STATE DEVELOPMENT, INFRASTRUCTURE AND INDUSTRY COMMITTEE

QUEENSLAND PARLIAMENT

RE: Regional Planning Interests Bill 2013

Submission No. 028
17 January 2014
11.1.14

SUBMISSION

17th January 2014

On behalf of the Submitters:

Ken & Sylvia Sullivan
Ben and Sally Sullivan

Arcturus Downs Limited
(Sam and Lizzie Bradford)

Eugene & Kate Sullivan

[redacted]

Stakeholders

The Submitters are owners of Strategic Cropping Land (SCL) that is directly affected by the Springsure Creek longwall underground coal project. They are located in the Golden Triangle area of Central Queensland. They have had extensive firsthand involvement in the whole matter of resource activities affecting SCL. **('A' airphoto, Springsure Creek area; 'B' property plan)**

Under the existing Strategic Cropping Land Act, their land, with exception of its creek flats, is mapped as potential SCL and the resource applicant has accepted that classification. The submitters' properties support thousands of hectares of dryland and irrigated cropping. **('C' SCL Trigger Map)**

The longwall mining, if it goes ahead, will cause subsidence predicted to be up to 2.3 metres. Such subsidence will produce steep slopes and pondage requiring dense vegetative groundcover to manage erosion and preserve the soil, so that the land will no longer be capable of cropping.
('D' example plan of post subsidence slopes)

The Submitters' properties are currently the subject of two applications by the mining proponent for SCL Protection Decisions, and a third such application, or possibly another type of SCL application, is expected. The approvals process - including the EIS and three current and one rejected mining lease applications with associated environmental authority applications - imposes a constant burden of time and cost in supervision, response, consultation, negotiation, submissions and representations. Add to that the disturbance of ongoing drilling and other exploration activities on their properties.

The Submitters are acutely conscious that the long and complicated process they have already endured may be further prolonged and even further complicated, and their uncertainty deepened, if under transitional provisions the unfinished SCL applications become applications under the proposed new Act with its very different provisions. As set out below, they submit that unfinished applications for SCL Protection Decisions should be determined as though the new Act had never been enacted.

Commitment to Protect Crop Land

The Submitters consider the principle of protecting the State's strategic cropping land has already been accepted and it is not necessary to argue it again here. And, since the SCL Act is already in force and could readily be upgraded as required then legislatively linked to the regional planning process, the question is whether this Bill offers a superior scheme for achieving that objective.

From the Submitters' perspective, it would only make sense to repeal the SCL Act and replace it with the Bill if the Bill offered better defined, better designed systems to ensure the preservation of good cropping land and, where resource activities are allowed to affect that land, to more effectively regulate their conduct. It doesn't.

The SCL Act's purposes (in s.3) are superior, explicitly and unambiguously stating it exists to protect highly suitable cropping land, manage development impacts on it and preserve its productive capacity for future generations. The SCL Act would need to be upgraded and fine tuned, as is to be expected after its introductory period, given it breaks new ground.

The Bill, by contrast, only sets out broad and generalised purposes and achievements (in s. 3) about regional planning and regional interests. Preservation of highly suitable cropping land and its productivity is not stated or inferred as one of the Bill's purposes. Highly productive agricultural activities only rate a mention as an example of land uses where a purpose of the Bill is to manage coexistence with resource activities and regulated activities.

In section 6 of this submission we explain why the Bill's purpose of managing resource activities to achieve coexistence will never be any more than a motherhood statement. The ordinary meaning of 'coexist' is to exist together in peace despite differences – effectively as equals. The Submitters say that is unachievable in this context because three of the four stakeholders – ie. resource operators, the government and local government – gain material benefit from the exploitation of the fourth stakeholder - the landowners - who are compelled by law to submit.

The Submitters, given that they also find that the Bill repeatedly ducks the critical issues governing how it will work by leaving things to be specified under regulations (as highlighted later in this submission) are therefore very dissatisfied.

They are apprehensive that protection of strategic cropping land will be lost in the vastness of regional planning issues. With the Bill expressing no specific outright commitment, and its lack of transparency, it will inevitably be far less effective than the existing SCL Act in preserving highly suitable cropping land and in protecting its productive capacity.

And, the Submitters are apprehensive that the Bill will in fact make it easier for resource proponents to gain approvals on strategic cropping land.

1. **Decision Maker**

The decision-maker for applications concerning resource development on Priority Agricultural Land should be the Chief Executive of Natural Resources and Mines.

Having the Chief Executive of State Development as the sole decision-maker for approval of resource activities on a Priority Agricultural Area or Strategic Cropping Area – instead of the chief executive (natural resources) - is inappropriate and unworkable. Because the relevant expertise on soils and cropping is in DNRM, not State Development, the purpose of the change certainly isn't to give the task to the person best qualified. It can be reasonably inferred that the priority is to clear the way for easier approval of resource activities, not to protect the priority agricultural land.

DNRM and/or DAFF will only be involved in those decisions as assessing agencies, and even then only if regulations - which will be written by State Development - specify an advisory role for them and if the application is declared referrable under a regulation.

And, DNRM, and DAFFQ if it gets a Guernsey, will be second-class assessing agencies, compared to the privileged position local government will have when it acts as an assessing agency. If local government decides under its planning powers to refuse an application for a 'regulated activity' affecting a regional interest, that decision must be adopted by the Chief Executive. But assessments of resource activity applications by DNRM or DAFF are not binding on the Chief Executive – **the Submitters ask why the DNR&M and DAFFQ recommendations cannot also be mandatory.**

The Coordinator General, whose base is the Department of State Development, has consistently approved virtually every EIS for mining, in some cases via reports which clearly show that land use priorities and safeguards for priority agricultural land were given little or no weight. The State Development Department and the Coordinator General both exist to promote development. They have no track record showing they have either the impartiality or the relevant expertise to arbitrate on resource applications affecting agricultural land. The achievements listed on the State Development website are, naturally enough, all about approval decisions and removing obstacles to development.

Compare this proposed new scheme with the Strategic Cropping Land Act, where the equivalent decision making power as to resource activities on cropping land rests with the Chief Executive of Natural Resources and Mines, and mitigation of impacts on the land rests with DAFF (Agriculture). At least DNRM operates a land management unit separate from its mining unit, and together with DAFF they comprise the sum total of the Government's expertise in administering the State's agricultural land and production systems.

2. **Mapping of Priority Agricultural Areas**

The mapping, or the prescribing of Priority Agricultural Areas under Regulations, should be the province of Natural Resources and Mines, not State Development.

For the same reasons mentioned above, State Development is not the appropriate department and is not equipped to have responsibility for this task – Natural Resources is the appropriate group for this task.

As mentioned in section 6 below, DNR&M's existing trigger map will continue on its website and its Strategic Cropping Areas will become areas of regional interest – but apparently frozen in time with no provision for further review or amendment. While the Explanatory notes for the Bill say (on page 9) that existing management and protection areas as provided for under the SCL Act will be recognised through a regulation, we can see no provision for that in the Bill.

3. Coexistence

Coexistence should not be a stated purpose of the Bill.

While it is a nice motherhood concept, the term 'coexistence' as used in s. 3 of the Bill suggests wishful thinking by some, and spin or propaganda by others. Its inclusion as an objective of the Bill may give superficial comfort, but is ill-founded and does not stand the integrity test.

The idea of coexistence according to statute as provided in this Bill is farfetched and unrealistic.

The resource company relies on authorisation from the government to enter and use the landowner's property. The landowner is compelled by law to not obstruct those authorised activities.

The resource company holds its authorisations subject to numerous conditions and it is answerable to the government for compliance with those conditions – but active enforcement of conditions is not something any government has ever done. In fact, even when landowners lodge complaints direct enforcement action is not usually forthcoming.

Where compensation for the landholder has not been agreed, it will be decided by a court – and as a matter of law the court is obliged to assume all conditions of the authorisations will be met.

Government has a vested interest in the authorised activities, because it benefits directly from mining royalties, and indirectly from the creation of jobs and economic activity. Local government also has a vested interest as it benefits directly from rates on mining leases and other charges and works contributions, etc., as well as stimulation of economic activity.

Apart from the right to object to lease applications and to proposed environmental authorities (and to make submissions on assessment applications under this Bill), the landholder has no control over the resource activities and is in fact put upon and exploited by this resource company/government cabal and coexistence is pie in the sky.

4. Excessive Reliance on Regulations

Issues to be specified under regulation should be limited to appropriate points in conformity with the Legislative Standards Act – ie. those listed below should instead spell out their terms.

All legislation, but in particular this Bill should, through its provisions, openly disclose all important facets of how the powers it creates are to be applied – as clearly stated in the *Legislative Standards Act* 1992.

Except on issues which, for practical reasons, need to be specified in regulations and where use of a regulation is permissible because that regulation would not modify application of the Act, Parliament should take responsibility for deciding every important parameter in the Bill.

But in this Bill, a substantial number of fundamentally important issues are relegated to be spelt out later, under regulations. That means the Bill may pass into law without landowners being given any information or any chance to be heard on important issues which, when dealt with as regulations, will materially affect application of the Act.

This secretive approach makes a mockery of the words, in s. 3(2) of the Bill: *to achieve its purposes, this Act provides for a transparent and accountable process for the impact of proposed resource activities on areas of regional interest to be assessed and managed.*(emphasis added)

The analysis below explains why, in respect of 10 such issues, it is inappropriate that their provisions be specified under regulations instead of by open and transparent provisions in the Bill.

Where appropriate, the analysis also evaluates the merit of the relevant sections of the Bill as to their soundness, as to whether they are consistent with the Bill's objects, and as to whether they have sufficient regard to the rights and liberties of individuals and to the institution of Parliament as required by section 4(2) of the Legislative Standards Act.

Section	Topic
8(1)(b)	A ***priority agricultural area*** may be determined under a regulation. An example where the Bill allows regulation to modify application of the Act. By relegating the process of selecting and specifying priority agricultural areas to a function carried out under a regulation (rather than under a provision of an Act), using criteria also to be specified under a regulation (rather than under a provision of an Act), **the Bill denies landholders and the public the right to know about or participate in either the formulation of criteria, or the mapping or mapping amendment of areas determined as priority agricultural area.** This is a secretive and unsatisfactory system compared to that which it will replace, ie. the mapmaking and map amendment process in the SCL Act section s31-37 together with the zonal criteria in Schedule 1 of that Act.
8(3)	Identification of ***highly productive land use*** is to be prescribed under a regulation. An example where the Bill allows regulation to modify application of the Act. Under s. 8(2) of the Bill, a priority agricultural area is not to be shown or prescribed as such unless it includes, *inter alia*, an area used (ie. actually in current use) for a *priority agricultural land use.*

Section 8(3) defines such use as: *highly productive agriculture either identified in a regional plan, or prescribed under a regulation.*

A fundamental issue arising from this provision is that the prerequisite of a highly productive agriculture opens the way for government to pick winners amongst alternative land uses, types of cropping and levels of yield or crop value. We recognise that the Central Queensland Regional Plan adopts selected land uses from those listed in the DAFF Australian Land Use and Management Classification, but the Bill leaves open any other approach specified under a regulation.

Thus, it is possible that some high quality land will be excluded from classification as priority agricultural area simply because a delegate of the Chief Executive, or the relevant shire council, has decided its current land use is not highly productive agriculture, therefore it is not a priority agricultural area.

This is a significant departure from the principles of the SCL Act, in which cropping capability of the land and a history of cropping use are the only issues – ie. under the present Act it is irrelevant whether government considers the agriculture currently supported qualifies as highly productive agriculture.

The Bill fails to provide a regime under which government and shires can work in harmony. For example, if a particular crop is unique to a region, or even just uncommon Statewide, will a local government be permitted to recognise it in the regional plan as a priority agricultural land use even though it is not a land use specified in the regulation defining that term ?

Land use is not a necessary or appropriate criterion for priority agricultural land

10(4) Criteria for land to be classed as ***highly suitable for cropping*** is to be prescribed under regulation.

As in 8.3 above, an example where the Bill allows application of the Act to be modified by regulation.

11(1)(b) A ***strategic environmental area*** is to be mapped in a regional plan, or prescribed under a regulation.

An example where the Bill allows application of the Act to be modified by regulation.

It would be appropriate that, in keeping with provisions of the SCL Act regarding maps (SCL Act sections 25 to 39), **initial making of the map be performed under a regulation, there must be provision for review and amendment of the maps in a transparent way. Such provisions should be added to the Bill.**

16(b) A ***regulated activity*** is to be prescribed under a regulation.

An example where the Bill allows application of the Act to be modified by regulation.

We believe the classes of activities (other than resource activities) which would affect an area of regional interest and are therefore governed by the proposed Act must be spelt out in the Bill. **Landowners need to know what activities the Government proposes to control on priority agricultural land.**

23(1)(d) The ***management practices*** under which an exempt resource activity is carried on a priority agricultural area will be specified under a regulation.

An example where the Bill allows application of the Act to be modified by regulation.

There is no good reason why the management practices cannot be included in the Bill. The way the practices are specified will have a material bearing on the application of the Act.

27(1) Identification of the ***assessing agency for an assessment application*** will be prescribed under a regulation.

An example where the Bill allows application of the Act to be modified by regulation.

It is inexcusable and entirely unacceptable to landowners that the Bill fails to identify the assessing agency or agencies for particular classes of application. We expect, but cannot assume the assessing agencies will be government bodies and of various kinds – these bodies and their expertise are well known**. We need to know.**

34(2) Identification of assessment applications which are ***notifiable applications*** is to be prescribed under a regulation.

An example where the Bill allows application of the Act to be modified by regulation.

Landowners expect the Bill to disclose such important information as the classes of assessment application about which they will be directly notified**. There is no good reason why this information cannot be included in the Bill.**

39(2) & 40 Classes of ***referable application*** and the ***functions of assessing agencies*** are to be prescribed under regulations.

Two examples where the Bill allows application of the Act to be modified by regulation.

These, too, are fundamentally important factors affecting application of the Act - and for which **non-disclosure is inexcusable.**

49(1)(b) The ***criteria for deciding an application*** may, in addition to those stated in section 49, include any criteria prescribed under a regulation.

An example where the Bill allows application of the Act to be modified by regulation.

Of the various provisions with material bearing on application of the Act, this is perhaps the most significant. **Accordingly the criteria for deciding assessment applications must be completely transparent.**

5. Transitional Provisions

Section 91 retrospectively imposes a new scheme with adverse effects on our rights, interests and obligations. Unfinished applications should remain to be determined under the SCL Act – so section 91 amended accordingly.

An unfinished application for an SCL Protection Decision, for a resource activity on land that is a strategic cropping area, will under s. 91 of the new Act be taken to be an assessment application made under s. 29 of the Bill. We submit the Bill should be amended so that any unfinished SCL Act application continues to be processed under the SCL Act, as though the change to a new Act had not occurred.

The effect of s.91 as it stands is to potentially adversely affect our rights and liberties retrospectively and impose obligations on us retrospectively. The adverse effects and obligations arise because our properties, which are affected by the Springsure Creek coal project, are currently subject to two separate applications SCL Protection Decisions for that project and a third is expected.

These SCL Protection Decision applications are each running concurrently with the Proponent's applications under the Environmental Protection Act for environmental authorities. A great deal of our time and resources has been invested in responding to those closely related applications together with the recently-approved EIS application. Overall we have had to deal with a very fragmented scheme, made all the more difficult because the latter two of the applications are post-Greentape and we therefore have to understand and respond to two different legislative schemes.

One of our many concerns is the difficulty in assessing cumulative impacts in such a fragmented scheme. The relevant agencies acted improperly, we believe, in allowing a single project to be broken up into three separate sections. That means we're responding to six separate mining and environmental applications – each with its own separate, independent timetable, instead of two.

The added complications and delay which we potentially face if, after all this, any of the three applications for SCL Protection Decisions (or other SCL applications which are possible) were to be rolled over into applications under the new Act would be unbearable. The change that we seek would be in line with s. 96 of the Bill whereby an unfinished SCL appeal in the Land Court would continue and be decided as if the new Act had not been enacted.

In any event, we would be disadvantaged because the objectives and processes of the proposed new Act are substantially different to and, we believe, inferior in outcome to us as landowners, such that our rights, liberties and obligations would be adversely affect by the transition.

Such retrospective legislation is contrary to the fundamental legislative principles of the Legislative Standards Act, in particular as to our rights and liberties under section 4(3) which requires that legislation not retrospectively affect our rights and liberties, or retrospectively impose obligations on us.

6. Individual Sections

s.10(1): The definition of strategic cropping area is incorrect, as the SCL Trigger Map does not show land which has been validated as SCL or decided non-SCL. That validation is only shown on the decision register. **The definition should read:**

> *A **strategic cropping area** is an area shown on the SCL trigger map as potential strategic cropping land and which is not shown on the decision register as non-SCL.*

s.10(2) – (5): The definitions of *strategic cropping land, potential strategic cropping land* and *land suitable for cropping* **are superfluous and should be deleted**. They are not terms that are used in the Bill.

s.10(5): The definition of SCL trigger map is questioned because it relies upon the chief executive (natural resources) continuing to maintain and publish the Trigger Map for Strategic Cropping Land in Queensland**. The existing powers to maintain, amend and publish the Trigger Map (in sections 25 to 39 of the SCL Act) should be preserved.**

s.29: It is a gift for resource companies but a serious extra time and cost burden for landowners that under the Bill the application for a regional interests authority is a stand-alone process which can be made and decided irrespective of whether and at what date the other approval applications – the EIS if there is one and mining lease and environmental authority - have been lodged or decided.

This contrasts with the SCL Act which provides that no environmental authority can be issued until an SCL protection decision has been made for the project, recognising that the resource proponent is effectively ineligible to be granted a mining lease or an environmental authority unless and until an SCL clearance has been granted.

The current longstanding system coordinates the separate applications for mining lease and environmental authority whereby the two are lodged simultaneously and notified to the landowner, then both stand by until the EIS (if there is one) is approved, after which the public notice and objection process for both the mining lease and environmental authority are proceed in tandem, with a joint objections hearing if needed.

We ask that s. 28 be amended**. The public notice and objection phase of mining lease and environmental authority applications should not begin until a regional interests authority has been granted.**

On behalf of the Submitters

G.T. Houen

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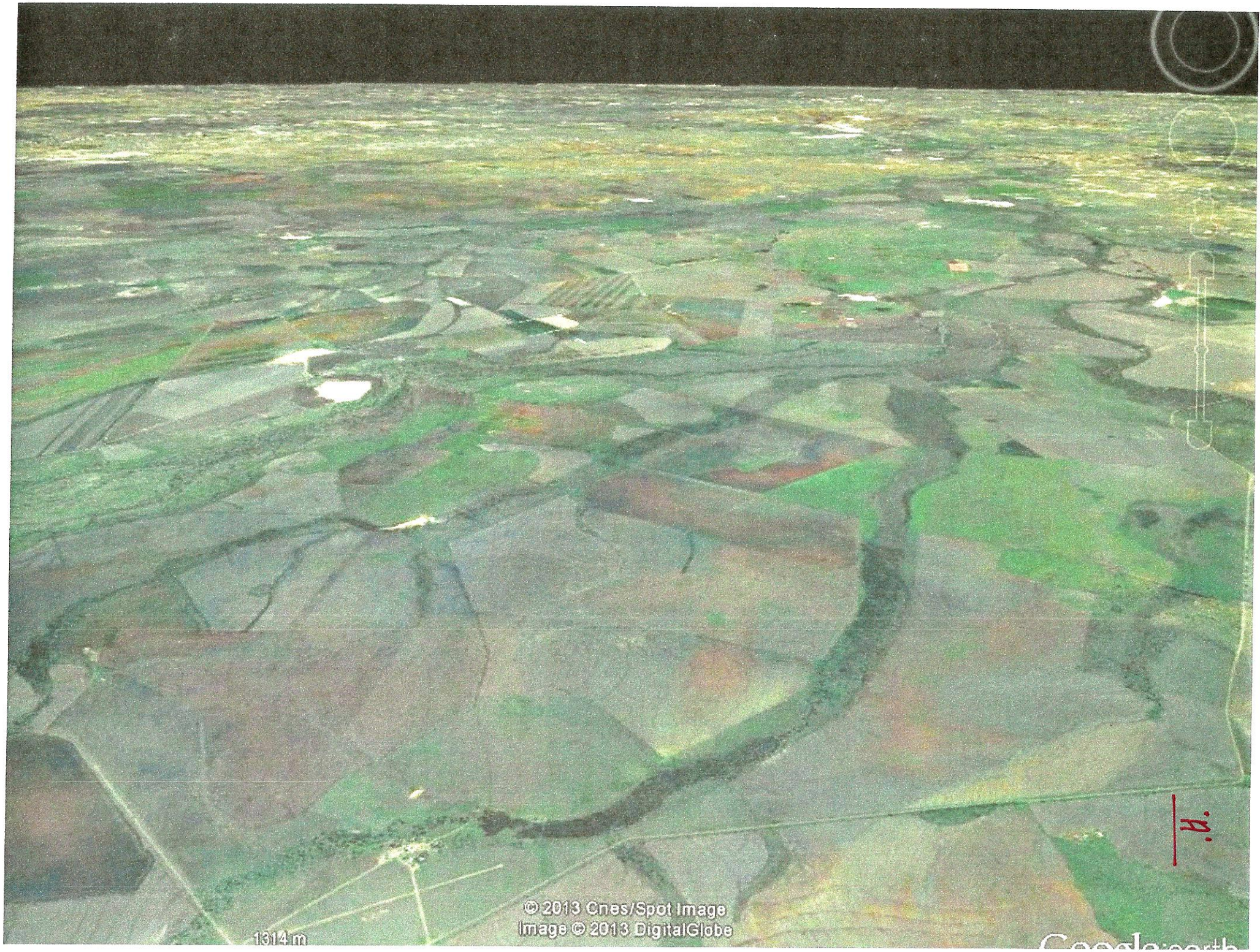
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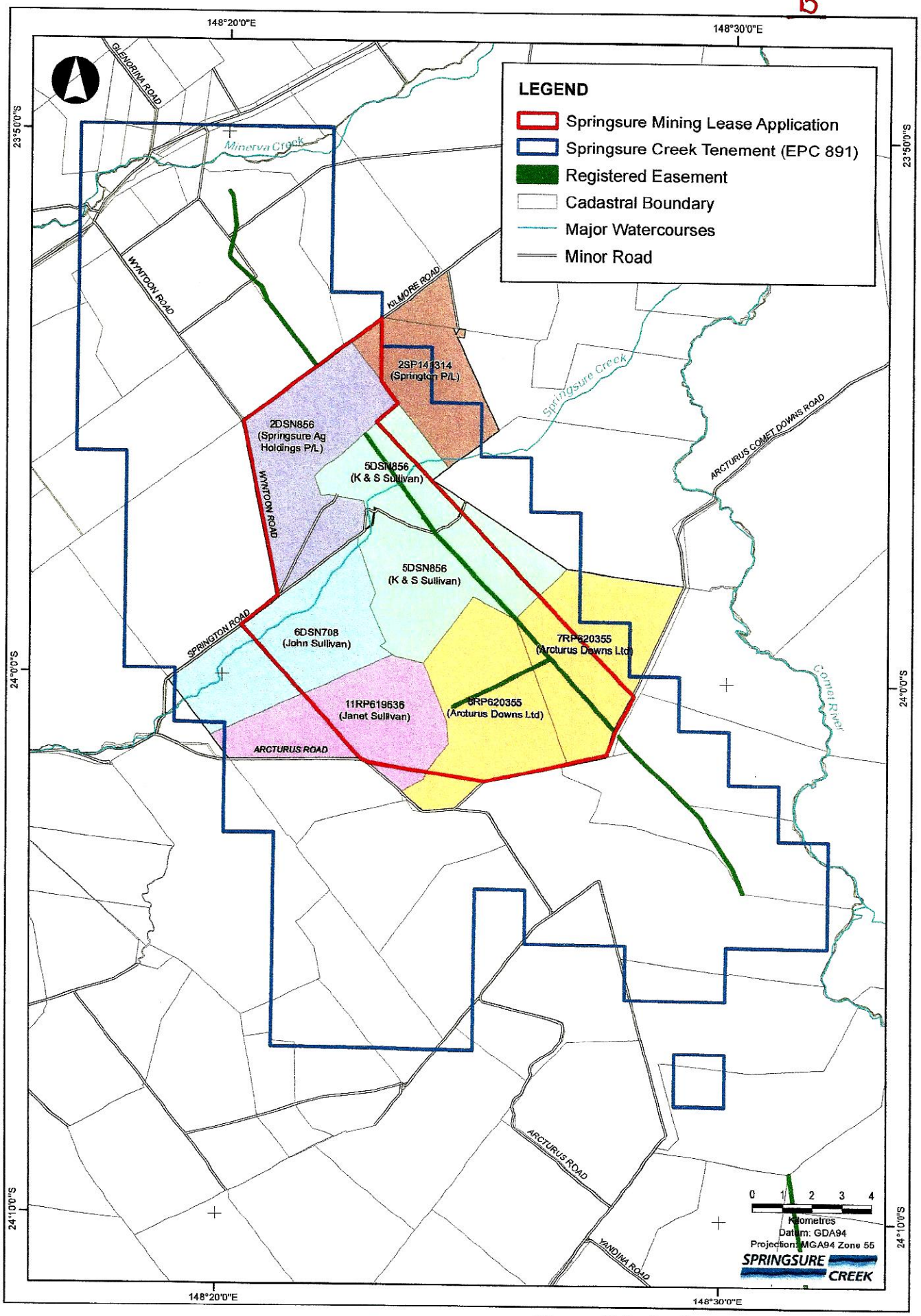

Figure 2.1 - Springsure Landholders 26

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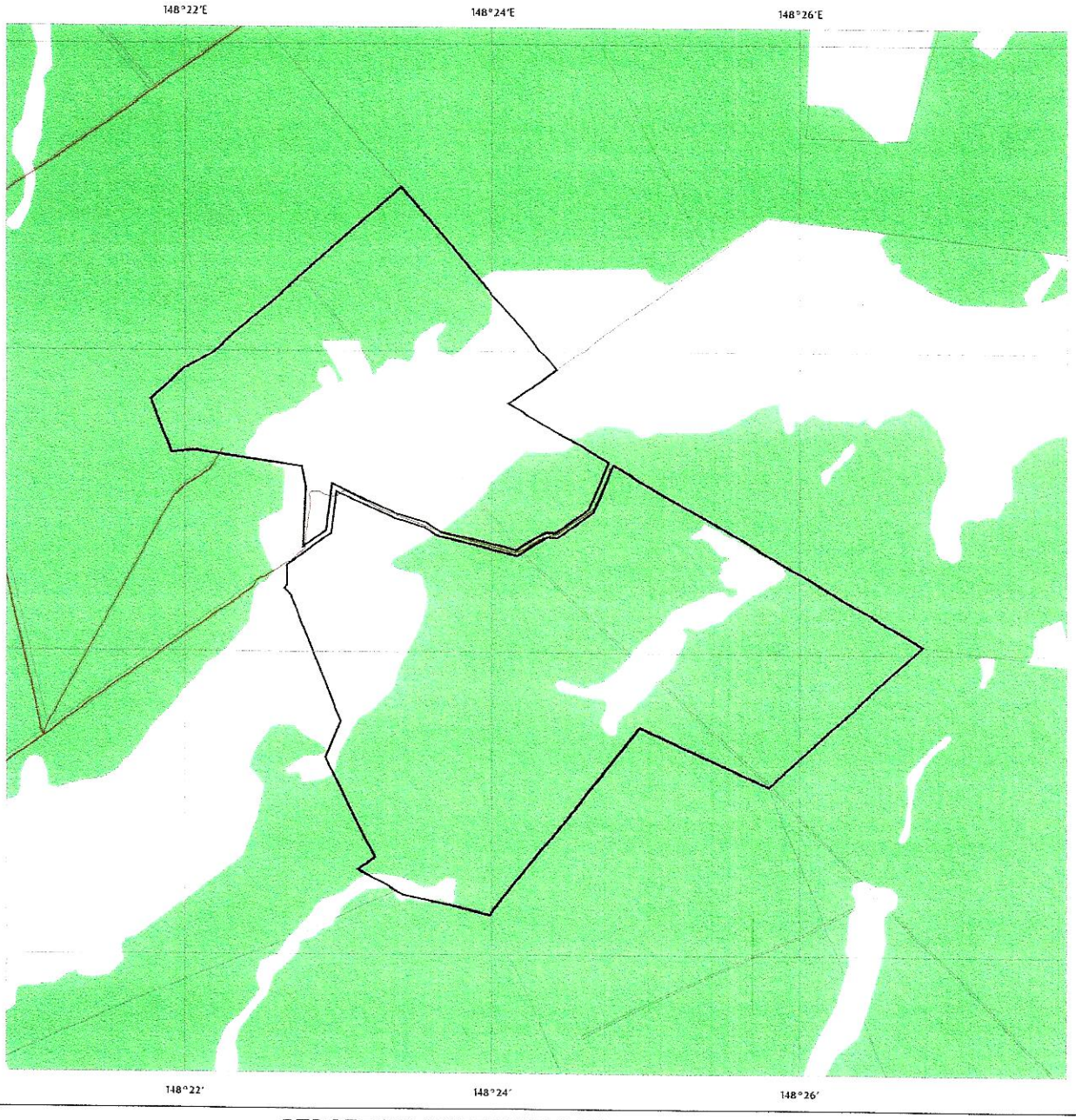


STRATEGIC CROPPING LAND TRIGGER MAP

Potential strategic cropping land

Strategic cropping land

Zonal criteria validated (management area only)

Cropping history validated (management area only)

Decided non-strategic cropping land

Current validation applications
Application reference number(s) shown on map face

Protection area boundary

Zone boundary

Subject lot

Roads
© Pitney Bowes Software 2012

Cadastral line
Lot on Plan boundaries shown are provided as a locational aid only.

Towns

This Lot on Plan is located in:

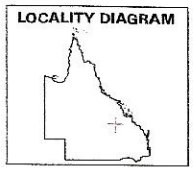
(1) CENTRAL PROTECTION AREA
(2) WESTERN CROPPING ZONE
(3) CENTRAL HIGHLANDS ISAAC MITIGATION SUB-ZONE

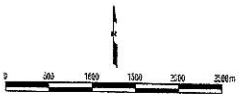
Requested By: GEORGEHOUEN@GMAIL.COM
Date: 16 May 13 Time: 10.08.17

Centred on Lot on Plan:
5 DSN856

Queensland Government

LOCALITY DIAGRAM





This scale bar is approximate only
Horizontal Datum: Geocentric Datum of Australia 1994 (GDA94)
This product is unprojected and is not suitable for measuring distances

This map can be used to identify land that is subject to the *Strategic Cropping Land Act 2011*.

The location of potential strategic cropping land (SCL) was prepared using Class A Agricultural Land and Versatile Cropping Land data and 1999 Queensland Land Use Mapping Program (QLUMP) data identified as production from agriculture or plantations. Land is excluded as potential SCL where it is remnant vegetation, or is in a national park, state forest, timber reserve or forest reserve. Land is excluded as potential SCL where it is within the urban footprints for Far North Queensland or South East Queensland, or is in a collection of small cadastral parcels. The extent of potential SCL is limited to those areas within the five SCL zones.

The map shows land that has been validated as SCL or decided non-SCL under the *Strategic Cropping Land Act 2011*. It also indicates areas that are currently subject to a validation application, and where a zonal criteria or cropping history decision has been made but further assessment is required to validate the land as SCL or decided non-SCL.

For further information on the strategic cropping land policy or the specific assessment requirements of land under the strategic cropping land policy, go to the website:
www.dnrm.qld.gov.au

Digital GIS data and full metadata can be obtained from <http://dds.information.qld.gov.au/dds/>

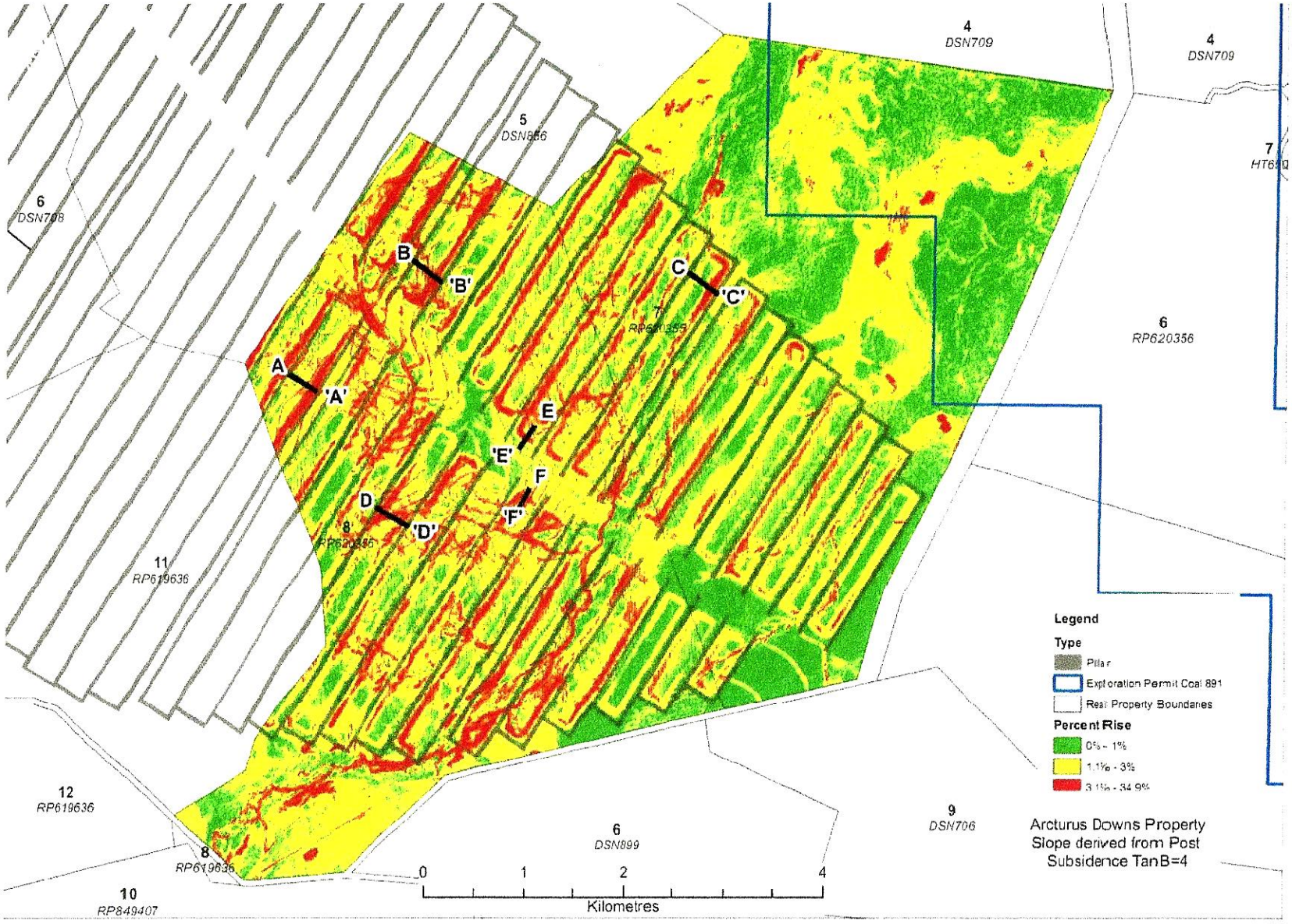


Figure 2. Predicted post subsidence slopes (tanB=4) for Arcturus Downs