



# QUEENSLAND FARMERS' FEDERATION

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## Submission

17 March 2021

Mr Warwick Squire  
Chief Executive Officer  
GasFields Commission Queensland  
PO Box 15266  
CITY EAST QLD 4002

Via email: [warwick.squire@gfcq.org.au](mailto: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:

- CANEGROWERS
- Cotton Australia
- Growcom
- Nursery & Garden Industry Queensland (NGIQ)
- Queensland Chicken Growers Association (QCGA)
- 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
- Mallowa 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).

*The united voice of intensive and irrigated agriculture*



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.<sup>1</sup> 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.<sup>2</sup>
- 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.<sup>3</sup> SCAs are areas that are highly suitable for cropping due to soil, climate, or the landscape.<sup>4</sup> There are guidelines to help proponents to demonstrate that land in the strategic cropping area does not meet the criteria for SCA.<sup>5</sup> 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.<sup>6</sup>

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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<sup>1</sup>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>.

<sup>2</sup> *Regional Planning Interests Act 2014* (Qld), s 8.

<sup>3</sup> As above n 1, for SCA.

<sup>4</sup> *Regional Planning Interests Act 2014* (Qld), s 10.

<sup>5</sup> 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.

<sup>6</sup> *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.”<sup>7</sup>

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.”<sup>8</sup>

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”.<sup>9</sup>

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

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<sup>7</sup> *Regional Planning Interests Act 2014* (Qld), s 3(1).

<sup>8</sup> *Strategic Cropping Land Act 2011* (Qld), s 3.

<sup>9</sup> *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.<sup>10</sup> 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”.<sup>11</sup> 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.

#### *Inconsistent mapping across Queensland*

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<sup>10</sup> *Regional Planning Interests Act 2014* (Qld), s 34.

<sup>11</sup> *Ibid*, s 34(3).

PAA's are mapped through regional plans, however not all regional plans have been updated to define PAA's for regions around Queensland. For example, the Wide Bay Burnett Regional Plan<sup>12</sup>, though currently under review, was last published in Sept 2011, prior to the implementation of the *RPI Act*, and therefore has no provision for PAA's 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*<sup>13</sup>) 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*<sup>14</sup> 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.<sup>15</sup>

#### *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.<sup>16</sup> 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.<sup>17</sup>

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

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<sup>12</sup> Department of Local Government and Planning, *Wide Bay Burnett Regional Plan*, September 2011.

<sup>13</sup> *2016* (Qld).

<sup>14</sup> *2016* (Qld).

<sup>15</sup> *Regional Planning Interests Act 2014* (Qld), pt 2 div 2.

<sup>16</sup> *Ibid*, s 22(2)(a).

<sup>17</sup> *Ibid*, ss 22(2)(b)-(c).

whether an activity qualifies for an exemption under the *RPI Act*.<sup>18</sup> 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’.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> However, this limit only applies to the case where the applicant is not the landowner.<sup>24</sup> 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.<sup>25</sup>

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<sup>18</sup> 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.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Regional Planning Interests Act 2014* (Qld), s 23.

<sup>21</sup> *Ibid.*, s 24.

<sup>22</sup> *Regional Planning Interests Regulation 2014* (Qld), sch 2.

<sup>23</sup> *Ibid.*, sch 2 reg 3(3)(a).

<sup>24</sup> *Ibid.*

<sup>25</sup> 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.<sup>26</sup> 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 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.

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<sup>26</sup> *Regional Planning Interests Act 2014* (Qld), pt 4.

- 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.”<sup>27</sup>
- 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.

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

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<sup>27</sup> *Development Assessment Rules 2020* (Qld), r 17.



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*,<sup>28</sup> 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

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<sup>28</sup> 2016 (Qld), s 45(5).