ENVIRONMENT, AGRICULTURE, RESOURCES AND ENERGY COMMITTEE

REPORT No.6 ON THE

STRATEGIC CROPPING LAND BILL 2011

QUEENSLAND GOVERNMENT RESPONSE

INTRODUCTION

On 25 November 2011, the Environment, Agriculture, Resources and Energy Committee tabled Report No.6 in relation to the Strategic Cropping Land Bill 2011.

The Queensland Government response to recommendations made and clarification on points raised by the committee is provided below.

RESPONSE TO RECOMMENDATIONS

Recommendation 1
The committee recommends that the Bill be passed subject to clarifications and assurances sought by the Committee in respect of key Clauses and provision of the Bill that are discussed in this report.

Government Response
The Government thanks the committee for its consideration of the Bill and appreciates the committee's recommendation that the Bill be passed subject to clarifications and assurances being provided in respect of key clauses. Clarifications of key clauses are provided.

Recommendation 2
The committee recommends that Chapter 4 Part 2 be redrafted to clarify meaning and remove ambiguity from the application of the exceptional circumstances test.

Government response
The government does not support this recommendation.

The Bill provides sole criterion for deciding each of the two necessary parts of the exceptional circumstances test. The elements of the sole criterion are reasonable and relevant to the intent of the test and are consistent with similar legislative tests of this kind. The Bill provisions in this regard are consistent with *Protecting Queensland's strategic cropping land: A policy framework* released by the Government in August 2010.

Further information about the exceptional circumstances test is provided in relation to the committee's comments on Chapter 4 part 2 below.

CLARIFICATIONS ON POINTS RAISED BY THE COMMITTEE

Issue

The committee remains concerned that the Bill does not provide a clear and unambiguous definition of strategic cropping land, a term that is central to the operation of the Act. The committee seeks assurances from the Minister that the wording of Clause 4 will provide a clear and adequate indication as to what strategic cropping land is.

Government response

The Bill sets out a detailed soil science test consisting of 8 criteria which has been developed by DERM soil scientists and peer reviewed by independent expert, Dr Roger Shaw.

The Bill also establishes a Science and Technical Implementation Committee consisting of expert soil scientists including two soil scientists nominated by the Australian Society of Soil Science Incorporated.

Given these comprehensive steps, the government is of the view that strategic cropping land is adequately identified through the Bill.

To provide further detail:

Clause 4 of the Bill makes clear that the purposes of the Bill are achieved, in part, by the identification of land with potential to be highly suitable for cropping (termed potential SCL) and by a decision-making framework for confirming that land has that quality (termed SCL).The identification of strategic cropping land is provided in those parts of the Bill that establish trigger maps, zones and zonal criteria.

The identification of land that is potential SCL on trigger maps is based on the best available soils mapping available at regional scales. This map represents a starting point for the identification of SCL and assists with regulatory certainty. The zones have been determined in consultation with stakeholders and technical experts as those areas of Queensland that contain areas of land that are highly suitable for cropping. These are zones in which climate and landscape are particularly favourable for cropping. The eight criteria and associated thresholds identify soils within those zones that have characteristics that make them Queensland's best cropping soils.

The zonal criteria and the zones were developed through a rigorous process by technical experts. The trigger maps are based on the best available information. The Bill provides for a robust and clear identification of strategic cropping land.

Issue

The committee seeks clarification by the Minister as to the justification for the 50 year timeframe for permanent damage to strategic cropping land provided in Clause 14. The committee also invites the Minister to clarify whether baseline assessments and periodic reviews will be conducted at the commencement of development projects to be used for future assessments of loss of productivity of cropping lands.

The committee also invites the Minister to clarify the extent of protections the Bill would provide for strategic cropping land against alienation or damage caused by drilling and exploration for coal seam gas deposits

Government response

50 years is the maximum time that an impediment can prevent cropping and still be considered a *temporary* impact—however this timeframe is dependant on the land being able to be restored to its pre-development condition. 50 years is suitable for legal impediments such as a covenant that prevents cropping but has no physical impacts on the land. For physical impacts, clause 14 *does not* necessarily allow a physical impact to occur for 50 years and be considered temporary because clause 14 (b) provides that if the land can not be restored to its pre-development condition, it will be considered a permanent impact. Therefore the activity can last for less than 50 years, but still be considered permanent if it cannot be restored to its pre-development condition.

The definition of *pre-development condition* provides that land must be either restored to its condition before the development started—when benchmarking about the pre-development condition of the land is available—or, the definition allows that if the condition cannot be worked out, the land can be restored to a condition consistent with contiguous SCL.

Coal seam gas activities may include a combination of temporary and permanent impacts. Temporary impacts will be conditioned to ensure restoration to pre-development condition, while permanent impacts will either be required to avoid, minimise and mitigate their impacts in the management area, or in the protection areas they will be refused unless they can demonstrate exceptional circumstances

Issue

The committee is concerned that 21 days provided in Clause 36 may allow insufficient time for an affected party to become aware of a proposed zonal or protection area amendment, to seek expert advice on the proposed amendment and to then lodge a written submission with the Minister should they wish to object to the proposed amendment.

The committee invites the Minister to clarify the justification for providing landholders with such a brief submission period. In our view, a 30 business day submission period, as proposed by the Queensland Resources Council, would be reasonable.

Government response
Clause 36 provides for a period of *at least* 21 days—this is the minimum time required by the Bill, however the Minister can provide a period of 30 days or longer if appropriate for the amendments.

Issue
The committee seeks assurance from the Minister that the focus on soils in the criteria used to establish that land is strategic cropping land will not allow mining companies to circumvent the strategic cropping legislation by moving from open-cut operations to underground operations such as longwall mining, or bord and pillar mining mechanisms.

The committee also invites the Minister to clarify whether officers of the Department of Environment and Resource Management (DERM) who would be responsible for administering SCL are certified practitioners from an appropriate professional body such as the Australian Soil Science Society Inc., the Australian Institute of Agricultural Science or the Environment Institute of Australia and New Zealand that have certified practices for making certain that advice is given as a professional and people are prepared to sign off on it and accept responsibility for those outcomes.

Government response
The purposes of the Bill are to protect, manage and preserve the productive capacity of strategic cropping land. It is not an aim of the Bill to prevent mining but rather to regulate to ensure that developments are conducted in a way that meets the Bill's purposes.

A change in operations from open cut to underground mining does not alter the application of the Bill. All mining and resources projects that may impact on potential or proven SCL will be assessed under the Bill. To be clear, a change in operation from open cut to underground is not a circumvention of the Bill but may, if the changed operations meet the assessment constraints in the Bill, represent the achievement of the Bill's purposes. However at this stage, there is no conclusive scientific basis upon which to conclude that underground operations such as longwall mining will not impact on surface soils.

In administering the SCL framework, DERM will rely on officers with a broad range of skills and qualifications including, but not restricted to, qualifications in soil science. Among those staff are qualified soil scientists with decades of field experience. Many are members of the Australian Society of Soil Science Incorporated. DERM will as necessary seek independent expert advice on the application of the 8 zonal criteria in particular cases.

Finally, the Science and Technical Implementation Committee that will be established under the Bill will provide independent scientific and technical advice about the administration of the Act regarding soil and land resources.

Issue
The committee invites the Minister to respond specifically to the points raised by Xstrata Coal in relation to Clause 48.

Government response
Xstrata Coal's first point indicates that the criteria '*merely identify land that is not suitable for viable farming, as opposed to distilling the best cropping land from all other*'. DERM has undertaken a rigorous scientific process to establish the criteria and threshold limits—they have been subject to an independent expert review and a technical assessment that involved detailed checking of 128 sites across Queensland and found that the criteria and thresholds were effective and appropriate.

Xstrata Coal's second point relates to the concerns of the Australian Society of Soil Scientists Incorporated (ASSSI)—however in the public hearing of the committee, ASSSI stated that they recommend adoption of the Good Quality Agricultural Land criteria—which includes a broad range of cropping land and grazing land, broader than land that would meet the SCL zonal criteria. This is contrary to the position put forward by Xstrata that the criteria should better distinguish best cropping land from all other and inconsistent with the purpose of the Bill and the published policy intent of the Government.

A Science and Technical Implementation Committee will be established to give further independent advice about the administration of the Act relating to soil and land resources. Both the resources sector and the ASSSI have been invited to nominate a relevant expert to this committee to further advise the Minister on these matters during implementation of the Bill.

Issue
The committee seeks the minister's assurance that the cropping history test will provide an effective and workable filter for identifying land that is strategic cropping land, and will not unduly constrain development applications relating to land that is of dubious strategic cropping value.

Government response
It is uncertain how the Committee defines land that is of "dubious strategic cropping value".

The cropping history test relies on clearly prescribed criteria and readily available evidence. In the management area, land that does have a history of cropping but does not meet the other criteria in the Bill is not classed as SCL.

Development on land that is found not to be SCL will not be subject to the development assessment provisions of the Bill.

Issue
The committee requests clarification by the Minister of the criteria she will require to be met in respect of applications for exceptional circumstances, ensuring consistency in decision making and that decisions will not be based solely on profitability and economic benefits of the project. The committee

seeks such clarification to allay concerns of benefit to one industry over another or private interests over public. The committee invites the Minister to provide examples of other matters requiring ministerial discretion and community benefit tests and the criteria applied in such cases.

Government response
The Bill provides sole criterion for deciding each of the two necessary parts of the exceptional circumstances test.

Clause 128 (2) specifically provides that a significant community benefit cannot be decided solely on the profitability of the carrying out of the development or its economic benefit to the State.

The elements of the sole criterion are consistent with the announced Government Policy. They are relevant to the intent of the test and are consistent with similar legislative tests of this kind. Examples of similar tests are provided in the:

- *Sustainable Planning Act 2009* which provides for the Chief Executive to decide where there is an over riding need for a development in the public interest, which is determined by weighing the overall social, economic and environmental benefits of the development against its detrimental impacts on the site and the integrity of the regional plan.
- *State Development and Public Works Organisation Act 1971* which provides that the Minister, when determining whether to declare a prescribed project, amongst other factors, may have regard to the public interest or the general welfare of persons in the region in which the project is to be undertaken.

Issue
The committee notes the strong views expressed in submissions and at the hearing that the premise that strategic cropping land can be restored to its original productive capacity after permanent alienation by developments such as resource extraction. Witnesses who commented on this issue told the committee that there is no scientific basis for claims that strategic cropping land as distinct to grazing land can be rehabilitated.

Government response
The Government has never claimed that strategic cropping land that is permanently impacted or alienated can be restored to its original condition. Indeed, an assessment that it cannot, is the whole rationale for this Bill.

The mitigation requirements in the Bill recognise that when SCL is permanently impacted, it can no longer be restored to its pre-development condition and therefore its previous productive capacity. Government agrees with all submissions and witnesses that asserted that SCL cannot be replaced or recreated when it is permanently impacted.

Mitigation in the Bill is not designed to physically replace or restore SCL that is permanently impacted – it is designed to replace the productive cropping

capacity that a region or local community loses when a portion of SCL is permanently impacted as a result of development.

Mitigation therefore does not purport to be able to replace or create SCL; it is a policy designed to replace the lost productive capacity that occurs if SCL is permanently impacted.

Issue

The committee invites the Minister to clarify whether the transitional arrangements provided to Bandanna Energy differ from transitional arrangements available to other resource project applicants, the quantity of SCL that will be impacted by the Springsure Creek Coal Project and whether the impact will be permanent or temporary. In respect of permanent impacts, the committee invites the Minister to outline the conditions that Bandanna Energy will be required to comply with to ensure that any SCL affected by the project is restored to its full productive capacity.

Government response

The Bill provides specific transitional arrangements for Bandanna's Springsure Creek Coal Project (termed EPC 891 in the Bill). These transitional arrangements differ from those applying to other projects in two significant ways. Firstly, the Bill provides specific eligibility for this transitional arrangement, to apply to resources activities under an Environmental Impact Statement (EIS) resulting from the finalised EIS Terms of Reference published on 2 June 2011. Secondly, the Bill provides for additional development conditions on any future authorities for the Springsure Creek Coal Project that do not apply to other transitional projects.

The Bandanna's exploration permit (EPC 891) is approximately 42 000 hectares, of which 33 000 hectares (around 80%) is mapped as potential SCL by SCL trigger map. The Mining Lease Application lodged for this project has a total area of almost 13,000 hectares, of which over 10,300 hectares (about 80%) is mapped as potential SCL.

These areas are currently mapped as potential SCL – the actual area of confirmed SCL that may be impacted by the project cannot be determined until an on ground assessment is completed and the actual extent of SCL is validated.

The conditions prescribed in the Bill require that no open cut mining can be carried out under any future lease and that any future environmental authority requires that all reasonable endeavours are used to rehabilitate all impacts— temporary and permanent— on the land from underground coal mining. These conditions will not preclude permanent impacts; however rehabilitation measures will still be required to reduce the severity of the impacts. The Bill does not limit the imposition of further SCL protection conditions that are not inconsistent with the conditions prescribed in the Bill. Such conditions include the requirement to avoid, minimise and mitigate any permanent impacts. However until a formal assessment process through an EIS occurs, it is not appropriate to comment of possible outcomes of any future statutory application assessment for this, or any other, project.

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	Member: Don Nolan		
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