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Dear Ms Pasley

Thank you for the opportunity to make a submission on the *Sustainable Ports Development Bill 2015* (the Bill).

As you are aware, 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. The QRC works on behalf of members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

QRC supports the focus on the protection of the Great Barrier Reef (GBR) as the centrepiece of the *Sustainable Ports Development Bill*. QRC's assessment is that the Bill successfully walks the difficult line of demonstrating the highest standard of environmental outcomes within complex coastal ecosystems in a way which is entirely consistent with well-managed port developments.

The Bill will make the operation of ports more complex and expensive, but importantly it also recognises that Queensland is fundamentally a maritime economy. Ports are the gateways to Queensland's regional economies, serving as a two-way hub for vital trade, tourism, recreation and defence activities.

The Bill will inevitably come at an economic cost to the Queensland economy. Over time the legislated ban on disposal at sea of material from capital dredging will inevitably mean that some future port developments will not proceed or will have to be scaled back due to cost or a lack of disposal/ reclamation options.

It is QRC's fundamental view that: i) Ports are critical to Queensland's economy ii) Ports need to be dredged for safety and navigation purposes iii) Queensland ports have been dredged for decades without incident iv) The Bill addresses impacts from port developments in the Great Barrier Reef but these localised developments should be considered in the context of the real/reported threats to the Reef's health.

While the Bill's requirements are onerous and exacting, industry recognise they are in keeping with the Queensland government's commitments contained in *Reef 2050 - the long term sustainability plan* (LTSP). QRC congratulates both the current Government and their predecessors for the collaborative manner in which this long term plan was developed.

UNESCO's assessments of how Australia has managed the Great Barrier Reef, and the decision made by the World Heritage Committee on 1 July to not recommend an 'in danger' listing for the GBR clearly recognises the partnership approach which has underpinned the development of the *Reef 2050 - the long term sustainability plan* (LTSP).

The Bill makes it very clear which activities are prohibited, unfortunately the process for how other activities will be regulated is much less clear only proposing that all existing approval systems remain as defined by the Port Overlay.

In addition, the Bill's design provides for much of the detail about how ongoing port activities will be assessed, regulated and monitored to be set out in regulations and guidelines. As these subordinate instruments are not yet available, this drafting makes the Bill appear one-sided. QRC is keenly interested to understand how ports will secure approvals under the Bill, in particular, the critical issue of reclamation inside the World Heritage Areas to enable development in priority port areas. Industry is placing a lot of faith that the pragmatic partnership approach which has informed the development of the Bill will continue during the development of the regulations which underpin the Bill.

So far the draft guidelines that the industry has been able to review, including for the development of priority port boundaries, really seem to be framed for the Department of State Development (DSD) only. It should be much clearer that they are also for use by other agencies – including how these agencies use the masterplans and overlays to assess against their own relevant approval systems.

The Bill establishes a management framework for Queensland's ports that clarifies the State interest in each priority port within their masterplan and establishes a process for ensuring that those State interests are protected and fostered in the port overlay. The development of these new layers of planning documents and their interaction with the more detailed operational masterplans of the ports may take some time to bed down and QRC seeks assurance that the government has recognised the resourcing that will be required to undertake and complete this work.

This new process of involving ports in their long-term strategic planning provides essential transparency for all stakeholders on how the economic, environmental, cultural and social values of the Great Barrier Reef are being managed. However, QRC seeks assurances that this management framework will not duplicate existing regulatory processes, but rather deliver efficiencies through, for example, subsequent recognition of environmental assessments in the port planning areas. Unless this occurs, QRC considers it a lost opportunity to align and remove duplication of a range of approval processes.

QRC is concerned to understand whether the definitions around dredging provide enough practical flexibility to allow incremental improvements in existing infrastructure. QRC suggests that dredging should be available for the incremental improvement of *all* existing ports, including in relation to loading facilities, tugs and pilotage operations.

Industry would like to see reclamation permitted inside the World Heritage Areas to enable development in priority port areas. QRC requests that the Committee recommend amendments to the Bill to deliver assurance on this critical outcome.

Given the increasing tendency of activists to litigate at every opportunity, QRC is concerned that the new process of port masterplanning and developing port overlays may be subject to legal appeals. QRC suggest that the Committee consider how applications for merits review or judicial reviews might be managed in a manner which allows legitimate community concerns to be heard and addressed, but also allows the views of vexatious litigators to be discounted.

The Bill's concept of recognising port networks and their associated supply chains is a valuable one, but it is not clear how they apply to ports and the linear infrastructure that services them. QRC is interested to understand how statutory requirements will flow on to other land use managers and planners adjacent to port areas? How does the Bill ensure that planning conducted on either side of the masterplan's boundary is complementary and enabling of port development?

This is significant as it is important that the Bill, while focused on port activities and their relationship with the GBR, should make full use of its capacity to also operate as an important planning instrument in relation to port, and associated, infrastructure and supply chains.

As suggested above, QRC is also interested to understand whether the consideration of the State interest in individual priority ports, (which will presumably encompass matters such as the world heritage area (WHA), matters of national environment significance (MNES) and cumulative impacts in master planning) will reduce the need for these issues to be addressed in detail and repeatedly for individual project or environmental impact statement (EIS) processes? In the same way that the strategic assessment can be recognised in subsequent regulatory processes, QRC would like to see an analogous process established in this Bill and its associated regulations.

Fundamental legislative principles

The explanatory notes suggest that there are two areas where the Bill may not be entirely consistent with fundamental legislative principles (FLP).

Clause 22 was identified on page 3 as perhaps inconsistent with the principles of natural justice and not having sufficient regard for the rights and liberties of individuals. In the context of this Bill, QRC suggests that this concern with the development of the port overlay being incompatible with fundamental legislative principles in clause 22 is unfounded. While the Bill contains no prescriptive process requirements for public consultation around the development of the port overlay, the reality is that the development of the overlay will occur hand in glove with the development of the port masterplan. The process of developing the masterplans does set out specific consultative processes and QRC suggests that these are sufficient to satisfy the fundamental legislative principles around natural justice and having sufficient regard to the rights and liberties of individuals. In addition, the overlay is tabled in the legislative assembly (section 22(4)), which provides a final opportunity for scrutiny.

Clause 6 and Clause 59(2) both relate to setting the area of the masterplan and the Bill's explanatory notes suggest (page 5) that this arrangement may not have sufficient regard to the institution of Parliament. QRC suggests that the approach in the Bill is appropriate in allowing sufficient flexibility in deciding the masterplan area for a priority port, and as such the concern for

fundamental legislative principles is unfounded. While the masterplan and overlay will regulate development within the identified area, these regulations will be consistent with the State interest and the Port's long-term vision as expressed in the masterplan.

One of the attractions of the new masterplan overlay is that it provides a framework to identify and resolve possible inconsistencies between the planning schemes which may operate in and around priority ports. QRC suggests that this approach does have sufficient regard for the institution of Parliament as one of the mechanisms in the Bill for resolving inconsistencies is to table a statement in the Legislative Assembly (see clause 26 and 27 for example) which explains the reasons for any inconsistency with the Bill. As such, QRC regards the institution of Parliament as playing an appropriate and ongoing role in the oversight of the masterplans of priority ports.

Comments on specific sections of the Bill

Section 2: While QRC supports the purpose of the Bill, industry is interested to understand the implications of a number of aspects of the purpose. In particular:

(1) QRC is interested to understand whether “...*managing port-related development in and adjacent to the area*”, describes the port area or the World Heritage Area. Also, the definition and extent of the term “adjacent” will be really important. This is a phrase which is echoed in the long title of the Bill.

(2) and (3) QRC doesn't understand why the mechanisms to achieve the purpose has been divided between the two sub-sections. The result seems to be some overlap between section 2(2)(b) and section 2(3)(a).

(2)(c) makes reference to “...*regulated development in and surrounding priority ports*”, QRC supports the concept, but is unclear how the important term “*surrounding*” will be defined and applied.

(3)(c) QRC supports the statement about the diverse functions of the port network, but suggests that “*recreational uses*” also be added to the list of functions.

(3)(d) and (e) The concept of a port's “*supply chain infrastructure*” and “*supply chain capacity*” are both useful ones, which could be extended to the development of the port masterplan (subdivision 2) and the port overlay (division 3) particularly in the sense of section 3(f) “*protecting land and infrastructure critical to the effective operation of the port network*”.

(3)(e) QRC strongly supports the need to recognise expansions of capacity to meet demand for imports and exports.

(3)(f) QRC suggests that the concepts of “*supply chain infrastructure*” and “*supply chain capacity*” both be explicitly recognised in 3(f) in terms of the land which needs to be “*identified and protected*”.

Section 6: **(3)(a)** QRC notes that the definition of tidal waters is incomplete (page 43)

(3)(b) As a stylistic note, QRC suggests that “...*the limits of the port under...*” may be easier to understand than “...*the port's port limits under...*”

Although we understand that the government has confined the legislation to the four priority points at this time, it is vital to understand when and how the 8 non-priority ports will also have access to some form of the masterplanning process as set out in the Bill?

Section 7: (2) QRC is not clear on how the masterplan area for a priority port will be determined? Earlier parts of the Bill have made references to “adjacent” (in the long title of the Bill) and “surrounding priority ports” in section 2(2)(c) and section 2(3)(f) “protecting land and infrastructure critical to the effective operation of the port network” but it is not clear how these concepts are applied in delineating an area for the masterplan.

In addition, QRC is unclear on why section 7(2) has adopted a two-part definition in (a) and (b)? Industry would be interested to understand whether (b) is perhaps intended to ensure that the masterplan applies equally to the entire area? The definition of port overlay area in section 19(2) seems to echo this complexity, whereas QRC would have thought the port overlay would simply apply to the masterplan area?

(3) Does the reference to “ecologically sustainable development” risk missing the cultural values which are also referenced in the Bill’s purpose (section 2(3)(a))?

Section 8: (1)(c)(i) “identifies and maps environmental values...” (as defined in the Environmental Protection Act). QRC suggests that these definitions may need to be more closely focussed on the GBR’s Outstanding Universal Values (OUVs)

(2) When are the draft State interests articulated? Is there a process for consultation around these draft interests and how they are ultimately expressed in the masterplan? Do these form part of the processes in section 11?

Section 11: (2)(e) A new masterplan is likely to require more consultation time than an amendment, perhaps the additional 10 business days consultation period for a new masterplan in (i) could be further extended?

Section 14: As drafted the masterplan review process seems to focus on the existing environmental values and priority management measures. Should the review process also consider whether the original set of environmental values are still appropriate? Is it worth considering the *efficiency* as well as the *effectiveness* of the priority management measures (section 14(2)(b)) ?

It is also not clear how the assessment of the effectiveness of managing the impacts of development on the environmental values identified in the plan would be undertaken. For example how will cumulative impacts be considered, how will the difference in point source and diffuse impacts be measured? We suggest that the government needs both to develop some clearer wording around how 14(2)(b) would operate as well as accompanying guidance material.

As the priority management measures apply only to environmental values (defined in section 8(1)(c)(ii) and (iii)), should the review also consider other measures (for example as described in section 21((2)(c)(ii)) ?

Section 16: (1) On a stylistic note, the final part of the section is slightly confusing. QRC suggests “...to satisfy the Minister’s request for relevant information” might be an effective replacement for “to give [to?] the Minister information the Minister is satisfied is relevant to the review...”?

Section 22 (4) seems to duplicate sections 49(2) of the Statutory Instruments Act 1992, which is referenced in (5).

(5) For clarity, should this clause note that it is not withstanding section 21(2)?

Section 26 (2)(b) QRC suggests that the clause be amended to include the phrase “*or adversely affects*”, so that it reads “...*the priority development area is within, or includes, or adversely affects, a priority port’s master planning area*”.

Section 27 (2)(b) QRC suggests that the clause be amended to include the phrase “*or adversely affects*”, so that it reads “...*the priority development area is within, or includes, or adversely affects, a priority port’s master planning area*”.

Section 29 (2) QRC suggests that the clause be amended to include the phrase “*or adversely affects*”, so that it reads “...*the priority development area is within, or includes, or adversely affects, a priority port’s master planning area*”.

Section 30 (2)(b) QRC suggests that the clause be amended to include the phrase “*or adversely affects*”, so that it reads “...*the priority development area is within, or includes, or adversely affects, a priority port’s master planning area*”.

Section 33: (b) QRC suggests that non-capital dredging should also be available for the incremental improvement of all existing ports, including in relation to loading facilities, tugs and pilotage operations as part of the definition of capital dredging (part (b) on page 40) which allows dredging “*to maintain the safe and effective ongoing operation of a port facility*”.

Similarly on the definition of capital dredging (page 40 in the dictionary), QRC suggests that part (a)(iii) should be amended to specify either a minimum diameter for the pipe, cable or tube or otherwise a minimum width for the trench for a pipe, cable or tube.

Section 60: (1) and (2) At what stage is an EIS process deemed to have started? The definition of the starting point is important as EIS work can commence a year or more in advance of a formal application process commencing.

Also – for many projects, incremental expansion of infrastructure doesn’t require a full EIS process, but rather an approval through an amendment of an environmental authority (EA). This consideration will be important for the port’s supply chain. This EA amendment process should also be recognised and grandfathered under this section.

Finally, QRC suggests that these transitional provisions cover the disposal of any dredge spoil as well as the dredging itself.

Schedule 1 - Dictionary

capital dredging (page 40) - QRC suggests that the definition of capital dredging should be amended so that non-capital dredging is available for the incremental improvement of all existing ports, including in relation to loading facilities, tugs and pilotage operations as part of the definition of capital dredging (part (b)) which allows dredging “*to maintain the safe and effective ongoing operation of a port facility*”.

Similarly QRC suggests that part (a)(iii) should be amended to specify either a minimum diameter for the pipe, cable or tube or otherwise a minimum width for the trench for a pipe, cable or tube.

port facility (page 42) Part (2) of the definition includes an example of a marina as a small scale port facility which is not included in the definition. QRC suggests that

a marina should not be included in the definition of a small scale port facility and as such should be included as a port facility.

tidal water (page 43) This definition seems to be missing the schedule reference in the Coastal Act.

Thank you for the chance to provide comments on the Bill for formal submissions.

In summary, QRC understands that the protection of the Great Barrier Reef is the centrepiece of the *Sustainable Ports Development Bill* and all stakeholders should recognise that this focus is appropriate and necessary.

QRC's assessment is that the Bill successfully walks the difficult line of demonstrating that it is possible to obtain the highest standard of environmental outcomes within complex coastal ecosystems in a way which is entirely consistent with well-managed port developments.

However the Bill will inevitably come at an economic cost to the Queensland economy. Over time the legislated ban on disposal at sea of material from capital dredging will inevitably mean that some future port developments will not proceed or will have to be scaled back due to cost or a lack of disposal/ reclamation options.

QRC understands that this Bill is only part of the regulatory framework, with priority port master plans and overlays still to be produced. This represents a significant body of work & co-ordination across Government. QRC is keen to remain actively involved in the port legislative reform & planning process given the importance of these issues for industry.

QRC would welcome the opportunity to discuss any of the issues raised in this submission and/or to appear before the Committee at a public hearing. The contact at QRC is Andrew Barger [REDACTED]

Yours sincerely



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