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Submission

30 June 2021

Department of Resources
Queensland Resources Industry Development Plan
c/- Reform Unit
PO Box 15216
CITY EAST QLD 4002

Re: Queensland Resources Industry Development Plan

The Queensland Farmers' Federation (QFF) is the united voice of intensive and irrigated agriculture in Queensland. It is a federation that represents the interests of 20 peak state and national agriculture industry organisations and engages in a broad range of economic, social, environmental and regional issues of strategic importance to the productivity, sustainability and growth of the agricultural sector. QFF's mission is to secure a strong and sustainable future for Queensland farmers by representing the common interests of our member organisations:

- CANEGROWERS
- Cotton Australia
- Growcom
- Nursery & Garden Industry Queensland (NGIQ)
- Queensland Dairyfarmers' Organisation (QDO)
- Australian Cane Farmers Association (ACFA)
- Queensland United Egg Producers (QUEP)
- Turf Queensland
- Queensland Chicken Meat Council (QCMC)
- Bundaberg Regional Irrigators Group (BRIG)
- Burdekin River Irrigation Area Irrigators Ltd (BRIA)
- Central Downs Irrigators Ltd (CDIL)
- Fairbairn Irrigation Network Ltd
- Mallawa Irrigation Ltd
- Pioneer Valley Water Cooperative Ltd (PV Water)
- Theodore Water Pty Ltd
- Eton Irrigation Scheme Ltd
- Pork Queensland Inc
- Tropical Carbon Farming Innovation Hub
- Lockyer Water Users Forum (LWUF).

QFF welcomes the opportunity to provide comment on the Queensland Resources Industry Development Plan (QRIDP). We provide this submission without prejudice to any additional submission from our members or individual farmers.

Background

Queensland is rich in agricultural, mineral and gas resources. At times, this creates coexistence challenges for the agriculture and resource sectors to manage. To assist with this ongoing relationship, the Queensland Government is creating a Queensland Resources Industry Development Plan (QRIDP), which aims to set out a long-term vision to ensure the future of the state's resources industry, and identify the immediate actions needed to achieve it. QFF understands this strategy is about working with industry, the regions and communities to set a shared vision for the future of the sector.

The QRIDP comes as the GasFields Commission Queensland is reviewing the coal seam gas (CSG) assessment process identified under the *Regional Planning Interest Act 2014*, following a recommendation by the Queensland Audit Office. This review, now entering the preliminary findings and recommendations stage, will determine whether the process adequately manages CSG activities in areas of regional interest, the land classifications provided by the legislation are consistent and adequate exemptions are available in the assessment process. QFF's submission to this review is at Attachment 1 and is relevant to the QRIDP process.

It is encouraging that the Queensland Government wishes to better manage the impacts and co-existence of resource activities and other regulated activities throughout Queensland, including on agricultural land. Many landholders are rightly concerned the current land-use planning framework for resource activities fails to provide the level of certainty and strength of protection that is needed to ensure remaining areas of high-quality agricultural land are protected from inappropriate development. It is unquestionable that to continue providing food and nutrient security, Queensland's limited prime agricultural land must be treated as the precious and irreplaceable commodity.

Coexistence with landholders

There are social challenges inherent in energy transition and trust is critical, both in processes and in such expertise as authoritative. Resource activity can involve controversial technology and environmental ambiguity that tests trust in a range of different forms of expertise.

Recent challenges to coexistence in New South Wales, with the state government's decision to pay $100m for a resources company to exit its coal mining lease (Watermark Coal Mining project) on the Liverpool Plains and its plan to cancel exploration licences, has created an of optimism for those seeking to overturn existing resource licence and tenue decisions. Often, what happens in other states impacts the policy landscape in Queensland.

QFF has serious concerns the current land-use planning framework for resource activities, does not provide for a transparent or accountable process for managing development impacts on areas of regional interest. There is no requirement to protect or avoid impacts to areas of regional interest. It is likely that many Queenslanders would have an expectation that our laws would provide protection for our high-quality agricultural land. Instead, the word 'manage' assumes that impacts are going to occur, and in fact provides for them. However, sometimes coexistence between certain resource activities and the agriculture sector is simply not possible and planning decisions must be made.

The purpose and operation of current legislation must be updated and clearly prioritise the protection of areas of regional interest including high-quality agriculture land, not facilitating resource activity by managing coexistence.

The definitions and classification of agricultural land in Queensland

QFF is increasingly concerned at the uncoordinated and inconsistent approach to the protection of agricultural resources afforded by the various pieces of legislation and policy that affect this issue. There are now very different approaches applied to the protection of agricultural land between the *Planning Act 2016* (Qld) and the *Regional Planning Interests Act 2014* (Qld) ('*RPI* Act') depending on whether a development proposal is for urban development (and other development under the *Planning Act*) or resource development.

There is also the added confusion of different classifications of prime agricultural land between these approaches, despite the fact that the various classifications have been derived from the same mapping base. There is an urgent need to rationalise the various land classifications — Important Agricultural Areas, Agricultural Land Class (ALC) class A and class B lands, Priority Agricultural Area (PAA) and Priority Agricultural Land Use (PALU) and Strategic Cropping Land (SCL) — so that there is a single land classification that applies consistently to any assessment process for the protection of prime agricultural land. A standardised, simpler agricultural land classification framework will help ensure highly productive and irreplaceable agricultural land is protected while realising better planning outcomes.

To this end, QFF has proposed a new framework for the *RPI Act* which includes the above recommendations but would seek to remove PAA (and PALU) as an area of regional interest. Instead, it provides for the prohibition of development on certain SCL and requires development defined under the *Planning Act* to obtain a Regional Interest Development Approval (RIDA) where proposed on agricultural land. We invite you to consider this proposed framework as an alternative to ensure the protection of agriculture land in Queensland.

Improved landholder engagement, support and protections

Chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014* (Qld) ('*MERCP Act*') outlines the circumstances and obligations for resource authority holders to give each owner and occupier of private land an entry notice to enter that land to:

a. carry out an authorised activity for a resource authority; or
b. cross access land for the resource authority; or
c. gain entry to access land for the resource authority.

The extent to which the authorised activity impacts the business or land use activities of any owner and occupier of the land will determine whether the activity is either a 'preliminary activity' or an 'advanced activity'.

QFF has concerns following a resource proponent failed to provide a notice of entry to undertake an authorised activity on the Darling Downs – drilling a deviated well – in a PAA after self-assessing this activity as preliminary. As a result, the affected landholders are not entitled to a conduct and compensation agreement (CCA). However, landholders fear a potential devaluation of land, inability of landholders to drill future water bores and a disqualification of public liability insurance. While neighbouring landholders are also without a legislated right to compensation should similar impacts occur on their property following their removal under section 81 of the *MERCP Act*.

Not only should resource proponents provide a notice of entry to landholders to carry out all authorised activities, but the definition of advanced activity should be widened to include all activities that may impact landholders, such as deviated drilling and wells. Additionally, neighbouring landholders ought to be included for compensation. As a result, these activities would require a CCA and better protect landholders and neighbouring landholders should they experience a 'compensatable effect'.[1]

[1] *Mineral and Energy Resources (Common Provisions) Act 2014* (Qld), s 81.

Furthermore, QFF strongly supports the work the Land Access Ombudsman does to assist landholders by investigating and resolving land access disputes in Queensland. However, the Ombudsman is limited to helping resolve issues and providing resources where there has been an alleged breach of a term or condition of a CCA or Make Good Agreement (MGA). QFF would like to see the Ombudsman's scope and capacity to act widened to provide support to landholders where a Notice of Entry is given. It is imperative that landholders have access to adequate support throughout their interactions with resource proponents.

Furthermore, where an activity is proposed to occur in an area of regional interest designated as PAA or SCA, a RIDA may be required to assess the extent of the expected impact of the activity on the area.[2] However, a resource proponent is not required to obtain a RIDA to carry out its activities within a PAA or a SCA if the authority holder has entered into either a CCA or other voluntary agreement with the owner of the land.[3] For this exemption to apply, the activity must not likely have a significant impact on PAA or SCA or on land owned by someone other than the landowner.[4]

To ensure our best farming lands are protected, QFF recommends all proposals, including where a voluntary agreement has been reached should be required to obtain a RIDA. This is necessary to ensure adequate scrutiny of conduct and compensation agreements or voluntary agreements with landowners and that there are no likely impacts from development. Additionally, all approved RIDA must include a publicly available statement detailing how the resource activity will prevent significant impacts on the area of regional interest and for affected neighbouring landholders. This is necessary as the *RPI Act* requires mere confirmation that a CCA or voluntary agreement has been reached and this agreement is not open to government or industry scrutiny to assess to veracity of the agreement or the likely level of impact the activity may have on PAA or SCA.

Under existing arrangements, a proponent for a development project proposed to be located within an area of regional interest may apply for a RIDA at any time, including after all other approvals have been obtained. Once all approvals are obtained, it is highly unlikely the broad terms of assessment for a RIDA would prevent the proposed development from going ahead. To provide certainty, QFF proposes that the *RPI Act* and other relevant legislation should be amended to include provisions requiring proponents of proposed projects within areas of regional interest to obtain a RIDA before applying to obtain other necessary approvals or integrate the RIDA process into other major approvals. This would ensure the approval of a RIDA is not prejudiced by other assessment approvals.

Efficacy of the current adaptive management approach to ground water impacts

A significant concern for QFF's membership (irrigated and intensive agricultural sector) continues to be potential and actual impacts to ground water. The cumulative environmental effects of CSG extraction are a notable challenge as demonstrated in 2013, when public concern about these effects were sufficient to drive the introduction of federal environmental requirements to assess the cumulative impacts of coal seam gas projects under the 'water trigger' within the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).[5]

This legislation has been accompanied by significant government investment in regional models and tools for analysing cumulative effects, and coincides with increasing regulatory attention to protecting groundwater-dependent ecosystems in particular. Yet the effectiveness of this federal regime for regulating the cumulative environmental effects of coal seam gas projects remains unclear and key gaps in how cumulative effects are considered in practice under the water trigger persist.

[2] *Regional Planning Interests Act 2014* (Qld), s 16.
[3] *Regional Planning Interests Act 2014 (Qld)*, s 22(2)(a).
[4] Ibid, ss 22(2)(b)-(c).
[5] Ibid, ss 24D-24E.

One critical factor in cumulative effect assessment is time and time is central to many concerns around CSG and conventional mining, particularly with impacts to groundwater. QFF acknowledges that there are various frameworks for assessing cumulative effects. From the initial scoping of spatial and temporal factors, judging past, present and future activities and impacts; through to technical assessments which are fundamentally prediction (looking into the future); as well as effects management and how predicted events may be mitigated.

Groundwater systems fundamentally operate at longer timeframes than those associated with other activities and systems. QFF notes that unsustainable water extractions may not have obvious effects for years, decades or longer and the process of Adaptive Management (which is the focus of the *Environmental Protection Act 1994* (Qld) and associated Environmental Authority) is limited in its effectiveness. It is QFF's belief that adaptive management cannot substituted for effectively assessing cumulatively effects, since the cumulative degradation could be substantial, and time lags between adjusting management and seeing a response, meaning degradation may continue even after making changes. This is equally true where groundwater conditions are highly variable over time, so that a sustained and relatively large amount of degradation must occur before management adjusts.[6]

QFF also notes that the current groundwater assessments are not considering the impacts of climate change and how that will impact demand for water (from non-resource applications), ground water levels from lower levels of recharge and changes in water quality.

This leads to concern that many of the current assessments are underestimating cumulative affects and approving greater than expected ecological and hydrological harm. As such, temporal aspects of assessments must be improved, long-term impacts need to be more transparent, and the science and management of those impacts needs to be more explicit.

This is where landholders' concerns persist. CSG projects for example, are 'operational' and regulated for short periods of time (20 to 30 years). However, Farmers are looking beyond a 20-year project, they are engaging with principles of intergenerational equity, integrating both short- and long-term decision-making processes into their land and business management, with consideration of the precautionary principle. Queensland needs farmers and farmland into perpetuity if we are going to manage food and nutrient security into the future.

A Review of Royalties

QFF acknowledges that royalty sharing is a policy initiative of some governments, designed to facilitate the acceleration of onshore gas production. The 2019 decision of South Australia to offer landowners impacted by gas production a direct share of the royalties received by the state was a significant initiative in their new energy plan.

While QFF acknowledges that there are no constitutional requirements compelling states to share resource royalties with landowners, QFF contends that royalty sharing is consistent with an evolving awareness and changing imperatives of public resource ownership. Such an approach also provides direct financial rewards to landholders impacted, beyond the current framework of simply compensation.

QFF notes that current compensation is generally inadequate and does not encompass the broader lifestyle impediments (noise, dust, loss of quiet enjoyment) or the indirect impacts aligned with a changing community environment and broader environmental justice concerns (ranging from housing affordability, rural decline, to personal distress and stress associated with the uncertainty of a project).

[6] Lee H MacDonald, 'Evaluating and Managing Cumulative Effects: Process and Constraints' (2000) 26(3) *Environmental Management* 299, 311.

QFF therefore proposes a review of the modern royalty options for Queensland's landholders impacted by traditional as well as new and emerging resource industries. QFF notes that there are complexities with how royalties are fairly and transparently calculated. From compensating for impacts to neighbouring properties without resource activities directly on their land; to some discrepancies in resource generating potential (for example, gas wells and mines being more productive than others and therefore differentiating royalty amounts for the apparent same activity). However, QFF would like to see these options considered in the review.

Increased regulation for small miners

While there are coexistence concerns regarding major resource proponents and the agriculture sector, current legislation provides a level of understanding of regional interests, and oversight of these designated areas through a framework that provides some assistance to resolve competing land uses and interests. However, QFF is concerned that this management, despite needing improvements, does not extend to small scale mining by providing adequate conditions and guidance to ensure it is conducted in a responsible manner.

Projects that have a relatively low environmental impact and meet the eligibility criteria for a small-scale mining activity do not need an environmental authority under the Small-Scale Mining Code.[7] However, these projects have the potential to cause significant land management concerns for landholders with regarding to biosecurity, water contamination and insurance.

QFF recommends that further regulations be considered to limit the potential impacts that small scale mining can have on landholders and their properties. The Small-Scale Mining Code must better provide for the protection of the agriculture sector's unique priorities to ensure food, fibre and foliage production into the future.

New Economy Materials

QFF notes one of the drivers for the QRIDP is the increasing demand for 'new economy materials'. However, reference is only focused to 'refocusing current efforts' and 'new exploration activities'.[8] Simply focusing in these two areas is limited and misses resource recovery opportunities as well as strengthening material security and managing domestic risk.

There is growing acknowledgement of both supply risks, and that society cannot continue to lose new economy materials (beyond those which are 'consumed', meaning that they cannot be recovered). The application and use of new economy materials is growing – not just in terms of electronic goods but in an increasingly diverse range of new and innovative technologies across every sector, particularly in the clean technology and defence sectors.

It is important to address the misconception of supply risk as simply being about a shortage of supply. It is more likely that supply risks will manifest themselves as price increases and greater price volatility. This poses inherent risks and opportunities for the recycling sector, most notably the links between raw materials, secondary materials supply and reprocessing or remanufacture costs.

Critical materials experience a combination of high economic significance and a high supply risk compared to other materials, particularly those materials where supply is concentrated in a single or few countries.

In 2020, the European Commission released its fourth critical raw materials list. This updated list contains 30 raw materials that are critical to the EU economy, and include Antimony, Beryllium, Borates,

[7] State of Queensland, Department of Natural Resources and Mines, *Small-Scale Mining Code*, 2013.
[8] State of Queensland, Department of Natural Resources and Mines, *New economy minerals*, (Web page, 4 May 2021), <https://www.resources.qld.gov.au/mining-resources/initiatives/new-economy-minerals>.

Chromium, Cobalt, Coking Coal, Fluorspar, Gallium, Indium, Magnesite, Magnesium, Natural Graphite, Niobium, Platinum Group Metals, Phosphate Rock, Rare Earths (Heavy), Rare Earths (Light), Silicon Metal and Tungsten amongst others.

Rare earths, for example Neodymium (Nd), is used to create permanent magnets which are found across cars and aircraft, as well as in renewable and clean technologies such as wind turbines. It is also used in electronic equipment from headphones to lasers. Whilst optical drives and hard disks contain further materials including Praseodymium (Pr), Terbium (Tb) through to Dysprosium (Dy). Other important uses include catalysts, chemicals for the steel sector; Indium – flat screen TVs; and Antimony for flame retardant plastics. Many of the agricultural technology and ag-innovation opportunities rely on all of these materials.

China is believed to control over 90 per cent of the rare earth production. In March 2014, the World Trade Organisation ruled against China in a United States-led case, over the strict rare earth export quotas it imposed in 2010 in order to increase prices and provide its own rare earth consuming industries an uncompetitive advantage.[9] China's quotas had reportedly increased some materials over ten times, for example, dysprosium rose from GBP250/kg to GBP2,840/kg and neodymium from GBP42/kg to GBP334/kg between 2010 and 2011 alone. China's overall dominance of rare earth has led a number of nations and manufacturers dependent on Rare Earth Elements (REE) supplies to seek alternative opportunities and solutions for critical materials.

While Australia is a major exporter of mineral commodities, it is at present, a relatively small exporter of REE and other critical materials – it is also a small user of critical materials consumer. The Australian Government believes that, "therefore the critical commodities for other countries are not critical at present for Australian industries".[10] With such short-sightedness coupled now with new drive for an 'innovation nation' and more recycling, it is no wonder that Australia is losing ground in innovation and the on-shore manufacturing of new technologies.

Australia has natural resources of many critical materials – some of which are contained with the tailings produced from conventional materials mining. Australia is fortunate to possess Chromium, Cobalt, Copper, Nickel, platinum-group elements (PGE), REE, and Zirconium. Of these seven commodities, five are ranked in the group considered as most critical by the EU, Japan, South Korea, United Kingdom and United States. Critical commodities assessed as having category two resource potential in Australia are Antimony, Beryllium, Bismuth, Graphite, Helium, Indium, Lithium, Manganese, Molybdenum, Niobium, Tantalum, Thorium, Tin, Titanium, and Tungsten. Of these 15 commodities, eight are considered to be of highest 'criticality' by this same group of countries.

There is considerable potential to increase recycling performance to recover more value and environmental benefit from e-wastes across Australia. Technology advancements across recycling processes, coupled with application of strong policy instruments and enforcement of regulations is required. This, in turn, will provide market opportunities delivered through economic incentives and will drive consistent recycling within Australia. We must ensure that the importance of critical materials, particularly 'technology metals' are recognised, and policy and regulatory approaches support their domestic recovery and reuse.

Expanding the material recovery and recycling efforts to include critical and rare earths will lead to substantial benefits, including the substitution of these valuable and finite primary-resources for secondary-resources (for example, through the domestic recycling of electronic and clean technology products and waste streams).

[9] Panel Report, *China – Measures Related to the Exportation of Rare Earths, Tungsten, and Molybdenum*, WTO Doc WT/DS431/R, WT/DS432/R, WT/DS433/R (26 March 2014).

[10] Geoscience Australia, *Critical Commodities for a High-Tech World: Australia's Potential to Supply Global Demand*, 2013.

Queensland needs new policy stimulus around the recovery of critical metals through improvements in waste management. This must start with the expansion of the current product stewardship schemes to include further e-wastes, renewable energy technologies, batteries and better management of the current annual targets which have created a boom-bust culture. We must also capture new and clean technologies, ranging from end-of-life electric car batteries through to solar photovoltaics. We can use the current regulation to ensure the recycling and capture of critical materials, and prepare them for reuse in the manufacturing of clean technologies domestically.

Unlike broader metal prices, which have fallen over recent years as commodity and broader energy prices fell, prices for most critical materials have risen or at least remained constant, creating more certainty and reduced risk for recyclers and processors, and those dealing exclusively with new economy materials.

Queensland needs to recognise and prosper from the economic benefit that closed-loop business models can bring. Queensland and indeed Australia is lagging behind Europe and the United States when it comes to the security of new economy materials supply and providing certainty to those industries which (will) use them, and it is at our innovation and economic peril.

Conclusion

According to the Australian Bureau of Statistics, investment in Queensland exploration has increased by 22.5 per cent in the last year, with minerals (up 14.5 per cent) and oil and gas (up 53.1 per cent) compared to the previous 12 months. The figure is only expected to rise when the 2021 Queensland Exploration Program is released.

However, there are many existing issues with the relationship between the agriculture and resources sectors, such as the Fox Mine Fox Resources Ltd and their Mineral Development Licence in Bundaberg and directional drilling on the Darling Downs. And we must also shift our focus to future trends and demands.

Consistent and meaningful planning outcomes for agriculture are necessary to ensure the best agricultural land remains available for food, fibre, foliage production. With an increase in resource activity in recent years, and demands on agriculture increasing, vigilance is needed to ensure agriculture land is treated as the irreplaceable commodity that it is as major resources projects are considered, approved and developed.

Yours sincerely

Dr Georgina Davis
Chief Executive Officer

Attachment 1 – Submission to the GasFields Commission Queensland's review of the Regional Planning Interests Act 2014 (Qld)

17 March 2021

Mr Warwick Squire
Chief Executive Officer
GasFields Commission Queensland
PO Box 15266
City East QLD 4002

By email: warwick.squire@gfcq.org.au

Dear Mr Squire

Re: GasFields Commission Queensland's review of the *Regional Planning Interests Act 2014* (Qld)

The Queensland Farmers' Federation (QFF) is the united voice of intensive and irrigated agriculture in Queensland. It is a federation that represents the interests of 21 peak state and national agriculture industry organisations and engages in a broad range of economic, social, environmental and regional issues of strategic importance to the productivity, sustainability and growth of the agricultural sector. QFF's mission is to secure a strong and sustainable future for Queensland farmers by representing the common interests of our member organisations:

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- Pork Queensland Inc
- Tropical Carbon Farming Innovation Hub
- Lockyer Water Users Forum (LWUF).

QFF welcomes the opportunity to provide comment on the GasFields Commission Queensland's review of the *Regional Planning Interests Act 2014* (Qld) ('*RPI Act*'). We provide this submission without prejudice to any additional submission from our members or individual farmers.

Background

Queensland is rich in agricultural, mineral and fuel resources. At times, this creates challenges for the agriculture sector and the gas industry to manage the interaction between these critical industries. To assist with this ongoing relationship, the Queensland Audit Office has recommended the GasFields Commission Queensland review the coal seam gas (CSG) assessment process identified under the *RPI Act*. QFF understands this review will determine whether the process adequately manages CSG activities in areas of regional interest, the land classifications provided by the legislation are consistent and adequate exemptions are available in the assessment process.

The *RPI Act* provides for the declaration of areas of regional interest, which include:

- Priority Agricultural Areas (PAAs): PAAs are shown on regional plans, or declared under regulations.[11] An area will be declared a PAA where it includes (wholly or not exclusively) one or more areas used for a priority agricultural land use (PALU), being highly productive agriculture, whether it also includes other areas or features. It includes a regionally significant water source.[12]

- Strategic Cropping Areas (SCAs): SCAs are areas formerly mapped under the *Strategic Cropping Land Act 2011* (Qld) ('*SC Act*'), which have been now transitioned under the Trigger Map for Strategic Cropping Land (SCL) in Queensland.[13] SCAs are areas that are highly suitable for cropping due to soil, climate, or the landscape.[14] There are guidelines to help proponents to demonstrate that land in the strategic cropping area does not meet the criteria for SCA.[15] However, a guideline does not exist providing a remedy for community members where SCA land has not been accurately identified and registered as such.

The *RPI Act* applies when considering the impact of resource activities (mining, gas, petroleum or geothermal activities) and other regulated activities. Where an activity is proposed to occur in an area of regional interest designated as PAA or SCA, a Regional Interest Development Approval (RIDA) may be required to assess the extent of the expected impact of the activity on the area.[16]

QFF recognises the benefits the *RPI Act* provides, including four relatively nuanced considerations of diverse areas of regional interest; some level of extra oversight for these designated areas; and a framework to provide some assistance to resolve competing land uses and interests. While there are improvements needed, the *RPI Act* does provide a single framework for proponents to refer to and consider if whether they are potentially impacting agricultural land, townships or strategic environmental areas, rather than having these matters being dealt with in separate regulations.

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[11] Maps of PAA are available on the Development Assessment Mapping System located on the Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP) website at https://planning.dsdmip.qld.gov.au/maps.

[12] *Regional Planning Interests Act 2014* (Qld), s 8.

[13] As above n 1, for SCA.

[14] *Regional Planning Interests Act 2014* (Qld), s 10.

[15] State of Queensland, Department of State Development, Manufacturing, Infrastructure and Planning, *RPI Act Statutory Guideline 08/14: How to demonstrate that land in the strategic cropping area does not meet the criteria for strategic cropping land*, August 2019.

[16] *Regional Planning Interests Act 2014* (Qld), s 16.

However, QFF is concerned the *RPI Act* does not provide the level of certainty and strength of protection that is needed to ensure remaining areas of high-quality agricultural land are safeguarded from inappropriate development.

The assessment process and assessment criteria used to manage the impacts of CSG activities in Priority Agricultural Areas and Strategic Cropping Areas

The purpose of the *RPI Act* does not reflect community expectations to protect regional interests of high-quality agricultural land. The purpose of an Act is important because it is used to help interpret the application of the Act, particularly where there is any uncertainty in the provisions.

The purposes of the *RPI Act* are to—

a. "identify areas of Queensland that are of regional interest because they contribute, or are likely to contribute, to Queensland's economic, social and environmental prosperity; and
b. give effect to the policies about matters of State interest stated in regional plans; and
c. manage, including in ways identified in regional plans—
    i. the impact of resource activities and other regulated activities on areas of regional interest; and
    ii. the coexistence, in areas of regional interest, of resource activities and other regulated activities with other activities including, for example, highly productive agricultural activities."[17]

The purpose of the *RPI Act* is to manage the impacts and co-existence of resource activities and other regulated activities on regional interests. However, there is no requirement to protect or avoid impacts to areas of regional interest. It is likely that many Queenslanders would have an expectation that our laws would provide protection for our high-quality agricultural land. The *RPI Act* does not meet that expectation. Instead, the word 'manage' assumes that impacts are going to occur, and in fact provides for them. However, coexistence between certain resource activities and the agriculture sector is simply not possible and planning decisions must be made.

The purpose of the current *RPI Act* can be compared to that of the repealed *SC Act* that the *RPI Act* replaced, as outlined below.

The purpose if the *SC Act* was to—

a. "protect land that is highly suitable for cropping; and
b. manage the impacts of development on that land; and
c. preserve the productive capacity of that land for future generations."[18]

The *SC Act* provided for the protection and preservation of strategic cropping land in Queensland. Unfortunately, this level of protection has not been carried over and provided for in the *RPI Act*. This distinction is particularly conspicuous as the *RPI Act* states that to achieve its purposes, the Act "provides for a transparent and accountable process for the impact of proposed resource activities and regulated activities on areas of regional interest to be assessed and managed".[19]

QFF has serious concerns the *RPI Act*, does not provide for a transparent or accountable process for managing development impacts on areas of regional interest. Transparent and accountable laws are clear and certain, in a way that all stakeholders can understand the process and criteria to be applied in decision making. In addition, they provide little discretion, or at least discretion subject to independent

[17] *Regional Planning Interests Act 2014* (Qld), s 3(1).
[18] *Strategic Cropping Land Act 2011* (Qld), s 3.
[19] *Regional Planning Interests Act 2014* (Qld), s 3(2).

oversight and community accountability to avoid corruption of decision making and to ensure good quality decisions.

The purpose of the *RPI Act* does not meet community expectations and previous legislative precedent to protect high-quality agricultural land from resource and regulated activities. In addition, the *RPI Act* is not meeting the achievement of its purpose defined above, with room for discretion, and the inadequate opportunities for meaningful public involvement and independent oversight.

The effectiveness of the implementation of the assessment framework

Disconnection from major approvals likely to weaken the application of the RPI Act

There is a lack of structure and connection between the major approvals for resource activities as set out by the RPI Act, including the environmental authority, a development permit or the tenure, and the RIDA process. A proponent can apply for a RIDA at any time in the assessment and approval process. Thereby, a proponent may apply for and obtain all major approvals prior to applying for a RIDA; meaning there is significant momentum which could impact or influence the RIDA assessment process.

The environmental impact assessment undertaken for the major approvals could assist with the assessment of a RIDA application. However, the impact assessment for the major approvals would not have had the same criteria invoked as the RIDA application.

Inconsistency, uncertainty and discretion

Throughout its period in force, the *RPI Act* has been inconsistently applied across Queensland, creating unnecessary uncertainty for landowners, and allowing significant discretion of decision makers. Discretion in decision making processes increases risks of corruption, creates uncertainty, potentially wastes the resources of stakeholders seeking clarification on how the law should be applied and weakens the effective operation of the framework.

Public notification of proposed impacts to PAA and SCL is at the discretion of the Chief Executive.[20] The proponent will be exempt from notification if the chief executive is satisfied "sufficient notification under another Act or law of the resource activity or regulated activity to the public".[21] Issues arise where this notification is prescribed under other legislation that may not have applied the same criteria, nor provided for the same legal rights to land owners and the community. Further, the community may understand that the *RPI Act* is the appropriate time to consider impacts to regional interest and therefore did not raise concerns under the other process. Thereby wasting the resources of the community and the proponent in seeking confirmation around whether the application will be open to community input, and that of the government in needing to make case by case decisions as to whether the application should be notified.

Inadequate accountability and independent oversight

Under the current arrangements, there are limited opportunities for the public to participate in the assessment of RIDA applications or the declaration of areas of regional interest. There is no standing available for third parties to appeal these public interest decisions. Only the resource proponent, owner of land or affected landowners may appeal a decision under the *RPI Act*. This omission fails to recognise that the *RPI Act* is a public interest act in the management of impacts on areas of regional interest.

[20] *Regional Planning Interests Act 2014* (Qld), s 34.
[21] Ibid, s 34(3).

Inconsistent mapping across Queensland

PAAs are mapped through regional plans, however not all regional plans have been updated to define PAAs for regions around Queensland. For example, the Wide Bay Burnett Regional Plan[22], though currently under review, was last published in Sept 2011, prior to the implementation of the *RPI Act*, and therefore has no provision for PAAs to be mapped for that region.

The definitions and classification of agricultural land in Queensland

QFF is increasingly concerned at the uncoordinated and inconsistent approach to the protection of agricultural resources afforded by the various pieces of legislation and policy that affect this issue. There are now very different approaches applied to the protection of agricultural land between the *Planning Act 2016* (Qld) and the *RPI Act* depending on whether a development proposal is for urban development (and other development under the *Planning Act*[23]) or resource development.

There is also the added confusion of different classifications of prime agricultural land between these approaches despite the fact that the various classifications have been derived from the same mapping base. There is an urgent need to rationalise the various land classifications — Important Agricultural Areas, Agricultural Land Class (ALC) class A and class B lands, Priority Agricultural Area (and Priority Agricultural Land Use) and Strategic Cropping Land — so that there is a single land classification that applies consistently to any assessment process for the protection of prime agricultural land. A standardised, simpler agricultural land classification framework will help ensure highly productive and irreplaceable agricultural land is protected while realising better planning outcomes.

To this end, QFF has proposed a new framework for the *RPI Act* which includes the above recommendations but would seek to remove PAA (and PALU) as an area of regional interest. Instead, it provides for the prohibition of development on certain SCL and requires development defined under the *Planning Act*[24] to obtain a RIDA where proposed on agricultural land. We invite you to consider this proposed framework as an alternative to ensure the protection of agriculture land in Queensland.

The exemptions to the assessment process

While a RIDA may be required when a resource or regulated activity is proposed in an area designated as PAA or SCA, the *RPI Act* sets out several exemptions precluding this from being necessary.[25]

Agreement with the landowner

A resource proponent is not required to obtain a RIDA to carry out its activities within a PAA or a SCA if the authority holder has entered into either a conduct and compensation agreement (CCA) or other voluntary agreement with the owner of the land.[26] For this exemption to apply, the activity must not likely have a significant impact on PAA or SCA or on land owned by someone other than the landowner.[27]

However, there is no requirement to apply for an exemption on the basis of an agreement with the landowner. As a result, there is no scrutiny of the adequacy of agreements or the likely level of impact the activity may have on PAA or SCA. No formal written advice is be provided to applicants regarding

[22] Department of Local Government and Planning, *Wide Bay Burnett Regional Plan*, September 2011.
[23] *2016* (Qld).
[24] *2016* (Qld).
[25] *Regional Planning Interests Act 2014* (Qld), pt 2 div 2.
[26] Ibid, s 22(2)(a).
[27] Ibid, ss 22(2)(b)-(c).

whether an activity qualifies for an exemption under the *RPI Act*.[28] Thus, an applicant may wish to apply for a RIDA or seek a declaration to determine whether they are exempt, and this will be determined on a case by case basis regarding whether it is 'important, notable or of consequence, having regard to its context or intensity'.[29] QFF contends this exemption be removed and all proposals, including where a CCA or voluntary agreement has been reached, should be required to obtain a RIDA to ensure adequate scrutiny of the likely impact of the activity on land.

Activity carried out for less than 1 year

An exemption will apply where the resource activity is to be carried out on a property in a PAA or SCA for no longer than one year.[30] Therefore, most exploration activities could be exempt. Additionally, some production activities, including gas and petroleum, could be exempt if they are able to be completed on a site within this time limit.

Pre-existing resource activity

Should resource activity be carried out lawfully on the land before the relevant land is declared subject to an area of regional interest, the resource proponent will not be required to apply for a RIDA.[31] Thereby, the activity may be carried out under a resource authority or environmental authority without the need for any further authority or approval relating to the location, nature or extent of the expected surface impacts of the activity. This exhibits a further lack of scrutiny and transparency without the completion of a RIDA.

Furthermore, even where resource activity is not exempt, a proponent may obtain a RIDA where PAA land has not been used for a prime agricultural land use (PALU) within three of the previous 10 years.[32] This exemption becomes an issue where resource operators own the land and can deliberately ensure the land has not been used for a PALU within this time period. QFF questions the policy rationale regarding the exemption. Why Queensland's strategic cropping land undervalued because it has not recently been used for an agricultural purpose? We contend the value of the land is maintained and therefore, the exemption should not apply.

In fact, there is an additional incentive for the proponent to acquire the land prior to seeking a RIDA. Where a voluntary agreement has not been completed between an applicant and the landowner, a maximum of 2 per cent of the PALU on the property can be impacted by the development.[33] However, this limit only applies to the case where the applicant is not the landowner.[34] This provision provides an incentive for the applicant to acquire the property to avoid this restriction and expand the impact of the development.

That there are statutory guidelines which provide assistance for removing SCA designation over land but none to allow for addition of new land further suggests the priority is facilitating development and not protecting our best agricultural land.[35]

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[28] State of Queensland, Department of State Development, Manufacturing, Infrastructure and Planning, *RPI Act Statutory Guideline 02/14: Carrying out resource activities in a Priority Agricultural Area*, August 2019, 4.
[29] Ibid.
[30] *Regional Planning Interests Act 2014* (Qld), s 23.
[31] Ibid, s 24.
[32] *Regional Planning Interests Regulation 2014* (Qld), sch 2.
[33] Ibid, sch 2 reg 3(3)(a).
[34] Ibid.
[35] State of Queensland, Department of State Development, Manufacturing, Infrastructure and Planning, (n 5).

There is also a provision allowing impacts on SCL even if they cannot be remediated if a proponent makes a contribution to a mitigation fund.[36] This effectively allows a proponent to pay for activities on our best quality soil which cannot be remediated. There is very little transparency or accountability around this mitigation fund and given that impacts to the soils are irreversible, the funds can only be used for activities such as research into how agricultural activities can better operate on poorer quality soils rather than protecting the high-quality land already available.

Recommendations

Introduce strict, clear, non-discretionary prohibitions on inappropriate activities in key areas of regional interest

Clearer laws are required that provide for no-go zones on areas of regional interest. These zones are necessary for selected areas of SCA to provide minimum protections over the most important agricultural areas such as irrigation and the highly productive areas on the Darling Downs, Central Highlands and in the Lockyer Valley.

The broad ranging exemptions provided under the *RPI Act* do little to dissuade resource activities on PAA and SCA. In addition, they greatly reduce the power of the *RPI Act* framework to protect these areas of regional interest from inappropriate development. To ensure our best farming lands are protected, QFF recommends the following:

- All proposals, including where a voluntary agreement has been reached should be required to obtain a RIDA. This is necessary to ensure adequate scrutiny of conduct and compensation agreements or voluntary agreements with landowners and that there are no likely impacts from development.

- All approved RIDA must include a publicly available statement detailing how the resource activity will prevent significant impacts on the area of regional interest and for affected neighbouring landholders. This is necessary as the *RPI Act* requires mere confirmation that a CCA or voluntary agreement has been reached and this agreement is not open to government or industry scrutiny to assess to veracity of the agreement or the likely level of impact the activity may have on PAA or SCA.

- Provisions in the legislation and regulation that encourage development proponents to acquire land covered by a regional interest to either affect a PALU designation or to avoid limits on development, should be removed so that all applications for a RIDA are treated equally regardless of the ownership of the land.

- The purpose and operation of the Act should be updated and made clear the priority of the *RPI Act* is the protection of areas of regional interest including high-quality agriculture land, not facilitating resource activity by managing coexistence.

Require proponents of proposed projects in areas of regional interest to obtain a RIDA before applying to obtain other major approvals – or integrate this criteria into major approvals

Under existing arrangements, a proponent for a development project proposed to be located within an area of regional interest may apply for a RIDA at any time, including after all other approvals have been

[36] *Regional Planning Interests Act 2014* (Qld), pt 4.

obtained. Once all approvals are obtained, it is highly unlikely the broad terms of assessment for a RIDA would prevent the proposed development from going ahead.

- To provide certainty, the *RPI Act* and other relevant legislation should be amended to include provisions requiring proponents of proposed projects within areas of regional interest to obtain a RIDA before applying to obtain other necessary approvals or integrate the RIDA process into other major approvals. This would ensure the approval of a RIDA is not prejudiced by other assessment approvals.

- It should be required that areas of key regional interests that are protected from development applications under the RPIA are recognised in other legislation.

Remove discretion and uncertainty

At the time the *RPI Act* was introduced, the Queensland Government claimed it included the same planning and approval provisions as those in the planning legislation. However, this is not the case. Unfortunately, this has created unnecessary uncertainty for landowners, and allowing significant discretion of decision makers. To ensure the consistent application of the *RPI Act*, QFF contends the following:

- Ensure all RIDA applications must be publicly notified, in at least the same way as notifiable development applications prescribed by the *Planning Act 2016* (Qld) below. In addition, the publishing of the notice should provide the public with the right to review the RIDA application and any supporting documentation. This notification, publication and access to relevant documentation should occur at both the application and approval stage.

    a. "placing notice on the premises the subject of the application that must remain on the premises for the period of time up to and including the stated day; and
    b. giving notice to the adjoining owners of all lots adjoining the premises the subject of the application; and
    c. where there is a hard copy local newspaper for the locality of the premises the subject of the application, publishing a notice at least once in a hard copy local newspaper circulating generally in the locality of the premises the subject of the application; or
    d. where there is no hard copy local newspaper for the locality of the premises the subject of the application by either—
        i. publishing a notice at least once in an online local newspaper for the locality of the premises the subject of the application in a section of that publication that is intended for displaying notices intended for members of the public; or
        ii. publishing a notice on the assessment manager's website; or
    e. publishing a notice at least once in a hard copy state newspaper."[37]

- Citizens should be able to sign up for email notifications for regions of particular interest to them, so that they can receive notifications via email for any application registered in that region.

- Removing the discretion around public notification will ensure that all stakeholders have more certainty as to the process for RIDA applications and the ability of the community to be involved, reducing the need for case by case assessment by the Department of this decision which is open to misapplication.

[37] *Development Assessment Rules 2020* (Qld), r 17.

Introduce meaningful public consultation processes and third-party appeal rights to increase transparency

Under the current arrangements, there are limited opportunities for the public to participate in the assessment of RIDA applications or the declaration of areas of regional interest. Only the resource proponent, owner of land or affected landowners may appeal a decision under the *RPI Act*.

- Include provisions that enable the public to meaningfully participate in processes associated with assessing RIDAs, along with establishing third party appeal rights, which are key to reducing the risk of corruption by the ability to hold decision makers to account.

- Third party merits appeal powers must be introduced, in line with impact assessment processes under the *Planning Act,*[38] to ensure independent court oversight of the public interest decisions of the *RPI Act*. The *RPI Act* is by nature an instrument that regulates matters in the public interest, being how we manage (and protect) areas of regional interest. It therefore must provide meaningful community involvement and independent scrutiny.

Improved and consistent mapping

There must be fair and consistent application of the measures provided under the *RPI Act* to protect and manage impacts on areas of regional interest, rather than delaying the application of the Act in each region as each regional plan is slowly updated.

- Ensure mapping and designation of areas of regional interest is consistent in application across the state by preparing State-wide maps of each regional interest.

Conclusion

While the scope of this review is narrow, consistent and meaningful planning outcomes for agriculture are necessary to ensure the best agricultural land remains available for food, fibre, foliage production. With an increase in resource activity in recent years, and demands on agriculture increasing, vigilance is needed to ensure agriculture land is treated as the irreplaceable commodity that it is as major resources projects are considered, approved and developed.

Yours sincerely

Dr Georgina Davis
Chief Executive Officer

[38] *2016* (Qld), s 45(5).