reasonable timeframe.

As such, QRC believes that the 20 business day timeframe should be re-inserted into section 166 of the current Bill.

Recommendation 25:
That the 20 business day timeframe for the making of a decision on whether to create an end of waste code be re-inserted into section 166 of the current Bill.

4.2.12 Amendment of end of waste code – Clause 167 EPOLA Bill and Section 167 WRR Act

Section 167 of the EPOLA Bill gives the Chief Executive of EHP the broad power to amend an end of waste code at his or her initiative. This creates an incredibly broad power for the Chief Executive and limits the certainty of process regarding the framework for end of waste codes.

The concern for industry is that this uncertainty will have implications for the way in which industry undertakes waste management. The risk that a proponent could be operating under an end of waste code, only to have the Chief Executive unilaterally amend the Code without being required to consult on the proposed amendment does not appear to be consistent with the standard regulatory practice of government.

A unilateral amendment could, for example, compromise long term commercial contracts entered into between proponents and third parties. This is compounded if it is applied retrospectively. In the case of associated water, significant investment has been made in the development of a beneficial use network which could run the risk of becoming obsolete through a unilateral amendment by the Chief Executive.

As such, QRC believes that it would be appropriate to limit the ability to unilaterally amend an end of waste code to a predefined set of criteria, or alternatively to limit the amendment to minor amendments.

Recommendation 26:
That the unilateral amendment of an end of waste code by the Chief Executive should be limited to a predefined set of criteria, or alternatively to minor amendments.

4.2.13 Application to amend end of waste code – Clause 167 EPOLA Bill and Section 168 WRR Act

Under section 168 of the EPOLA Bill, a person may apply to the Chief Executive to amend an end of waste code. However, QRC is concerned that it is unclear as to whether this will result in the code being turned into an end of waste approval, or whether it will simply amend the code. While the Explanatory Notes clarify that it is about amending the code and not turning it into an Approval, QRC does not believe that this is clear in the draft of the Bill.

This concern is linked with QRC's concerns regarding section 172 of the EPOLA Bill (see below), which details the procedure for amending an end of waste code.

While QRC is supportive of the intent that an end of waste code can be amended, where for example it may be necessary to amend a code because there may be instances, where possible end uses for a waste may not have been considered at the time an end of waste code was developed, QRC believe that there is need for greater clarity in the drafting of these provisions.

Recommendation 27:
That the sections under the EPOLA Bill detailing the process for the amendment to an end of waste code be clarified to reflect the intent of the Bill as detailed in the Explanatory Notes.

4.2.14 Cancellation or suspension of end of waste code – Clause 167 EPOLA Bill and Section 171 WRR Act

As discussed above at clause 167 section 163, QRC has a fundamental issue with the definitions of serious environmental harm and material environmental harm under the EP Act.

Under the proposed section 171 of the WRR Act in the EPOLA Bill, the Chief Executive may cancel or suspend an end of waste code if the use of the resource under the code has caused, or is likely to cause, serious environmental harm or material environmental harm.

Particularly in the case of material environmental harm, which only has a threshold of $5000 damage, there is the potential for significant ramifications on the users of a code, irrespective of whether they have caused the harm or not. Instead, rather than cancelling the code, there is still the ability for the Department to prosecute the proponent that actually caused the harm, which would be the more appropriate course of action.

The second concern for industry is that the section ties the offence to the 'use' of the resource. This means that the code could be cancelled if a single proponent supplies a resource to a third party under the code, who then inappropriately uses that resource. The proponent, let alone other registered end of waste code users, has no control over that third party, and yet their actions could jeopardise (for all users of a code) long term commercial contracts entered into as a result of the end of waste code.

This section significantly undermines the business certainty required to invest in beneficial use infrastructure, which is not consistent with the objects of the WRR Act to encourage reuse and the purpose of the reform to increase business certainty and reduce the regulatory burden on industry.

Recommendation 28:
That the Committee remove the triggers of serious environmental harm and material environmental harm to trigger the suspension or cancellation of an end of waste code, or at least the Department review these definitions as a priority.

Recommendation 29:
That the Committee remove the link to the use of the resource as a trigger for the cancellation or suspension of the end of waste code as it holds proponents responsible for the actions of a third party beyond the control of the proponent.

QRC would also like to seek clarification as to why 'human health impacts' has been removed as a trigger for the cancellation or suspension of an end of waste code from the draft Bill to the current EPOLA Bill. Neither serious environmental harm nor material environmental harm consider the concept of impacts to human health. QRC believes that this is an important consideration in the development of end of waste codes, and should be considered in the context of the development, amendment, cancellation and suspension of end of waste codes and approvals.

Recommendation 30:
That the Committee reinstate the concept of 'human health impacts' into the trigger for the cancellation and suspension of end of waste codes into section 171.

4.2.15 Procedure for amending, cancelling or suspending end of waste code – Clause 167 EPOLA Bill and Section 172 WRR Act

QRC notes that under section 172 there is no process detailed for the consideration by the Chief Executive of the advice from a technical panel with respect to the amendment of an end of waste code.

This is in contrast to section 173G(1)(b)(ii) of the EPOLA Bill which references the ability of the Chief Executive to form a technical panel to provide advice on an amendment of an end of waste code.

QRC believes that it should be made clear that the Chief Executive can both form and take advice from a technical panel with respect to an amendment of an end of waste code.

Recommendation 31:
That section 172 be amended to allow for the Chief Executive to take advice from a technical panel with respect to a proposed amendment to an end of waste code.

QRC would also like to recommend that the words 'or should' be inserted into s172(3)(f) after 'the proposed action should not', as this would allow stakeholders to provide a submission in support of the proposed amendments as well. This would more accurately capture the views of stakeholders, rather than just canvasing those who are against the amendment.

Recommendation 32:
That section 172(3)(f) be amended to allow for stakeholders to provide a submission in support of proposed amendments.

QRC also recommends that s172(3)(g) should be replicated for when a code is proposed to be cancelled. There needs to be a process for consideration of submissions as a cancellation of a code is the most significant form of action taken by the Chief Executive with respect to end of waste codes.

Recommendation 33:
That section 172(3)(g) be replicated for when a code is proposed to be cancelled. This would allow for stakeholders to provide submissions to the Chief Executive on why a code should or should not be cancelled.

4.2.16 Registration of end of waste code users – Clause 167 EPOLA Bill and Section 173B WRR Act

As noted in the submission above, QRC has serious concerns with respect to the requirement for users of a resource to register, and pay, with respect to the end of waste code. QRC would like to raise our concern again as to how critical this is in the context of the supply of resources to third parties such as adjacent landholders. The requirement for a farmer to register and pay will create an unnecessary impediment and further complicate the process for resource proponents who are often supplying the resource as part of land access agreements or for social licence to operate reasons.

QRC does not believe that there is any environmental benefit for the regulation of the resource beyond the processing/treatment activity. Once an outcome has been reached there should be no need for government to regulate beyond that point. This is consistent with the Department's Regulatory Strategy, and would mean that there are no unintended consequence of driving landholders away from reusing a resource because of the regulatory burden placed on them.

Recommendation 34:
That users of a resource should not be required to register under an end of waste code and that this requirement should be deleted from the relevant sections in the EPOLA Bill.

Further, it is unclear whether current producers under existing General BUAs will be automatically registered when these General BUAs are rebadged as end of waste codes. To require retrospective registration is not only unnecessary paperwork for proponents who have been already operating under these existing General BUAs, but it increases the sovereign risk during the transitional period as to whether proponent can continue to operate under these General BUAs until such time as they become registered.

Recommendation 35:
That current producers under existing General BUAs be automatically registered on the commencement of the EPOLA Bill.

4.2.17 Holder of end of waste approval responsible for ensuring conditions complied with – Clause 167 EPOLA Bill and Sections 173P and 173Q WRR Act

QRC has serious concerns with this section, to the point where this section has the capacity to act as a disincentive for our members thinking of applying for an end of waste approval. This is because s173P ties the offence under s173Q to someone 'acting under an approval' (e.g. a farmer receiving associated water). Once a proponent supplies a resource to a third party, they have no control as to how the third party uses the product. To then hold the proponent accountable for the actions of the third party is illogical and as mentioned above has the serious potential of driving proponents away from seeking an end of waste approval towards simply disposing of the resource, which is of no benefit to the government, the state or the environment.

Further to this, the Department already has significant powers under the EP Act which would allow them to prosecute a user that uses a resource that causes environmental harm. If EHP really considers it necessary, there could be some guidance in the code that would require a proponent to make the user aware of their general environmental duty under section 319 of the EP Act. This is consistent with how the General BUAs currently operate. Also, some mines have similar conditions of their environmental authorities, where they have agreed to provide beneficial re-use water to neighbours (e.g. for stock or crop irrigation purposes), requiring the mine to advise the recipient of their general environmental duty. (This used to be a model mining condition, but the current version of the Model Mining Conditions has deleted it, in recognition that this is an unnecessary 'how to' condition and that the recipients of the water should be treated as grown-ups who can make their own decisions.)

The penalty attached to this provision is significant enough to scare good performers away entirely from an end of waste approval given their risk averse nature. Instead of rewarding proponents who want to act in the best interests of the environment by seeking to reuse a resource rather than disposing of it, the government is in fact creating a framework that drives the complete opposite behaviour. This is further compounded by the fact that this section is a completely new section that was NOT included in the draft Bill, and is yet another reason why QRC cannot support key components of the proposed amendments under the EPOLA Bill unless significant redrafting is undertaken.

Recommendation 36:
That s173P and s173Q be significantly amended to ensure that proponents that refine/process/treat a product are not held accountable for the activities of a user of that product, given that those actions are outside of the control of the proponent.

4.2.18 Amendment of end of waste approval – Clause 167 EPOLA Bill and Section 173W WRR Act

As with s167 of the EPOLA Bill, section 173W of the EPOLA Bill gives the Chief Executive of EHP the broad power to amend an end of waste approval at his or her initiative. This creates an incredibly broad power for the Chief Executive and limits the certainty of process regarding the framework for end of waste codes.

As noted above, the concern for industry is that this uncertainty will have implications for the way in which industry undertakes waste management. The risk that a proponent could be operating under an end of waste approval, only to have the Chief Executive unilaterally amend the Code without being required to consult on the proposed amendment does not appear to be consistent with the standard regulatory practice of government.

As recommended above with respect to s167, QRC believes that it would be appropriate to limit the ability to unilaterally amend an end of waste code to a predefined set of criteria, or alternatively to limit the amendment to minor amendments.

Recommendation 37:
That the unilateral amendment of an end of waste approval by the Chief Executive should be limited to a predefined set of criteria, or alternatively to minor amendments.

4.2.19 Cancellation or suspension of an end of waste approval – Clause 167 EPOLA Bill and Section 173X WRR Act

QRC does not agree with s173X(1)(a), in that some uses of a resource may be temporal, or be affected by the availability of other similar resources for extended periods, for example waste water may have more uses during a drought period that during and extended wet period.

As such, QRC recommends that this criteria be deleted from s173X(1).

Recommendation 38:
That s173X(1)(a) be deleted.

5 Conclusion

Given the length of this submission, in order to assist the Committee, QRC has summarised the proposed recommendations contained in this submission at Appendix 1.

QRC would again like to thank the Committee for the opportunity to provide a submission on the Environmental Protection and Other Legislation Amendment Bill 2014 (Qld).

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

6 Table of Recommendations

No.	Topic and clause reference	Recommendation
Amendment of Environmental Protection Act 1994		
1	**Greentape reduction** Clause 22 Bill - Decision on whether EIS may proceed Clause 27 Bill - Assessment of adequacy of response to submission and submitted EIS Clause 135 Bill - Contaminated Land	That the timeframe extension in Clause 22 (inserting new subsections (1A) and (1B)) in Section 49 should be omitted, but new subsection (1C) should be retained and re-numbered; that the timeframe extension in Clause 27 (inserting new subsections (2A) and (2B) should be omitted, but the new subsection (2A) and (2B) in Section 56A should be omitted, but the new subsection (2C) should be retained and re-numbered; in Clause 135 (Section 398(2)(a) the additional period should only be for the period of the submitter's response to the requirement under Section 397 and (2)(b) should be replaced with an extension by agreement provision similar to Section 49(1C). In addition, the Bill should make the clerical and greentape reduction amendments set out above in Section 1.1 (a) to (e) of this submission, as follows: (a) EHP can take 2 weeks just to send the submissions to the applicant (Section 56(1)). We would suggest 5 business days. (b) The chief executive's period should commence under Section 56A(2) upon receipt of the proponent's response under Section 56(2). (c) In Section 56(3), after the words 'within the 20 business days' insert 'or within any previously extended period'. (d) Once EHP decides whether or not the assessment can proceed, EHP can take another 10 business days (2 weeks) just to give notice of that decision. Again, this should be brought in line with the position for local governments, that is, 5 business days. (e) The same reduction from 10 business days to 5 business days for notification of a decision should be made in Section 49(5).
2	**Relationship between resource activities and prescribed ERAs** Clauses 18-20 Bill	That the amendments to s18 and s19 of the EP Act and the insertion of a new s19A should be omitted; and in addition EHP should be advised to stop their current operational practice of requiring ancillary prescribed ERAs to be listed in ERAs for resource projects.

No.	Topic and clause reference	Recommendation
3	**Condition conversion -** Clause 39 EPOLA and Section 223 of the EP Act	That the new definition 'condition conversion' in Clause 39 should be amended by inserting at the end '*or an amendment replacing part of the conditions of the authority with the corresponding part of the standard conditions'*.
4	**Notification stage does not apply if EIS process complete** – Clauses 115 – 118 EPOLA Bill; Section 150 and related sections of the EP Act	That at clause 115, in Section 150 EPA Act(1)(ba), 'have not changed' be replaced with 'have not increased'.
5	**Cancellation or suspension** – Clause 51 EPOLA and new Section 278(2)(baa) EP Act	In Section 278(2)(baa) address the following drafting concerns: (a) Just because an application for an increased financial assurance has been approved, this does not necessarily mean that at that point, there is any new risk to the State; the increased risk actually arises when the work that is the subject of the increase in FA is started. It would obviously be wrong for EHP to have a power to cancel the EA for a project on the basis of a paperwork excuse, at a time when the actual disturbance has not occurred. This needs to be included in the draft. (b) Second, if the work the subject of the increase has already commenced prior to the FA increase decision, an appropriate time should be allowed for the increased FA to be lodged bearing in mind the tedious processes required to obtain bank guarantees or whatever other form of financial assurance is required. These steps do not occur overnight, as a matter of normal commercial experience. (c) Third, a more proportionate enforcement mechanism for securing the increased FA should first be required to be attempted by EHP. It would be patently disproportionate for EHP to cancel an EA instead of simply enforcing the condition that requires lodgement of the increased FA, particularly since the failure to pay an increased amount of FA is not tied to any imminent risk of harm being caused. It is difficult to imagine a scenario in which EHP has already asked a court to enforce the increased FA, obtained a court order to that effect, still not obtained

No.	Topic and clause reference	Recommendation
		the FA and EHP really has to resort to cancellation of the project's EA.
6	**Expansion of duty of notification to auditors –** Clause 123 EPOLA and Section 320A(1) EP Act (and successive provisions)	That the Committee rejects all of the amendments to Section 320A(1) EP Act (and successive provisions) relating to notification by auditors.
7	**Change in the condition of the land** Explanatory notes for Clause 123 EPOLA – Section 320A EP Act; Clause 125 EPOLA – Section 320DA EP Act; Clause 125 EPOLA - Section 320DB EP Act; Clause 132 EPOLA – Section 363F EP Act.	That the Committee recommends that the Explanatory Notes for Clause 123 should be amended should provide guidance about examples of the types of changes in the condition of the land that EHP has in mind and, in the case of gradual changes, how EHP sees this as interfacing with a notification process within 24 hours. For subsequent reference to changes in the conditions of the land, a cross-reference to the initial explanatory information should be added. (This could then be re-published by EHP as a fact sheet on their website.)
8	**Content of program -** Clause 64 EPOLA; Section 331 EP Act	That the amendment to Section 331 EP Act set out in Clause 64 should be omitted.
9	**Increasing penalties, particularly in relation to a set of offences which still fail to make sense** Throughout the Bill	That the penalty increases do not commence unless and until the corresponding supporting work has been done to place them in an equitable context; that is, until each of the elements of the corresponding offences have been defined clearly, internally consistently and so that each penalty is proportionate to the level of the offence for that penalty.
10	**Environmental evaluation for contaminated land –** Clause 128 and Section 326BA(1)	That the Committee reject this amendment unless the definitions of serious and material environmental harm have been appropriately amended. In addition, the term 'animal' should be qualified so that it is restricted to stock, domestic pets and protected native fauna (not pests, passing insects etc.); and in relation to 'another part of the environment', this should also be qualified so as to protect the property of third parties and protected plants, not the landowner's own land or property. Trespassers should also be excluded.

No.	Topic and clause reference	Recommendation
11.	**Temporary emissions licences (TELs) -** Clause 67 EPOLA and Section 357A EP Act	That: (a) The words 'that was not foreseen when particular conditions were imposed on an environmental authority' should be omitted from Section 357A EP Act; (b) Clause 67 should be omitted from the Bill; (c) In Section 357B(1) EP Act, omit 'that relate to the release of a contaminant'; (d) Section 357J EP Act should be amended so as to insert a new paragraph (c) enabling the holder of an temporary emissions licence to apply for amendment of the TEL and for the criteria in Section 357D to apply to assessment of the amendment application to the extent relevant to the amendment.
12.	**Notice of removal or amendment –** Section 385 EP Act	That in Section 385 EP Act a copy of the notice should be given to registered occupiers (including registered on title or resource tenement holders), not just owners.
13.	**Process for including land in relevant land register –** Clause 135 EPOLA and Section 375 EP Act	That in Clause 135, Section 375 of the EP Act, should be amended by replacing the term 'show cause notice' with 'notice of proposed listing'; the notice should be given to the owner, registered occupiers and the holders of registered resource tenements, and the opportunity should be provided for each of the recipients to object or support the proposed listing and request any corrections to the description of the land or the description in the listing.
14.	**Notice of removal or amendment –** Section 385 EP Act	That in Section 385 EP Act a copy of the notice should be given to registered occupiers (including registered on title or resource tenement holders), not just owners.
15.	**Provisions about contaminated land investigation documents –** Division 3	That the Bill should maintain the recognition of a Suitably Qualified and Experienced Person to undertake certain contaminated land auditing and documentation requirements.
16.	**Coordinated Projects -** Clause 40 and Section 226(3) of the EP Act	That in Clause 40, at the end of Section 226(3), insert 'or to amend an application to incorporate additional activities in an existing environmental authority where the additional activities have been addressed through a completed EIS process'.
17.	**Explanatory notes error –** financial assurance	That the Committee seek a rewording of the Explanatory Notes in relation to Clause 54 of the EPOLA Bill to (1) acknowledge that the financial assurance calculator already exists and (2) it is made clear that EHP has the ability to certify a company's own FA calculator, as is already the case.

No.	Topic and clause reference	Recommendation
Amendment of Waste Reduction and Recycling Act 2011		
18.	**Definition of product –** Clause 164 EPOLA Bill and Schedule (Dictionary) WRR Act	That the Schedule be amended to read: ***Product includes an article or substance —*** a) that has been manufactured, refined or extracted for use (whether or not that intended use ever actually occurs); or b) (b) comprising any packaging for that article or substance.
19.	**Unregistered end of waste code users –** Clause 167 EPOLA Bill and Section 157 WRR Act	That there be the ability for conditions under an end of waste code or approval to be able to 'speak to' any relevant waste conditions in an EA, without the need for a major amendment to the EA (this is particularly relevant in light of the significant increase to major EA amendment fees).
20.	**Unregistered end of waste code users –** Clause 167 EPOLA Bill and Section 157 WRR Act	That users of a resource from an end of waste code should not be required to register. If the resource has met the standards of the Code at the point of transfer there is no need for further regulation on the part of the Department.
21.	**Creation of end of waste code when end of approval is in place –** Clause 167 EPOLA Bill and Section 159 WRR Act	That the above subsection (3) be reinserted back into the EPOLA Bill to ensure that there is clarity that both a Code and an Approval can exist concurrently.
22.	**Process for making end of waste codes –** Clause 167 EPOLA Bill and Section 160 WRR Act	That the section 162 (from the draft EPOLA Bill) be reinserted into the EPOLA Bill to provide the ability for the public to trigger the consideration of the development of an end of waste code. Failing this, in the alternative, QRC recommends that the Chief Executive should have a legislative requirement to invite submissions on end of waste codes on an annual basis.
23.	**Matters to be considered in preparing an end of waste code –** Clause 167 EPOLA Bill and Section 163 WRR Act	QRC recommends that the section 163(1)(b) be amended to clarify that an end of waste code can authorise multiple uses in the one Code.
24.	**Material environmental harm –** Clause 167 EPOLA Bill and Section 163 WRR Act	That EHP to consider amending the definition of serious and material environmental harm, and until such time as they are appropriate refrain from linking the terms in the EP Act to the WRR Act.
25.	**Timeframes for decision on whether to make an end of waste code –**	That the 20 business day timeframe for the making of a decision on whether to create an end of waste code be re-inserted into section 166 of the current Bill.

No.	Topic and clause reference	Recommendation
	Clause 167 EPOLA Bill and Section 166 WRR Act	
26.	**Amendment of end of waste code –** Clause 167 EPOLA Bill and Section 167 WRR Act	That the unilateral amendment of an end of waste code by the Chief Executive should be limited to a predefined set of criteria, or alternatively to minor amendments.
27.	**Application to amend end of waste code –** Clause 167 EPOLA Bill and Section 168 WRR Act	That the sections under the EPOLA Bill detailing the process for the amendment to an end of waste code be clarified to reflect the intent of the Bill as detailed in the Explanatory Notes.
28.	**Cancellation or suspension of end of waste code –** Clause 167 EPOLA Bill and Section 171 WRR Act	That the Committee remove the triggers of serious environmental harm and material environmental harm to trigger the suspension or cancellation of an end of waste code, or at least the Department review these definitions as a priority.
29.	**Cancellation or suspension of end of waste code –** Clause 167 EPOLA Bill and Section 171 WRR Act	That the Committee remove the link to the use of the resource as a trigger for the cancellation or suspension of the end of waste code as it holds proponents responsible for the actions of a third party beyond the control of the proponent.
30.	**Cancellation or suspension of end of waste code –** Clause 167 EPOLA Bill and Section 171 WRR Act	That the Committee reinstate the concept of 'human health impacts' into the trigger for the cancellation and suspension of end of waste codes into section 171.
31.	**Procedure for amending, cancelling or suspending end of waste code –** Clause 167 EPOLA Bill and Section 172 WRR Act	That section 172 be amended to allow for the Chief Executive to take advice from a technical panel with respect to a proposed amendment to an end of waste code.
32.	**Procedure for amending, cancelling or suspending end of waste code –** Clause 167 EPOLA Bill and Section 172 WRR Act	That section 172(3)(f) be amended to allow for stakeholders to provide a submission in support of proposed amendments.
33.	**Procedure for amending, cancelling or suspending end of waste code –** Clause 167 EPOLA Bill and Section 172 WRR Act	That section 172(3)(g) be replicated for when a code is proposed to be cancelled. This would allow for stakeholders to provide submissions to the Chief Executive on why a code should or should not be cancelled.
34.	**Registration of end of waste code users –** Clause 167 EPOLA Bill and Section 173B WRR Act	That users of a resource should not be required to register under an end of waste code and that this requirement should be deleted from the relevant sections in the EPOLA Bill.

No.	Topic and clause reference	Recommendation
35.	**Registration of end of waste code users –** Clause 167 EPOLA Bill and Section 173B WRR Act	That current producers under existing General BUAs be automatically registered on the commencement of the EPOLA Bill.
36.	**Holder of end of waste approval responsible for ensuring conditions complied with –** Clause 167 EPOLA Bill and Sections 173P and 173Q WRR Act	That s173P and s173Q be significantly amended to ensure that proponents that refine/process/treat a product are not held accountable for the activities of a user of that product, given that those actions are outside of the control of the proponent.
37.	**Amendment of end of waste approval –** Clause 167 EPOLA Bill and Section 173W WRR Act	That the unilateral amendment of an end of waste approval by the Chief Executive should be limited to a predefined set of criteria, or alternatively to minor amendments.
38.	**4.2.19 Cancellation or suspension of an end of waste approval –** Clause 167 EPOLA Bill and Section 173X WRR Act	That s173X(1)(a) be deleted.

Case Study 1

Extract from Rio Tinto Alcan Weipa Environmental Authority MIN100939109 (ML6024 and ML7024)

Standard Conditions for **Land based Abrasive Blasting & Metal Surface Coating**

[listed as ERA 17 on the second page of the Environmental Authority]

(B17) Abrasive blasting and/or metal surface coating may only occur outside of a blasting chamber or spray booth where:

(a) the structure or item to be blasted and/or sprayed is too large to be accommodated within a reasonably accessible and approved blasting chamber or spray booth, or

(b) the structure or item to be blasted and/or sprayed is unable to be reasonably relocated or transported to an approved blasting chamber or spray booth, and

(c) no reasonable, alternative process of treatment is available to replace abrasive blasting and/or spray painting.

(B18) Where it is deemed necessary to conduct abrasive blasting and/or spray painting other than in a blasting chamber or spray booth, the holder of this environmental authority must:

(a) where the structure or item to be blasted and/or sprayed is able to be reasonably relocated or transported to a site approved for abrasive blasting and/or metal surface coating, conduct the activity at the approved site; and

(b) other than where the activity is being conducted at a site approved for abrasive blasting and/or metal surface coating or in the case of an emergency, provide twenty four hour notice to the administering authority of the intent to abrasive blast and/or spray paint at a location other than in a blasting chamber or spray booth. Such a notification must shall:

(i) be in writing; and

(ii) describe the specific reasons for the decision to blast and/or spray paint other than in a blast chamber or spray booth; and

(iii) identify the location at which the blasting or spray painting is to occur; and

iv) provide an estimate of the period of time over which the blasting or spray painting is to occur.

All abrasive blasting and spray painting

(B20) The holder of this environmental authority must:

(a) operate abrasive blasting and spray painting equipment only between the hours of 0800 hrs and 1800 hrs; and

(b) use suitable shrouds, barriers, screen or other means of containment in a manner that will localise the collection of spent abrasive material and/or over spray; and

(c) collect and store wastes and resultant dusts and other materials from all surfaces as soon as practicable after completion of abrasive blasting and spray painting, or in the event that abrasive blasting and spray painting is not intended to recommence within eight hours; and

(d) provide for the containment and treatment or disposal of any waters, including stormwater, that may become contaminated as a result of undertaking the activity; and

(e) during the period of blasting and/or spray painting, maintain daily records that will identify the job particulars, dates and times of blasting and/or spray painting, description of wind conditions and name of the person(s) conducting the activity. Such daily reports are to be verified as correct by the signature of the person responsible for supervision of the activity.

(f) ensure that the surface coatings applied to structures has a low contaminant content

(g) ensure that structures requiring abrasive blasting and metal surface coating are maintained regularly.

Department of Environment and Heritage Protection

Permit[1]

Environmental Protection Act 1994

Environmental authority

This environmental authority is issued by the administering authority under Chapter 5 of the Environmental Protection Act 1994.

Permit[1] number: EPPG00968013

Project Name: Walloons Development Area

Environmental authority takes effect 8 September 2014.

The anniversary date of this environmental authority is **15 September**. An annual return and the payment of the annual fee will be due each year on this day.

Environmental authority holder(s)

Name	Registered address
Australia Pacific LNG Pty Limited ACN: 001 646 331	Level 45, Australia Square 264 – 278 George Street SYDNEY NSW 2000

Environmentally relevant activity and location details

Environmentally relevant activity(ies)	Location(s)
Schedule 2A – 3 – a petroleum activity that is likely to have a significant impact on a category A or B environmentally sensitive area Schedule 2A – 4 – extending an existing pipeline by more than 150km under a petroleum authority Schedule 2A – 6 – a petroleum activity carried out on a site containing a high hazard dam or a significant hazard dam Schedule 2A – 7 – a petroleum activity involving injection of a wase fluid into a natural underground reservoir or aquifer Schedule 2A – 8 – a petroleum activity or GHG storage activity, other than an activity mentioned in any of items 1 to 7, that includes 1 or more activities mentioned in schedule 2 for which an AES is stated.	Petroleum Facility Licence (PFL) 26 Petroleum Lease (PL) 215 Petroleum Lease (PL) 216 Petroleum Lease (PL) 225 Petroleum Lease (PL) 226 Petroleum Lease (PL) 272 Petroleum Lease (PL) 289 Authority to Prospect (ATP) 692

[1] Permit includes licences, approvals, permits, authorisations, certificates, sanctions or equivalent/similar as required by legislation

Additional information for applicants

Environmentally relevant activities

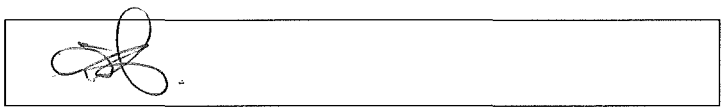
The description of any environmentally relevant activity (ERA) for which an environmental authority is issued is a restatement of the ERA as defined by legislation at the time the approval is issued. Where there is any inconsistency between that description of an ERA and the conditions stated by an environmental authority as to the scale, intensity or manner of carrying out an ERA, then the conditions prevail to the extent of the inconsistency.

An environmental authority authorises the carrying out of an ERA and does not authorise any environmental harm unless a condition stated by the authority specifically authorises environmental harm.

A person carrying out an ERA must also be a registered suitable operator under the *Environmental Protection Act 1994* (EP Act).

Contaminated land

It is a requirement of the EP Act that if an owner or occupier of land becomes aware a notifiable activity (as defined in Schedule 3 and Schedule 4) is being carried out on the land, or that the land has been, or is being, contaminated by a hazardous contaminant, the owner or occupier must, within 22 business days after becoming so aware, give written notice to the chief executive.



Signature

08/09/14.

Date

Kerynne Birch
Department of Environment and Heritage Protection
Delegate of the administering authority
Environmental Protection Act 1994

Enquiries:
Energy Assessments
Department of Environment
and Heritage Protection

7th Floor, 400 George Street
GPO Box 2454
BRISBANE QLD 4001

Phone: (07) 3330 5715
Fax: (07) 3330 5634

Responsibilities under the *Environmental Protection Act 1994*

Separate to the requirements of standard conditions, the holder of the environmental authority must also meet their obligations under the *Environmental Protection Act 1994*, and the regulations made under that Act. For example, the holder must be aware of the following provisions of the *Environmental Protection Act 1994.*

General environmental duty

Section 319 of the *Environmental Protection Act 1994* states that we all have a general environmental duty. This means that we are all responsible for the actions we take that affect the environment. We must not carry out any activity that causes or is likely to cause environmental harm unless we take all reasonable and practicable measures to prevent or minimise the harm. To decide what meets your general environmental duty, you need to think about these issues:

- the nature of the harm or potential harm
- the sensitivity of the receiving environment
- the current state of technical knowledge for the activity
- the likelihood of the successful application of the different measures to prevent or minimise environmental harm that might be taken
- the financial implications of the different measures as they would relate to the type of activity.

It is not an offence not to comply with the general environmental duty, however maintaining your general environmental duty is a defence against the following acts:

(a) an act that causes serious or material environmental harm or an environmental nuisance
(b) an act that contravenes a noise standard
(c) a deposit of a contaminant, or release of stormwater run-off, mentioned in section 440ZG.

More information is available on the Department of Environment and Heritage Protection website www.ehp.qld.gov.au.

Duty to notify

Section 320 of the *Environmental Protection Act 1994* explains the duty to notify. The duty to notify applies to all persons and requires a person or company to give notice where serious or material environmental harm is caused or threatened. Notice must be given of the event, its nature and the circumstances in which the event happened. Notification can be verbal, written or by public notice depending on who is notifying and being notified.

The duty to notify arises where:

- a person carries out activities or becomes aware of an act of another person arising from or connected to those activities which causes or threatens serious or material environmental harm
- while carrying out activities a person becomes aware of the happening of one or both of the following events:
  - the activity negatively affects (or is reasonably likely to negatively affect) the water quality of an aquifer
  - the activity has caused the unauthorised connection of 2 or more aquifers.

For more information on the duty to notify requirements refer to the guideline *Duty to notify of environmental harm (EM467).*

Notifiable activities

It is a requirement under the *Environmental Protection Act 1994* that if an owner or occupier of land becomes aware that a Notifiable Activity (as defined by Schedule 4 of the *Environmental Protection Act 1994*) is being carried out on the land or that the land has been affected by a hazardous contaminant, they must, within 22 business days after becoming so aware, give notice to the administering authority.

Some relevant offences under the *Environmental Protection Act 1994*

Non-compliance with a condition of an environmental authority (section 430)

Section 430 of the *Environmental Protection Act 1994* requires that a person who is the holder of, or is acting under, an environmental authority must not wilfully contravene, or contravene a condition of the authority.

Environmental authority holder responsible for ensuring conditions complied with (section 431)

Section 431 of the *Environmental Protection Act 1994* requires that the holder of an environmental authority must ensure everyone acting under the authority complies with the conditions of the authority. If another person acting under the authority commits an offence against section 430, the holder also commits an offence, namely, the offence of failing to ensure the other person complies with the conditions.

Causing serious or material environmental harm (sections 437–39)

Material environmental harm is environmental harm that is not trivial or negligible in nature. It may be great in extent or context or it may cause actual or potential loss or damage to property. The difference between material and serious harm relates to the costs of damages or the costs required to either prevent or minimise the harm or to rehabilitate the environment. Serious environmental harm may have irreversible or widespread effects or it may be caused in an area of high conservation significance. Serious or material environmental harm excludes environmental nuisance.

Causing environmental nuisance (section 440)

Environmental nuisance is unreasonable interference with an environmental value caused by aerosols, fumes, light, noise, odour, particles or smoke. It may also include an unhealthy, offensive or unsightly condition because of contamination.

Depositing a prescribed water contaminant in waters (section 440ZG)

Prescribed contaminants include a wide variety of contaminants listed in Schedule 9 of the *Environmental Protection Act 1994*.

It is your responsibility to ensure that prescribed contaminants are not left in a place where they may or do enter a waterway, the ocean or a stormwater drain. This includes making sure that stormwater falling on or running across your site does not leave the site contaminated. Where stormwater contamination occurs you must ensure that it is treated to remove contaminants. You should also consider where and how you store material used in your processes onsite to reduce the chance of water contamination.

Placing a contaminant where environmental harm or nuisance may be caused (section 443)

A person must not cause or allow a contaminant to be placed in a position where it could reasonably be expected to cause serious or material environmental harm or environmental nuisance.

Some relevant offences under the *Waste Reduction and Recycling Act 2011*

Littering (section 103)

Litter is any domestic or commercial waste and any material a person might reasonably believe is refuse, debris or rubbish. Litter can be almost any material that is disposed of incorrectly. Litter includes cigarette butts and drink bottles dropped on the ground, fast food wrappers thrown out of the car window, poorly secured material from a trailer or grass clippings swept into the gutter. However, litter does not include any gas, dust, smoke or material emitted or produced during, or because of, the normal operations of a building, manufacturing, mining or primary industry.

Illegal dumping of waste (section 104)

Illegal dumping is the dumping of large volumes of litter (200L or more) at a place. Illegal dumping can also include abandoned vehicles.

Responsibilities under other legislation

An environmental authority pursuant to the *Environmental Protection Act 1994* does not remove the need to obtain any additional approval for the activity that might be required by other State and/or Commonwealth legislation. Other legislation for which a permit may be required includes but is not limited to the:

- *Aboriginal Cultural Heritage Act 2003*
- contaminated land provisions of the *Environmental Protection Act 1994*
- *Fisheries Act 1994*
- *Forestry Act 1959*
- *Nature Conservation Act 1992*
- *Petroleum and Gas (Production and Safety) Act 2004 / Petroleum Act 1923*
- *Queensland Heritage Act 1992*
- *Sustainable Planning Act 2009*
- *Water Supply (Safety and Reliability) Act 2008*
- *Water Act 2000*

Applicants are advised to check with all relevant statutory authorities and comply with all relevant legislation.

An environmental authority for petroleum activities is not an authority to impact on water levels or pressure heads in groundwater aquifers in or surrounding formations. There are obligations to minimise or mitigate any such impact under other Queensland Government and Commonwealth Government legislation.

This environmental authority consists of the following schedules:

Schedule A	General Conditions
Schedule B	Water
Schedule C	Dams
Schedule D	Land
Schedule E	Noise
Schedule F	Air
Schedule G	Waste
Schedule H	Rehabilitation
Schedule I	Stimulation Activities
Schedule J	Community Issues
Schedule K	Notification Procedures
Schedule L	Definitions

SCHEDULE A – GENERAL CONDITIONS

Authorised Petroleum Activities

(A1) This environmental authority authorises the carrying out of the following resource activities:
(a) the **petroleum activities** and **specified relevant activities** listed in *Schedule A, Table 1 - Authorised Petroleum Activities* to the extent they are carried out in accordance with the activity's corresponding scale or intensity or both (where applicable); and
(b) **incidental activities** that are not otherwise specified relevant activities.

(A2) The **authorised resource activities** are authorised subject to the conditions of this environmental authority.

(A3) This environmental authority does not authorise a relevant act to occur in carrying out an authorised resource activity unless a condition expressly authorises that relevant act to occur. Where there is no condition, the lack of a condition must not be construed as authorising the relevant act.

Schedule A, Table 1 – Authorised petroleum activities and specific relevant activities

Authorised Petroleum Activity	Scale		Intensity
	Maximum size	Location	
Petroleum activities			
Coal seam gas production and exploration	1430 ha (wells only)	Within project area	1430 wells
Petroleum facility (PFL 26)	N/A	Within PFL 26	150 TJ/day
Specified relevant activities			
Stimulation activities	N/A	Within project area	N/A
Extracting material, other than by dredging	N/A	Within project area	N/A
Electricity generation–by using gas (permanent, in isolation or combined in operation, or interconnected) at a rated capacity of 10 megawatt (MW) electrical or more	N/A	Within project area	200 MW for project area
Operating fuel burning equipment (permanent, in isolation or combined in operation, or interconnected) that is capable of burning more than 500kg of fuel in an hour	N/A	Within project area	N/A
Chemical storage (permanent) that meets any of the thresholds described in Schedule 2, Part 2, section 8 of the *Environmental Protection Regulation 2008*	>50t of chemicals of DG class 1 or 2, division 2.3 >500m^3 of chemicals of class C1 or C2 combustible liquids under AS 1940 or DG Class 3	Within project area	1430 storages at well leases; N/A at other permanent facilities

Authorised Petroleum Activity	Scale		Intensity
	Maximum size	Location	
	>200m^3 of chemicals that are liquids		
Sewage treatment works, other than no-release works, where treated effluent is discharged from the works to an infiltration trench or through an irrigation scheme; or otherwise discharged	1,500 EP per facility	Within project area	9,100 EP for project area
Waste disposal onsite—operating a facility for disposing of greater than 50t of non-regulated waste in a year (including landspraying while drilling, or mix-bury-cover where the drill muds do not have any substances that would make it a regulated waste)	N/A	Within project area	31.5 ha across 1430 facilities
Waste disposal onsite—operating a facility for disposing of more than 200,000t of general waste (trial injection of treated water or wastewater)	1,200 m^3/day	Within project area	1 injection well
Regulated waste storage—any structure, including regulated, low hazard dams, and other dams containing regulated waste	N/A	Within project area	180 ha across 12 dams
Water treatment activities—treating 10ML or more of raw water in a day in a way that allows waste, whether treated or untreated, to be released into the environment	40 ML/day	Within project area	1 water treatment facility; 1 release point
Storing waste that is not regulated waste (including coal seam gas water) in a regulated dam	N/A	Within project area	30 regulated dams
Storing coal seam gas water that is not regulated waste in a low hazard dam	N/A	Within project area	1,130 low hazard dams

Prevent or Minimise Likelihood of Environmental Harm

(A4) This environmental authority does not authorise environmental harm unless a condition contained in this environmental authority explicitly authorises that harm. Where there is no condition, the lack of a condition shall not be construed as authorising harm.

Maintenance of Measures, Plant and Equipment

(A5) The holder of the environmental authority must:
- (a) install all measures, plant and equipment necessary to ensure compliance with the conditions of this environmental authority;
- (b) maintain such measures, plant and equipment in their proper and effective condition; and
- (c) operate such measures, plant and equipment in a proper and effective manner.

Case Study 3

Site	Amendment to scoping condition	Description in original application	Related change to conditions	Application and approval date
1	Amendment to additional advice section to identify ERA 8(3)(a) (fuel storage within the relevant threshold identified in Schedule 2 of the EP Regulation in force at the relevant time) and ERA 43 (concrete batching as identified in Schedule 2 of the EP Regulation in force at the relevant time). Amendment to increase water treatment plant capacity from 90ML/d to 100ML/d.	ERAs The application identified ERA8(3)(a), but not ERA43. Although concrete batching was not described by reference to the Schedule 2 terminology, civil construction works (including likely environmental impacts, management strategies etc.) and the requirement for concrete foundations were described in the application. Fuel storage requirements were described throughout the application, including by reference to diesel requirements (e.g. requirement for diesel generators, using approximately 300 L of fuel per day). WTP Construction and operation of a WTP with an "anticipated" capacity of 90ML/d was described in the application.	N/A Concrete batching No conditions specifically regulate concrete batching, although general conditions regulating impact of construction activities (including in Schedule D) apply. No new conditions imposed to regulate concrete batching. Fuel storage Pre-existing conditions in respect of chemical and fuel storage were not amended. They impose requirements in respect of handling and storage, and call up relevant Australian Standards.	Submitted on 16/1/12 and granted on 10/12/12
2	Amendment to increase from 1 STP with capacity of 300KL/day (1050EP) and 17ha disturbance to 2 STPS, 350KL/day (1520EP) and 31ha disturbance area.	Total number of STPs not identified. Descriptions of modules and irrigation methods provided. Description of accommodation camp included description of anticipated capacity (1050 people). Estimates of volume of grey water requiring treatment identified based on 240 litres per person per day, and the area required for irrigation was estimated based on 1.6 ha required for every 100 persons. Requirement for MEDLI modelling to determine application area (i.e. disturbance area) identified.	N/A Existing conditions about sewage treatment prescribed how activities were to be conducted (e.g. pump stations to be fitted with a stand-by pump, minimum area of land and location for irrigation to be determined by using the MEDLI model, identification of prescribed treated effluent release limits to land). These conditions were not amended.	Submitted on 20/12/12 and granted on 14/05/13

3	Amendment to increase maximum capacity of the two authorised STPs from 350KL/day (1520EP) to 350KL/day (1700EP). Disturbance area (31 Ha) and number of STPs not required to be increased. Increase in maximum capacity required because of related increase in accommodation camp capacity (itself not constrained by the scoping table or other conditions)	See above	See above	Submitted on 28/3/13 and granted on 15/05/13
4	Amendment to remove prescription of maximum number of borrow pits (14) and increase maximum disturbance of 77ha to 120ha. The removal of prescribed maximum number of borrow pits was justified on the basis that the final number could not be known until geotechnical investigations were complete, and that identification of maximum disturbance was sufficient	Borrow pit requirements could only be estimated in the application. It was described as follows: "Company X has not finalised the source of quarry material. The source of quarry material depends on: ☐Identifying a source of suitable quarry material in the local area or region ☐the significance of impacts on roads and traffic from transporting quarry material from suitable sources. Should a local or regional source of quarry material not be available or should road and traffic impacts be considered too great, Company X will source borrow material from borrow pits developed onsite. If this was the case, it is estimated that one borrow pit would be required per block, with the ability to supply approximately 155,000m3. The area of each borrow pit would be approximately 7.8 ha at a depth of 2m. Company X prepared an assessment of potential borrow pit impacts.	N/A EA Conditions do not directly regulate the construction and operation of borrow pits. Schedule B conditions about erosion and sediment control, Schedule D conditions about impacts to land, Schedule E conditions about noise, vibration and blasting activities and Schedule F conditions about dust and nuisance are relevant, but were not amended.	Submitted on 25/9/13 and granted on 23/10/13

5	Amendment to increase number of STPs and related capacity from 2 STPs with capacity of 350KL/day (1700EP) to 3 STPs, 350KL/day (1710EP). The maximum disturbance area (31ha) did not need to be increased.	See above for Site 2	See above for Site 2	Submitted on 19/12/13 and granted on 03/02/14
6	Increase number of STPs and capacity. 1 STP with capacity of 300KL/day (1250EP) and 15ha disturbance increased to 2 STPS, no increase in capacity and 30ha disturbance area (for irrigation)	See above for Site 2	N/A	Submitted on 31 January 2013 and approved 26 March 2013
7	Amendment to remove maximum number of borrow pits (as maximum to be exceeded) and increase authorised disturbance of 94ha to 133ha.	Quarry material requirement (1 borrow pit per block estimate)	N/A	Submitted on 7/12/13 and granted on 17/01/14.
8	Amendment to increase number of authorised borrow pits from 12 with maximum disturbance of 93ha to 36 with maximum disturbance area of 133ha.	Quarry material requirement (1 borrow pit per block estimate)	N/A	submitted on 15/2/13 and granted on 15/05/13