



Property Council of Australia
ABN 13 008 474 422

Level 6, 300 Queen Street
Brisbane QLD 4000

T. +61 7 3225 3000
E. info@propertycouncil.com.au

propertycouncil.com.au
[@propertycouncil](https://twitter.com/propertycouncil)

15 March 2019

A/Committee Secretary
Innovation, Tourism Development and Environment Committee
Parliament House
George Street
Brisbane Qld 4000

Via email: itdec@parliament.qld.gov.au

RE: Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Bill 2019

Thank you for the opportunity to provide input into the Committee's consideration of the Government's *Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Bill 2019*.

The Property Council of Australia is the leading advocate for Australia's biggest industry – property. We are a national not-for-profit organisation established to promote the work of the property industry in delivering prosperity, jobs and strong communities to all Australians.

Here in Queensland, the Property Council represents over 360 member companies across residential, commercial, retail, retirement living, industrial, tourism and education sectors.

In terms of interaction with the proposed reforms, many of our members own, develop or manage industrial property within the outlined Great Barrier Reef catchments that could be the site of prescribed environmentally relevant activities (ERAs) under the *Environmental Protection Regulation 2008*. Many of these companies are likely to be adversely affected by the elements of the Bill that seek to create power to impose water quality offset conditions for new prescribed ERAs (clause 8 of the Bill, proposed Part 5 of the proposed new Chapter 4A of the *Environmental Protection Act 1994* (EP Act)). The Property Council submits that the introduction of this unnecessary new requirement is unsupported by evidence, will add to duplication and red tape and will potentially endanger regional jobs and growth opportunities.

Realization of the Government's stated objectives – general approach

The Government's stated objective through this reform is to "strengthen Great Barrier Reef protection measures to improve the quality of the water entering the Great Barrier Reef." The Property Council acknowledges the important role the Great Barrier Reef plays, not only in terms of the environment and ecosystem it supports, but also its role in contributing to the Queensland economy.

While supporting action to protect the Reef, the Property Council contends that policy responses in this area must be proportionate to the environmental threat, based on evidence, and coordinated with other existing and emerging policy responses from all levels of government.

The Property Council has provided submissions to the Department of Environment and Science (DES) in the past in relation to these reforms, through the discussion paper, consultation paper, and the 'Broadening and enhancing reef protection regulations' consultation regulatory impact statement (RIS).

Given the limited resources of the State Government to effectively respond to threats to the Great Barrier Reef, the Property Council has called for these reforms to target the land uses identified by the Great Barrier Reef Water Science Taskforce as the largest contributors to sediment and nutrient run-off into reef catchments. Agricultural production, which has a significant impact on the reef catchments, must be the principal focus rather than smaller contributors such as industrial activities and urban development.

Approach adopted by the Government – targeting prescribed ERAs

The Property Council welcomed the Government's decision, outlined in the draft RIS, to not subject "urban development" to the proposed catchment load limits. This decision recognised that the new State Planning Policy has already imposed new requirements for the management of sediment and erosion during construction, and provides design objectives consistent with best practice environmental management. In the Property Council's view, this is an appropriate response to address the issue.

However, the Property Council notes that final reform package contained in the Bill will have application to some urban industrial uses which are prescribed ERAs, such as metal, plastic or glass manufacturing activities, food and beverage production or waste management activities. These activities will be required to meet (through conditions) a 'no net decline' standard regarding nutrient and sediment releases through mitigation measures. If the standard cannot be met through mitigation measures, then the Bill contains new powers for DES to impose an offset condition informed by a policy to be developed, to be entitled the *Point Source Water Quality Offsets Policy*. The policy is not yet available to it is unclear what its scope and requirements will be.

Property Council's general concerns – additional offsetting powers

The Property Council is concerned with the creation of a new head of power to mandate compliance with an unseen future water quality offsets policy, to offset potentially insignificant impacts caused by 'restricted contaminants' which are not yet identified. Queensland's property industry is already subject to a complex and overlapping framework of offset conditions which add significant costs to the delivering of new homes, offices, shops, schools and industrial buildings, even in areas identified by Local and State Governments as desirable for urban development.

The new offset requirement for some industrial uses within these regions could act as a strong disincentive for investment in job-creating projects. The Property Council is concerned that a broad requirement to provide offsets related to water quality could undermine the State Government's commendable efforts to create jobs in regional Queensland.

The Property Council contends that the existing powers that the Government has in relation to uses of land for prescribed ERAs is sufficient to minimise their potential impact on the Great Barrier Reef, and that a new offset conditioning power is not required. This is for the following reasons:

- Prescribed ERAs are already subject to an extensive approval process, with many requiring both development approval under the *Planning Act 2016* and an environmental authority under the EP Act.
- Sufficient power already exists within the EP Act to impose a 'no net decline' requirement in conditions for new prescribed ERA and resource activities, and where an activity will result in significantly disturbed land, it is common for DES to place the payment of financial assurance as a condition on an approval.
- Regulatory control has already been strengthened considerably by the Government's Chain of Responsibility reforms to the EP Act, enacted in 2016.

Specific concerns - interaction with current offsets regimes – unnecessary and undesirable complication

There is concern within the Queensland property industry that the creation of a head of power for a water quality offset through this Bill would be a retrograde step, potentially leading to further complexity, overlap and duplication. Key issues for consideration in this respect are:

- **Undermines streamlined offsets approach:** Creating a new standalone water quality offsets conditioning power and policy will undermine the streamlined and consolidated approach to offsets that successive State Governments have adopted since the *Environmental Offsets Act 2014* (Offsets Act) was enacted.

Under the streamlined regime, offsettable matters are listed as matters of national, State or local environmental significance in the *Environmental Offsets Regulation 2014*, and various regulatory authorities are permitted to impose offsets conditions on certain approvals, as part of the usual approvals processes, in respect of significant residual impacts on the relevant matters.

The Bill has proposed an unusual way to give DES an additional offset conditioning power. Instead of adding 'a river basin in the Great Barrier Reef catchment' as a prescribed environmental matter under the existing offsets regime, the Bill proposes to apply the Offsets Act (through proposed section 88 of the EP Act) to river basins of this kind, with various EP Act terms stated to be equivalent to Offsets Act terms. This appears unusually complex. The creation of a new offsets conditioning power through the EP Act is a complicated and backwards step, and directly inconsistent with the State's previous goal of consolidating offsets powers and policies as far as possible.

- **Inconsistency with criteria for other offsets, potentially disproportionate response:** The proposed Part 5 is inconsistent with the Offsets Act, and this will lead to confusion. The Offsets Act provides for offsets where there is a significant residual impact on offsettable matters. The Bill refers to a 'residual impact', so even a trivial or inconsequential impact could be required to be offset. This would be a disproportionate and unrealistic regulatory response to the issue. The fact that the accompanying water quality policy is not available, and that the definition of a 'restricted contaminant' (to be prescribed by regulation, and which will determine whether there is a 'residual impact' and hence a possible offset requirement) are not yet available further adds to the uncertainty and the risk of over-regulation.
- **Multiple offsetting powers leading to overlap and uncertainty:** Impacts on the Great Barrier Reef caused by development are already dealt with to an extent in the Offsets Regulation, as in some cases they can be prescribed environmental matters. The Great Barrier Reef is also a matter of national environmental significance so the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) applies to development which has a 'significant impact' on the Reef, potentially requiring approvals including offset conditions. The introduction of the new offset conditioning power leads to further overlap and duplication, and the provisions of the Offsets Act which are supposed to deal with the State/Federal overlap are complex and arguably do not achieve their desired result.
- **Bill is premature:** A comprehensive review of Queensland's environmental offsets framework is currently being undertaken. The Property Council calls on the Committee to recommend that the passage of the elements of the Bill that relate to new offset obligations be deferred until after this review has been completed. This will ensure that the State Government's offset framework remains coordinated, consistent and coherent.

Thank you for the opportunity to respond to this Bill. If you have any questions or would like to discuss this further, please do not hesitate to contact Henry Pike, Senior Policy and Communications Advisor, on [REDACTED]

Yours sincerely,

A handwritten signature in dark ink, consisting of a large, sweeping 'C' shape that extends to the right and then curves back down.

Chris Mountford
Queensland Executive Director