



QMDC's submission on the Draft Guideline for Triggers for Environmental Impact Statements (EIS) under the *Environmental Protection Act 1994*: for mining and petroleum/gas activities June 2012

Submission To:

Mr Terry Loos
Environmental Performance and Coordination
Environmental Services and Regulation, EHP
Email: Terry.Loos@ehp.qld.gov.au

Submitting Organisation:

Chief Executive Officer
Queensland Murray-Darling Committee Inc.
PO Box 6243, Toowoomba QLD 4350
Phone: 07 4637 6270 Fax: 07 4632 8062
Email: geoffp@qmdc.org.au

This submission is presented by the Chief Executive Officer, Geoff Penton, on behalf of the Queensland Murray-Darling Committee Inc. (QMDC). QMDC is a regional natural resource management (NRM) group that supports communities in the Queensland Murray-Darling Basin (QMDB) to sustainably manage their natural resources.

QMDC's activities are influenced by its member organisations with representation from a wide range of community interests e.g. Aboriginal Traditional Owners, Landcare groups, catchment management associations, conservation groups, local government and rural industries. The primary role of QMDC's member delegates is to provide strategic direction for the delivery of natural resource management in the QMDB, based on their area of interest.

1.0 General Comments

QMDC supports environmental regulation that provides a high level of protection for the QMDB consistent with the aspirations of the Regional NRM Plan and its internal policy, *Mining and energy industry impacts on natural resources in the Queensland Murray-Darling Basin Policy Revised Final Draft* (the QMDC Mining and Energy policy)

QMDC asserts “Greentape reduction” and reforming licensing under the *Environmental Protection Act 1994* (the EP Act) must take into consideration not only the individual impacts of each development or business licence application but also **the cumulative impacts** of the mining and petroleum industry and the total number of businesses or industries impacting on the natural resources of a region.

QMDC seeks a robust legislative and regulatory framework in which the *Triggers Guideline* sits that is compatible with the protective mechanisms afforded by regional plans, policies and strategies.



Funded by:





The extensive number of licenses and EAs regulating the mining and petroleum industry, in Queensland raises concern regarding community participation in legislative processes. QMDC therefore supports processes that make best use of community engagement especially in terms of the voluntarily efforts of groups that are usually under-resourced to fully participate in EIS processes. Streamlining processes however should not be at the cost of relaxing stringent control measures to ensure the protection of the environment and socio-economic structures.

QMDC supports the need to have improved information and advice on regulatory requirements. QMDC would add that included in this information should be data and information documenting the key natural resource assets and values of each region and targets for their management. QMDC supports this information being made available on key government websites.

QMDC supports the need to align legislation and administrative processes. QMDC has experienced how anomalies in water legislation, for example, create certain injustices especially when the mining and energy industry sector have inherent rights under the *Petroleum and Gas Act* to water and all other sectors are subject to water resource planning and allocations.

QMDC also supports widespread community and EHP's concern regarding the quality of information provided by proponents being sometimes inadequate to make informed decisions. As a submitter to a number of EA applications by CSG companies, QMDC has found that decisions are often delayed because proponents are not forthcoming with essential data.

A wider concern is that the regulator is being put in a position to make decisions when there is a clear lack of scientific evidence or certainty. This may lead to impacts on natural resources, the environment or community interests that should be avoided in the first place. QMDC therefore does not support using "size" as best practice nor as best science to determine whether to assess for environmental impact. QMDC does support the use of "triggers" and code compliance as a methodology to inform the detail and level of assessment required. However the "triggers" QMDC supports are based on the precautionary principle and the threshold limit approach is not a purely administrative, mathematical approach as the *Draft Triggers Guideline* appears to be promoting.

2.0 Specific comments

2.1 Scientific data and research informing threshold limits is needed

"*Triggers for EIS*" if they are to be a crucial component of the EP Act, must be informed by:

- 1. Scientific data and research that identifies those natural resource assets as being both statewide and regionally at risk to the impacts caused by activities and infrastructure of mining and petroleum industries and associated businesses; and**
- 2. Definitive threshold and threshold limits.**

Produced by: Kathie Fletcher, Geoff Penton, 11 July 2012
For further information, contact QMDC on (07) 4637 6200 or visit www.qmdc.org.au

While every care is taken to ensure the accuracy of this information, QMDC accepts no liability for any external decisions or actions taken on the basis of this document.

Setting threshold limits for natural assets (surface water and groundwater); vegetation & biodiversity; land and soils; air) will help to identify whether a new development or existing project can operate or expand without causing impacts, for example, generating or disposing of levels of waste that will cause unacceptable impacts on those assets within the defined threshold limits and should then be able to streamline approvals process.

Having these thresholds could therefore result in less work for some elements of the EIA saving both industry and government time and money. QMDC asserts that this approach creates a more straight forward process to follow. This would provide greater clarity and certainty to the Administering Authority, the proponents for mining and petroleum projects, the EIS writers (academic and technical) and community and other key stakeholders as to whether the risks of environmental harm are sufficient to warrant an EIS.

Promoting a threshold limit approach in the “trigger” guidelines can also act to “define and provide:

- “no go” zones for development and projects (NB// State Planning Floodplain and Coastal management Policies and Hazard Mapping, Strategic Cropping Land assessments, the Underground water Impact Report (UWIR) can help to define these zones);
- clear and predetermined standard environmental practices acceptable under legislation e.g. safe effluent disposal, no net loss environmental offset programmes, defined buffer zones for activities and infrastructure against stream order classifications, set road heights on floodplains, stream water quality discharge limits etc;
- more efficient administrative processes within the EP Act.

QMDC asserts the *Triggers Guideline* must ensure very clear messages are sent to applicants that causing unacceptable environmental risks will not be supported.

QMDC suggests the key is to develop a process to compliment the EP Act assessment process that aims to educate industry or businesses on environmental compliance, so that they do not see it as a burden and can efficiently work towards benefit from the savings and opportunities of sustainable practices 'beyond compliance'. This would likely require EHP and other key stakeholders such as environmental legal services, business associations, NRM or industry peak bodies to actively identify ways to assist individuals, businesses and industry interpret and implement their environmental requirements on a local or regional level.

Better alignment between the EIS process and statutory planning processes is also necessary to enable more efficient administration of the EP Act.

What may also assist is the coordination of information dissemination by EHP regarding current and relevant Land and Environment Court case law as well as federal, state and local government environmental initiatives, strategies and policies, and significant international protocols, treaties best practices and standards. The education process should include as its basis the importance of compliance in terms of environmental protection, risk reduction and the advantages of sustainable business practices.

Produced by: Kathie Fletcher, Geoff Penton, 11 July 2012
For further information, contact QMDC on (07) 4637 6200 or visit www.qmdc.org.au

While every care is taken to ensure the accuracy of this information, QMDC accepts no liability for any external decisions or actions taken on the basis of this document.



Regulations to support *suitably qualified persons* including *auditors* to perform regulatory functions are also dependent on adequate government resourcing to increase the availability of people who not only have the relevant skills, knowledge and experience but also have the ability to adapt and apply new products, technologies and information to their local and regional needs.

QMDC recommends the implementation of regulations which build the capacity to deliver further important knowledge and technological advances to Queensland and its regional communities. This will ensure the EP Act will advance the Act's effectiveness and efficiency.

2.1.1 Recommendation:

- 1. That threshold and threshold limits are included within the *Triggers Guideline***
- 2. That the relevant regulations reflect not only *suitably qualified persons* including *auditors* whom are skilled in current best practices but are also persons that are well-informed by localised and regionalised knowledge and research.**

2.2 Levels of assessment process and measuring environmental values and risks

QMDC is concerned that when an EIA does not apply, key issues may slip through the safety net and opportunities for public consultation will be lost creating a lack of transparency and confidence in the process, for example, will the public be notified or advised as to which assessment process will be used for each application and reasons it is exempt from EIA?

Deeming *environmental risks* are significantly different according to the size of operations shows a lack of understanding of the scale and extent of site specific and localised potential impacts.

QMDC is concerned that if there is no formal process to require the *information stage* for an applicant's proposed project because the EIS is not necessary, a review of environmental risks to consider any key changes to operations is missed. If an EIS is not required what guarantee is there that the application will be assessed according to best available scientific data and knowledge providing light on current and future environmental risks, best business practices, threshold and threshold limits, community aspirations and the cumulative impacts to natural resources in the region of the application. How will the other level of assessments capture, for example, substantial changes in the environment owing to natural disasters, the risks associated with climate change, or the cumulative impacts of other development and industry?

How are the environmental values defined and measured for the description required to trigger an EIA? Will ecosystem values be addressed in relation to socio-economic well-being of community addressed under this clause? Will they include an analysis on greenhouse gas and dust emissions, noise and lighting impacts, soil impacts, weed and pest threats/biosecurity risks, loss of biodiversity and vegetation, the quantity of water required for camp services, quantity of other types of waste (construction materials, sewage, food scraps, tyres etc). Having a feasible alternative to an evaporation pond, for example, should be an essential component of the *Triggers guideline*.

Produced by: Kathie Fletcher, Geoff Penton, 11 July 2012
For further information, contact QMDC on (07) 4637 6200 or visit www.qmdc.org.au

While every care is taken to ensure the accuracy of this information, QMDC accepts no liability for any external decisions or actions taken on the basis of this document.



Additionally environmental risks and measures to protect the environment from potential evaporation impacts caused by the construction and operation of frac ponds and the exploration and appraisal ponds required for pilot production testing must be as stringent as CSG evaporation dam constructions and operations.

QMDC argues that the EP Act must be implemented so that all developments live within in the capacity of a region's natural assets. We know, for example, water sources are limited and their viability relies on a whole range of environmental, social and economic factors, the capacity of a region's biodiversity means that species will disappear if certain amount of hectares and types of habitat are cleared, and soil is also a finite source.

Why are cumulative impacts not to be considered?

Justification for a project must highlight how that project will safeguard natural resource and community assets and values, and traditional or potential economic opportunities in the region in the short to long term, rather than from the short to medium term of a project. Any discussions pertaining to the *status of the project in a regional, state and national context* must be analysed in context of the project's potential harm and contribution to the cumulative impact on region, state and country, for example, an increase in:

- air pollution
- leachate pollution
- greenhouse gases
- contaminated sites
- degradation of groundwater
- disturbance of farming land
- land subsidence
- thermal pollution
- water consumption
- waste

2.2.1 Recommendations:

- 1. That these issues be considered and addressed accordingly.**
- 2. That a public record be made available recording the assessment of the EP Act applications against all the environmental values and impacts considered.**
- 3. That the Administering Authority recover costs from the applicant for all public access requests for application documentation.**
- 4. That cumulative impacts be considered.**

2.3 Timeframes for public objection

QMDC is concerned about whether the public will be able to object to decisions on the level of assessment required. If not this creates a situation where it is not possible to assess the degree to which issues may be adequately addressed until an EA is granted.



Sufficient time must be allowed for a member of the public to evaluate and comment on both decisions on the level of assessment and the possible hundreds of conditions attached to an EA.

Consulting local communities and key stakeholders, legal, technical and scientific experts, to determine whether to give an objection notice and draft the required grounds of objection is a formidable task for community groups and NGOs.

QMDC believes there should be in depth discussion on the issues pertaining to stakeholder consultation and participation of community groups, NGOs and landholders affected by proposed developments in the EIS process.

How and who should resource community groups, NGOs and landholders who are under the most pressure to respond, have the less amount of time to respond, are often not resourced, and are often under skilled in terms of technical and scientific expertise and yet are the major players but are treated as the last players. As the most dedicated and effective community representation, full consideration of the experiences and opinions of the EIS process including issues relevant to resourcing this invaluable source of community representation should be a priority in this review and other legislative and policy improvement and implementation by the government.

2.3.1 Recommendation:

- 1. That a minimum objection/appeal period of 30 business days is provided for both mining objections and appeals on decisions on coal seam gas environmental authorities.**
- 2. That EHP seek further information from community representatives and stakeholders on the development and improvement of stakeholder engagement and participation in the EIS and EA process.**

2.4 Compliance assessments

QMDC is concerned that the necessary expertise or experience that is required to carry out compliance assessments is under-resourced and therefore by not requiring an EIA may lead to consequential poor environmental management planning.

In QMDC's experience DERM previously and local governments were currently under-resourced to monitor current Environmental Authorities (EAs) and Operation Plans (OPs). There are currently over 185 EAs in Queensland with thousands of associated conditions. Will this under-resourcing be addressed so EHP and local governments can fulfil their roles efficiently and effectively?

With the CSG and coal industry and their associated support industries on the ever increase in the QMDB there is a real need to articulate clearly what skills and knowledge are needed to ensure development or work or documents comply with not only the conditions imposed in accordance with the EP Act and other associated legislation but also current best practices.

Produced by: Kathie Fletcher, Geoff Penton, 11 July 2012
For further information, contact QMDC on (07) 4637 6200 or visit www.qmdc.org.au

While every care is taken to ensure the accuracy of this information, QMDC accepts no liability for any external decisions or actions taken on the basis of this document.



QMDC submits that current best practices must not only be based on national and international industrial practices but also be informed by localised and regionalised knowledge and research. This will ensure the EP Act and any associated legislation or regulations will serve to further the effectiveness and efficiency of environmental legislation.

Public and community confidence in the assessment process is dependent on the availability of public servants and other persons who have the relevant authority, skills, knowledge and experience and also have the ability to adapt and apply new products, technologies and information to their local and regional needs.

2.4.1 Recommendation:

- 1. That a regulation is implemented and read alongside this relevant section of the EP Act to require financial payments from applicants to build the capacity and qualification of public servants and other persons to assess development, work or documents that fall within the ambit of the EP Act.**

(NB//This will assist the mining and resource industry, for example, to deliver on their promises to increase the skills of the working force of Queensland and its regional communities).

2.5 Info collected during EIS and EA process should be to a certain standard

QMDC is of the understanding that there is no coordinated collection or cross-referencing of baseline data produced by EISs across the State. This information must be made available to facilitate State intelligence on the site specific and cumulative impacts of all developments on regional and state-wide natural resource assets and regional communities, towns and cities. Mapping presented in an EIS is in QMDC's opinion is often of poor quality as it does not provide proper legends, metadata or data sources and currency etc. Standards must be raised so that all maps are provided with this sort of detail and using legends according to best practice cartography standards. Additionally all other information produced must be at a standard that can be readily used to assess a project against identified key data sets, in order to, for example:

- add to baseline data recording a region's natural resource assets;
- identify current or potential risk and hazards to those assets from the proposed petroleum and mining projects;
- identify whether the projects in the entirety or certain activities or associated infrastructure pose unacceptable risks and environmental harm to those assets; and
- assess level of cumulative impact on an asset and whether its threshold limit will have been reached.

2.5.1 Recommendation:

- 1. That the information produced by all EISs is required to meet a standard that facilitates better coordination of baseline data for the State and its region in order to address and fully account for cumulative impacts.**

Produced by: Kathie Fletcher, Geoff Penton, 11 July 2012
For further information, contact QMDC on (07) 4637 6200 or visit www.qmdc.org.au

While every care is taken to ensure the accuracy of this information, QMDC accepts no liability for any external decisions or actions taken on the basis of this document.



2.6 New development and perverse outcomes

QMDC is most concerned that by not enforcing a process based on the precautionary principle and the threshold limit approach and pursuing instead one that is determined by an administrative, mathematical approach will result in perverse outcomes, namely projects being scaled down to avoid EIS process and then at a later date be extended.

QMDC asserts that the *Triggers guideline* do not provide enough safeguards against this possibility. To do so would likely mean that each proponent would need to disclose that no future projected activities are being contemplated or planned for the lease under application and any other neighbouring and associated leases, that the total coal or CSG resource estimated within their leases is correct and that they will not apply for an authority to mine it if it turns out greater than originally estimated, that their predictions on market opportunities and demand are correct etc.

2.6.1 Recommendations:

1. **That these issues be considered and addressed accordingly.**
2. **That all future expansion and development of lease under application and all other neighbouring or associated leases be considered.**
3. **That reliance on the size of a development and its waste product not be the determinant of whether an EIS is produced but instead that the determinant should be in accordance with a region's nature assets and their threshold and threshold limits.**