13 July 2020

Committee Secretary
Natural Resources, Agricultural Industry Development and Environment Committee
Parliament House
George Street
Brisbane Qld 4000

Re: Department of Environment and Science – Responses to Questions taken on Notice and Additional Information with respect to the Public Briefing on the Environmental Protection and Other Legislation Amendment Bill 2020

The Queensland Resources Council (QRC) provides this supplementary submission to the Natural Resources, Agricultural Industry Development and Environment Committee (the Committee) on the Department of Environment and Science’s (DES) response to questions taken on notice during the public briefing for the Environmental Protection and Other Legislation Amendment Bill 2020 (the Bill).

On 1 July 2020, the Member for Buderim (Mr Brent Mickelberg MP) requested that DES respond to the following question:

“Outside of this Bill what specific legislative provisions exist, which enable a pathway for petroleum and gas companies to progressively transfer rehabilitated land back to the underlying land owner when they have signed off on it and the company has achieved progressive certification”.

On 6 July 2020, DES provided its response to the Committee. It referred to the partial surrender and progressive rehabilitation certification provisions under the Environmental Protection Act 1994 (EP Act) and other arrangements outside of legislation as means for allowing underlying landholders to access and use rehabilitated land associated with petroleum and gas activities. However, QRC must clarify the barriers to these provisions, and the limited ability for these to deliver practical on-ground outcomes for proponents and landholders. This expands on Section 4.2 of QRC’s initial submission on the Bill (dated 3 July 2020).

As correctly stated by DES, for petroleum and gas tenures, the underlying land titles are not acquired by the proponent. The tenure overlays the land and is divided into blocks like a grid.

For each sub-block within a petroleum and gas tenure, activities may be relatively short-term for each stage of work followed by prompt rehabilitation. It would then be common sense to allow the land to revert to (or be ‘transferred’ for the purpose of) the activities of the underlying landholder. In some circumstances, the best way to achieve this is by way of a partial surrender under Section 261 of the EP Act. This would be the
preferred approach where the sub-blocks of the petroleum and gas tenure align with property boundaries. However, in most instances, the sub-blocks (grid) generally do not align with landholder property boundaries. As such, it is not possible to partially surrender a property where activities may still be occurring across one or multiple properties also in that sub-block.

Where partial surrender cannot be utilised, the default position should be to undertake progressive certification for the sub-block where the petroleum and gas activities have been completed, obtain landholder sign-off for the work and allow the landholder to return to normal activities within that area.

However, as DES has explained, the progressive rehabilitation certification provisions impose an ongoing responsibility on an Environmental Authority (EA) holder to maintain the rehabilitation in the same condition as at certification through to surrender. However, this means that if the proponent does allow the land to revert to use by the landholder, without being able to undertake partial surrender, the EA holder remains at risk of liability for the landholder’s activities.

For example, a proponent’s rehabilitation requirements imposed in EA conditions (e.g. type of vegetation) and the condition in which it is to be maintained may not be consistent with cropping (and harvesting) activities that the landholder legitimately wishes to undertake. If the rehabilitated land is reverted to use by the landholder, the proponent risks the rehabilitation being cleared or modified in a way that no longer reflects the condition at certification and hence the holder would be obliged to regain or maintain access, revisit and rectify the condition prior to submitting a surrender application in order to satisfy DES. If the CCA has expired, the EA holder would no longer even have a right of access. This would not be feasible for thousands of previously rehabilitated well sites.

DES states in its response that:

“the resource company may enter into an arrangement for the landholder to maintain the land to the standard when it was progressively certified. The Department of Environment and Science, as the administering authority under the EP Act, has no role in brokering or approving these arrangements. They are between the landholder and the resource company only”.

DES has previously suggested that such arrangement could be managed through a Conduct and Compensation Agreement (CCA) between the proponent and the landholder.

As stated in QRC’s initial submission on the Bill, it is not appropriate or feasible to continue a CCA as a mechanism to retain access to private land to maintain rehabilitated land through to surrender. Given a Petroleum Lease can have a maximum term of 30 years, a CCA for a particular area should usually only last for the period in which activities are being undertaken on an individual landholder’s property or properties.

Continuing a CCA beyond the agreed period places unnecessary conditions on or restricts both the landholder and EA holder and creates a financial obligation for the EA holder for no return. It also delays achieving the Government’s rehabilitation policy which seeks to return rehabilitated land to a subsequent use as soon as possible.
For the reasons set out above, it is not feasible or practical to utilise the existing pathways under the EP Act as suggested by DES.

DES recognises in its response, and QRC agrees, that by achieving progressive rehabilitation certification, the Department (not the landholder) is acknowledging that the proponent has rehabilitated the land to meet all relevant requirements in the EA, including that it is safe, stable and non-polluting. This is the same standard expected at surrender, the only difference is the point in time which the land is considered for assessment.

Due to the interaction with underlying landholders and how operations advance, the petroleum and gas sector cannot be considered in the same way as mining. It is in the interests of all stakeholders for rehabilitated land associated with petroleum and gas activities to be able to revert to use by the underlying landholders at the earliest practicable time. There would be two possible ways to achieve this:

- The simplest solution would be to adapt the existing progressive rehabilitation certification pathway, only in respect of petroleum and gas, so that, once the EA holder has rehabilitated the land as per the relevant conditions, and provided that it will then revert to use by the underlying landholder, the EA holder should no longer have responsibility for maintaining that area of land until final surrender. This would involve an exemption from Section 318ZB(2) and (4) of the EP Act; and

- There should be increased flexibility for EA holders to apply for partial surrenders not matched to the original blocks and sub-blocks, where this is practicable.

Separate to, and following certification, as part of the transfer process, the landholder should be able to state their overall satisfaction with the rehabilitation and willingness to accept responsibility for the land moving forward.

At surrender, the question of a residual risk payment should not even arise in a situation where there are no credible ongoing residual risks that need to be managed by the landholder or the State.

Should the Committee have any queries in relation to this supplementary submission, please contact Chelsea Kavanagh via [contact information redacted].

Yours sincerely

[Signature]

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Chief Executive