Queensland Government

Queensland Treasury

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Consultation Regulatory Impact Statement – Lake Eyre Basin

Thank you for your enquiry of 21 September 2022 regarding the adequacy of the Consultation Regulatory Impact Statement for the Queensland Lake Eyre Basin region (RIS).

Background

The Department of Environment and Science (the department) notes that the Kati-Thanda Lake Eyre Basin (LEB) system is an intact set of dryland rivers, floodplains and connected alluvial hydrology of global ecological importance and First Nations cultural significance. Land uses within the Queensland LEB area include oil and gas exploration and extraction, mineral mining, grazing and pastoral farming, towns, tourism, and First Nations cultural practices. The ecological health and economic productivity of the LEB is influenced by the integrity of surface water processes, subsurface hydrology, and ecological functionality, meaning impacts on water quality and movement in one place affect downstream environmental health and land uses.

The *Regional Planning Interests Act 2014* (the Act) establishes a framework for the management of resource activities and other regulated activities in areas of regional interest, and their coexistence with other land uses. The *Regional Planning Interests Regulation 2014* and connected statutory mapping prescribe sections of the Georgina and Diamantina Rivers, the Cooper Creek, and their associated floodplains as the Channel Country Strategic Environmental Area (SEA). Open cut mining, broadacre cropping, and dams (excluding for domestic use and stock watering) are prohibited 'unacceptable uses' in the SEA, while other regulated activities are restricted to where a Regional Interests Development Approval has been granted or to where the Act provides an exemption.

The department advises that current land uses are regarded as having minimal negative impacts on water quality and overland flows, and existing conventional oil and gas activities have not created widespread, or irreversible impacts. However, existing regulation may not appropriately manage the increased risks from unconventional extraction of oil and gas. Such activities use a much greater volume of water, require the storage and disposal of contaminated water and hydraulic fracturing chemicals, and the related infrastructure can impede or alter overland flows and drainage.

The Regulation prescribes environmental attributes which regulated activities within the SEA must not have widespread or irreversible impact on. The attributes, and area of the SEA, are narrower than those previously prescribed under the repealed *Wild Rivers Act 2005*. There is concern that impacts on those environmental values no longer protected

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may be widespread or irreversible, thereby affecting downstream environmental health and land uses.

The department also notes the LEB holds significance for Traditional Owners who speak of their obligations to look after rivers and water places according to ancestral lore and custom. For Traditional Owners, the LEB holds vast social, cultural, and economic value, and is fundamental to the wellbeing of Country, people, and culture. The healthy flows and water quality of rivers are particularly important in maintaining this culture.

Proposal

The RIS presents three areas for potential amendments to the Act, the Regulation and statutory mapping, with options for each.

Spatial extent of the SEA:

1. Status quo
2. Expand the SEA to include High Preservation Areas and Special Floodplain Management Areas identified under the *Wild Rivers Act 2005*
3. Option 2 plus Floodplain Management Areas under the *Wild Rivers Act 2005.*

Regulation of resource activities in the SEA:

1. Status quo
2. Strengthening risk management principles to adopt a greater precautionary approach using existing assessment and approval processes
3. Prohibit unconventional oil and gas extraction in the floodplains and rivers
4. Prohibit all future oil and gas activities in the floodplains and rivers.

Prescribed environmental attributes:

1. Status quo
2. Expand the attributes prescribed by the Regulation to include those previously included under the *Wild Rivers Act 2005.*

The RIS presents limited impact analysis for each option and does not identify recommended options.

Consideration is separately given to recognising the need for engagement and consultation with First Nations Peoples beyond Native Title processes, noting this may progress via the review of the *Aboriginal Cultural Heritage Act 2004* underway and the proposed Queensland Treaty legislation.

Consultation

The department convened a LEB Stakeholder Advisory Group including representatives of First Nations' communities, agricultural bodies, conservation and environment groups, the resources sector, local governments, regional development, and scientific interests. Members received presentations from Traditional Owners, resource operators, wetland ecologists, and the Chief Geologist, and their feedback contributed to the development of options considered in the RIS. Three forums have also been held with the Lake Eyre Basin Traditional Owners Alliance, representing 16 Traditional Owner groups from across the basin.

Assessment

In undertaking its assessment of a RIS, the Office of Best Practice Regulation (the OBPR) has regard to the adequacy criteria in *The Queensland Government Guide to Better Regulation* (the guidelines). Under the guidelines, a RIS reflects the full policy

development cycle including a demonstration of whether the options considered can deliver a net benefit to the Queensland community relative to the status quo.

The OBPR notes the RIS identifies the stakeholders and physical attributes which constitute the LEB, a broad set of objectives for government action, a range of feasible policy options and how consultation to date has informed their development. However, at this stage, the RIS does not contain detail sufficient to inform full consideration of the options and their potential impacts. For example, the RIS has not articulated:

- a systematic analysis of the risks presented by future unconventional coal seam gas and oil activities in the SEA, including the breadth of potential adverse impacts (environmental harms) their intensity, probability, proportionality, or frequency
- the relative effectiveness of the options, including whether less prohibitive measures could achieve a similar degree of effectiveness at a lower cost
- how the options considered impact obligations or rights and the scope of their costs (including opportunity costs) to government or private interests
- whether any of the proposed options can deliver a net benefit to the Queensland community
- an implementation strategy for each option including when the proposed changes could take effect, and which metrics will be used in future evaluations of the effectiveness and efficiency of the proposed amendments.

Without these details the OBPR considers that stakeholder's ability to engage meaningfully in the consultation process and understand the implications of each of the options presented could be constrained. For a subsequent Decision RIS to adequately inform decision makers' consideration of the final policy proposed, it will need to specify the quantum of risk presented and establish evidence that the costs of the preferred option/s are outweighed by the benefits to the Queensland community, clearly acknowledging the degree of uncertainty around the assessment.

Consistent with the guidelines, when a Consultation RIS is approved for release, it is published on the OBPR website along with this letter. After consultation has concluded, a Decision RIS incorporating the department's consideration of public comments should be provided to the OBPR for assessment before being referred to Cabinet for decision.

Please contact Tim Elliott, Senior Economist, on (07) 3035 3488 if you require additional information or guidance concerning the above comments or the guidelines in general. Please note that in accordance with Cabinet Handbook requirements, this letter of advice should be attached to relevant Cabinet submissions.

Yours sincerely



Dr Karen Hooper
Productivity Commissioner

27 September 2022