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4th November 2011.

The Research Director
Environment, Agriculture, Resources and Energy Committee
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Property Rights Australia (PRA) is a not for profit organisation with members in all states but mostly in Queensland. It was formed to protect a range of property rights including, importantly, rural property rights.
PRA believes that too little time was allowed to respond to the Strategic Cropping Land Bill 2011, particularly with the Qantas grounding causing disruption to many people including the preparer of this document.
It was also not ideal that the Mitigation Arrangements were not added to the discussion paper for SCL SPP until days before submissions were due. Many small to medium voluntary community groups would have already have had their submission in the final stages.
Owing to the short time frame PRA will concentrate on Mitigation Arrangements and this submission should be read in conjunction with our previous submission (attached) for our views in other areas.
A spokesperson will be available for committee hearings.

14 When development has a *permanent impact* or *temporary impact*

(1) Carrying out development on SCL or potential SCL has a ***permanent impact*** on the land if—
(a) the carrying out impedes the land from being cropped for at least 50 years; or
Example—
drilling or wells under a resource Act carried out on the land at a level or density which, or the cumulative effects of which, impede it from being cropped for at least 50 years
(b) because of the carrying out, the land can not be restored to its pre-development condition; or
(c) the activity is or involves—
(i) open-cut mining; or
(ii) storing hazardous mine wastes, including, for example, tailings dams, overburden or waste rock dumps.
(2) For subsection (1)(a), it does not matter whether the impediment is legal or physical.
Example of a legal impediment—
a restrictive covenant impeding cropping
(3) A regulation may prescribe—
(a) for subsection (1)(a)—
(i) development that, if carried out on SCL or

potential SCL, is taken to impede, or not impede, the land from being cropped for at least 50 years;
or
(ii) a level or density for a temporary activity which, if carried out at a higher level or density, is taken to impede, or not impede, the land from being cropped for at least 50 years; or
(b) for subsection (1)(b)—development the carrying out of which is taken to cause, or not cause, the land to be unable to be restored to its pre-development condition.
(4) Carrying out development on SCL or potential SCL has a ***temporary impact*** on the land if—
(a) the carrying out does not have a permanent impact on the land under subsections (1) to (3); or
(b) it is development of a type prescribed under a regulation.

We agree that the legislation should define what is a permanent impact or temporary impact and the inclusion of cumulative impacts.
We also agree that the impediment can be physical or legal.
PRA would like to see an additional subsection suggested
1.(c) (iii)dewatering or contaminating the underlying aquifer or other water supply to such an extent that the ability to crop is impaired.

135 What are the *mitigation criteria*

(1) The ***mitigation criteria*** are that mitigation measures (under a mitigation deed or under a payment from the mitigation fund) must—
(a) aim to increase the productivity of cropping in the State; and
(b) provide a public, rather than a private, benefit; and
(c) aim to provide an enduring effect; and
(d) be quantifiable and able to be independently valued; and
(e) benefit the largest possible number of cropping agribusinesses; and
(f) if a cropping activity or cropping system existed for identified permanently impacted land to which the measures relate—provide a benefit to that type of activity or system in the relevant local area.

This Section fails to recognise the unique situation of dual occupancy and dual businesses operating on a single piece of land most likely involving the resources sector.
If the permanent impact takes place on privately owned or leased cropping land subsections (1) (b) and (1)(e) should not apply and provision should be made for the mitigation payment to be made to the owner of the cropping right where the permanent impact is made by an individual or company who is not the owner of the land.

If the permanent impact is on land where cropping rights are owned or leased by an individual or company involved in a genuine cropping business it should be possible to have the mitigation payment made to that individual or company.

PRA would like to see another subsection
135. (2)(a)
The above clauses (1)(b) and (1)(e) do not apply if the viability or productivity of a privately run cropping business which is not the cause of the permanent impact is affected and the mitigation may be paid to that individual or business for example
(i)drilling or wells under a resource Act carried out on the land at a level or density which, or the cumulative effects of which, impede it from being cropped for at least 50 years
(ii)works including but not limited to road works on the land at a level or density which, or the cumulative effects of which, impede it from being cropped for at least 50 years
(iii)storing hazardous mine wastes, including, for example, tailings dams, overburden or waste rock dumps
(iv)overflow from mining and gas wastes including but not limited to tailings dams, salt storages, heavy metals, chemicals
(v)other developments which may permanently impact cropping

These subsections would be a recognition that the profitability or even viability of individually owned or operated businesses on a given piece of land for cropping can be affected by permanent impacts as detailed in Section 14.

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Protecting Queensland's Strategic Cropping Land-Draft State Planning Policy
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Submission on Strategic Cropping Land State Planning Policy

Property Rights Australia (PRA) is a not for profit organisation with members in all states but mostly in Queensland. It was formed to protect a range of property rights including, importantly, rural property rights.

Our organisation is concerned that this SCL SPP will be unduly restrictive of farm diversity, farm value-adding and a range of common farming practices such as erosion control, flood mitigation, water conservation and soil levelling activities. It is a fruitless exercise to place costs and impediments to business flexibility on agriculture to protect it from itself. When industry supported SCL legislation, the major problem that it wished to alleviate was threats to farming from mining and the coal seam gas industries and other large scale external developments.
This planning instrument punishes the very people it should be protecting.

Considering that this planning instrument does not include the resources industries such as mining and coal seam gas extraction[1] and no draft legislation as it relates to those industries and no definite time frame is available, our organisation proposes that this SPP be delayed until it is possible to make a comparison of how the legislation affects mining and CSG extraction and exploration and ensure that these companies are responsible for policy outcomes on SCL.

It is our understanding that changes to the Mining Act and Petroleum and Gas Acts are proposed for later in the year to take into consideration required outcomes on Strategic Cropping Land.

We note the very generous transitional arrangements which will apply to the mining and CSG extraction industries and would like to make the point that considerable harm of the types outlined in the SCL SPP can occur in that time.

It could be many years before all or most resource projects are covered by this legislation but its constraining effects will be felt by the agricultural community immediately it commences. No clear indication that necessary amendments to the Mining Act and Petroleum and Gas Acts will be made concurrently with the introduction of this SPP under the Sustainable Planning Act has been given.

[1] Draft State Planning Policy: Protection of Queensland's strategic cropping land beginning pages
http://www.derm.qld.gov.au/land/planning/pdf/strategic-cropping/scl-draft-spp.pdf
Strategic cropping land: Draft State Planning Policy overview
http://www.derm.qld.gov.au/land/planning/pdf/strategic-cropping/spp-policy-overview.pdf

Without any draft legislation as it relates to the resources industries, it is impossible to determine if it will mirror the draft SPP, be more restrictive or less restrictive or entirely different.

Key terms such as "mitigate" have not been defined and will be defined in the legislation. For all of these reasons we cannot support this SPP and SCL at this time.

> *"Why **are transitional arrangements required?***
>
> *Resource development projects can take many years to complete all relevant assessment requirements and receive all final approvals, and this process involves significant investment.*
>
> *Since the release of Protecting Queensland's strategic cropping land: A policy framework (SCL framework) in August 2010, feedback from stakeholders has indicated that transitional arrangements for some undecided resource projects are necessary to provide business certainty and confidence. In this document, 'undecided' means projects which have not yet reached the stage of a decision being made for final approval or refusal under the relevant legislation."* [2]

We note government's concern about the "significant Investment" and "business certainty and confidence" for resource companies.

We also note the lack of concern for the significant investment of life savings over generations, stewardship over decades and business certainty and confidence for businesses in agriculture.

DERM's "Greentape Reduction Project" has as one of its aims a licensing model that is proportionate to the risk of the activity with low risk activity to have a simplified licensing process.[3]
This SCL SPP is an example of over regulation of low risk activity, namely agriculture which is the designated use of SCL while EIS's of mining and CSG companies, which are high impact, high risk activities are largely self-regulatory.

Application of the SPP.
Development to which the SPP applies
2.11. (i*) material change of use under the SPA is often necessary to diversify and protect sustainability of farm business, is common practice, good business practice and should not have further regulatory provisions considered by the planning instrument or by legislation. Value–adding activities such as cheese making, pasta making and a range of other activities common to rural businesses may not be permitted by this section.*

2.11. (ii) reconfiguring of a lot.
Except in the circumstance of sub division into small residential allotments, where permanent alienation of strategic cropping land would occur, PRA does not believe that the SPP should be applied to the amalgamation or subdivision of a lot. SPP 1/92 encourages amalgamation of lots to achieve a more economic area. Some elements of this SPP will discourage this.
In some instances sale to a mining or CSG company of a portion of a lot may be necessary or intergenerational transfer and succession planning may benefit from this.

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[2] Strategic Cropping Land-Transitional Arrangements /DERM
http://www.derm.qld.gov.au/factsheets/pdf/land/l275.pdf

[3] Reducing Green Tape for Business
http://www.derm.qld.gov.au/link/2011issue06/green_tape_reduction.html
Greentape Reduction Discussion Paper and Regulatory Assessment Statement
http://www.derm.qld.gov.au/environmental_management/pdf/greentape-reduction-discussion-paper.pdf

2.11.(iii) operational work that is excavating or filling an area of 150m2 or greater.
This area is unduly restrictive and needs to be increased substantially and able to be modified.
If it is intended to apply to water conservation works, levelling or erosion control it needs to be removed totally.

Development to which the SPP does not apply
2.12.1 We appreciate the exclusions under Annex 1 but believe the list is too constraining. eg. (v) development that is for a single dwelling on a lot that does not contain an existing dwelling where no new lot has been created.
It is common practice for more than one generation to live on a lot and require another dwelling. This common practice should not have further regulatory provisions considered by the planning instrument or by legislation.
It is common practice, necessary and accounted for in rural wage awards, to provide employee accommodation. This common practice should not have further regulatory provisions considered by the planning instrument or by legislation.
It is common practice to supplement rural income with a working farm home-stay. This common practice should not have further regulatory provisions considered by the planning instrument or by legislation.
Sometimes a new dwelling is required. This legislation neither allows the construction of a new dwelling nor demolition of an old one under the definitions in the Sustainable Planning Act.

(xiii) rural industry for the purposes of supporting agricultural practice undertaken ***on the subject lot*** *with a maximum ground floor area of 750m2.*
Individual, community or co-operative sorting and packing sheds in excess of 750m2 are common practice. This common practice should not have further regulatory provisions considered by the planning instrument or by legislation.
Other rural businesses and integrated value adding to farm produce are common. This practice should not have further regulatory provisions considered by the planning instrument or by legislation and designation of shed size is unduly restrictive.
The ownership of integrated farming businesses often extends over more than one lot with all support work done on one lot. This common occurrence should not have further regulatory provisions considered by the planning instrument or by legislation.

(xv) winery
It is common practice for a winery to have not only a wine tasting and sales area but a restaurant This common practice should not have further regulatory provisions considered by the planning instrument or by legislation.

This list is not exhaustive of common agricultural and rural practices and farm-based businesses and provision should be made for such things as farm-based restaurants, craft shops, tea houses, cheese making, dairying and any other farm-based value-adding activities and farm-based co-operative activities which are brought to the attention of the Minister.

Development of a diversified on farm enterprise as outlined in the recent Federal Senate Inquiry into the management of the Murray Darling Basin (coal seam gas) would be difficult under the arrangements in the SPP.

Ms Tydd: Predominately we produce durum wheat, dryland cotton, chickpeas and beef. In addition, we have a value added business, Bellata Gold, that operates a durum mill and pasta-making facility, whereby we turn the durum wheat grown on our farms into an award-winning pasta that is sold domestically and exported around the world. Together we employ 29 people with an additional 20 casual staff.[4]

Achieving the SPP outcomes through development assessment in Strategic Cropping Protection Areas.

4.5 The list of activities listed in Annex 2 is overly restrictive with swimming pools, golf courses and tennis courts not dealt as temporary use, is overly harsh and should not be automatically excluded.

On-farm home-stay is a common commercial operation on working farms and could benefit from any or all of these activities to add to the amenity of their operation.

It is difficult to see that these activities are less temporary or more damaging in nature than coal seam gas extraction and associated infrastructure which is not addressed in this instrument.

This section gives considerable discretion to the Minister.

Achieving the SPP outcomes through development assessment in the Strategic Cropping Management Area

4.14 Section 4.14 to 4.22 applies only to land identified as SCL in the Strategic Cropping Management Area and where there is demonstrated cropping history.

4.15Development in Section 2.11(i) and (iii) achieves the policy outcomes in section 1 if:
(i) it is not located on land identified as SCL and does not contribute to the permanent alienation of land identified as SCL on the subject site.

All sections 4.14 to 4.22 refer to land " identified as SCL in the Management Area."

The Management Area covers a huge area from the NSW border to Mossman in the North and extending West of Emerald, Roma and St. George. Many or all applications in this area will require validation of SCL status and cropping history.

Significant costs attach to such applications and are unacceptable where they relate to farming and grazing operations.

1. The proposed application fee for validation of SCL is $3998.
2. The proposed application fee for demonstrating history of cropping in the Strategic Cropping Management Area is $1951.
3. The proposed application fee for assessment of a development proposal on SCL is $27,254.
4. The proposed application fee for assessment of a development proposal that may qualify as an "exceptional circumstance" in Strategic Cropping Protection Areas is $46,253.

Code A: Protection and management of SCL code (development that is proposed on a lot containing SCL) Applies to a Strategic Cropping Protection Area and land

Rural Affairs and Transport References Committee

[4] http://www.aph.gov.au/hansard/senate/commttee/s193.pdf

identified as SCL in the Strategic Cropping Management Area where there is a demonstrated cropping history.
Section 2.11. (i) refers to material change of use and applies to increasing intensity of use and all value-adding operations.
and (iii) applies to operational work that is excavating or filling an area of 150m2 or greater of land identified as SCL on a lot that is 5ha or greater in size.
4.3 (i) Development identified in Section 2.11 (i) and (iii) achieves the Policy Outcomes on Section 1 if:
(i) it is not located on land identified as SCL and the development does not contribute to the permanent alienation of land identified as SCL.
4.4 refers to sensitive land use and the need for buffers and with the possible exception of accommodation is more in the realms of local government.
4.15(i) and 4.16 are similar to4.3(i) and 4.4 but on land identified as SCL in a Management Area.
Performance Outcomes
PO1: Development (as defined in the Sustainable Planning Act) is not located on that part of a site containing land identified as SCL.
PO2 Development for sensitive land use should have buffers.
P03: Development does not result in contamination of the land identified as SCL on the site that:

a. adversely affects the physical and chemical properties of the soil(e.g. through the introduction and mobilisation of salinity)
b. contaminates the soil in a manner that would restrict cropping options by inhibiting crop emergence and/or growth
c. results in heavy metal contamination of the soil.

This condition sounds like a fair and reasonable condition to put on mining and coal seam gas extraction except that this planning instrument does not apply to those industries.
PO4: Development minimises the impact of any associated erosion, run-off and sediment onto land identified as SCL on the site and ensures that any impacts are temporary in nature.
PO5: Built structures or earthworks associated with the development do not directly, indirectly or cumulatively, cause any increase in flooding on land identified as SCL on the site.
PO6: Development does not result in adverse changes to soil hydrology by changing the landscape topography resulting in:

a. altered directional flow of surface water

or

b. inundation of SCL (surface water pooling, water logging).

It is our view that necessary and common practices to assist water conservation and erosion control could be forbidden. Common farming practice should not have further regulatory provisions considered by the planning instrument or by legislation.
These performance outcomes sound like a fair and reasonable conditions to put on mining and coal seam gas extraction except that this planning instrument does not apply to those industries and it is impossible to support this planning instrument and legislation without a comparative daft of similar regulations as they apply to mining and CSG companies..

Code B: Protection and management of SCL code (temporary development)
This code applies to development in section 2.11 (i) (material change of use) and (iii) (excavation of more than 150m2) of the SPP that is undertaken on land identified as SCL

that is in the Strategic Cropping Area where the development is also identified as temporary development in Annex 2 of the SPP. This code identifies how Section 4.3. (ii) {it cannot avoid being located on land identified as SCL and the development and the development and its impacts on the land identified as SCL are temporary and the soil is restored [to be defined in SCL legislation]back to SCL or b. when the use stops The development and any use resulting from it must have ceased, and restoration of the impact on the land identified as SCL must be completed within 50 years from the date of the approval of the development) condition can be met.}
The purpose of this code is to ensure that any temporary development on a site identified as containing land identified as SCL does not permanently alienate the land identified as SCL on the site.

We appreciate the list of temporary developments as outlined in Annex 2 and note that swimming pools, golf courses and tennis courts are not considered temporary development. We do not see that these developments are any less able to be restored than the site of CSG extraction and would be concerned if CSG extraction were regarded as a temporary use.

Performance Outcomes
PO1: Temporary development does not occur on that part of the site confirmed as land identified as SCL for more than 50 years from the date of development takes effect.
PO2:The land identified as SCL on the site is rehabilitated to its previous condition or a condition consistent with surrounding SCL within the 50-year timeframe permitted for the temporary development.
PO3: Temporary development is located and designed so as to minimise its encroachment onto land identified as SCL on the site.
PO4: Any earthworks undertaken on land identified as SCL on the site minimise disruption to and impacts on land identified as SCL, having regard to, but not limited to, the following outcomes:

a. The soil profile is not mixed when it is excavated.
b. Where excavated soil is placed backing an excavated site, the soil layers are replaced in the same layer ordering as they were excavated.
c. Soil is not compacted by development undertaken on the site.
d. Soil hydrology of the site is not adversely affected by changing the landscape topography resulting in:

(i)altered directional flow of surface water
or
(ii) inundation of land identified as SCL (surface water pooling, water logging).

PO5: Temporary development does not result in contamination of the land identified as SCL that

a. adversely affects the physical and chemical properties of the soil (e.g. through the introduction or mobilisation of salinity)
b. contaminates the soil in a manner that would restrict cropping options by inhibiting crop emergence and/or growth.
c. Results in heavy metal contamination of the soil.

PO6: temporary development minimises the impact of erosion, run-off and sediment on the land identified as SCL on the site and ensures that any impacts are of a temporary nature.
PO7: Temporary development otherwise minimises disruption to, and impacts on, land identified as SCL on the site.

These performance outcomes sound like a fair and reasonable conditions to put on mining and coal seam gas extraction except that this planning instrument does not apply to those industries and it is impossible to support this planning instrument and legislation without a comparative daft of similar regulations as they apply to mining and CSG companies..
It may however unduly restrict on farm water conservation and erosion control practices. There should be flexibility in the instrument to accommodate these practices.

Code C: Protection of SCL code (development designated as an exceptional circumstance)
The purpose of this code is to ensure that development that has been designated as an exceptional circumstance minimises and mitigates its impacts on land identified as SCL on the site to the greatest extent possible where development is within a Strategic Cropping Protection Area. This code identifies how Section 4.11
The purpose of this code will be achieved when development designated as an exceptional circumstance minimises and mitigates its impacts on the remaining land identified as SCL on the site.

Performance Outcomes
As" exceptional circumstance" falls outside the permissible developments in a SCL our organisation is concerned with the change of language from "avoids" to "minimises " and "mitigates".
"Minimises" in PO2, PO3 and PO4 under Code C is not sufficient and should be changed to "avoids" or "does not result in" to be consistent with policy outcomes under codes A and B. Soil contaminants, salinity mobilisation, soil contamination which restricts cropping options, heavy metal contamination, erosion, run-off, sedimentation, flooding and changes to soil hydrology are not acceptable under this section and should be couched in similar language to similar policy outcomes under Code A and Code B.
"Exceptional circumstance" is allowed outside the terms which most businesses have to observe to achieve policy outcomes and regulation under the planning instrument or legislation should be stronger, not weaker.
We also have this opinion about similar sections which regulate "exceptional circumstance" developments under the Mining and Gas and Petroleum Acts as they relate to SCL.
"Mitigate" has not yet been defined and seems to be a very weak option and it is impossible to make an informed comment without definition.
PO7: Unavoidable permanent alienation of land identified as SCL resulting from the development designated as an exceptional circumstance is mitigated at the conclusion of the development.
If the development is ongoing over a period of years "mitigation" should be staged and should occur immediately each section is completed or abandoned Large areas of land laid to waste for years is not acceptable..

Code D: Management of SCL code (development minimises and mitigates impacts on land identified as SCL)
The purpose of this code is to ensure that development undertaken on land identified as SCL on the Strategic Cropping Management Area where there is a demonstrated cropping history, that is not a temporary development, where there is no alternative site and for which there is an overriding need for the development, undertakes appropriate mitigation measures where there are impacts on land identified as SCL. This code identifies how Section 4.15(iii) of the SPP can be met.
Performance Outcomes

PO4 to PO9:
As "overriding need" falls outside the permissible developments in a SCL our organisation is concerned with the change of language from "avoids" to "minimises " and "mitigates". "Minimises" and "mitigates" in policy outcomes PO4 to PO9 of code D is not sufficient and should be changed to "avoids" or "does not result in" to be consistent with policy outcomes under codes A and B.
Soil contaminants, salinity mobilisation, soil contamination which restricts cropping options, heavy metal contamination, erosion, run-off, sedimentation, flooding and changes to soil hydrology are not acceptable under this section and should be couched in similar language to similar policy outcomes under Code A and Code B.
"Overriding need" is allowed outside the terms which most businesses have to observe to achieve policy outcomes and regulation under the planning instrument or legislation should be stronger, not weaker.
We also have this opinion about similar sections which regulate "exceptional circumstance" developments under the Mining and Gas and Petroleum Acts as they relate to SCL.

With regard to Section 3 of the Draft State Planning, Property Rights Australia believes that we are not qualified to comment on this section as it relates to local government. However we do note that Local Government will experience restrictions to their current operations under the SPP with more regulatory power devolving to the state. We are not in favour of this and believe that more decisions should be made at the local level.

Conclusion

While placing significant restrictions and impositions on farmers operating a farm-based business in the Strategic Cropping Protection Areas and the Strategic Cropping Management Areas, mining or coal seam gas extraction are excluded from this planning instrument.[5]
Property Rights Australia is concerned about the future ability of food producers to meet the increasing demand of food in this world. Greatly hindering food producer's ability to meet this demand, is permanent harm to productive lands caused not only from advancing urbanisation and mining/ coal seam gas activity but the large amount of unnecessary and unscientifically based regulation imposed upon landowners. Much of it is increasingly preventing them from adopting new technologies which emerge as the result of research and productivity is declining.
This proposed SPP will greatly increase the regulatory requirement (red tape) and costs on farmers and thereby reduce their ability to diversify, introduce efficiencies and adapt to newer management systems.

[5] Strategic Cropping Land: Draft State Planning Policy Overview August 2011 under the heading Overview page iv
http://www.derm.qld.gov.au/land/planning/pdf/strategic-cropping/spp-policy-overview.pdf

It is in the public interest that prime cropping soils are retained for food production and that mining/coal seam gas activities do no permanent harm to all types of water supplies and to quality soils. In order that this public interest is met, some regulation is needed. PRA believes that this draft SPP fails to correctly target the policy outcomes and is therefore deeply flawed. To achieve the protection of strategic cropping lands as stated in Strategic cropping land: Draft State Planning Policy Overview, any new regulation or legislation should be aimed firstly at the Acts collectively known as the "resources legislation" with some incentives for local government to manage the negative effects of urban expansion onto strategic cropping land.

Considering the potential for permanent harm caused by both mining and coal seam gas industries to strategic cropping land and water resources used on strategic cropping land, this area needs addressing with less emphasis on self regulation for mining and gas companies and more regulation of impacts by DERM and other departmental offices.

In the past, DERM have found it all too easy to take a hard line with farmers and their perceived responsibilities. No such hard line has been observed with CSG companies.

The erosion of farming rights without just terms and the imposition of waves of regulation which are making farming untenable should be of concern to all levels of government who are concerned about the food task.