Advancing Rural Queensland

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Regional Planning Interests Regulation 2014

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The Research Director
State Development, Infrastructure and Industry Committee
Parliament House
George Street
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Dear Ms Pasley,

Thank you for the invitation of 25 June 2014 to make a submission on the *Regional Planning Interests Regulation 2014* (the Regulation) and the policy it is intended to implement.

AgForce is the peak lobby group representing the majority of beef, sheep and wool, and grain producers in Queensland. AgForce exists to ensure the long term growth, viability, competitiveness and profitability of these industries. Our members provide high quality food and fibre products to Australian and overseas consumers, manage a significant proportion of Queensland's natural resources and contribute significantly to the social fabric of rural and remote communities.

As a result of intensifying competition for land and other resources AgForce welcomes the stated intention of the *Regional Planning Interests Act 2014* (the Act) and the Regulation to manage the impacts of resource and other activities on agricultural and other areas that contribute, or are likely to contribute, to the state's economic, social or environmental prosperity. However a number of issues highlighted in our previous submissions on the framework are yet to be addressed.

As stated in the submission invitation, the objective of the Regulation is to give effect to the provisions in the Act by detailing the land use policy supporting the Act. The Regulation prescribes:

- A regionally significant water source
- **Strategic Environmental Areas (SEA) and their environmental attributes**
- **Regulated activities**
- Referable assessment applications
- Assessing agencies and their functions
- Notifiable assessment applications
- **Assessment Criteria**
- **Strategic Cropping Land (SCL) mitigation requirements**
- Application fees, and
- Assessment Timeframes.

This submission will outline AgForce's views particularly on the areas identified in bold text in the list above as well as identification of PAA and PALU within the Regulation.

Strategic Environmental Areas

Consultation process on SEA identification and mapping
In conjunction with relevant regional Plans (s11 of the Act), the Regulation (s4) defines the areas prescribed as SEA and that the mapping of those areas is held by the Department and published on its website. As identified in our submission on the draft of the Regulations, the current SEA maps, particularly for the Cape York and the Channel Country, appear to be largely based on past Wild

Rivers designation footprints and include significant areas of land with potential for sustainable agricultural development. Consultation by the Government with the Western Rivers Advisory Panel and the Cape York Regional Planning Committee specifically on these SEA maps was limited, with the Departmental maps subsequently produced not reflective of the development aspirations of the broadacre agriculture sector in those areas. For example, extensive areas of the Indigenous Local Government Area of Lockhart River and areas around Coen are identified under the SEA designation.

AgForce is concerned about the transparency and effectiveness of the process and rationale by which the current SEAs, designated precincts within them and the environmental attributes to be protected have been defined and mapped. There is a need for a more clearly defined, structured consultation process involving local stakeholders, preferably embedded in the Act or the Regulation, and which is responsive to the views of those stakeholders. This consultation process should be combined with periodic reviews to ensure the ongoing accuracy of the identified areas, as identified in our submission on the Bill for the RPI Act.

Regulated Activities

New cropping and water storages should not be subject to blanket prohibition
Section 11 of the Regulation defines both broadacre cropping and water storage (dam), not including stock and domestic water storages, and identifies them as regulated activities for a SEA. These are the only activities currently defined in the Regulation as regulated activities, with the Act (s17) identifying a regulated activity as one which is likely to have a 'widespread' and 'irreversible' impact on the area of regional interest.

Given the range of regulatory tools already in place to manage significant, widespread impacts (e.g. *Nature Conservation Act 1992*, *Environmental Protection Act 1994,* the *Sustainable Planning Act 2009* and the *Water Act 2000*), AgForce does not support including new broadacre agricultural developments as regulated activities, nor the blanket prohibition of new broadacre cropping or supporting water storages in the designated precincts of the SEA.

Any examination of proposed agricultural activities in the SEA must recognise voluntary landholder conservation activities, previous good land management practice and the capacity to manage environmental impacts. Assessment under the RPI framework should rely on a case by case objective assessment of potential impacts for particular sub-areas within SEA rather than relying on outright prohibition; the same as the approach taken for Regional Interests Development Approval (RIDA) applications concerning PALU within PAA.

A survey of AgForce members in the Lake Eyre Basin indicated little support for prohibition of small scale irrigation for the use of the landowner, but this aspiration is apparently excluded by the current SEA designations in the Channel Country. There is a need for further clarification in the Regulation of the term 'extensive' (s11(2)) to more clearly identify which cropping projects are likely to be prohibited or require assessment under the Regulation. Guideline 05/14 suggests that 'extensive' is anything that exceeds the 'domestic' needs of the occupants of the land. This would mean that even small scale production of hay for stock horses used on the property is unacceptable in SEA designated precincts – this is unreasonable, heavy-handed and needs revisiting.

It is important that assessment processes are streamlined, efficient and affordable and do not impede development that reduces the overall pressure on significant environmental values while enabling producers to meet the challenges of markets, climate variability, and input costs.

Regulation may identify further Priority Agricultural Areas (PAA) or Priority Agricultural Land Uses (PALU)

The Act (S8(1)) indicates that the Regulation can identify further areas of PAA for inclusion and can prescribe further PALU for an area of regional interest (s8(2b)).

Inclusion of a more equal say for graziers

At the public briefing on the RPI Bill the Department of State Development Infrastructure and Planning indicated that '*grazing is not protected, because the government's direction was that in those instances agriculture and mining have the capacity to work together to resolve how they exist in the landscape'*. This resolution can only occur where the grazier, as for other primary producers, has an equal say with the resource proponent about what activities are proposed to occur on their land, and to agree or disagree that what is proposed is reasonable.

To deliver a more equal say for all of Queensland's primary producers, and a stronger incentive for resource companies to negotiate effectively with them in relation to resource developments proposed to occur on their land, AgForce also supports the inclusion of grazing livestock land uses within the framework. This has been previously raised by the Deputy Premier but is yet to progress further. A specific set of Required Outcomes and Prescribed Solutions could be developed for inclusion under Schedule 2 and AgForce would contribute actively to any Government process to do so. A more limited outcome could be the inclusion of leucaena and other forage crop plantations as a PALU under the Regulation, given it requires a significant capital investment for a long (30 year) period of return and has limited opportunity to change in response to proposed resource developments.

Inclusion of valuable cropping areas as PAA

Outlined in our submissions to the Darling Downs and Central Queensland Regional Plans, AgForce also identified a number of valuable current and potential cropping areas that could be included for consideration under the Regulation, until reviews of those Regional Plans are undertaken. Using QLUMP cropping and irrigated cropping land use areas it has been estimated by AgForce that current PAA covers just 40% of the total current cropping area in Central Queensland and 47% of the current cropping areas in the Darling Downs. For example, irrigation and dryland areas on the 'Big Bend' of Mackenzie River, the Capella area north of Emerald, and cropping in the Important Agricultural Areas of the Darling Downs are not currently included as PAA. These valuable areas should also come under the enhanced consideration of agricultural land uses under the RPI Act. While the Cape York Regional Plan process of the identification of PAA is yet to be completed, and may address the following, AgForce would also like to see the Endeavour Valley, the McIvor River and past cropping areas (tobacco and hay production) in the Laura area included with Lakeland.

Part 6 - Mitigation

Mitigation of impacts on SCL on a single property

Under the current Regulation there is an apparent inconsistency in how mitigation is applied to permanent impacts on SCL, with mitigation currently seeming to only apply to activities when impacts occur across more than one property (s13 (1)(d)(ii) of Schedule 2). Permanent impacts on SCL from an activity on a single property do not appear to require mitigation, and this view appears to be supported by the RIDA approval application by Cockatoo Coal for its Baralaba North Continued Operations Project[1]. However, the inclusion of 'or' at the end of s12 (1)(a) would indicate that if the activity will result in any impact on SCL in an SCA, regardless of it occurring on a single property, it

[1] http://www.dsdip.qld.gov.au/resources/applications/rpi-14-001/rida-application-form.pdf, accessed 11 August

would also have to meet the Prescribed solution for Required Outcome 3, which then activates mitigation measures if the Chief Executive imposes them. The Committee is encouraged to clarify this issue. AgForce calls for mitigation to have to apply to all permanently impacted SCA, including that on individual properties, and not left to the discretion of the Chief Executive as to which land permanently removed from food production is mitigated.

No permanent impacts on PALU land within PAA

Agricultural stakeholders have consistently rejected enabling permanent impacts on PALU land within PAA, which is consistent with undertakings by the Government that this land is to be protected or prioritized for agricultural uses and that land protected under the SCL framework would retain its protection. This included no permanent impacts on SCL in Protection areas (now covered under the PAA designation) unless in Exceptional Circumstances. This view is also consistent with the clauses in the Regulation about an activity not preventing the ongoing conduct of PALU ((s3 (3)(d), s5 (1)(e) in Schedule 2). To exclude all doubt, Schedule 2 s3 (3)(a)(ii) should be reworded to indicate that the 2 per cent losses being referred to are non-permanent (or temporary) losses only. However, should permanent impacts actually be intended by the Government then these losses must all be mitigated given the very high long-term value of this irreplaceable agricultural resource.

Retain the effectiveness of mitigation payments

The financial values specified in s16 of the Regulation for the mitigation of SCL land appear consistent with the values specified in the *Strategic Cropping Land Regulation 2011*. To maintain the real value of that amount, consideration should be given to linking it to an index of inflation such as CPI or agricultural input costs.

Assessment Criteria (s14 and Schedule 2)

Schedule 2 – Part 1 Preliminary

Land use test appropriate

AgForce supports the 3 years in the previous 10 years test in relation to land or property used for PALU as appropriate, particularly given the extended drought conditions experienced in many of the identified areas. We understood the Government's intention towards PALU in PAA was to apply a greater level of protection than that applied to SCL and, in line with prioritizing these agricultural land uses over resource development, a more conservative test is therefore appropriate.

Land restoration timeframes must be specified

The current definition of permanent impact as it applies to SCL (s1 (2)) provides no indication as to the timeframe when the restoration to pre-activity conditions must occur, just that it could be restored at an unspecified point in the future. Full restoration of agricultural productivity must firstly be demonstrated as being able to occur, and secondly must occur to minimise impacts, such as at the end of the activity but preferably sequentially during an activity. This definition should be strengthened in the Regulation to protect the productive capacity of agricultural land from open-ended, significant (>2 per cent) 'temporary' impacts, particularly as these would be without landholder agreement.

Schedule 2 – Part 2 PAA

Support regional and property level assessments being applied

To ensure all factors are considered and to incentivise negotiation with landholders, AgForce strongly supports the requirement for regional level and property level assessments to apply to proposed activities that occur over one or more agricultural properties (s5 (6)), i.e. to address required outcome 2 and consideration of Schedule 2 s3 for each affected property.

Property level assessments –

Landholder views provided direct to the Government

Despite s30 of the Act requiring the applicant to give the owner of the land a copy of the assessment application, it is very important to the achievement of co-existence and a stronger say for landholders that their views about the reasonableness of the steps taken by resource proponents to consult and negotiate (s3 (3)(a)(i)) can be provided directly to the government decision-maker.

Without this capacity the landholder will largely be forced to rely on the applicant, with whom they have not been able to reach full agreement, to put forward an accurate and balanced statement. Direct submission of views could be achieved by making PAA- and SCL-related applications notifiable. Alternatively, a more targeted option would be to require in the Regulation or Act assessing or referral agency staff to consult directly with affected landholders in making their assessments.

Resource landholders not subject to PALU and SCL impact limits

AgForce is concerned about a potential loophole within the RPI framework by which a resource proponent who owns PALU or SCL land can bypass the Government's acceptable caps on impacts. Whereas s22 of the Act ensures that proponents who are land owners cannot be exempt under a voluntary agreement from making a RIDA assessment application, Schedule 2 s3 (a) could be read that if the proponent is the owner of the land then s3 (a)(ii) does not apply and so the proponent is able to have impacts of more than 2 per cent of the land and its productive capacity for agriculture. They would still have to demonstrate solutions (b) through (f) but the overarching 2pc limit would not apply.

Similarly where the proponent's activity affects 2 or more SCL properties under Part 4, the effect of the wording of s13 (2) is that s13 (3) does not apply where the proponent is the land owner. This means that the prescribed solutions for outcome 2, including the maximum 2pc permanent impact of SCL on the property, do not apply.

Resource proponents obviously have different motivations towards the ongoing use of agricultural land than primary producers. Currently these provisions could incentivise resource proponents to acquire valuable agricultural land in order to avoid the 2pc impact caps being applied and so result perversely in greater impacts on PALU and SCA, contrary to the intention of the RPI framework. The Regulation should be amended to address this issue.

Resource activity profitability should not be the reason for an activity not to avoid PALU or SCL

As stated previously AgForce does not support permanent impacts on PAA, which we understand was intended to have a greater level of protection that SCL. In relation to Schedule 2 s3 (3)(b) of the Regulation regarding avoiding locating resource impacts on PALU, economic implications for the resource proponent should not be the deciding consideration in determining whether the activity cannot be carried out on other land that is not used for a PALU. Under the former SCL Act (s135) when considering alternative sites for an activity a number of factors were required to be disregarded, including 'the profitability of carrying out the development on the site', 'if the proposed authority is a resource authority—its proximity to existing infrastructure relevant to carrying out the development' and 'the classification, grade or quality of the relevant resource'.

All impediments to be included as an activity's footprint

Under s3 (3)(c) the construction and operation 'footprint' of an activity on PALU must be minimised to the greatest extent possible, however 'footprint' is not currently clearly defined in the Regulation. For consistency with the intent of s3 (3)(d), the definition of 'footprint' should also include legal constraints, such as rights of way or access, that have an impact on the operation of PALU and the

carrying out of everyday farm practices. Legal constraints were also included for consideration in the previous SCL Regulation.

No constraint restriction or prevention of PALU, including on overland flow
We strongly support the required outcome (s3 (3)(d)) for a proposed activity not to constrain, restrict or prevent ongoing and usual farming practices, activities, and infrastructure essential to PALU. The onus must remain on the proponent to demonstrate that they will not have these impacts on the best of our agricultural lands and if unable to do so then the activity should not go ahead.

As previously discussed with the Government, there is a need to clearly specify a separate criterion requiring no change or interference with 'overland flow' natural paths and volumes. While currently only referred to in the supporting Guidelines (2/14 p4) overland flow considerations should be contained in the Regulations. The *Water Act 2000* definition of overland flow could be applied for consistency.

Definitions required
AgForce would support the Committee in also seeking to establish clearer definitions under this Part for the following terms:

- Significant impact (s3 (3)(e))
- Impact (s3 (3)(f)).

Regional level assessments -

Cumulative impact monitoring mechanism needed
It is important that a mechanism be included to monitor the impacts of approved and exempt resource activities over time so that cumulative regional impacts can be accurately estimated to be 'material' or not. Currently there is no requirement to register or notify the Government about impacts occurring where a voluntary agreement exists (s22 (2)(a) of the Act). While these impacts are required to not be 'significant' (s22 (2)(b) of the Act), over time these non-significant impacts could add up to a material effect on an area of PAA (s4 (2) of the Regulation) or SCA (s12 (2) of the Regulation). We recommend including a registration or notification process for voluntary agreements by activity proponents to enable effective monitoring and policy responses to emerging issues. This cumulative impact monitoring could be managed by the Gasfields Commission.

Common issues at different scales
The single property-level issues raised by AgForce above in relation to assessment of avoidance, footprint minimisation, and constraining, restricting or preventing use of the area for PALU also apply to regional level assessments. It is important that the property-level assessment is also applied alongside a regional solution (s5 (6)).

Capturing all impacts on regionally significant water sources
It is unclear how the Regulation will meet the State's regional interests relating to impacts on regionally significant water sources supporting PALU where they aren't likely to produce associated water for net replenishment, e.g. shale gas production (s5 (2)(a) and (b) in Schedule 2). This omission in the Regulation should be addressed.

Schedule 2 Part 4 Strategic Cropping Area

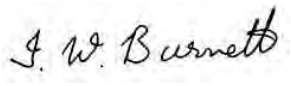
Process for transparent addition of further validated SCL needed
The Government's SCL Review recommended that the SCL trigger map accuracy be refined by utilising available and updated data, and that the trigger map be regularly updated. There is not a process outlined in the Act (s10) or Regulations by which this might be done and by which the map be validated, as per the Review recommendations, or further areas of validated SCL added by

landholders. Stakeholder consultation must be required in that process. We would also support revisiting the criteria in Part 2 of Schedule 3 given the capacity of modern agricultural practices to overcome some of the soil limitations represented by those criteria. For example with controlled traffic, zero till and appropriate paddock layouts slope impacts can be well managed and so an increase in the allowable slope criteria would be justified.

Conclusion

AgForce would welcome the opportunity to provide any further information required in support of our position and assist the Committee in its deliberations. If there are any questions about the content of this submission, please contact Dr Dale Miller, AgForce Senior policy Advisor by telephone [redacted]

Yours sincerely



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