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Sent: Friday, 4 November 2011 3:14 PM

To: Environment, Agriculture, Resources and Energy Committee

Subject: Strategic Cropping Land Bill 2011

The following are comments provided at an officer level on the Strategic Cropping Land Bill.

(1) Section 10 describes "potential SCL" as "...land in an area shown on the trigger map as being potential SCL.". The current trigger maps available on DERM's website actually lists those areas as "area where strategic cropping land may exist".

(2) Section 12 describes "identified permanently impacted land" as "...land decided under section 98(1)(a)(ii) or the Planning Act as being land on which development will have a permanent impact on SCL or potential SCL.". SPA doesn't do that at this point in time. Are consequential amendments to SPA proposed or this a round about way of referring to the draft SPP?

(3) Section 13 has a definition for "development" which differs from that in SPA. Given the obvious interaction between the two pieces of legislation, this difference in meaning for a critical term could create unnecessary confusion.

(4) Section 14 draws a distinction between what is a "permanent impact" and what, by default, is merely temporary. The 50 year trigger is extraordinarily long for an impact to be considered temporary. The definition of "permanent impact" in section 14 also lists in the trigger criteria that development has a permanent impact if "...because of the carrying out, the land cannot be restored to its pre-development condition;". There should be a reference in this trigger criteria being "reasonably able to be restored" as restoration in this context will always be possible, at a price (can't rely on subsection (3)(b) to provide that clarity due to the use of the word "may" in the lead-in to subsection (3) and the potential for any clarifying Regulation to be "inclusive" rather than "exclusive" in its description). Yet another of the criteria in section 14 refers to storage of overburden or waste rock dumps. A threshold needs to be set for such activities in that trigger.

(5) The following words should be used as a lead-in to section 14 (4): "Notwithstanding subsection (1)," to remove the potential for conflicting provisions within that section.

(6) The definition of IDAS in section 16(2) refers to approval processes for "development". Since the term "development" has a different meaning in this Bill to that in SPA, which meaning to be used in this context is unclear.

(7) The map names used in sections 25, 26 and 28 do not match those on the maps currently available on DERM's website.

(8) The term "minor error" as used in regard to map amendments in section 32 needs to be defined.

(9) The following words should be used as a lead-in to section 32 (3): "Notwithstanding subsection (1)," to remove the potential for conflicting provisions within that section.

(10) Throughout the Bill, timing is expressed in "days" rather than "business days". Given the obvious interaction between the proposed Act and SPA, this difference in the way that time is expressed represents an unnessary potential for misinterpretation.

(11) The "required criteria" for "zonal amendments" used in section 37(2)(a) and (b) is expressed in terms of "...likely to be highly suitable for cropping...". These are "protection area" issues rather than "zone" issues and should be replaced with criteria statements to correspond to the lead-in.

(12) The word "boundaries" is used in a number of places within section 38. However, it is unclear as to precisely which boundaries are intended to be covered by those provisions. Clarification is required.

(13) The effect of section 39(5) is unclear, especially the phrase "...or no disallowance motion is passed.". Use of common english in this instance would be preferred.

(14) It is unclear why section 41(e) relates solely to a "management area" rather than both Management areas" and "protection areas".

(15) Section 42(f) requires that "...any other information prescribed under a Regulation..." be included in a "validation application". That required should be expressed as "...all other information prescribed under a Regulation which is relevant to the context.".

(16) It is unclear why sections 45 and 46 require validation applications for land within a "management area" to be over an entire property (lot or lots) if only part of it is shown as "potential SCL". If the size of the property is the issue, then a minimum area for validation should be stated instead (Section 42(d) implies that an application can be over part of a lot).

(17) The criteria for determining "required cropping history" under section 49(1) is expressed in terms of specified uses operating on any of the property. That criteria should be expressed in terms of the majority of the property so as to negate the effect of a tiny incursion triggering a decision that "required cropping history" has been shown.

(18) The term "timber planation" is used for determining "required cropping history" in section 49(1)(b). That term needs to be defined, especially given the statement in subsection (2)(b) that the materials do not need to be for sale as well as the specific exclusion in section 50 that cropping history does not apply to "domestic purpose" activities. (Note that the term "domestic purpose" in this context also needs to be defined/quantified.

(19) Section 55 requires that public notification of a "validation application" be made as soon as practicable "…after making the validation application…". This is contrary to the time stated in section 53.

(20) Section 55(2)(h)(ii) also requires that submissions address "...the matters mentioned in section 44...". There are no specific matters mentioned in that section.

(21) Section 57 prevents certain types of amendments being made to validation applications after they are advertised for public submissions. This should be revised to allow the amendments to be made on the condition that the application is then readvertised.

(22) The meaning of the term "decided land" as it appears in sections 61, 65, 66 and 68 needs to be expanded to make it clear that it only applies to the part of the land that is shown to be "zonal compliant", rather than all of the land covered by the application.

(23) Section 61(2)(b)(ii) indicates that the minimum land area requirement for determining compliance with "zonal criteria" can be achieved by combining the area of the land covered by the "validation application" with contiguous "potential SCL". This becomes a nonsense if that "potential SCL" is subsequently shown not to be suitable for inclusion as SCL.

(24) Section 66(3) stipultes that "…if the applicant is only an eligible person for part of the property, a criteria decision can not be made for the rest of the property.". It is unclear how that restriction is to be applied to an area of land that is under joint ownership as opposed to different parts owned by different persons. It is also unclear why this same provision has not been applied to land within a "protection area".

(25) Section 119 describes the "relevant person" for an "exceptional circumstances application" as the person listed in subsection (2). However, that subsection lists obligations of the "relevant person" rather than specific entities.

(26) Section 121 requires that public notification of an "exceptional circumstances application" be made as soon as practicable "…after making the exceptional circumstances application…". This is contrary to the time stated in section 120.

(27) Section 123 prevents certain types of amendments being made to exceptional circumstances applications after they are advertised for public submissions. This should be revised to allow the amendments to be made on the condition that the application is then readvertised.

(28) Section 124 deals with exceptional cicumstances applications that have not been "…withdrawn or decided under section 235(3).". Reference should also be included in that section to lapsed applications.

(29) Section 127 deals alternative sites for deciding exceptional circumstance applications. The reference in subsection (3) to a possible alternative site being a "...reasonable distance from, the region or locality to which the development relates…" needs to be more prescriptive to have the necessary effect.

(30) Section 147 dealing with the membership of the "community advisory group" needs to be expanded to address the "community" component required by section 145.

(31) Section 156 mentions withdrawal and termination of restoration notices. Where are the provisions dealing with withdrawing or terminating "stop work" and "restoration notices"?

(32) Section 232 needs to be modified to clarify that that part only deals with applications made under the the proposed Act. Such a modification would make it clear that the part does not apply to development applications made under SPA but mentioned in the Bill provisions. A similar comment applies to the wording of section 264.

(33) Section 238 indicates that a power to decide an application includes a power to "…grant the application subject to conditions that must be complied with before the application is granted…". That same provision also indicates that the power extends to an ability to "…approve or grant the thing the subject of the application subject to conditions that must be complied with before the thing is approved or granted…". There are two issues here:-

- you grant an approval or a request, not an application; and

- conditions of an approval cannot be imposed before that approval is issued.

(34) Section 249 refers to a notice stating the grounds on which a party intends to rely to prove that a statement was incorrect. That provision relates to section 250 and should be deleted from section 249.

(35) Section 271 deals with issues that may be addressed in a Regulation. Other provisions within the Bill make it clear that the scope of such issues is far more extensive than what is indicated in subsection (2).

(36) The definition of "permanent impact restriction" in section 272 needs to be modified to replace the word "means" with "see".

(37) Note 2 within section 274 refers to a "source application" being granted. Only a request or an approval can be granted.

(38) The list of "excluded matters for SCL or potential SCL concurrence agency jurisdiction" contained in section 291 differs from the list of exemptions appearing in Annex 1 of the draft SPP.

(39) The listing for "intensive animal industries" in section 291 indicates that the exemption applies "...to the extent that any of the industries are feedlotting…". This implies that so long as some of the industries on the site are feedlotting, all of the intensive animal industries on the land are "excluded matters". Clearly that is not the intent of the provision and removal of the words "any of" would clarify that intent.

(40) The definition of the term "footprint" in section 292 has the following problems:-

- the term is expressed in section 290, (changes to Schedule 7 of SPR), as an area rather than a "...proportion of the relevant lot…" as indicated by the definition; and

- the term includes "…an area used or that may be used for storage.". This aspect is unlikely to be known at the application stage and would be very difficult to police. The word "storage" also needs to be clarified to exclude temporary goods storage.

(41) The definition of the term "decision-maker" in Schedule 2 needs to be amended to clarify that it only applies to applications made under this Act (see item 32 above for more detail).

(42) The definition of "highly suitable for cropping" in Schedule 2 needs to be more determinative.

(43) The section number has been omitted from the definition of the term "minimum size" in Schedule 2.

(44) The definition of the term "official" in Schedule 2 is cyclical in its operation. Its meaning is essential to establishing the scope of liability under section 268. However, item (f) of the definition is reliant upon firstly establishing who is liable in the performance of functions under the Act.

(45) The words "…that the land is restored to…" need to be removed from the definition of the term "pre-development condition" in Schedule 2. The current wording gives the impression that restoration is required before the development is started rather than when it ceases.

(46) The definition of the term "relevant website" in Schedule 2 refers to "…the department's website…" but gives no indication as to which department is involved in this context.

Regards

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