



SCL Bill 2011

Submission



Queensland Murray-Darling Committee Inc.'s Submission on Queensland's Strategic Cropping Land Bill 2011

4 November 2011

Submission to:

The Research Director
Environment, Agriculture, Environment, Resources and Energy Committee
Parliament House George Street
BRISBANE
QLD 4000

earec@parliament.qld.gov.au

Rhia.Campillo@parliament.qld.gov.au

Submitting organisation:

Chief Executive Officer
Queensland Murray-Darling Committee Inc.
PO Box 6243
Toowoomba QLD 4350
Phone: 07 4637 6276
Fax: 07 4632 8062
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.

1.0 Background

QMDC is a member of the Stakeholders' Advisory Group. The following comments represent issues raised in previous discussions and submissions on proposed policy and planning. QMDC's comments are informed by ongoing consultation over 2 years with the region's rural landholders and communities.

2.0 General comments

2.1 QMDC recognises the attempts to anticipate challenges associated with determining SCL. However QMDC believes conflicting scientific and/or technical assessments may still occur as a result of the proposed legislation, negating attempts to provide a high level of certainty. The SCL Bill should provide certainty to all parties and not result in the commissioning of expensive consultants to prove or disprove SCL criteria. QMDC is concerned that there are both definitions and clauses within the Bill that may lead to protracted legal arguments over their meaning or application. These will be discussed in more detail.

2.2 Acknowledging the global context of food security is critical to the process of identifying and protecting SCL. QMDC remains concerned that the current Bill fails to adequately recognise a growing world population with rising demands for food and the worldwide loss of arable land. This is reflected by the Bill's lack of vision with regards to the need to acknowledge changing climate patterns, increasing climate variability and their



Funded by:





implications for future food production. These climate change issues suggest SCL needs to be identified and protected in all climatic zones,

2.3 QMDC is strongly of the view that agricultural systems need functional landscapes and ecological systems, at a catchment and regional level. SCL legislation and policy therefore needs to be applied in a manner that preserves groundwater aquifers, avoids land use conflicts with all forms of development, and achieves habitat protection and weeds management so there is a landscape coordinated approach to implementing the policy.

2.4 QMDC is concerned that the SCL Bill may result in a piecemeal development pattern with SCL interspersed with non SCL. Therefore QMDC supports maintaining the existing GQAL policy with a level of planning required across a landscape or district/regional scale to differentiate areas of industrial development from agriculture (agriculture on a range of soil qualities).

3.0 Clause 3 Purposes of Act

Climate change adaptation needs to be identified and protected in all climatic zones as part of the purposes of the Act. This Act will need to be reviewed in the future giving more definition around the impacts of climate change.

4.0 Clause 6 Exclusions from this Act

QMDC asserts that each and every proposal, whether it be mining, residential, transport, power supply etc should still be assessed on its merits to determine the degree of community advantage. QMDC does not support “blanket” exclusions as per **clause 6**. QMDC would expect multiple use of easements to minimise impact.

5.0 Clause 7 Relationship with resource Acts and Environmental Protection Act

It is still unclear how the SCL Act will apply in relation to the EPA and resource Acts if SCL and non SCL are captured within, for example, a single petroleum lease. There needs to be better explanation on how the proposed SCL legislation will operate in these situations.

6.0 Clause 9 Strategic cropping land, SCL and decided non-SCL

QMDC is concerned by the lack of technical and scientific definition offered by the Bill for SCL and recommends a better definition be articulated in relation to **Schedule 1**.

7.0 Clause 11 SCL principles

7.1 QMDC asserts that the term “reasonably practicable” (See **clause 11(3)**) does not provide certainty as is necessary.

7.2 Case law abounds where Courts have endeavoured to decide what “reasonable” and “practicable” mean in a given situation. In QMDC’s opinion, applying this condition to the *avoidance principle* causes ambiguity and serves to undermine the responsibility to avoid development on SCL. This absolutely waters down the avoidance principle. A precautionary approach means there should not be development unless it is assessed not to be SCL particularly in the trigger map area.

Produced by: Kathie Fletcher, Geoff Penton, 4 November 2011
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.



7.3 QMDC recommends that **clause 11(3)** be rewritten to read:

(3) The avoidance principle is that development must avoid SCL.

7.4 QMDC asserts that the term “wherever possible” (See **clause 11(4)(a)**) does not provide certainty as is necessary. What assessment will be undertaken to determine whether it is possible, when will this be done and by whom?

7.5 QMDC recommends that **clause 11(4)(a)** be rewritten to read:

**(4) The minimisation principles are that development must-
(a) minimise its impacts on SCL; and....**

7.6 The Bill must be worded to ensure impacts on SCL are minimised and managed through appropriate and effective mitigation measures to achieve a net environmental gain. Mitigation offsets must deliver ‘like for like’ SCL in context of the agricultural system it exists within including the functional landscapes and ecological systems associated with that SCL whilst also providing greater agricultural quality and quantity for the affected region. The size of the offset area should for example be larger than the area to be alienated for development. The offset area must also include the opportunity of increasing the capacity of agricultural systems including associated functional landscapes and ecological systems. QMDC as a last resort supports mitigation offsets where it can be proven that at an absolute minimum there will be no net losses.

7.7 QMDC recommends that **clause 11(5)(a)** be rewritten to include:

(5) The mitigation principles are that –

(a) for identified permanently impacted land -

(i)...

(ii)...

(iii)...if the mitigation requirement can be relied on, mitigation measures must result in no net loss to a region; and

7.8 What assessment will be undertaken to determine whether mitigation measures proposed will have a “positive and enduring effect”, when will this be done and by whom?

8.0 Clause 14 When development has a permanent impact or temporary impact

8.1 QMDC has repeatedly suggested a 50 year timeframe is too long and is therefore not an appropriate measure of time for the following reasons:

- The average age of landholders is 59 years however average length of land ownership (as per 2006 census) is 15 years
- A generation is considered 25 years
- Most State Government planning cycles are 5 years – some for example Water Plans are 10 -15 years at the most
- Delbessie Lease renewals are done to 30 years.



8.2 A 50 year timeframe therefore does not mirror key factors that address land use impacts and restoration of SCL.

9.0 **Clause 29 Management area**

This definition is confusing and requires rewriting to provide legal clarity.

10.0 **Clause 32 When a map amendment is *minor***

10.1 Amendments should be reflective of wider landscape values so that fragmentation is avoided. QMDC asserts that all SCL should be protected. QMDC is concerned that what is deemed as a “minor” amendment may undermine the total protection for SCL that should be promoted by the Bill. If the intent of the amendment is to protect SCL and future food production, any amendment that compromises a lot being included in a zone or protection area map because it consists of both SCL and non SCL is unacceptable (See **clause 32(1)(c)(ii)**).

10.2 **Clause 32(3)** is not supported because QMDC does not believe the exclusions listed in **clause 6** are acceptable.

11.0 **Clause 33 Minor amendments**

QMDC supports the notice being published on DERM's website and would suggest it be published at same time using other public media.

12.0 **Clause 34 Trigger map amendments**

QMDC suggest the required criteria needs to refer **Schedule 1**.

13.0 **Clause 36 Ministerial notice of proposed amendment**

QMDC recommends the submission period should be extended to 28 days to allow for better community engagement and real public time to make a submission (See **clause 36(2)(d)**).

14.0 **Clause 37 Ministerial decision on whether to amend**

14.1 QMDC recommends the submission period should be extended to 28 days to allow for better community engagement and real public time to make a submission as per recommendation for **clause 36(2)(d)**.

14.2 QMDC also recommends the notice being published on DERM's website and would suggest it be published at same time using other public media as per recommendation for **clause 33**.



15.0 Clause 38 Record-keeping obligations for maps

15.1 The SCL Bill does not articulate whether the maps denote a fuzzy or binary membership, although it is assumed that by requiring the identification of the “exact location of the boundaries” on each map to be shown a binary membership is intended. QMDC recognises that this type of membership will pose challenges to the outcome sought. It is important to design the Bill so that all SCL is protected.

15.2 If a binary membership is intended as a definitive layer, QMDC would suggest there is a need to clearly document the process used to update the SCL register with new or improved data such as more refined mapping, including the metadata relied on.

16.0 Clause 40 Who may apply

QMDC supports any third party making an application to validate or prohibit SCL.

17.0 Clause 42 General application requirements

QMDC believes that some community benefit should be recognised in the cost recovery for a validation application. The fee prescribed under a regulation therefore should not require the individual landholder to shoulder the total cost. DERM needs to illustrate in the regulation the actual staff cost to administer the applications and not be based on a generic multiplier.

18.0 Clause 49 When a property has the *required cropping history*

18.1 QMDC is concerned that this clause poses a risk to the protection of SCL because developments are likely to occur within existing and/or future food production areas. Failure to protect “agricultural areas” will impact on landscape features that support agricultural systems, resulting in either complete losses of agricultural uses on affected lands or diminished productivity and future cropping opportunities. QMDC argues that by focussing on existing land use and a 3 year cropping history is not acceptable. It is either SCL or not according to scientific criteria. The opportunity to secure strategic cropping areas that will prove invaluable as climate refugia for cropping in the future is being overlooked.

19.0 Clause 50 Things that are not crops for required cropping history

This clause is not supported as per above comments.

20.0 Clause 55 Public notice of application

20.1 QMDC recommends that a set timeframe should be stipulated for the publishing of an *application notice* (See **clause 55(1)**).

20.2 QMDC recommends the submission period should be extended to 28 days to allow for better community engagement and real public time to make a submission (See **clause 55(4)**).



21.0 Clause 56 Acceptance of submissions

QMDC recommends that the reasons for the Chief Executive to accept a submission about a validation application be recorded and made publically available (See **clause 56(2)**).

22.0 Clause 61 Validation decision if any of the land is zonal criteria compliant

QMDC asserts that the nominated minimum sizes may well result in loss of SCL through material change of use in development sites less than 100, 50, or 5 hectares or the minimum size prescribed under **clause 35(1)**. These areas are likely to be significant in quantity and the overall impact on SCL and adjoining uses. A likely outcome is a fragmented landscape.

23.0 Clause 62 What is the *minimum size*

23.1 QMDC is concerned by the references to minimum land or part of land sizes and recommends that the legislation should be reflective of wider landscape values so that fragmentation is avoided. All SCL should be protected and there should be no minimum area assigned to that protection.

23.2 These requirements remain controversial. QMDC is of the view that 100 hectares for the Western Cropping Zone is too large. Our basis for this concern is that properties across this zone cover a wide range in terms of size and crop type. In the Eastern Darling Downs Zone, many properties supporting horticultural crops are less than 50 hectares. Parts of the Eastern Darling Downs zone are being promoted as a horticulture precinct by DEEDI which will result in high value, highly intensive horticulture in the near future.

23.3 The risk of the proposed framework is that development (mining, residential or other non-agricultural uses) is likely to occur within existing and/or proposed food production areas resulting in a fragmented landscape with inadequate buffers.

24.0 Clause 78 Exemptions

24.1 QMDC is concerned that because of the number of resource activities proposed in EIS and EA applications that either involve major soil movement, long term storage dams or facilities or have inherent contamination risks then should the land associated with these projects be deemed strategic cropping land it will not be able to be reinstated or fully restored to strategic cropping land condition. The development would therefore permanently alienate rather than temporarily diminish productivity. QMDC recommends the removal of **clause 78(1)(b)**.

24.2 QMDC submits that thorough and detailed rehabilitation research programmes have not yet demonstrated that mining prime agricultural land is only a temporary cessation to agricultural production and that disturbed landscapes and soils can be reconstructed to pre-mine capability and productivity. In order to return the soil close to its original state (and cropping potential), entire soil profiles would have to be cut into layers and then stockpiled separately and replaced, in order, after mining. Mixing of the soil profile is likely to result in depression of crop yields due to the increased salinity and exchangeable sodium percentage in the upper layers. Additionally, the stockpiling of soil, which would be necessitated because of the restraints of the mining process, would result in organic matter



breakdown in the surface layer and in the dispersion and erosion of the subsoil layers. If the projects stockpiled a pile of topsoil for 10 years, most of it would be anaerobic. It would lose its biology and structure.

24.3 Another consideration is that if any proposed facilities are to be situated in flood prone areas this will mean that flooding poses the risk of further damage to stockpiles. The potential impacts of the Project on the cropping soils could include a reduction in the yield potential of the reinstated soil, loss or reduction of underground water supplies and dust impacts on surrounding crops.

25.0 Clause 81 Standard conditions code

QMDC asserts that the regulation and *standard conditions code* must address construction, operations, products and wastes in context of resource activities. This includes:

- best environmental practices;
- the cumulative impacts of the resource activity in relation to numbers of wells, mines, infrastructure and waste produced on SCL etc;
- whether an impact on water supporting SCL will have a permanent impact on SCL. Protecting SCL and associated soils requires addressing the need to protect water. If land achieves the versatile cropping land classification it is because of access to groundwater as well as cropping reliability etc;
- what area of land or size of footprint triggers the indicator that productivity has been temporarily diminished or permanently impacted on;
- at what point does volume and configuration impact on productivity;
- whether creating a buffer zone will protect cropping capacity from a resource activity etc;
- whether the site can be “fully restored” back to the parameters in the original land suitability assessment and demonstrate how this is possible based on peer reviewed scientific evidence; and
- that there are no alternative sites.

26.0 Clause 85 Location requirements

QMDC support the identification and description of all the “footprint of the development”. QMDC however recommends the inclusion of pipelines, communication towers, power lines and poles, and telemetry infrastructure in the footprint (See **clause 85 (2)(b)**).

27.0 Clause 92 SCL protection decision required before environmental authority can be issued

QMDC supports this clause.

28.0 Clause 93 Restriction on issuing authority for identified permanently impacted land in protection area

QMDC would expect the Act to provide a definition on what is deemed an ‘exceptional circumstance’ and not rely solely on a regulation yet to be written.



29.0 Clause 96 Additional requirements for making development application also apply

QMDC support the identification and description of all the “footprint of the development” as per **clause 85 (2)(b)**. QMDC however recommends the inclusion of pipelines, communication towers, power lines and poles, and telemetry infrastructure in the footprint (See **clause 96(b)**).

30.0 Clause 99 SCL protection conditions generally

30.1 QMDC supports the requirement for financial assurance. QMDC is not confident that this can be accurately assessed at the time of deciding an application, especially if a resource activity is expected to continue over a 50 year timeframe. QMDC recommends that it be more clearly articulated than **clause 105(2)(b)** that the amount set at the time of the application will be reviewed at regular intervals and be increased if necessary to reflect the real costs of restoration/rehabilitation or possible non - compliance.

30.2 QMDC asserts that the Queensland Government needs to secure a significant bond or proportion of financial assurance to safeguard against risk associated with the collapse/abandonment of companies and/or the resource industry. This security must consider the loss of rates, and increase of costs to local governments for management of infrastructure, resources and services as a direct result of the resource activity or development. The security must also be considerate of the unique issues of smaller rural and residential holdings and the compounded impact to communities and natural resource values of the area.

30.3 Additionally a pre-determined percentage of the financial assurance received from the applicant should be invested in natural resource management within the SCL area in order to provide future opportunities to establish new or improved cropping land that is supported and maintained by healthy and viable natural resources.

31.0 Clause 113 Power to prescribe a type of development

31.1 QMDC asserts that **clause 113(2)(b)(i)** does not offer clarity in terms of what parameters the Minister’s power must be exercised within but rather creates ambiguity. No definition is offered as to what “an overwhelmingly significant opportunity of benefit to the State” is. QMDC recommends that this term and clause must be defined within the Act.

31.2 QMDC is similarly concerned that **clause 113(2)(b)(ii)** creates ambiguity. QMDC seeks clearer legislation that outlines what factors must be taken into account when the “benefit” of development is weighed against the need to protect SCL. What is needed to tip the scales in favour of the development?

32.0 Clause 114 Public notice of proposal and submissions

QMDC recommends the submission period should be extended to 28 days to allow for better community engagement and real public time to make a submission (See **clause 114(3)**).



33.0 Clause 118 What is a *significant community benefit*

QMDC is similarly concerned as per above comments that **clause 118(a)** creates ambiguity. QMDC seeks clearer legislation that outlines what factors must be taken into account when the carrying out of development is “an overwhelmingly significant opportunity” against the need to protect SCL. What is needed to tip the scales in favour of the development? In determining that purely economic and job creation should not be the sole determining factors.

34.0 Clause 121 Public notice of application

QMDC recommends the submission period should be extended to 28 days to allow for better community engagement and real public time to make a submission (See **clause 121(4)**).

35.0 Clause 128 Sole criterion for deciding significant community benefit

QMDC agrees with **clause 128(a)& (b)** and believes these both make **clause 128(c)** redundant.

36.0 Clause 131 What is *mitigation*

QMDC does not support the mitigation fund. It assumes a developer can buy his/her way out of the Act’s intention to protect SCL, which is a very small percentage of the State’s cropping land.

37.0 Clause 132 What is the *mitigation value* of identified permanently impacted land

QMDC does not support minimum sizes.

38.0 Clause 135 What are the *mitigation criteria*

QMDC supports the criteria in general but suggests clarification is needed on how the Act intends to measure the “benefit” referred to in **clause 135(1)(e)**.

39.0 Clause 143 Payments from fund

QMDC recommends that if payments from the mitigation fund are required for “the expenses incurred by the chief executive in performing functions”, those “expenses” need to be listed in a Schedule of the Act.

40.0 Clause 147 Membership

QMDC recommends that the membership of the community advisory groups be facilitated and coordinated at a regional level in order to bring together expertise from within each region. Representation must include local landholders, NRM organisations, industry, government, business, Aboriginal communities, Landcare groups, scientific organisations, research institutions and community groups. The membership of the advisory groups must



provide the regions with the confidence that consultation with key stakeholders and communities will be facilitated by the Act.

41.0 Clause 279 Applications made and finalised EIS TOR on or before 31 May 2011

This date should be the date when the strategic cropping policy and legislation development process was announced the then Minister Stephen Robertson who stated that it was the government's intention that developments would abide by the spirit of the proposed legislation. It should be noted that the Trigger maps have remained virtually unchanged since that announcement.

42.0 Clause 280 Finalised EIS TOR on or before 31 May 2011 for petroleum lease application

Comments as above.

43.0 Clause 290 Amendment of sch 7 (Referral agencies and their jurisdictions)

QMDC is concerned by the references to minimum land or part of land sizes and recommends that the legislation should be reflective of wider landscape values so that fragmentation is avoided. All SCL should be protected and there should be no minimum area assigned to that protection.

44.0 Clause 291 Insertion of new sch 13A

Urban expansion has historically been the main cause of reduction in good quality agricultural land in the QMDB region. This is unlikely to change given the increasing population of both Southeast and Southern Queensland. QMDC are very concerned that the following listed excluded matters **clause 291(4),(5),(6)& (7)** will undermine the intent of the SCL Act and should therefore be removed from this section.

45.0 Schedule 1 Zonal criteria for original zones

45.1 QMDC supports the publication definitions and defined publications as they provide some rigour in the assessment process.

45.2 More specifically, the criteria are mostly too narrow, as some of the limitations identified can be ameliorated e.g. rock picking, liming for pH, on-farm drainage for poor drainage. These are commonly adopted practices. Additionally, if they are applied through the processes identified, this will result in the loss of what is clearly SCL. QMDC is concerned by the following definitions, for example:

- Chloride content definition does not appear to have a threshold...how can this be applied (See **Schedule 1 (11)**)?
- Electrical conductivity definition does not appear to have a threshold...how can this be applied (See **Schedule 1 (12)**)?
- Soil depth definition re continuous gravel layer...need depth to gravel layer and depth of the gravel layer (See **Schedule 1 (17)**)?

Produced by: Kathie Fletcher, Geoff Penton, 4 November 2011
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.



45.0 Schedule 1 Part 2 Criteria Division 1 Western Cropping Zone

45.1 Criterion 3 Gilgai density extent is too narrow. Many of the cracking vertosols are flat and black and will meet many of the criteria outlined in this document. In the past these areas have been levelled with lasers to allow successful crop production. QMDC is of the view that these practices could continue to be implemented, depending on individual property circumstances. In addition, some gilgai depressions cannot be easily levelled. Some of the areas play an integral role in supporting biodiversity. From a biodiversity point of view it would be detrimental to remove these gilgai depressions.

If these attributes are included as criteria for SCL, outstanding questions are:

Is land considered SCL criteria once the laser levelling takes place?

Does this criteria restrict properties from improvements such as laser levelling?

45.2 Criterion 6: An assessment process viewing this criterion in isolation does not account for soil type, related soil chemistry, soil porosity and rainfall reliability.

45.3 Criterion 7: QMDC is concerned that the concentration of chloride is the only salt being measured in the Western Cropping area.

45.4 Criterion 8: QMDC's concern with the threshold proposed is that in practice there are a lot of production systems that are grown on soils with a PAWC of 75mm or better.

46.0 Schedule 1 Part 2 Criteria Division 5 Granite Belt Zone

46.1 Criterion 7: the EC criteria for the Granite Belt may be misleading because there are crops being grown in that area that are EC tolerant. QMDC would also like to see some discussion on secondary salinity and whether this needs to be considered.

46.2 Irrigation Capability: Areas within the Western Zone and granite belt zone produce a large proportion of the nation's horticultural crops on sandy loam soils which is largely excluded from SCL maps. Further discussion is required to articulate clearly whether the intent of the policy is to solely protect naturally productive areas or whether it also includes other areas which become productive with the addition of water. It could be well argued irrigated property could also be strategic cropping lands.

46.3 Process and Changes to Criteria and Thresholds: QMDC recommends that the development and application of agreed criteria and associated thresholds should be underpinned by a number of guiding principles, similar to the SPP1/92. These principles would assist a consistent and transparent approach within the policy framework.