

Our ref: CTS 17420/23

Your ref: A1154090



28 SEP 2023

Mr Chris Whiting MP
Chair
State Development and Regional Industries Committee
Parliament House
George Street
BRISBANE QLD 4000

Department of
**Regional Development,
Manufacturing and Water**

Email: sdric@parliament.qld.gov.au

Dear Mr Whiting

Thank you for your letter of 13 September 2023 requesting further information on certain provisions within Subordinate Legislation No 67 - Water Plan (Barron) 2023.

The Department of Regional Development, Manufacturing and Water (the department) appreciates the oversight and feedback from the State Development and Regional Industries Committee (Committee).

In response to the query about provisions of the Water Plan (Barron) 2023 referenced in your letter that allow for the *chief executive's consideration of other matters* in deciding those sections does not breach fundamental legislative principles.

This approach is not unique to the Water Plan (Barron) 2023 and when the *chief executive considers other matters*, those matters must be relevant and within scope of the individual Water Plan and the *Water Act 2000* (the Water Act). The chief executive is not given unfettered discretion.

The Queensland legislative framework provides safeguards if the chief executive were to take into account irrelevant considerations in making the decision, i.e. those that are outside the scope of the Water Plan or the Water Act, via a statutory order of review under the *Judicial Review Act 1991*.

Historically this approach has rarely been used, however there are practical policy reasons why it is necessary to enable the *chief executive to consider other matters*. Water Plans are adaptive and decision making is undertaken on a point in time basis. This provision balances the challenge of developing a Water Plan, stating prescriptive considerations at a point in time for making a decision for specific dealings that provide the ability for the chief executive to take account of new and relevant information such as best available science. The department is also required to afford natural justice to any party that is impacted by a decision under a Water Plan including outlining the factors that may be considered in reaching any decision.

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An example of how the flexibility of the *chief executive's consideration of other matters* may be applied is demonstrated in the framework for decisions about taking groundwater in the Cairns Northern Beaches Groundwater Management Area (Cairns GMA) in the Barron Water Plan area.

The Water Plan (Barron) 2002, previous to the recently amended Water Plan (Barron) 2023 (Subordinate Legislation 67), in section 57B applied to water licence decisions in the Cairns GMA. This section listed four specific issues that the chief executive must have consideration when making the decision. It also did *not limit the matters the chief executive may consider* in making the decision.

The Cairns GMA is a groundwater resource that has an underground freshwater and sea water interface that extends under land. The Water Plan (Barron) 2002 flexibility of *not limiting matters of consideration*, enabled the chief executive to consider potential water quality impacts of a water licence application on the aquifer from saline water ingress and in another case the potential impact on the pH of the aquifer and acid sulphate soils of the activity being proposed.

Through the review and replacement process the Water Plan (Barron) 2023 now requires the impact of seawater intrusion on natural ecosystems as a matter that the chief executive must consider in deciding a water licence application (your letter reference 5, section 67). This inclusion reflects that Water Plans are adaptive, decisions are made on a point in time basis and this flexibility allows for the chief executive to consider new and relevant information (that may not be known and therefore prescriptively stated in the plan) to support best possible resource decision making.

While the Water Plan (Barron) 2023 strengthens matters the chief executive must consider in managing water in the Cairns GMA, section 67 also states *chief executive's consideration of other matters*.

For these reasons I trust it sufficiently explains why the *chief executive's consideration of other matters* does not breach fundamental legislative principles and provides flexibility to benefit water users and the community.

If you require any further information or you would like an in person briefing on this issue, please contact Mr Ian Gordon, Acting Executive Director, Water Act Initiatives in the department on [REDACTED] or email [REDACTED], who will be pleased to assist.

Yours sincerely



Linda Dobe
Acting Director-General