Submission on the Regional Planning Interests Bill 2013

Submission to:

The Research Director

State Development, Infrastructure and Industry Committee

Parliament House

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Property Rights Australia 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, other businesses and the community.

Our philosophy is that if the community (or other business) wants our resource for any other purpose such as environmental protection then the community must pay fair and unsterilised value for it.

Property Rights Australia is of the view that the Regional Planning Interests Bill is necessary in light of the changes made to various planning schemes throughout 2013. It provides a mechanism to manage the impact of resource activity upon highly productive agricultural areas. Overall the structure of the bill is good and is the best option other than a full, well considered reform of the Mineral Resources and Petroleum & Gas Acts. PRA notes that there are many positive aspects to the bill.

However the Regional Planning Interest Bill cannot achieve equitable outcomes for all of those involved in agricultural activity because a regional interest is determined by a Priority Agricultural Area as found in the Regional Plans or by a Strategic Cropping Area retained from the SCL Act that will be repealed.

Clauses 7, 8 & 10 Definitions about areas of regional interest

The Central Queensland and the Darling Downs regional plans took effect on 18th October 2013 without addressing the many flaws that were identified in the submission process for the draft plans. PRA submission to the draft Darling Downs regional plan (DDRP) is attached as ***Appendix 1.***

In submissions to or in public comment about the draft DDRP Agforce, Queensland Farmers Federation, Basin Sustainability Alliance, Property Rights Australia and Australian Lot Feeders Association all found significant concerns about the regional plan including how it serves to restrict areas considered to be top agricultural production lands. It is inconceivable that all these organisations have misunderstood the plan.

Furthermore there are regions in Queensland where there is yet to be a regional plan to take effect. While in the course of 2014 the Cape York and south East Queensland regional plans will be finalised there are other areas that have no plan in place to determine what a regional interest is.

PRA's submission to the Strategic cropping land framework review can be found in ***Appendix 2.*** Consistent with the thrust of this submission PRA does not have concerns that the SCL act will be repealed. 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.

There will remain a complexity of land classifications with the retention of Strategic cropping area along with Priority agricultural area. 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 *Appendix 1* on pages 2 & 3 and at *Appendix 2* within questions 3 & 4 on pages 3 & 4.

> *"These soil types have already been identified in a land classification system called Good Quality Agricultural Land. This land classification system was developed from decades of work by soil scientists who were unimpeded from any agenda other than good science. GQAL is a simple classification system of A, B, C and D class soils. Class A is top cropping country; B is land suitable for cropping and grazing; C is grazing only, unsuitable for cropping; and D is unsuitable for agriculture or reserved for environmental purposes.*
>
> *QGAL is clearly defined; it has been used successfully for many years and has been as standard in resolving matters in the courts. SCL is poorly defined; it has only been in operation for two years and was developed for the very dubious purpose of being seen to be doing something about protecting the very best soils.*
>
> *When comparison is made between the maps developed by soil scientists for GQAL and the trigger maps an appreciation can be gained for the deficiency in the trigger maps."*

All good quality agricultural land (A&B) no matter its current land use should be considered as a regional interest; not just land that is currently cropped.

Clause 3 (1) (c) (ii) Coexistence

Page 6 of the Explanatory notes states, "*as the coexistence and assessment criteria are developed for inclusion in the Regional Planning Interests Regulation"*

No coexistence criteria have been included in the Explanation notes, the Bill or in the definitions in schedule 1 to make a comment on. PRA would welcome the opportunity to submit on the further development of co-existence and assessment criteria.

See also PRA's comments to **Clause 28**.

PRA has made previous comment in submissions about the concept of coexistence; please refer to *Appendix 1* pages 6 & 7 and to *Appendix 2* page 2

Clause 5 Relationship with resource acts and Environmental Protection Act

See also **Clauses 56 & 100**

The regional interest authority can override the EPA & Water Act; the Bill is unclear if protections afforded to landowners in environmental authorities (EPA) and the likes of the 'make good' provisions in the Water Act are at risk. This uncertainty should be rectified and assurance given that landholders (owners & occupiers) property & water rights are retained.

Clause 9 Priority living area (PLA)

Using the example of the DDRP not all settlements were given the status of a PLA, no closely settled rural residential houses and certainly no individual farm house is afforded this consideration. Priority living areas should be extended to both closely settled rural residential houses and the individual farm house.

Refer also to *Appendix 1* page 7

Clause 12 Resource Acts

The Regional Planning Interest Bill makes no mention of impacts on a regional interest by infrastructure for the sole benefit of resource activity. Landholders (owners & occupiers) are experiencing considerable angst as infrastructure projects are subject to the Acquisition of Land Act 1967 (ALA) which affords them little protection of their rights.

Until such time as a well-considered submission process to reform the ALA is finalised consideration should be made to include the ALA amongst the resource acts in the regional interest bill; this will ensure that all resource requested infrastructure such as High Voltage Power infrastructure, Railway Lines, Water Pipelines, etc. are not exempt from determination of a regional interest.

Clause 13 Resource authority

Should provide the inclusion of the associated infrastructure required for Resource Development currently occurring under the Acquisition of Land Act 1967. ALA 1967 has not kept pace with the Resource Sector Boom and an amendment in this Bill should occur to ensure areas of Regional Interest are not impacted by this type of development and the Bill is more in touch with landholders (owners & occupiers) expectations.

Clauses 18 to 20 and 78 Penalties

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.

Clause 22 Exemption: agreement of land owner

The potential is there for the misuse of this exemption and for resource activity to proceed even on the very best agricultural land by "buying" an exemption via a favourable agreement with the land owner. If the Queensland government wishes to achieve its agricultural strategy to double the State's agricultural production by 2040 (the 2040 Plan) then perhaps this exemption would not be as freely available.

The land owner should be provided with the information that possibly a regional interest may apply to their land which could possibly stop the resource activity proceeding at the onset of negotiation for a Conduct and Compensation agreement (CCA). Rarely have resource companies given full disclosure of future activity when first approaching landholders (owners & occupiers). The availability of this exemption is far from ideal and outcomes are likely to be unpredictable.

Similarly PRA is concerned that resource activity will proceed even if it causes a permanent loss to the productive capacity of good quality agricultural land through the mitigation measures found in **Part 4, clauses 57 to 67** of the regional interests bill.

The mitigation fund established under the repealed SCL act will continue under the new act and the potential is there if resource commodity prices are high to proceed even if damage occurs to productive land and pay the government mitigation fund.

Mitigation is paid to a government fund and is legislated to have a public rather than a private benefit. PRA believes that the legislation should be amended so that the landholder (owner or occupier) is able to be compensated for this unfair situation which has been forced on the landholder and is often unforeseeable when there is a loss to the productive capacity of the land and thereby a loss in the earning capacity from that affected area. It has the effect of diminishing a property right.

This compensation should not be made available to agricultural land which is owned by a mining or gas company or associate.

Clause 23 Exemption: activity carried out for less than a year.

There has been no consideration made for cumulative impacts. Provision should be made throughout the bill for cumulative impacts. **Clauses 25, 41 & 49** are further examples where consideration for cumulative impacts should be included.

Clause 24 Exemption: pre-existing resource activity

Exemptions offered in this clause are broad and very generous. There is no direct guidance but by default it offers resource activity lengthy transitional measures.

24 (2) (b) Impact on the quantity and quality of underground water is one of the greatest concerns for landholders (owners & occupiers). The area defined as a Cumulative Management Area (CMA) will change every three years at the triennial release of the underground water impact report. Therefore the area where the exemption does not apply will change.

Clause 25 Exemption: small scale mining activity

Again there has been no consideration made for cumulative impacts. PRA are also concerned at the potential that this will allow loopholes in this Bill that will allow a large development to be approved by developing its resources little by little and thereby receiving an exemption by default with this wording.

Clause 27 Assessing agency

The Bill is unclear on how the chief executive will determine the qualifications of an assessing agency. Although not excluding the appointment of other bodies as an assessing agent, the bill makes mention only of Local Government. PRA believes that on a range of issues that Local government can aid in determining a regional interest; however State agencies have more expertise in areas such as The Environmental Protection Act and the Water Act.

Especially in light of **Clause 50 (2)** Local Government should not impose conditions outside its area of expertise.

PRA recommends that assessments must not solely rely on desk top studies and the area in question must be physically visited for on ground assessment.

Above comments also apply to **Clause 41**

Clause 28 Impact on a Regional Interest

Impact should also be recognised for tenure conditions of leasehold land**.** This is important to occupiers of leasehold land e.g. GHPL who have tenure condition obligations such as retention of at least 40% groundcover, prevention of erosion, must be a living area etc.

Clause 31 Owner of land given copy

PRA believes that word "occupier" as well as owner should be used to be more inclusive of leaseholders and business arrangements including family partnerships. "Occupier" should be used where appropriate throughout the bill.

Immediate neighbours should be given a copy of the assessment application.

These comments are also relevant to **Clauses 52 & 68**

Clause 41 assessments agency's assessment of application

There has been no consideration made for cumulative impacts.

Assessments must not solely rely on desk top studies and the area in question must be physically visited for on ground assessment.

Clause 53 Public notification of decision

The wording of **(1) (a)** should be changed from "*on the department's website; or";* to – "on the department's website; and"

Clause 56 regional interests conditions paramount

It is of significant concern that the Chief Executive has no power to vary conditions which may be inappropriate. We also reiterate that this approach can lead to huge inconsistency between areas.

There is the potential that an assessment agency for example local government may have a conflict of interest to certain aspects when assessing a regional interest which could create undesirable outcomes when a regional interest prevails over other established Acts.

The regional interest authority can override the EPA & Water Act; the Bill is unclear if protections afforded to landowners in environmental authorities (EPA) and the likes of the 'make good' provisions in the water act are at risk. This uncertainty should be rectified and assurance given that landholder's (owners & occupiers) property & water rights are retained

See also **clauses 5 and 100 (1) & (2)**

Part 4 Mitigation Clauses 57 to 67

Please also refer to comments made above under **Clause 22**.

PRA accepts that provision has to be made for the mitigation fund from the repealed SCL act and the administration of the fund provided for in the Regional Interests Bill.

However **Section 62(1) (b),** that the fund should *provide a **public**, rather than a private, benefit* excludes individual owners and lessees from applying for the fund.

In some cases where damage which limits productive capacity is done to a private owner's (includes lessees) property which limits productive capacity a fair outcome would be for that owner to be fully compensated. A *public* project may not benefit the affected landowner at all or benefits may be marginal.

Section 62(1) (e) provides that mitigation measures should *benefit the largest possible number of cropping agribusinesses*

In some cases where damage is done to a private owner's property (includes lessees) which limits productive capacity a fair outcome would be for that owner to be fully compensated. A *public* project which benefits many landowners may not benefit the affected landowner at all or may benefit the landowner only marginally.

Section 62(1) (f) *if a cropping activity or cropping system existed for mitigated SCL land to which the measures relate—provide a benefit to that type of activity or system in the relevant local area* also makes it clear that the individual owner of the cropping business is not a major concern. Our concerns for that business remain the same as above.

The wording should be changed to allow an owner or lessee to gain relief for severe damage to productive capacity unless that land is owned by a resources company or an associate of the resources company.

Not all forms of damage are foreseeable and individual farmers should not be left uncompensated for such damage.

Any amendments should not limit the ability nor necessity for landowners and occupiers to write access and compensation agreements which cover as many as possible foreseeable outcomes.

These sections from the SCL act were written by the previous Government who more readily accepted the belief that the productive capacity of the State belonged to the State and not the owner or lessee of the land.

See also PRA's comments in Appendix 2 page 6 to question 10

Part 5 Appeals

PRA agrees that there should be a fair appeals process.

Clause 68 affected land owner

PRA also submits that the owner of the land may not always be the affected business and wherever an owner is given rights such as in the appeals process that an occupier should enjoy the same rights.

Clause 70 Appeal period

20 days is insufficient as an appeals period. The period should be at least 60 days.

Clause 100 (1) & (2) Amendment of an environmental authority

Please refer to comments made in **Clauses 5 and 56**

Schedule 1 Dictionary

Owner

Owner, of land, means the person for the time being entitled to receive the rent for the land or would be entitled to receive the rent for it if it were let to a tenant at a rent.

By this definition it is clear that in the case of leasehold land the State is the owner of the land under the Act.

This will likely result in severe loss of property rights of those who conduct a business on leasehold land with no right of appeal or any of the other rights accorded the "owner".

PRA strongly urges that a definition of "occupier" be included in the Bill and that they be accorded the privileges of "owner" in the Bill.

Conclusion

The Regional Planning Interests Bill fails to or inadequately accommodates concerns about cumulative impacts, protection of water especially underground water and infrastructure for the sole benefit of resource activity.

The lack of consideration for leaseholder's rights and the definition of owner are surprisingly poor and regressive.

Exemptions are broad and over generous.

The Bill has overriding power over other acts and therefore it is very important to get it right especially in light of clauses 5, 56 and 100.

Pivotal to determining a Regional Interest will be the Regional Plans. PRA has significant concerns with the Darling Downs and Central Qld regional plans; other regional plans are not yet available. It is imperative that existing regional plans are reviewed.

PRA is available to attend a hearing and will travel to a location chosen by the committee. In an effort to assist the committee PRA's first preference in Toowoomba or failing that Rockhampton or Brisbane.

PRA believes that the Bill can be made into a positive 'workable' tool for all the different community interests if amendments are made. PRA respectfully requests that the committee give full consideration to the comments made in this submission.

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

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Dale Stiller

Vice Chairman

APPENDIX 1

PROPERTY RIGHTS AUSTRALIA SUBMISSION TO:

DARLING DOWNS REGIONAL PLAN

Submission
Draft Darling Downs Regional Plan

Submission to:
Honourable Jeff Seeney MP, Deputy Premier,
Minister
State Development, Infrastructure and Planning

Department of State Development, Infrastructure and Planning
Email: DDRegional Plan@dsdip.gov.au

Submission from:
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Property Rights Australia (PRA) is a not for profit organisation with members in all states but mostly in Queensland. It was formed to protect a range of property rights including, importantly, rural property rights.

Our organisation is concerned that the protections for agriculture set out in the draft Darling Downs Regional Plan (DDRP) are a further step away from protection for agriculture broadly and indicate a shift towards higher priority for mining and coal seam gas (CSG) production. This submission will refer to CSG particularly as this is currently the major concern for landholders. However, the submission applies equally to other extractive industries on agricultural land.

PRA believes many people affected by this regional plan would not be aware of it as the name Darling Downs has high association with the Condamine alluvial floodplain and close by centres such as Dalby and Pittsworth. Most certainly those living in the Balonne and Maranoa regional council areas would have not have considered it would have applied to them. This is especially concerning when the majority of the area outside of the central Darling Downs has not been mapped as Priority Agricultural Areas (PAA's) in this regional plan even though there are extensive areas of dryland cropping and high quality soil types with the current land use of grazing or in a ley rotation.

Context of the submission

The Queensland Government has an agricultural strategy to double the State's agricultural production by 2040 (the 2040 Plan). The deputy director-general of the Department of Agriculture has stated that the plan will increase the amount of farm land across the state as well as the productivity of existing land.[1]

This suggests that sustainable agriculture, in all its forms, should be a high priority for the Queensland Government and, certainly, a higher priority, especially for soils of the A and B land classification (as described below), than extractive industries with limited life spans.

Land Classifications

Agricultural land in Queensland has been classified using the simple classification system called Good Quality Agricultural Land (GQAL)[2] of A, B, C and D class soils. Class A is top cropping country; B is land suitable for cropping and grazing; C is grazing only, unsuitable for cropping; and D is unsuitable for agriculture or reserved for environmental purposes. This land classification system was developed from decades of work by soil scientists who were unimpeded from any other agenda other than good science. QGAL is clearly defined; it has been used as standard in resolving matters in the courts. It has stood the test of time.

PRA is very concerned where policy, legislation, planning schemes and ministerial decisions have been implemented without giving priority to good soil science.

A very blatant example in recent years is where the Coordinator-General's department in November 2010 reclassified lands in the Xstrata Wandoan coal mine lease application from A & B to C for the advantage of the mining company. This project was subsequently granted conditional environmental approval in March 2011. The Darling Downs Regional Plan - Draft for Consultation makes mention of this project on page 17.[3] Although this case study involves a number of other acts and planning policies it does warrant closer study to facilitate improved outcomes for the Darling Downs regional plan, as the following information demonstrates.

With any mining or petroleum lease application, a resource company is required to produce an environmental impact statement (EIS)[4] where a consultancy firm is hired to write a document (best measured in kilograms rather than pages) to shed the best possible light on the project proceeding. The Xstrata Wandoan coal mine addressed quality of soils in the lease application in volume 1, chapter 9.3.6 and land suitability and agricultural lands in chapter 9.3.7.[5]

Despite including the pre-existing GQAL mapping as Figure 9-11-V1.3, the EIS provides inconsistent mapping of soil quality in Figure 9-9-V1.3**.** The EIS states that this second map uses the classification system of Land Suitability Classification for Cropping and Grazing in the Semi-arid Sub-tropics of Queensland (Department of Mines and Energy, 1995). The result is that under GQAL the land was considered to be either, Class A, top cropping country or B, land suitable for cropping and grazing and in the classification system favoured by Xstrata the very same land overnight became either Class 3 – suitable land with moderate limitations – land which is moderately suited to a proposed use but which requires significant inputs to ensure sustainable use; or Class 4 – marginal land with severe limitations which make it doubtful whether the inputs required to achieve and maintain production outweigh the benefits in the long term.

The accuracy of the information and the methodology used to reach the conclusions in the relevant chapters within the EIS is questionable and was challenged by those with local knowledge. In response to these submissions the Supplementary EIS (SEIS)[6] spent many pages justifying the obvious anomalies without varying its conclusions.

The most disappointing aspect about Xstrata Wandoan coal mining lease application was not the information paid for by Xstrata and prepared by consultants but the almost unreserved acceptance of this material in the Coordinator-General's evaluation report on the EIS.[7]

In Chapter 5.2.1 - Good quality agricultural land, strategic cropping land and rehabilitation, the Coordinator-General makes the following statements

> *The EIS outlined that, under Section 2 and Attachment 2 of the associated SPP 1/92 Planning Guidelines: The Identification of Good Quality Agricultural Land (Department of Primary Industries and Department of Housing, Local Government and Planning Queensland 1993),* ***Class A, B and C agricultural land in the former Taroom Shire does comprise GQAL*** [emphasis added]
>
> *The Taroom Shire Planning Scheme classified the MLA areas as GQAL—Classes A, B and C. The land suitability assessment undertaken in the EIS and SEIS, however, concluded that Class 3 and Class 4 land suitability—which approximates to GQAL Agricultural Land Class C—occurred on the MLA areas. Therefore, indications are that the MLA areas are unlikely to be classified as strategic cropping land.*

It beggars belief that the Coordinator-General could accept without question the downgrading of this land classification by the party with an economic interest in having it downgraded, without considering the possible cost to Queensland agriculture and the past production history of that land.

PRA strongly believes land classifications must be based on established science and the production history of that land. No benefit to the immediate community or the citizens of Queensland can be identified in altering soil classifications for the expediency of the resource sector, as in the Xstrata Wandoan coal mine where A and B GQAL was changed to C class. Nor should it be the case where a process could be influenced so as C and D class land could be changed to A and B to stop a resource project.

More recently the classification of Strategic Cropping Land has restricted the areas considered to have priority as cropping land. PRA wrote in the very recent submission to the Strategic cropping land framework review:[8]

> *The legislation was supported by rural industry as better than nothing in their wish to have premium land protected from mining, coal seam gas and large scale development. Instead of protecting landowner's property it removed some property rights to freely further develop what the land had been long used for; the production of food. SCL has imposed another layer of red tape and more restrictions on farming activities and associated value adding activities. Wished for protection from coal seam gas activities were non-existent and little protection was afforded from other extensive developments.*

Now Priority Agricultural Areas (PAA) under the draft Darling Downs Regional Plan has served to further restrict the areas considered to be top class cropping land. Protected cropping land is further limited to areas dedicated to Priority Agricultural Land Uses (PALU) within the PAAs.

State Planning Policies

The draft regional plans are not the only planning policies under review. It is difficult to provide informed comment in submissions when other planning policies are in various stages of review, there are yet to be enacted amendments and are therefore unknown legislation. These changes are highly likely to have a profound impact on regional plans when future planning policies, (as stated under the Local Government and Other Legislation Amendment Bill 2013[9]), will over-ride regional plans and will devalue some of the assurances for the protection of agricultural property being offered in the draft regional plans.

The State Planning Policy Draft for consultation April 2013[10] in *Part B: Application and operation* (page 7) makes it clear that the State Planning Policy (SPP) has the power to make and amend local planning instruments and regional plans.

Because the regional plans will be over-ruled if they are inconsistent with a higher ranked planning policy, PRA wishes to make comment about the designation of community infrastructure, especially in light of the current situation in the north-west Surat Basin – an area within the Darling Downs Regional Plan where Powerlink are proposing to build multiple high voltage transmission lines that will be for the sole benefit of coal seam gas infrastructure and are seeking the designation of community infrastructure. These high voltage transmission lines will be crossing some land that under GQAL is classified as A and B and therefore should have been mapped as PAA under this draft Darling Downs regional plan.

Under the heading *Designation of land for community infrastructure* (page 7) State Planning Policy Draft for Consultation April 2013 states that a Minister can designate land for community infrastructure under the provisions outlined in the section "Making or amending a local planning instrument", in Part C found on page 42 of the same document.

Therefore the designation of community infrastructure under the provisions of the SPP will remove all landowner protections that have been assured under the DDRP.

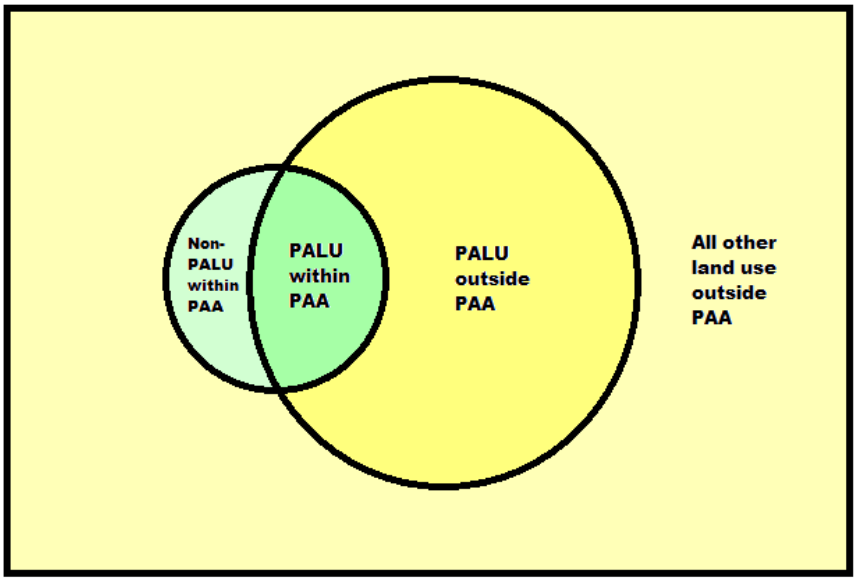
Powerlink have a proven history of poor consultation with landowners, disregard for how the project will affect the ongoing management of agricultural production on that land, and a failure to even consider alternative routes that would minimise inconvenience to the land use, avoid good GQAL and avoid passing close to houses. In short, they have not been good corporate citizens.

As the community and economy grows, infrastructure is needed. However infrastructure for the sole use of private companies should not be designated community infrastructure. Changes should be considered to other plans and legislation, and consideration must be given to how each one links with other plans and legislations.

Agriculture and the Draft Darling Downs Regional Plan

The Darling Downs region covers much A and B class agricultural land. This land will need to be further developed and exploited if the goals of Queensland's 2040 Plan are to be achieved.

The Petroleum and Gas (Production and Safety) Act (2004) (P&G Act (2004)) sections 804 and 805 establish basic rights and obligations for landholders and mining companies with respect to entry to land and interference with agricultural activity. Notwithstanding the relative disparity in power between a mining or gas company and the landowner, these provisions at least lay down a basis from which a landholder's position can be argued. All succeeding soil classification and proposed planning has focused on increasingly more restricted areas – Strategic Cropping Land, Priority Agricultural Areas (PAAs), Priority Agricultural Land Uses (PALUs) – in which agriculture will be a priority. The diagram below demonstrates conceptually how small the area of agricultural priority may be ("PALU within PAA"). The draft Darling Downs Regional Plan as it is currently worded suggests that CSG will be the priority in all areas which are not "PALU within PAA".



It is noted that a review of the Strategic Cropping land framework[11] is currently being conducted to "better align with statutory regional planning processes to protect priority agricultural land". As the draft Darling Downs Regional Plan stands, this could see a reduction in the area protected.

Priority Agricultural Land Use (PALU)

On page 56 of the draft Darling Downs Regional Plan, PALU has been defined as a land use included in class 3.3, 3.4, 3.5, 4 or 5.1 under the Australian Land Use and Management Classification Version 7, May 2010[12] published by the Department of Agriculture, Fisheries and Forestry ABARES, Australian Government.

PRA strongly believes that class 5.2 Intensive animal husbandry from the Australian land use and Management Classification be added to the definition of PALU. Cattle feedlots are a significant land use in the area covered by the DDRP reflected in the statistics that this area has 45% of the feedlots in the state and 31% of the feedlots in Australia

On page 58 the draft states that PALU generally includes:
1. continual cropping
2. horticulture
3. irrigated agriculture.

Given that the draft only gives agriculture the priority over resource activity if it is PALU within PAA, the use of the term continual cropping removes the flexibility of farm management practices to, for example, remove an area out of continual cropping for a short period of ley pasture. It would be far better if the regional plan recognised the pre-existing GQAL classification and provide agricultural priority for A and B class soils no matter of the current land use. The Plan as it stands takes no account of sustainable land management practice.

PRA commends the draft plan for the following and believes that it is highly desirable. These measures should also be afforded to intensive livestock industries:

> *"Shallow un-pressurised aquifers that supply irrigation water for a PALU, such as the Condamine Alluvial Aquifer, will be considered part of that PALU as they constitute an essential part of the high value intensive agricultural land use. Similarly, PALUs will include any dams or irrigation channels that constitute an essential part of the priority agricultural land use."*

Priority Agricultural Areas (PAA) Co-existence Criteria

The Draft Darling Downs Regional Plan refers extensively to the concept of co-existence. PRA does not believe that coexistence can be achieved in all instances. For example

- where broad areas and large scale machinery are the lynchpin of efficiency, having to reduce either or both of these to accommodate either of these will cause a permanent decrease in efficiency
- where irrigation entitlements to aquifers have been reduced and will be reduced in future often resulting in loss of crops, the notion that resource companies can have unimpeded access to that water is abhorrent
- CSG wells, roadways, pipeline and other associated infrastructure on alluvial flood plains are incompatible with areas that are cropped.

Furthermore the use of the word coexistence or the alternative sustainable coexistence has never been satisfactorily defined. The reality is that the "measures" for coexistence are opening doors for exploration and resource extraction. Landowners have never felt any comfort that any such arrangement would allow for full farming production and efficiency. The use of this term provides no legal or compensable protection for landowners.

Landowners can take little comfort and have little confidence in the Draft Darling Downs Regional Plan where it dilutes protections for landowners over resource sector activity. Specifically, in every measure outlined in the Priority Agricultural Areas (PPA's) Co-existence Criteria found on page 59 the use of the wording, "no reasonable alternative" indicates that, at the end of the day, protections will not exist if they are not convenient for the resources sector.

Regional policy 2 on page 18 apparently seeks to achieve what could well prove impossible:

> *"Maximise opportunities for co-existence of resource and agricultural land uses within Priority Agricultural Areas."*

Priority Agricultural Area (PAA) has been defined in the draft plan as an area identified in Map 1 found on page 19. PRA believes that if the pre-existing science which identified GQAL was applied, a far greater area would be identified as PAA. (The Xstrata Wandoan coal mining study underlines this fact.)

Priority Living Areas (PLA)

It is notable that throughout the draft plan there is very little mention of urban encroachment onto highly productive agricultural land. Throughout Australia, the failure to stop urban sprawl rolling over the top of very good vegetable growing areas has been well documented. The Darling Downs currently may have very few centres that could approach the definition of urban. However it would be prudent to strengthen the protection of PAA against urban encroachment.

Another failure in planning policy has been residential development allowed to encroach close to pre-existing industrial or intensive agriculture businesses only at a later date to have these residents complain about the activity at these pre-existing businesses. To secure approval for any feedlot development there are separation distance requirements. These buffer zone obligations imposed should be reciprocated to any residential development

The PLA seeks to preserve the 'liveability" of selected larger towns within the Darling Downs region. However the question needs to be asked whether this is sufficiently equitable? Do not all people deserve the same quality of life? An isolated farm house would have their amenity of life equally impacted upon by nearby resource sector activity.

Landholder Protections

The following comments apply to "protections" for "PALU within PAA" set out in the draft plan. However it is very important that effective protections be afforded for other agricultural land uses and primary producers in other areas as well.

The co-existence criteria set out in the draft Plan do not provide substantive protection.

The Plan states as an outcome: "A resource activity does not result in the material loss of land used by a PALU". "Material loss" is amplified by the statement "It is intended that whether a given impact or effect on a PALU is unreasonable will be determined by reference to the specific characteristics of any particular PALU." No indication is given of what the "tipping point" will be for material loss. It is not evident that this provides any additional protection beyond the limited protections already available.

The same considerations apply to the outcome "No material impact on overland flow [of water]".

The Plan further states as an outcome: "A resource activity does not have a material impact on the continuation of a PALU." However, there may be a "material impact" where there is "no reasonable alternative". Again "material" and "reasonable" are not defined.

The Plan finally states as an outcome: "A resource activity does not have a material impact on an irrigation aquifer that is an integral part of the PALU". "Material impact" is not quantified. However, it is scientifically accepted that a decrease in pressure in one underground stratum (by removing water and gas) will lead to leakage from other strata to equalise pressures. The effect on aquifers used for agriculture will be, at best, unpredictable.

The draft Darling Downs regional plan is burdened with unclear, poorly defined terminology. It offers landowners no further protections and it will most likely facilitate resource sector activity at the expense of agriculture. It introduces new confusing and restrictive mapping and criteria such as PAA and PALU when an easily understood, science based and tested by time land classification system of GQAL already exists.

Much CSG infrastructure may have a substantial footprint which will impact on different agricultural activities in different ways. While CSG companies have suggested that many landholders have been willing to take leases over properties they have purchased and established wells on, there is considerable difference between having wells on a property which is a primary source of agricultural income and leasing such a property as additional area. The psychologically depressing effects of having significant numbers of wells on agricultural land also cannot be ignored.

The question of the disposal or processing of salt water which is a by-product of extractive industries also needs to be addressed. There is a critical question affecting the Murray-Darling Basin far beyond the Darling Downs Region. The plan fails to mention any other waste product from CSG activity other than salt.

Far from providing "additional protections" the draft Darling Downs Regional Plan appears to limit the area of agricultural land that might qualify for protection. It does not provide concrete measures for "material impact" and "unreasonable effect" that might assist those landholders who might qualify for protection.

Notable by its absence is any reference to how the regional plan is going to limit or demand any improved standard upon existing approved resource activities.

The mining and coal seam gas industries are not now or in any current proposed amendments to legislation made to be compliant with Strategic Cropping Land or to any Regional Plans. They will not be until mention is made in the Mining Act and Petroleum and Gas Acts for those industries to be compliant to a clearly defined standard such as GQAL.

The draft Darling Downs Regional Plan as it stands does nothing to advance the objectives of Queensland's 40 year Plan for agriculture, yet the Darling Downs would surely figure prominently in that Plan.

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

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Dale Stiller
Vice Chairman

[1] http://www.abc.net.au/news/2013-06-12/doubling-ag/4749572 (17 August 2013).

[2] http://www.dsdip.qld.gov.au/resources/policy/plng-guide-identif-ag-land.pdf

[3] http://www.dsdip.qld.gov.au/resources/plan/darling-downs/draft-darling-downs-regional-plan.pdf

[4] http://www.dsdip.qld.gov.au/assessments-and-approvals/environmental-impact-statement-eis.html

[5] http://www.wandoancoal.com.au/EN/PublicationsandMedia/Pages/VolumeOneEIS.aspx

[6] http://www.wandoancoal.com.au/EN/PublicationsandMedia/Pages/VolumeOne.aspx

[7] http://www.dsdip.qld.gov.au/resources/project/wandoan-coal-project/coordinator-general-report.pdf

[8] http://www.nrm.qld.gov.au/land/planning/pdf/strategic-cropping/scl-framework-review-discussion-paper.pdf

[9] http://www.parliament.qld.gov.au/work-of-committees/committees/THLGC/inquiries/current-inquiries/INQ-LGOLA

[10] http://www.dsdip.qld.gov.au/resources/policy/state-planning/draft-spp.pdf

[11] http://www.nrm.qld.gov.au/land/planning/pdf/strategic-cropping/scl-framework-review-discussion-paper.pdf

[12] http://data.daff.gov.au/brs/landuse/docs/ALUM_Classification_V7_May_2010_detailed.pdf

APPENDIX 2

PROPERTY RIGHTS AUSTRALIA SUBMISSION TO:

THE STRATEGIC CROPPING LAND FRAMEWORK

Submission to: SCL Review, Land and Mines Policy

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Submission from: Property Rights Australia

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Property Rights Australia 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, other businesses and the community.

Our philosophy is that if the community (or other business) wants our resource for any other purpose such as environmental protection then the community must pay fair and unsterilised value for it.

The Strategic Cropping Land State Planning Policy was introduced by the previous government. Property Rights Australia participated in the submission process and made comment critical of the then proposed legislation.

> *"Our organisation is concerned that this SCL SPP will be unduly restrictive of farm diversity, farm value-adding and a range of common farming practices. It is a fruitless exercise to place costs and impediments to business flexibility on agriculture to protect it from itself; when industry supported SCL legislation, the major problem that it wished to alleviate was threats to farming from mining and the coal seam gas industries and other large scale external developments.*
>
> *This planning instrument punishes the very people it should be protecting*."

The previous government introduced the SCL SPP for reasons other than what were publically stated. The legislation was supported by rural industry as better than nothing in their wish to have premium land protected from mining, coal seam gas and large scale development. Instead of protecting landowner's property it removed some property rights to freely further develop what the land had been long used for; the production of food. SCL has imposed another layer of red tape and more restrictions on farming activities and associated value adding activities. Wished for protection from coal seam gas activities were non-existent and little protection was afforded from other extensive developments.

The Queensland Government has an agricultural strategy to double the State's agricultural production by 2040 (the 2040 Plan). The deputy director-general of the Department of Agriculture has stated that the plan will increase the amount of farm land across the state as well as the productivity of existing land.

The 2040 plan can only be achievable if the very best soils are protected by mining and the coal seam gas industries.

Comment on the Review of the Strategic Cropping Land Framework Discussion Paper

http://www.nrm.qld.gov.au/land/planning/pdf/strategic-cropping/scl-framework-review-discussion-paper.pdf

PRA wishes to make comment on some of the assumptions made in this discussion paper.

The following point was made on page 2 under the heading, Context of the review, about key government commitments that have been made since the introduction of the SCL Act.

"*ensuring the coexistence of the agricultural and resource sectors through a range of measures such as the GasFields Commission Queensland and improving land access provisions."*

PRA does not believe that coexistence can be achieved in all instances. For example

- in areas where broad areas and large scale machinery are the lynchpin of efficiency, having to reduce either or both of these to accommodate either of these will cause a permanent decrease in efficiency
- where irrigation entitlements to aquifers have been reduced and will be reduced in future often resulting in loss of crops, the notion that resources companies can have unimpeded access to that water is abhorrent
- CSG wells, roadways, pipeline and other associated infrastructure on alluvial flood plains that are cropped.

Furthermore the use of the word coexistence or the alternative sustainable coexistence has never been satisfactorily defined. The reality is that the "measures" for coexistence are opening doors for exploration and resource extraction. Landowners have never felt any comfort that any such arrangement would allow for full farming production and efficiency. The use of this term provides no legal or compensable protection for landowners.

On page 3 under the heading of Statuary Regional Planning the discussion paper states –

"The Central Queensland and Darling Downs regional plans provide additional protection for each region's highly productive agricultural uses through providing outcomes and policies to protect Priority Agricultural Land Uses (PALU) while supporting coexistence opportunities for the resource sector."

Far from providing "additional protections" the draft Darling Downs Regional Plan appears to limit the area of agricultural land that might qualify for protection. PRA will make further comment in its submission on Draft Darling Downs Regional Plan, due on September 20th.

Survey Questions from the Review of the Strategic cropping land framework discussion paper.

Question 1: Do you believe that the SCL framework and Act have achieved the stated policy intent and purposes?

No

Question 2: Are changes needed to these purposes in light of recent changes in policy?

Yes

Question 3: Do you have any suggestions on ways to improve the accuracy of the trigger map?

These soil types have already been identified in a land classification system called Good Quality Agricultural Land. This land classification system was developed from decades of work by soil scientists who were unimpeded from any other agenda other than good science. GQAL is a simple classification system of A, B, C and D class soils. Class A is top cropping country; B is land suitable for cropping and grazing; C is grazing only, unsuitable for cropping; and D is unsuitable for agriculture or reserved for environmental purposes.

QGAL is clearly defined; it has been successfully for many years and has been as standard in resolving matters in the courts. SCL is poorly defined; it has only been in operation for two years and was developed for the very dubious purpose of being seen to be doing something about protecting the very best soils.

When comparison is made between the maps developed by soil scientists for GQAL and the trigger maps an appreciation can be gained for the deficiency in the trigger maps.

http://www.dsdip.qld.gov.au/resources/policy/plng-guide-identif-ag-land.pdf

Question 4: Do the eight SCL soil criteria (slope, rockiness, gilgai microrelief, soil depth, drainage, soil pH, salinity and soil water storage) adequately reflect what should be considered Queensland's best cropping land? If not, what changes or additions are required?

The GQAL land classification system did not include slope or salinity. These criteria discriminate against some highly fertile soil types such as high sloping country around the likes of Kingaroy and for brigalow soil types to have suspended salts in their profile that do not inhibit plant growth. DPI and CSRIO trails have clearly shown that these low levels of salinity found in brigalow soils lower and disperse in the soil profile when cropped.

It was PRA's belief that when the previous government introduced SCL that at least one of these eight soil criteria were designed to catch the landowner out somewhere. It was not based on good science as is the previous well tested GQAL.

The SCL standards should be replaced by GQAL standards.

Question 5: **Is the process for identifying and validating SCL effective and can it be improved or streamlined?**

It is hardly surprising that landowners find the SCL validation process expensive when it has been imposed upon them by other industries and until very recently the very best outcome for another industry making use of the same area of land that the landowner had been using to produce food was to financially break even.

Table 3 on page 11 shows that out of 47 applications for assessment of SCL none have been adjudged SCL; a situation that would not give confidence in the process by landowners.

Question 6: Are the current definitions of temporary impact and permanent impact on SCL appropriate or should they be refined?

Coal seam gas activity is not considered a permanent activity under SCL. PRA agrees with the following statement made in the discussion paper –

"Stakeholders affiliated with the agricultural sector have commented that the less than 50 year timeframe associated with temporary impacts is inappropriate and that less than 50 years represents potentially an inter-generational impact on a farming enterprise."

The SCL Act made the wrong assumption that CSG activities have low impact on agricultural land. However especially in the situation of cropping on alluvial flood plains that account must be taken not just of the gas wells but also by the connecting roads and other associated infrastructure which combined has a high impact.

CSG production is not a temporary impact when it depletes or depressurises aquifers and brings long term impacts of the accessibility of quantity and quality of ground water for irrigation or for livestock. Also it may not be temporary if they leave salt or other contaminants on the ground or in the water.

Furthermore there is every indication that once the CSG is depleted that the resource companies will then drill deeper to the shale gas giving greater utilisation to very expensive infrastructure currently under construction. These combined gas sources could occupy good productive soil types for far greater than 50 years.

Question 7: Should greater clarity be provided about the type of activities that are considered to have a permanent and temporary impact on SCL?

Yes, but with increased and better defined standards as currently contained in the SCL Act. 50 years cannot be considered temporary.

Question 8: Do you think the current concepts of protection areas and management areas are appropriate? If not, what changes are required?

Far from providing "additional protections" the draft Darling Downs Regional Plan appears to limit the area of agricultural land that might qualify for protection. PRA will make further comment in its submission on Draft Darling Downs Regional Plan, due on September 20th.

The mining and coal seam gas industries are not now or in any current proposed amendments to legislation made to be compliant to the SCL SPP or to any Regional Plans. They will not be until mention is made in the Mining Act and Petroleum and Gas Acts to be compliant to a clearly defined standard such as GQAL

The mining and coal seam gas industries should be subjected to a SPA process for their activities, whether temporary or permanent impacts are involved.

Question 9: Do you believe that the current exceptional circumstance test is too inflexible?

No. The question implies that the exceptional circumstances test should be removed or given a much looser definition. It is already a get out of jail free card. The use of the terms "there is no alternative site" and "community benefit" can already be used to the disadvantage of agricultural land use.

Question 10: Is the mitigation process effective in addressing the loss of agricultural productivity to the State that occurs where permanent impacts on SCL are authorised?

Mitigation measures identify a community benefit or compensation to atone for damage to the state's resources.

PRA is adamant that where a farmer's productive capacity is damaged whether freehold or leasehold and whether temporarily or permanently then he should also be generously compensated unless the farm is owned by the mining company or an associate of the mining company. Individual farm businesses cannot be expected to bear the brunt of resource development or industrial accidents.

The Aquisition of Land Act offers a premium on compensation in recognition of the fact that the acquisition is not voluntary. Having a resources company on your land is also not voluntary and can damage efficiency and productive capacity. Compensation should be automatic if damage occurs and not contingent on a landholder's negotiating ability.

On page 8 of the discussion paper under the heading of, SCL standard conditions code, it states –

"The code seeks to protect SCL by conditioning resource activities to avoid and minimise the

impact on SCL. It includes conditions about potential impacts, including for example:

- *surface area disturbance*
- *mixing of soil layers*
- *compaction of soil*
- *erosion*
- *subsidence*
- *changing of soil structure; and temporary impedance of cropping"*

PRA believes that a further impact be listed of mining and coal seam gas industrial accidents, pollution and spillage of substances such as salt and chemicals.

The lack of retrospective application of the SCL to current authorities means that resource authorities and ERA approvals covering large swather of SCL will have no application other than to prevent farmer's applications on their land. If amendments are sought to existing approvals the impact will be limited to the matter to be changed.

Question 11: Should a more performance-based regulatory approach be adopted for the SCL Act and in particular the SCL Standard Conditions Code?

Question 12: Should the SCL assessment process for resource activities be de-coupled from the Environmental Authority?

Most definitely not! The Environmental Authority is the only avenue that landowners can take direct legal action to major impacts of their property by CSG and mining industries. It is the only avenue available where there is not a major power imbalance between the two sectors.

Question 13: Are there alternative application and assessment approaches that would reduce public and private sector costs for administration of the SCL framework while achieving the policy intent?

Question 14: Are there other forms of development that should be excluded from SCL assessment?

PRA believes that it was a worthy initiative of this government to introduce a range of exemptions from SCL assessment of agricultural activities that value adds; improves efficiencies or diversifies food production activities.

These activities should never have been caught up in the SCL Act.

Question 15: Do you think that the fees associated with SCL validation and assessments are too high?

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

Dale Stiller

Vice Chairman