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Regional Planning Interests Regulation 2014

Property Rights Australia (PRA) was formed in 2003 to provide a strong voice for landowners with regard to property rights issues. It aims to promote fair treatment of landowners in their dealings with government, businesses and the community.
Our philosophy is that if the community (or business) wants our resource for any other purpose such as environmental protection then the community must pay fair and unsterilised value for it.
Most of our members are in Queensland but we have members in all States.

Summary

Property Rights Australia is supportive of the intent of the regulations however there remains much scope to further improve the regulations. PRA wishes commend the State Development, Infrastructure and Industry Committee on its report to the Regional Planning Interests Bill; it is hoped that the committee can again bring greater balance and improvements to the regulations as currently drafted.

The Regional Planning Interests Act and these regulations are a planning instrument that should enable assessment where there are priority agricultural areas, strategic environmental areas and priority living areas. It should not provide extensive loopholes for regulated activities to negate the lands status. Either the land is important in environmental, agricultural or living values or it is not. Voluntary agreements should have no place in this planning regulation and belongs instead in resource legislation.

PRA believes some of the key points to this submission are made under Part 4 Strategic cropping area and also Schedule 3. Key recommendations are listed at the end of the submission and further recommendations with explanation are found throughout.

Introduction

The intent of the regulation should be to protect all good quality agricultural land, regardless of its current use, in order to meet the requirement of the new State Planning Policy[1] to improve opportunities for increased agricultural investment, production and diversification. The regulation should not be in contradiction to the new State Planning Policy which states on page 21:

> *The state's interest in planning for agriculture is to:*
>
> *• reduce the potential for conflict between agricultural land and other uses*
>
> *• protect resources from inappropriate development*
>
> *• minimise encroachment to ensure viable tracts of agricultural land are maintained*
>
> *• improve opportunities for increased agricultural investment, production and diversification.*
>
> *The planning scheme is to appropriately integrate the state interest by:*
>
> *(1) considering the strategic economic significance of important agricultural areas2 by promoting and optimising agricultural development opportunities and enabling increased agricultural production in these areas, and*
>
> *(2) protecting Agricultural Land Classification (ALC) Class A and Class B land for sustainable agricultural use by:*
>
> *(a) avoiding fragmentation of ALC Class A or Class B land into lot sizes inconsistent with the current or potential use of the land for agriculture, and*
>
> *(b) avoiding locating non-agricultural development on or adjacent to ALC Class A or Class B land, and*
>
> *(c) maintaining or enhancing land condition and the biophysical resources underpinning ALC Class A or Class B land, and*
>
> *(4) facilitating growth in agricultural production and a strong agriculture industry by:*
>
> *(a) considering the value and suitability of land for current or potential agricultural uses when making land use decisions"*

[1] http://www.dsdip.qld.gov.au/resources/policy/state-planning/state-planning-policy-dec-2013.pdf

PRA believes the stringent criteria for Strategic Cropping Areas particularly in the western cropping area and the ease that strategic cropping area can be struck off the trigger maps is of great concern.

Assessment processes appear not to allow for both current use and future development of this land for agricultural purposes; it does not reflect the potential for changed agricultural use in these areas nor the State Government's requirement to double agriculture by 2040.

Landholders to protect their SCA status are restricted by short time frames. Resource companies who have at their disposal significant financial resources will find experts capable of mounting a strong argument that they have met the criteria to gain approval and for a Landholder to appeal a decision they too will need to engage at their own expense, expert witnesses to counter evidence proposed by a resource company. Appealing against the grant of a regional interest development approval will be time consuming, costly and stressful. Even though the burden of proof will be on a resource company, without expert advice and evidence and legal representation to counter expert evidence from a resource company, a Landholder will have much reduced prospects of success.

Submission in reference to Regional Planning Interests Regulation 2014[2]

Part 2

Section 3 Regional significant water source

The regulations only make mention of one water source, the Condamine Alluvium. There is no doubt that the Condamine Alluvium is a regionally significant water source. There is also without doubt other water sources across Queensland that are also should hold the same status.

The Regional Planning Interests Act 2014[3] states in section 8 (3)

> *"A regionally significant water source is a water source prescribed under a regulation."*

If the regulations aren't amended to include these other water sources they will be without protection such as the provisions in Schedule 2, Part 2, section5, subsections 2 to 7 of the regulation.

PRA recommends that other significant water sources should also be added.

[2] https://www.legislation.qld.gov.au/LEGISLTN/SLS/2014/14SL088.pdf

[3] https://www.legislation.qld.gov.au/LEGISLTN/ACTS/2014/14AC011.pdf

Part 3 Strategic environmental areas

PRA believes that areas identified by sound science as having strategic environmental status should be given extra consideration as provided for in these planning provisions. It provides a much more stable and balanced method than the likes of the recently repealed Wild Rivers Act.

Part 4 Regulated activities

There is a danger of making regulated activities too prescriptive with the possibility of limiting agricultural industry to pre-existing management and technologies. The regulation must allow for innovation and the possibility of currently unknown new management system and even land uses.

PRA appreciates the difficulty of allowing for future innovation in the regulation while at the same time protecting the integrity of the strategic environment area but it is not an insurmountable problem.

Section 11 (2)

Small parcels of land with a small water allocation used to irrigate for hay used locally for example weaner hay for cattle producers should be excluded from the regulated activities.

Section 11 (3)

Infrastructure needed for a power source to pump water from a storage dam, water piping and troughs should also be excluded as a regulated activity.

Part 5 regional interests development approvals

Section 12 (2)

Indicates that Schedule 1 sets out the assessing agencies, their functions and whether the assessment application is referrable. As pointed out in the parliamentary committee hearings[4] for the Act, it is much more preferable to have the functions of the assessing agency and the criteria to be used in assessing the application to be in the overall framework Act rather than in the regulation.

[4] http://www.parliament.qld.gov.au/documents/committees/SDIIC/2013/14-RegPlanInterests/14-trns-ph30Jan14.pdf

Section 13 Notifiable assessment application

The regulation reads that only applications are "notifiable" is if a resource activity is proposed to be carried out in a priority living area (PLA) and by omission reads that public notification **will not** occur for applications for a resource activity in a strategic cropping area (SCL)or a priority agricultural area.(PAA) This means that an owner of land will receive a copy of the application, no-one else will know of its existence or have rights to make submissions in relation to the potential impacts on strategic cropping land or a priority agricultural area.

PRA **strongly recommends** that public notification be retained for applications to PLA's, PAA's and SCA's.

Part 6 Mitigation

In regards to coal seam gas activities there are an ever increasing number of agricultural productive properties purchased outright by coal seam gas companies. These mitigation measures are especially important in these circumstances. PRA wrote in submission to the Regional Planning Interests Bill 2013[5] (page 4)

> *"The minimalistic dollar penalties that have been issued on Resource Companies in the past for breaches in comparison to their overall income have not served as a deterrent. The very high value short term gains from non-renewable resources offers a temping "Eldorado" to ignore the long term impacts to the valuable top class good agricultural soils and the incalculable, beyond price value of underground water supplies. Good soils and good water managed well will support food production perpetually resulting in an enduring community benefit and dollar return that will far exceed short term gain.*
>
> *Resource companies, their employees and contractors must be held fully accountable for these impacts."*

Section 16 Mitigation Value

The amounts need to incorporate an annual adjustment for CPI increases

Schedule 1 Assessing agencies and their functions

PRA believes that the regulations correctly show the assessing agency for Priority Agricultural Areas as the Agricultural department. It is inconsistent that the assessing agency for Strategic Cropping Areas is the Natural Resources Department.

[5] http://www.parliament.qld.gov.au/documents/committees/SDIIC/2013/14-RegPlanInterests/submissions/036.pdf

In the case of a resource company also being the owner of the land the Agricultural department should be required to do an on ground assessment.

PRA strongly recommends that the assessing agency for SCL's be the agricultural department. This point cannot be emphasised enough. The natural Resources Department has neither the expertise nor the charter to assess SCL.

Schedule 2 Criteria for assessment or decision

This schedule in the regulations sets out the criteria for the assessment of an application but criteria can also be found in section 41 of the Regional Planning Interests Act 2014[6]. This is a rather awkward approach and it would have been far better if all the criteria had been placed in the act.

Part 1

Section 1 pre-activity condition

If the pre-activity for land in a strategic cropping area is the soil analysed within 1 year before making the assessment application the question needs to be answered to who does the testing, the independence of the testing and the methodology used. This definition does not appear to allow for the history of land use on that property, local knowledge and the production on neighbouring properties.

The soil chemistry isn't going to change markedly unless you apply good (or bad) management practises to it. If nothing has been done to the soil, the chemistry isn't going to change. Not unless the assessment is not using the criteria in schedule 3 of the regulations, in which case history should come into it.

Section 1 (b)

The definition for priority agricultural land use (PALU) needs to be improved as the Regional Planning Interests Act 2014 in section 8 (2) that in the absence of identification in a regional plan leaves the definition to regulation

"A priority agricultural land use is highly productive agriculture—

(a) of a type identified in a regional plan for an area of regional interest; or

(b) of a type prescribed under a regulation for an area of regional interest."

Not all of the State of Queensland has an updated regional plan and even within a current regional plan protection is only afforded to a PALU within a PAA.

[6] https://www.legislation.qld.gov.au/LEGISLTN/ACTS/2014/14AC011.pdf

In the regulation it states a PALU must exist for "at least 3 years during the 10 year immediately before an assessment application"; creates a loophole where an applicant can purchase land 8 years prior the application and undertake no activity under the Australian Land Use and Management classification Version 7, the requirement under a Regional Plan. Refer Schedule 2, page 55 of the Darling Downs Regional Plan.[7]

Part 2 Priority agricultural area

It is important that the regulations, compliance and monitoring apply if the applicant of a regulated activity on a priority agricultural area (PAA) is not the owner of the land or is the owner of the land. The situation of the applicant being not the owner of the land is mentioned in section 3 sub-section 3 (a); section 3 sub-section 3 (f) and section 5 subsections 5&6.

It is PRA's understanding of the regulations that land owned by an applicant for a regulated activity for example to a resource company who has purchased the land is covered but it is not clearly stated and greater clarity could be applied.

Section 3 (3) (a)

PRA is very concerned about the use of **voluntary agreements** as a way to overcome a number of the criteria in priority agricultural areas and strategic cropping areas. Neither the Acts nor the Regulation provides guidance as to what a "voluntary agreement" is.

Voluntary agreements although ill-advised belong in resource legislation such as the concurrently running Mineral & Energy resources (Common Provisions) Bill 2014[8] and have no place in planning legislation such as the Regional Planning Interests Act and associated regulations. if part of the intent of the Regional Planning Interests Act is to recognise strategic cropping and priority agricultural areas as a resource of the State and to keep areas in production to maintain economies of scale for agricultural industries, then the reliance on voluntary agreements with resource companies to allow premium farming areas to go into mining appears to be contrary to this intent.

If voluntary agreements are to be included there should be minimum safe-guard for these agreements to ensure Landholders are properly informed prior to entering into agreements, for example, a requirement to properly disclosure all material facts as well as an entitlement to Landholders to be reimbursed for their reasonable professional costs e.g. agronomist, independent legal advice, accounting advice to ensure Landholders fully understand the implications of entering into a voluntary agreement and to ensure no coercion or misleading or deceptive conduct by resource companies.

[7] http://www.dsdip.qld.gov.au/resources/plan/darling-downs/dd-rp-schedule-02.pdf

[8] http://www.parliament.qld.gov.au/work-of-committees/committees/AREC/inquiries/current-inquiries/24-MinEngResBill

PRA recommends that voluntary agreements be removed from the regulations.

Section 3 (3) (a) (ii)

It would have been helpful if the explanatory notes[9] had explained more about how the assessing agency for a priority agricultural area (the agricultural department) a will determine what is *"a loss of no more than 2%"* of the land on the property used for a priority agricultural land use, or the productive capacity of any priority agricultural land use on the property.

What activities have been included in the activities that will have no more than a sum total of 2% impact? Does the activity footprint covers just the well heads connecting roads, pipelines and field infrastructure or does it also includes access roads, vehicle movements, cumulative impacts such as dust ,noise, impacts to the community and loss of amenity?

Impacts of connecting roadways should not be discounted, so much so that it is PRA policy that coal seam gas activity should not be allowed on cropped alluvial floodplains.

Section 5 subsections 2 to 7

In subsection 3 the applicant has to have in place a strategy or plan for managing CSG water. No mention is made of a strategy in place for by-product or waste from associated water. Currently the strategy for dealing with salt in associate water is to allowing an ever increasing strength brine solution to accumulate in very large holding dams. Government and industry have also failed to recognise any other waste product from CSG activity other than salt.

Subsection 4 has no requirement for the quality of the water in the net replenishment of a regionally significant water source. This is a major oversight.

The intent of these sections is good but the danger is that compliance may be caught up in detailed scientific evidence and the CSG companies who have at their disposal significant financial resources will find experts capable of mounting a strong argument.

[9] https://www.legislation.qld.gov.au/LEGISLTN/SLS/RIS_EN/2014/14SL088E.pdf

Part 4 Strategic cropping area

Part 4 of schedule 2 and Schedule 3 have by accident more than design has become the most significant part of the regulation for landholders on productive agricultural lands outside of the mapped priority agricultural areas. This is because the regional planning interests process got off to a bad start when government did not take into account submissions from rural based groups to the Darling Downs and Central Queensland regional plans. For more information refer to page 2 of the PRA submission to the Regional Planning Interests bill.[10]

Also PRA did not support the extra complexity introduced with the regional plans with the introduction of the new land classification of PAA's and a then unknown role for Strategic Cropping Lands (SCL) criteria. PRA has consistently called for the return to the science based, time tested and much simpler classification system of Good Quality Agricultural Land (GQAL). Further information can be found at the previous reference link to the PRA submission.

It appears that different legislations each use a different land or soil classification system for example the State Planning Policy December 2013[11] (page 21) uses the Agricultural Land Classification system. Despite the many definitions and classifications prime productive agricultural land remains productive and should be protected.

It has always been PRA's position that the SCL trigger map and the SCL eight soil criteria were introduced by the previous government in such a way as to limit areas not available for resource activity while falsely claiming a protection for top cropping lands.

Many of the inadequacies inherited from the regional plans were addressed in the State Development, Infrastructure and Industry Committee report[12] on the Regional Planning Interests Bill 2013 tabled in parliament on Monday 17 March 2014 and acceptance of the report by the Queensland government.

[10] http://www.parliament.qld.gov.au/documents/committees/SDIIC/2013/14-RegPlanInterests/submissions/036.pdf

[11] http://www.dsdip.qld.gov.au/resources/policy/state-planning/state-planning-policy-dec-2013.pdf

[12] http://www.parliament.qld.gov.au/documents/committees/SDIIC/2013/14-RegPlanInterests/14-rpt-17Mar14.pdf

Found in the Hansard record from Wednesday March 19 (page 741)[13] in a speech by the deputy Premier Jeff Seeney on the second reading of Regional Planning Interests Bill the deputy Premier raised a possibility that provision could be made for prime grazing country and thereby a protection for the beef industry.

> *"There will be an opportunity over the next two months to consider whether those elements of the strategic cropping land legislation that have been imported are appropriate going forward and whether or not under this new planning regime we need to consider if those elements are set at their right levels. There needs to be a discussion about that. There are certainly a couple of areas that are worthy of discussion in regard to the strategic cropping area. The trigger map that was used by the former government was always a blunt instrument. It is what we have imported as a regulation. Also the soil criteria that are used to determine where strategic cropping land actually exists within that strategic cropping area are open for discussion, I would suggest. There has always been the proposition put by a range of agricultural peak industry bodies that the regulatory environment should extend beyond cropping land, and I have some sympathy for that argument. I have some sympathy for the suggestion that the best of our grazing land should also be part of the area that is regulated."*

The provisions in Part 4 of the regulations for Strategic cropping area are an improvement on the previous Strategic Cropping Lands Act repealed on June 13 2014. PRA agrees with the deputy premier's statement that the best grazing lands should also part of the area that is regulated. This is the land outside the PAA's that is productive mixed farming country. It has the ability to fatten cattle for the new premium markets opening up for grass fed beef. Much of this country has grown crops in the past and will again in the future if grain prices return to a more profitable proposition.

The same comments apply as about voluntary agreements. They should not be in the regulations apply as found above in Part 2 Priority agricultural area, Section 3 (3) (a).

13 http://www.parliament.qld.gov.au/documents/Hansard/2014/2014_03_19_DAILY.pdf#xml=http://www.parliament.qld.gov.au/internetsearch/isysquery/f35c4d42-df9a-4cb8-a258-b418ee53ccac/1/hilite/

Strategic Cropping Land trigger map – Essential landholder protections

The Regional Planning Interest Act[14] states in section 10–

> ***10 Strategic cropping area***
>
> *(1) The **strategic cropping area** consists of the areas shown on the SCL trigger map as strategic cropping land.*
>
> *(2) In this section—*
>
> ***strategic cropping land** means land that is, or is likely to be, highly suitable for cropping because of a combination of the land's soil, climate and landscape features.*

The integrity of trigger map is very important for the protection of the productive mixed farming country in the strategic cropping areas.

This submission has been critical of the Strategic cropping lands act 2011 but it did contain a couple of protections for landholders that are essential to be retained in the new arrangements.

SCL act 2011 made no pretence that the trigger maps were accurate. This quote is on page 2, 1.1 Trigger maps, from the document Protecting Queensland's strategic cropping land - Guidelines for applying the proposed strategic cropping land criteria, September 2011[15]

> *"The maps are not a definitive measure of the extent of SCL at a property level, but simply indicate areas where SCL are expected to exist"*
>
> *"Where development is proposed in an area that is identified as likely SCL on the trigger map, an on-ground assessment against criteria will allow the extent of SCL within the proposed assessment area to be confirmed.*
>
> *Where a landholder whose land is not triggered on the map can demonstrate that they have land that meets the SCL criteria, the landholder will be able to apply to have the land considered as SCL."*

1.4 Development proponent seeking to define the extent of SCL from the September 2011 guidelines

> *"Within any assessment area, land shown as likely SCL on the trigger map can be assessed on-ground against the criteria to refine the extent of SCL within the proposed development. This assessment will be at the expense of the proponent."*

[14] https://www.legislation.qld.gov.au/LEGISLTN/ACTS/2014/14AC011.pdf

[15] http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2011/5311T5265.pdf

1.5 landholder seeking confirmation or change of SCL status.

> *"If a landholder whose land is not identified as likely SCL (i.e. white areas on the trigger map) can demonstrate that they have land that meets the SCL criteria, the landholder can apply to have the land defined as SCL."*

The SCL Act 2011 was thrown together at the time as a political fix and did not stand the test of time as a substantive planning legislation. The SCL trigger maps were prepared in haste in Brisbane with no ground truthing and the original guidelines were honest enough to say the maps were an indication only.

Although this original trigger map has been updated at times to this current time until it has been 100% ground truthed it remains a map that gives an indication only of a Strategic cropping area. At this current date the Department of natural Resources information web page[16] about Strategic Cropping Land, last updated 24 June 2014 (SCL act was repealed June 13 2014) allows landholders to request a trigger map for their property free of charge and offers the opportunity to amend the map.

> *"**Obtaining SCL maps and data***
>
> *A strategic cropping land trigger map will be used under the new Act. Areas marked on the map as strategic cropping land (SCL) are triggered as the Strategic Cropping Area under the RPI Act.*
>
> *The updated version of the SCL trigger map (version 2.1) is now available for download. This update has removed the previously validated SCL decisions and excluded areas above the slope criteria limits using new higher resolution slope data."*
>
> ***"Correcting the SCL trigger map***
>
> *Note: If you are applying for a regional interest development approval under the new RPI Act, you do not need to apply to amend the strategic cropping land trigger map.*
>
> *If you think there is an error in the map for your property, you can apply to amend the map. Details of the application process will be available shortly. Until then, email SCLNorth@dnrm.qld.gov.au (for areas north/north-west of Wide Bay–Burnett) or SCLSouth@dnrm.qld.gov.au (all other areas) for more information.*
>
> *The SCL trigger map will be updated periodically to reflect any completed amendments."*

[16] http://www.dnrm.qld.gov.au/land/accessing-using-land/strategic-cropping-land

PRA believes that no land should be struck off of the trigger maps or added without a ground truthing process. The trigger maps must continue to be available to a landholder for their property free of charge and the ability must be retained for the landholder to include land that was left out of the trigger mapping.

In the case of a resource company applying to strike off SCL status it must be remembered that it is they who are imposing their activity over the top of a property with a preexisting agricultural land use. It has become standard under the resource acts for the resource company to pay for professional costs. This should also be the case when the landholder has to defend their property to be renegaded to a lower status, lesser protection and thereby lesser value. SCL status has now become a property right because of protection it offers and highly likely higher land value and should not be removed without a robust investigation and at no cost to the landholder.

Schedule 3 Criteria for land

The SCL Act 2011 soli criteria were too restrictive; they were designed to catch out nearly everyone at some point in the 8 criteria that were introduced in this legislation.

The criteria for land in the Regional planning Act regulations[17]are an advancement but there are couple of aspects that must be improved to bring the criteria to a more sound scientific basis and provide equity for landholders across the state. Further with agriculture recognised as a pillar of QLD's economy going forward it is imperative that every protection be afforded landowners wishing to sustainably develop their land for optimum production. These changes would provide surety to producers wishing to invest in technology which will facilitate high and sustainable production especially in the Western Cropping region.

Part 2 Criteria

Criterion 1

The differing slope criteria must be standardised at 5% to aid administration and implementation. Modern production technologies like controlled traffic and zero till dramatically reduce soil erosion on steeper country. For example one study showed a soil loss reduction from 30t/ha down to 5t/ha, when comparing random traffic zero till to down slope control traffic farming. Farming practices will vary according to different soils, rainfall and many other variants. It comes down to a question of management and there is no reason why the western cropping zone should be treated any differently to elsewhere in the state.

[17] https://www.legislation.qld.gov.au/LEGISLTN/SLS/2014/14SL088.pdf

Criterion 7

There are some highly productive soil types with dispersed salt in the soil profile. An increased water infiltration rate under zero till has shown the ability to move salts deeper in the profile. Therefore high production is possible on soils with chloride levels greater than the threshold levels under the SCL regulations. Modern regulations need to be based on modern science, not science formulated under tillage based scenarios.

Therefore chloride levels could be increased to 1000mg/kg, without compromising the robustness of the criteria.

Recommendations

1. PRA strongly recommends that the assessing agency for Strategic Cropping areas be the agricultural department

2. In the case of a resource company also being the owner of the land applied to be removed from Strategic cropping area status the Agricultural department should be required to do an on ground assessment.

3. The strategic cropping area trigger maps must continue to be available to a landholder for their property free of charge and the ability must be retained for the landholder to include land that was left out of the trigger mapping.

4. PRA believes that no land should be struck off of the trigger maps or added without a ground truthing process.

5. When a resource company makes an application to remove strategic cropping land status they should reimburse professional costs to the landholder when lodging an objection.
6. The differing slope criteria must be standardised at 5% in Strategic cropping land criteria 1

7. Chloride levels could be increased to 1000mg/kg in Strategic cropping land criteria 7

8. Any mention of voluntary agreements to be removed from the regulations.

9. PRA strongly recommends that public notification be retained for applications to PLA's, PAA's and SCA's.

10. Other significant water sources should also be added to the regulations.

11. The definition to pre-activity condition be changed

PRA is available for any hearing held by the committee for the regulations.

This Submission has been produced in consultation with others on behalf of Property Rights Australia by Dale Stiller

Dale Stiller

Vice Chairman

Property Rights Australia