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24<sup>th</sup> February 2017

Protected Area Strategy  
Department of Environment and Heritage Protection  
GPO Box 2454  
Brisbane QLD 4001

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Dear sir/madam,

### **Draft Protected Area Strategy**

QORF (the Queensland Outdoor Recreation Federation) is pleased to provide input on the draft Protected Area Strategy.

QORF is the peak body representing the interests of the outdoor community in Queensland. QORF has over 190 members, consisting of a range of outdoor industry stakeholders, including local governments, schools with an outdoor education focus, commercial operators and community organisations.

QORF's mission is to raise the profile, develop the capacity, and increase opportunities for outdoor recreation in Queensland.

Queensland's Protected Area Estate plays a crucial role in the provision of space that is used for outdoor activities.

While QORF supports the development of a Protected Area Strategy, we have significant concerns about the content of the draft, as provided. QORF's concerns are identified in the attached submission on the draft Protected Area Strategy, which has been prepared by Geoff Edwards, Policy Locums, on behalf of QORF.

We would be pleased to provide further detail on any aspects of this submission. QORF understands that this submission may be published as part of the community consultation process.

If further information is required, please contact us on 07 3369 9455 or [eo@qorf.org.au](mailto:eo@qorf.org.au).

Regards,

A handwritten signature in blue ink, appearing to read 'Dom Courtney', is written over a faint, larger version of the same signature.

Dom Courtney  
QORF Executive Officer



# Protecting Public Access to the Protected Area Estate



A submission on the draft  
*Queensland Protected Area Strategy*

By

**Geoff Edwards<sup>i</sup>**

on behalf of

**Queensland Outdoor Recreation Federation**

24 February 2017



# Protecting Public Access to the Protected Area Estate

## **Purpose and status of this paper**

This paper is a submission by QORF (Queensland Outdoor Recreation Federation Inc.) on the draft *Queensland Protected Area Strategy*.

QORF is the peak body representing the interests of the outdoor community in Queensland, including all those who participate in or conduct outdoor activities for recreational or educational purposes. QORF's membership consists of a range of outdoor industry stakeholders, including local governments, schools with an outdoor education focus, commercial operators and community organisations.

The author is an independent consultant with no pecuniary, family or legal interest in the subject matter of the submission.

## **Overview**

QORF submits that the draft Strategy is an inadequate basis on which to build a "diverse and effective protected area system".

The paper has a good deal of self-congratulatory wordage about the Government's current actions, conveys no narrative of the needs of the system or the pressures that the staff are facing, does not identify or resolve emerging challenges to the system, has a number of inadequately explained proposals such as for "Special Wildlife Reserves", and refers to greater private sector involvement in opaque terms that raise more questions than they answer. QORF would support new tenure arrangements that allow better coordination between public-good stakeholders, but not if they allow commercial corporations to gain legal interest in these special public lands.

The paper is replete with low level actions such as "Consider alternative and innovative ways..." and "Investigate options..." that ought to take place in the course of routine business without requiring a mandate by virtue of this Strategy.

The inclusion of a number of "Actions underway" is unusual in a paper purporting to be a strategic framework for the future.

Perhaps the most glaring omission is a thoughtful analysis of the budgetary situation. Many of the measures proposed would seem to be reactions to systemic underfunding over many years. This will not be remedied by editing the Strategy, only by vigorous advocacy for outdoor recreation and nature conservation within the State's budget context. The foreshadowed expansion of the estate will *necessarily* require expanded budgetary provision. This point should be made robustly with comprehensive supporting evidence.

Evidence to support adequate budget provision could include a tabulation of the trends in budget funding superimposed upon CPI and trends in expansion of the estate. There should be a benefit cost analysis of outdoor recreation and conservation in terms of a range of anthropocentric and ecosystem services, including human health, catchment value, tourism and fisheries. The cost of under-funding control of pest plants and animals should be highlighted.

Public good responsibilities require public funding. There is no shortcut and any attempt to secure the services free of charge by gifting property rights to a commercial investor or dragooning volunteers are invitations to heavy administrative overheads, inefficiency and scandal.

QORF submits that the paper should be comprehensively revised.

### **A notional model**

The Strategy is notable for what is missing rather than for anything particularly objectionable in the text. A worthwhile strategy should have the following elements:

#### *Context*

- a *policy context*, including reference to the *Queensland Plan*, the cardinal principle and other policies and statutes (including international, national and interstate policy settings) that frame the development of strategy in this sector;
- a *situation report*, describing the current condition of the estate, and itemising the positive indicators and shortcomings;
- an *institutional context*, identifying the private and public sector entities responsible for securing, augmenting and managing the estate and the extent to which they will be bound by the strategy;
- *linkage* to previous strategies and management plans and pedigree;

#### *Horizons*

- *emerging challenges*, including climate change, plant and animal incursions, visitor pressures, condition of parks infrastructure; skills development of personnel;
- *feedback*, including public sentiment, feedback from stakeholders and considerations that other parties would want included in the strategy;
- *unresolved issues*, such as horse riding which remain contentious among users;

#### *Evidence*

- *justification* for a robust and adequately resourced protected area estate, including economic and health benefits;
- *case examples* where the current arrangements are inadequate and further instruments are required;
- *targets*, such as biodiversity or geographic or recreation criteria that need to be met;
- *projections* such as visitor numbers, need for visitor infrastructure, trends in recreation preferences;

#### *Strategy*

- *principles*;
- *proposals and their implications*;
- *feasible paths for implementing the proposals*;
- *action statements*.

Of these elements, only some elements of the Strategy have been presented: the rationale for them is missing. Without a rationale, the recommendations lose strength and focus.

### **Main points**

#### ***Current policies could be liberalised to avoid need for new instruments***

The need for new forms of tenure might be ameliorated if the current regulatory framework and departmental policies were less restrictive. The example of horse riding is illustrative. Queensland has a more restrictive policy against horse riding in national parks than the other states. The bio conservation foundation for this policy is flimsy and the closure of the former State forests in South East Queensland against horse riding generated widespread hostility among the recreation fraternity against the very concept of national parks.

Proposals to moderate this policy have been with the Government for more than two years. Correspondence from the Department dated 24 April 2014 (CTS 08037/14) indicated that following amendment to the relevant regulation, horse riding could be permitted within prescribed areas of national parks. A horse riding policy framework to guide proclamation



of such areas is awaited. The recreation fraternity can reasonably expect the issue to be dealt with in a strategy purporting to shape the protected area estate for a number of years.

At present, the most extensive damage to the protected area estate is being inflicted not by low intensity recreational uses such as horse riding and mountain bike riding but by invasions of weeds such as buffel grass and pest animals such as pigs and feral cats. QORF submits that policy could be liberalised without compromising the cardinal principle.

#### ***Need for a new form of 'tenure'***

The justification for new legislative mechanisms to authorise management by third parties ("Special Wildlife Reserves" Page 10; and Third-Party Management Arrangements Action 17) is not clear. There is no explanation of why any private sector parties would need more secure tenure than current contract law allows. Necessarily, any form of tenure or management arrangement that grants rights to a third party thereby reduces the level of access enjoyed by the general public. The more secure the third party rights, the more likely that the public's access will be restricted or tolled.

The provisions itemised would seem to envisage granting tenure over a public park to a services corporation. To enter into such arrangements would be to succumb to a siren song. While this might not be the intention of the current Government, to establish a head of power for commercial corporations to manage the parks would be removing one of the safety nets that currently protects the public interest in the parks; and would be directly contradictory to the first Principle on page 5.

The text under "Proposal" on page 2 of the A17 appendix is self-contradictory. A tool to "harness external expertise and resources" is indistinguishable from "outsourcing current park management". Third-party management of remote areas can be facilitated by employing rangers or local station personnel as employees or contractors. QORF fully supports cooperative management arrangements, but not where the commercial purpose steers or compromises the public purpose.

The final complete paragraph on that page raises the prospect that the initiative is for the "construction, maintenance and operation of visitor facilities and other infrastructure." This is ominous. QORF supports the provision of visitor facilities within public parks, but if an activity requires a form of tenure other than a contract or licence, then *prima facie* it would be better located outside the park.

QORF recommends that the text be amended to preclude the government from outsourcing its management responsibilities to commercial corporations.

It is also recommended that text be inserted to insist that any constructed facilities be consistent with a management plan, prepared consultatively with stakeholders on the basis of comprehensive landscape and site assessment. In short, appropriate facilities in appropriate places.

The public tends to be unaware of the differences between national parks, conservation parks and land held for open space purposes by other entities such as local government. Given that the activities prohibited on these reserves (clearing, shooting, access for dogs for example) tend to be similar, the badging carries little weight in the public mind and the relative benefit in erecting a new category of reserve needs to be carefully balanced against the added complexity of the regime.

The Strategy should assess whether the "coordinated conservation area" provisions of the *Nature Conservation Act 1962* might be invoked to coordinate management across tenures, or liberalised to embrace recreational as well as conservation activities.

#### ***Volunteers are no substitute for budget funding***

The activities that might be conducted on protected areas fall into two broad categories:



- public good activities, which have no commercial return and require funding from a public budget or private volunteers or philanthropists;
- private good activities, for which a commercial return can be expected.

In various places in the text, the examples of partners mentioned – conservation groups, Indigenous groups, local government – are solely or mainly public good organisations. In other places, oblique reference is made to incorporated bodies, which could include Australian or multinational corporations. Commercial corporations cannot do public good activities as well as QPWS, and volunteers come at a cost.

Volunteers require supervision if their activities are to conform to the management plan. For workplace health and safety reasons, some activities cannot be performed by volunteers or require additional training and outfitting. Volunteers rapidly become disillusioned if they are expected to do work that they consider to be core business of the agency, if they don't have regular harmonious contact with the agency, if basic funds to support their activities dry up or if coordination falters. Volunteers come at a cost. Volunteers should not be regarded as cheap labour, but rather as partners in and objects of the educational outreach of the agency. This will always require resourcing.

#### ***Need for coordination: e.g. Bicentennial National Trail***

QORF supports creation of effective instruments to coordinate management actions between the owners and managers of land of different tenures within one linked locality. The Bicentennial National Trail is an example of a recreational facility that has never achieved its potential because it has lacked an institutional champion with the authority to coordinate between the different landholders over its length – and a budget to support volunteers' efforts.

Another example of a promising initiative that failed is the Boonah-Ipswich Recreational Trail in which a number of local governments, public authorities and other entities including QORF were collaborating in an exciting project that was collateral damage when the Regional Landscape and Open Space program (of the Department of Local Government and Planning) was abolished by the previous government. Had the initiative been subject to a statutory or even a formal contractual agreement, it may not have been so easily dismantled.

The loss of trust, momentum and economic potential with stop-start policy decisions of this kind is immense. QORF would welcome a new instrument, if this is necessary to allow Queensland Parks and Wildlife Service to take up coordination of this and other recreational facilities and give them sufficient administrative status to withstand stop-start policy decisions. However, it may not be necessary, as intimated in the next section.

QORF would also support a new instrument if it became a tool to leverage longer term funding for park management activities. The start-up and close down overheads of grant funds carry heavy administrative costs. An agreement of a statutory or contractual nature structured to support long-term project grants could be attractive.

#### ***Review of the Recreation Areas Management Act 2006***

The *Recreation Areas Management Act (RAM) 1988* was established to coordinate the management of recreation on land held by multiple owners and managers. It covered public land and potentially also private land by application of a form of voluntary statutory covenant. The Act was revised in 2006 but remains overly bureaucratic and legalistic, with rather daunting procedures for bringing private land into its coverage.

To take one example, the fear of litigation continues to restrict public access to land for recreation and was not assuaged by the 2006 revision. Assumption of liability by the State in Recreation Areas established under this Act could give a major fillip to outdoor recreation.



QORF does intend to provide a detailed submission on the shortcomings of the 2006 RAM Act in this submission, but promulgation of the Protected Area Strategy does allow an opportunity to revamp this legislation. As a first step, the features of the RAM Act that remain impediments to achievement of the purposes sought by Action 17 should be tabulated, then evaluated as to whether these impediments can be removed by amendment to the RAM legislation without requiring a new tenure.

### **Sentence by sentence critique**

Page 5, item 3: biodiversity conservation is only one of the objectives of the system or of the principle of establishing a mosaic of types. In any case, the sentence is grammatically opaque. A mosaic of types is likely to maximise public and private participation, but the principle of biodiversity conservation is independent of that.

Page 5, item 6: the point is opaque. This would seem to be dismissive of the question of ownership, and so contradicting item 1. In any case, in principle, ownership does matter: the state can apply a higher level of protection over land for which private property rights have been extinguished.

Page 5, item 8: the investment to be encouraged should be for remediation, regeneration, protection of natural attributes and low-intensity visitor facilities. The clause should not be used to justify capital-intensive tourist facilities.

Page 5, item 9: the clause could be used to justify capital-intensive tourist developments and should be amended to preclude that interpretation.

Page 5, item 11: the clause should be augmented by encouraging local governments to secure significant conservation reserves out of freehold land as a condition of development approval. The Strategy could even include some criteria or a formula as an aid to local government when taking parkland contributions.

Page 7, column 1 para 2: QORF endorses the principle of collaboration across sectors and would welcome an invitation to join a "Protected area coordination group". However, the inclusion of "investors" in the list of potential members is ominous. This provision could be misused to allow the property development industry into the forums of central policy. Also, the prospect of including representatives of the Land for Wildlife network should be added.

Page 7, Action A2: the clause is syrupy waffle.

Page 7, column 2: the text reports what is currently happening, rather than being a statement of what ought to happen and the justification for it. Action A3 in particular lacks crispness. Criteria or principles or targets should be specified. Under-resourced or unmet challenges should be identified.

Page 10, para 2: the first sentence may be technically correct but overlooks the availability of statutory covenants as an instrument for conservation. The paper does not explain why the existing mechanisms under the *Land Title Act 1994* or the *Nature Conservation Act 1962* are not adequate for achieving what would be the objectives of "Special Wildlife Reserve". In any case, the use of the term "Reserve" should be restricted to land in public ownership. In short, the case has not been made for the need for a new form of tenure.

Page 10, Action A7: the action is supported, but it should be presented as a proposed amendment to the *Land Act 1994*, to deem that conservation and low-intensity (non-capital intensive) outdoor recreation or tourism are acceptable purposes on all leases for grazing, agriculture or pastoral purposes. It should not be necessary to declare a protected area first.

Page 10, Action A8: the clause is opaque and the nature of the proposed new tools have not been explained. Some form of intermediation by the courts will always be necessary if the

state is to enter private land to enforce a regulation or alter property rights or conduct remediation.

Page 13, column 1: the column is opaque. Perhaps it is intended simply to provide a head of power upon which to approach Treasury for additional funds, in which case it is innocuous; but otherwise it's unclear what purpose it serves.

Page 13, column 2 para 2: is not clear why statutory covenants are expensive or ineffective. The case has not been made for any instruments beyond supplying adequate funding. The risk of weakening the integrity of the protected area system and its privileged place at the head of the hierarchy of reserve areas is not highlighted.

Page 14, para 1: it is widely recognised in the outdoor recreation and conservation movements that protected areas have intrinsic value beyond the utilitarian one of enhancing well-being and prosperity. In any case, use of the adjective "Queenslanders" precludes interstate and international visitors.

Page 14, column 2 dot point 1: the clause is opaque.

Page 14, column 2: optimism that camping and entry fees can fund park management is a perennial hope within the parks profession but for natural and wilderness areas, never achieves its potential. First, the law of diminishing returns operates; second, the measure discourages people from using parks whereas the public interest is best served by maximising usage and attendance. Third, it burdens the ranger force with serving as revenue collectors and bookkeepers rather than estate managers. The administrative overheads of accounting and regular banking are heavy and un-conducive to good public relations.

In any case, if revenue becomes substantial, it is quite vulnerable to being annexed by Treasury with a consequent reduction in the core budget anyway.

Page 14, column 2 final para: the term "investment" has ominous overtones. Replace with "budget".

Page 16, Action A17 and preamble: see detailed critique.

Page 17, questions 14-18: these questions are unanswerable. QORF naturally supports policies and mechanisms that smooth the way for public-good organisations to participate in the management of parks, but not necessarily policies that secure a commercial stake that compromises the public interest. The Strategy should be able to articulate some criteria that filter inappropriate from appropriate levels of development. In any case the appropriate intensity of any tourist or recreation development is locality- and site-specific and the need for thoughtful management planning should be identified here.

Page 18, Action A19 and question Q19: the question is unanswerable. Selection of areas for inclusion in the protected area estate should be selected on inherent conservation or recreation attributes, or on opportunity presented by willing landholders and other partners.

#### **Sentence by sentence critique – Proposed Action 17 (discussion paper provided by EHP/DNPSR)**

Page 1, para 4: the "increasing" trend towards collaboration with third parties is not quantified or justified.

The proposition that non-government organisations can access funds not available to the State Government should be deleted. If the reference is to grant funds available from other levels of government, then this is a clumsy and indirect method of funding core state responsibilities with heavy overheads and long delays. Not-for-profit organisations rarely



secure grant funds for ongoing recurrent operations, usually only for short-term projects. If the reference is to Commonwealth funds, it should be rejected as Commonwealth involvement in core state responsibilities is usually administratively inefficient and vulnerable when administrations change. If the reference is to volunteer activity, then it is improper for the state to rely upon volunteers to deliver its core operational recurrent activities. Public park management should be funded out of general taxation.

Page 1, final para: trustees don't exactly "disempower" the Chief Executive, or if they do, this can be changed by legislation or the instrument of appointment. Any of these parks or reserves can be rendered subject to a management plan specifying appropriate management prescriptions.

Trustees have a valuable role to play especially in remote settlements, but for the larger and more demanding parks, the text is supported: there is no substitute for the local government or the state.

If the activities required are of a public good nature such as land improvement, pest control or facilities maintenance, a source of public good expenditure will be required. Volunteer activity can supplement professional activity on a small scale especially in the suburbs, but beyond that, public funding will be required.

Page 2, para 4: it is not clear why common-law legal contracts are not deemed adequate or why they might be deemed not readily enforceable. Contracts are enforceable at civil law.

Page 3, para 3: the text is dismissive of the heavy overheads and unpredictability that not-for-profit bodies face when trying to raising funds from funders. If grant funding is available, it will be more easily administered by the state. Philanthropic investment should not be siphoned off for activities that are core state recurrent responsibilities.

The sixth paragraph on the page and the final para contain hypotheticals. The Department should be transparent and identify the properties where this is an issue and explain why the state is unable to remediate the remnants of prior uses.

Page 3, penultimate para: if QPWS has resources, particularly real property such as ranger houses, then they ought to be applied directly to the state's responsibilities and not rented or gifted to third parties as intermediaries.

ends

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