Regional Planning Interests (Lake Eyre Basin) Amendment Regulation 2024

Explanatory notes for SL 2024 No. 137

made under the

Regional Planning Interests Act 2014

General Outline

Short title

Regional Planning Interests (Lake Eyre Basin) Amendment Regulation 2024

Authorising law

Sections 11 and 95 of the *Regional Planning Interests Act 2014* (the RPI Act).

Policy objectives and the reasons for them

The objective of the *Regional Planning Interests (Lake Eyre Basin) Amendment Regulation 2024* (Amendment Regulation) is to enhance the management of Channel Country Strategic Environmental Areas (SEAs) and associated Designated Precincts (DPs) in the Queensland Lake Eyre Basin (Qld LEB) region, by updating the prescribed solution for their extent, the activities allowed within them, and the environmental attributes relating to those areas. In a formal regulatory context, the Qld LEB is referred to as the Channel Country.

Section 11 of the RPI Act defines an SEA as an area that contains environmental attributes that are either shown on a map or prescribed under a regulation. The Channel Country SEA is one such area, being defined by a regulatory map titled: 'Channel Country strategic environmental area' per Part 3, section 4 of the *Regional Planning Interests Regulation 2014* (RPI Regulation) that is held by the Department of Housing, Local Government, Planning and Public Works, and published on its website.

The environmental attributes for the Channel Country SEAs are detailed under Part 3, section 7 of the RPI Regulation. The area itself is subject to a range of prescribed solutions, per Schedule 2, Part 5, section 15 of the RPI Regulation, to ensure that activities occurring within it do not result in a widespread or irreversible impact on any of its environmental attributes. In the case of the Channel Country, the SEA is fully overlaid by areas with Designated Precinct (DP) status, where prescribed solutions identify certain activities as

'unacceptable uses', with the aim of limiting impacts. In line with the Queensland Government's decisions, the agreed updated SEA in the Channel Country will retain this consistency. Activities that are 'unacceptable uses' are not permitted in the DP.

Executing parts of the Queensland Government's decisions for the Channel Country requires an Amendment Regulation, which is a decision of the Governor in Council. The Amendment Regulation applies to:

- Part 3, section 7 of the RPI Regulation as this is where environmental attributes are provisioned in the Channel Country SEA;
- a new Part 9 of the RPI Regulation to manage certain transitional provisions; and
- Schedule 2, Part 5, section 15 of the RPI Regulation as this relates to the prescribed solutions designed to implement the object of the RPI Act, and provides definitions relevant to the implementation of the Regulation and the object of the RPI Act.

Achievement of policy objectives

The objective of the Amendment Regulation is to implement Queensland Government decisions, announced on 22 December 2023, to increase protections for the Channel Country SEA using an expanded description of the ecological features and characteristics of the most sensitive river and floodplain areas of the Qld LEB, along with geographically precise resource-related regulatory provisions, based on improved mapping of those most ecologically and culturally sensitive areas.

This is being achieved by more comprehensively and consistently describing the ecological features of the area that require protection. Government decided that the definition of environmental attributes for the Channel Country SEA should be expanded to capture the full range of Qld LEB-relevant natural processes and functions fundamental to its ecological functionality. The way that environmental attributes will now be described for the Channel Country SEA is more consistent with other SEAs under Part 3, section 7 of the RPI Regulation.

Further, the Queensland Government resolved to provide greater certainty for gas and oil operators by indicating that it was not changing any aspect of current regulation outside of the SEA. Within the SEA(DP), the Queensland Government has decided to prohibit future new gas and oil production from these sensitive areas, through a staged process of accepting that existing approved gas and oil production will continue, a transitional process for existing or imminent gas or oil production applications will apply, and a date after which applications for new petroleum and gas production in the SEA(DP) will not be accepted under the *Petroleum and Gas (Production and Safety) Act 2004*.

The amendments focus on the control of petroleum and gas activities, through the mechanism of a Regional Interests Development Approval (RIDA), to ensure that future new gas and oil activities cannot occur in the Channel Country SEA(DP) or that – where they do occur as a result of existing licences or applications (under the *Petroleum and Gas (Production and Safety) Act 2004*) in the system – that they only occur for conventional extraction only.

Specifically, existing applications (*Petroleum and Gas (Production and Safety) Act 2004*) for Petroleum Leases (PLs) already made prior to 22 December 2023 will continue to be assessed for approval to produce, but for conventional gas or oil only. In addition, existing holders of Authorities to Prospect (exploration) tenure or Potential Commercial Area declarations in the Channel Country SEA(DP) will be entitled to apply for a PL for conventional production only in the SEA(DP), providing the application is received before 11.59pm (AEST) on 30 August 2024. Applications to renew existing Authorities to Prospect (exploration) tenures in the SEA will be refused. The resulting effect is that:

- future new gas or oil production is prohibited within the SEA(DP) in the Qld LEB, by being made an 'unacceptable use' in those areas, but
- a transitional process allows that:
    - existing gas and oil production in place in the SEA(DP), with an existing RIDA, is to be allowed to continue as it does now;
    - PL applications (under the *Petroleum and Gas (Production and Safety) Act 2004*) in the SEA(DP) which had already been made prior to 22 December 2023 (i.e. the date of the announcement) will still be assessed, but for conventional production only;
    - holders of an Authority to Prospect or Potential Commercial Area declaration at 22 December 2023 and with interests in the SEA(DP), may still apply for a PL (under the *Petroleum and Gas (Production and Safety) Act 2004*) for conventional production, providing the application is received before 11.59pm (AEST) on 30 August 2024;
    - existing holders of PLs in the SEA(DP) under the *Petroleum Act 1923*, can apply for and obtain a replacement for an equivalent tenure under the *Petroleum Gas and Safet Act 2004*, Chapter 15, Part 3, Division 7, to continue conventional operations in the SEA(DP) only.

The transfer, renewal and amendment of existing PLs will be allowed, for conventional production only, and will be managed through the Department of Resources, and where appropriate the Department of Environment, Science and Innovation (DESI) via Environmental Authorities.

These outcomes will be achieved through amendments to the provisions of Schedule 2, Part 5, Section 15 of the RPI Regulation, such that a Regional Interests Development Approval (RIDA) for gas or oil production cannot be granted outside of these provisions. The RIDA is required in addition to the granting of the PL and an Environmental Authority for the activity.

There are also provisions which manage potential future critical minerals mining in the added Critical Minerals Reach of the Channel Country SEA. These are included in the amendments to the provisions of Schedule 2, Part 5, Section 15 of the RPI Regulation, and effect changes such that the unacceptable use provisions for open cut mining that normally apply to DPs of all other SEAs will not apply in the case of critical minerals in spatially-specific places identified in the new regulatory maps. Such mining proposals will be subject to site-specific assessment and approval processes under the RPI Act.

To support the transitional and critical minerals mining provisions, the Amendment Regulation includes the addition of new definitions and terms including 'conventional gas or oil', 'hydraulic fracturing', 'unconventional gas', 'shale gas', 'tight gas', 'deep coal gas', 'coal seam gas', and indicators of unconventional production. These are provided in

amendments to Schedule 2, Part 5, Section 15 of the RPI Regulation, and in some cases also reference provisions in the *Petroleum and Gas (Production and Safety) Act 2004* and Schedule 4A of the *Mineral Resources Regulation 2013*.

It should be noted that a new regulatory map, including a second identified area relevant to critical mineral mine provisions, will replace the current regulatory map, in both downloadable printed format and in spatial layers and shapefile data in Queensland Government mapping tools and services. This map has effect from the date of the announcement (22 December 2023) but does not require any regulatory amendment process.

Consistency with policy objectives of authorising law

The decisions and the Amendment Regulation are both consistent with the required outcome of the RPI Regulation in preventing activities from resulting in a "*widespread or irreversible impact on an environmental attribute of an SEA*", as detailed in Schedule 2, Part 5, section 15 of the RPI Regulation.

They are also consistent with the purposes and achievement of the RPI Act as stated in Part 1, Division 2, section 3 of the Act, and the policy objectives of the RPI Act, which seeks to manage the impact of resource activities and other regulated activities on areas of the State that have bearing on Queensland's economic, social, and environmental prosperity.

The Amendment Regulation will enable the Queensland Government to adequately protect the river systems of the Qld LEB and prevent the potential for widespread and irreversible impacts in culturally and ecologically sensitive areas, while ensuring that sustainable economic activities, including resources activities, are supported elsewhere in the region.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The benefit of the Amendment Regulation is that it is the most effective means of achieving the various objectives of government, addressing prevailing ecological and cultural imperatives, and factoring in matters of total economic value, and other present/future considerations relevant to the Qld LEB region.

In accordance with *The Queensland Government Better Regulation Policy* (the Policy), DESI prepared a Decision Impact Analysis Statement (DIAS) in relation to the regulatory proposals. The DIAS forms the final step of a detailed and extensive synthesis of impact and risk, and an analysis of a range of options and approaches according to their economic, social, ecological, First Nations and cultural heritage implications, benefits, and costs. The DIAS process determined that the government's preferred approaches can be achieved through regulatory amendment to the RPI Regulation.

In accordance with the Policy, a Summary Impact Analysis Statement (IAS) was also prepared by DESI and it was determined that the amendments will not add to the burden of regulation and will not result in significant adverse impacts and no further regulatory impact analysis is required.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles. It complies with relevant requirements of section 4(5) of the *Legislative Standards Act 1992*, as it:

a) is within the power that, under an Act or subordinate legislation (the authorising law), allows the subordinate legislation to be made;
b) is consistent with the policy objectives of the authorising law;
c) contains only matter appropriate to subordinate legislation;
d) amends statutory instruments only; and
e) allows the sub-delegation of a power delegated by an Act only—
   (i) in appropriate cases and to appropriate persons; and
   (ii) if authorised by an Act.

Consultation

DESI has worked extensively with First Nations partners, conservation groups, industry peaks, local government, others in the community, and scientists to develop the range of options presented to the Queensland Government and which informed its decisions. As part of that work, DESI:

- established a Stakeholder Advisory Group to identify relevant issues, to enable the presentation of positions and perspectives, and to inform the development of a Consultation Regulatory Impact Statement (CRIS),
- published a CRIS which provided detailed analysis of the issues, and sets of options for spatial matters, regulatory approaches, and other matters for consideration,
- conducted an associated 12-week public consultation process (which yielded some 17,500 submissions which were overwhelmingly supportive of, and advocated for, the strongest level of protections); and
- prepared a DIAS following further comprehensive synthesis of additional data including impact and risk analyses of each combination of options, and consideration of economic, social, ecological, First Nations and cultural heritage matters.

Overwhelming support for the outcomes the Amendment Regulation seeks to deliver has been provided by a wide range of sectors and groups spanning conservation, science, agriculture, tourism, and First Nations people.

To avoid potential economic impacts of the decision, a transitional approach to implementing the gas and oil related provisions have been included, alongside measures to support potential critical minerals mining in the future.

Targeted engagement occurred with resources peak bodies and petroleum companies in March and April 2024 regarding the implementation of the decisions of government and regulatory implications. This resulted in clarifications to the Amendment Regulation.

Briefing sessions were also held with the Traditional Owner Alliance of the Qld LEB and other First Nations groups from the Qld LEB, to communicate the decisions and their regulatory implications. Overall, First Nations people have been very supportive of the decisions and intended outcomes, noting ongoing concerns about the protection of cultural heritage.

Further engagement relating to a human rights impact assessment has been completed via a public notice published on the DESI website on 2 May 2024 which outlined the proposed regulatory amendments and their compatibility with the *Human Rights Act 2019* (HRA). This focused in particular on the Cultural Rights of Aboriginal Peoples and Torres Strait Islander Peoples under section 28 of the HRA. Direct communication about the impending changes with all known First Nations groups in the region was also provided. This human rights engagement process has identified positive engagement with section 28 of the HRA, and no expressions of negative impacts.

DESI has undertaken a human rights impact assessment for the amendments, to test other potential impacts or limitations, and to inform a Human Rights Certificate which was then prepared. No changes to the Amendment Regulation were required as a result of this process.

DESI consulted with the Office of Best Practice Regulation (OBPR) on the DIAS and notified OBPR of the proposed amendments.

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