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SEQ CATCHMENTS LTD.

Submission on: *Strategic Cropping Land Framework: Discussion Paper*

Report by SEQ Catchments Chief Executive Officer, Simon Warner
183 North Quay Brisbane
swarner@seqcatchments.com.au
07 3211 4404

Introduction

SEQ Catchments is a community-based, not-for-profit organisation helping to build a sustainable community that cares for and values the natural resources and biodiversity of South East Queensland.

We thank the Minister for Natural Resources and Mines, Honourable Andrew Cripps MP for his invitation to provide feedback on the effectiveness of the Strategic Cropping Land Framework. The Framework is an important part of ensuring the long term viability of Queensland's farming future.

SEQ Catchments has invested considerable time, skills and knowledge into ensuring the valuable land assets in South East Queensland remain in good condition and are protected. It does this work by implementing the South East Queensland Natural Resource Management Plan which forms an important component to the *South East Queensland Regional Plan 2009-2031*. Specifically, the land asset targets are designed to support the State Government's legislative structures in ensuring the future viability of our productive agricultural lands.

SEQ Catchments congratulates the State Government for its intentions to streamline and simplify the regulatory framework to protect strategic cropping lands in Queensland. Many landholders have expressed their frustration with the complexity of land regulation. Any effort to simplify and make the regulatory processes and outcomes understandable by those most affected is very welcome.

The discussion paper poses a number of questions which this submission will address. These are:

Do you believe that the SCL framework and Act achieved the stated policy intent and purposes?

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

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

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

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

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

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

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

Do you believe the current exceptional circumstances test is too inflexible?

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

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

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

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

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

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

Before providing feedback against each of the questions, it is worth noting that the SCL framework on its own may not be the best approach to ensure the future of our productive agricultural lands because it utilises a triggers based approach to achieve its objects. While this approach captures new activities proposed for cropping lands inside the protected and managed areas, it does not capture existing activities which may be incompatible with long term cropping uses inside these areas. Further, there is little protection of strategic cropping lands outside the designated areas in many cases.

For this reason, the importance of ensuring the planning system accounts for strategic cropping lands through carefully crafted local government planning schemes is crucial in many areas of the State, including South East Queensland. Interestingly, the planning system has delivered draft regional plans for two key strategic cropping land areas and deals with high value agriculture under the term "Priority Agricultural Areas (PAAs)". The coverage of these PAAs is significantly different and less than the SCL areas on trigger maps, and very different again to the Queensland Agricultural Land Audit (QALA). These inconsistencies covering essentially the same topic will likely cause confusion for land holders, local governments and industry entities.

Obviously, it makes sense for the State Government to agree to a single performance outcome for high value agricultural lands from all its internal perspectives, and then tailor its policy and programmatic responses to this outcome. Logic would determine that if the State was agreed on a performance outcome for agricultural land, that the result on the ground from all the different internal perspectives (regional plans and PAAs, SCL framework, Good Quality Agricultural Land, Vegetation Management Act High Value (Irrigated) Agriculture, and QALA and Important Agricultural Areas) would be coincident. Clearly, this is not the case now.

Importantly, SEQ Catchment's experience is that landholders feel quite remote from the *Strategic Cropping Land Act 2011* (SCL Act) and other elements of the regulatory framework affecting our high value agricultural lands. We also note that many State Government policy makers often dismiss South East Queensland as "just a peri-urban" area when in fact, the South East Region contributes 12% of the State's gross value of primary production with only 1.2% of the State's land mass[1]. Horticulture in South East Queensland alone contributed around $800 million in 2008[2].

One of the other issues often raised by landholders near urban centres is the desire to sell the farm once the farmer has reached retirement age. Many farmers feel they are entitled to sell their land for development to fund their retirement years viewing it as their superannuation. These farmers look at the many high value agricultural areas around the Redlands, Lockyer Valley and Sunshine Coast for example which have already been sold for urban land developments and feel entitled to do the same. While the Good Quality Agricultural Land Policy was designed to deal with this issue, many farmers still feel aggrieved. The SCL framework needs to clarify this issue and follow up with extension

[1] Queensland Farmers Federation (2008), Sustainable Agriculture Futures Strategy for South East Queensland, Brisbane.

[2] Marsden Jacob and Associates (April 2010), Managing what matters: The cost of environmental decline in South East Queensland, Brisbane.

services regardless of which policy track the State Government wishes to follow. SEQ Catchments believes this question needs to be determined having careful regard to issues of food security at a time when our climate is becoming more variable.

Policy intent and purposes of the SCL framework (Q.1, 2 & 11)

The policy intent needs to reflect the original drivers for the creation of the SCL framework; that is, to ensure a finite and diminishing cropping land resource is protected now and into the future. The land resource is not only under threat from urban creep (including peri-urban activity), mineral resource activities, and processes such as salinity, it is also under threat due to natural disasters, poor management practice and climate impacts. A triggers based approach will always be limited in its ability to respond to this intent. It does not effectively "preserve the productive capacity of that land for future generations". SEQ Catchments certainly acknowledges the inherent difficulties associated with the intended outcome.

In looking at the detail of the SCL framework, it appears that its major function lies in dealing with land use conflicts first, then attempting to control activities on the land once the decision on the conflict is reached. The protection areas and management areas give guidance to resolving conflict within their bounds; however, other high value cropping lands are caught in confusing process.

The principles of protection first; if not, avoidance; if not, minimisation; and if not, mitigation are sound enough principles. Application of a hierarchy such as this by definition will result in loss of SCL. As the value of mineral resources or urban land values increase, and more cropping land is affected, this approach will lead to an increasing rate of loss of strategic cropping land in the long term until the value of the cropping land begins to eclipse that of the mineral resources, or value of urban land in competition with it. Only once the SCL resource is so scarce in comparison to the mineral resource or urban land, will the market place a premium back on agricultural land. The vagaries of the market will be the major factor unless the SCL framework is improved. To date, the SCL Act and other policy approaches have ensured a steady decline in the nature and extent of SCL in Queensland. Under the current legislative regime, this trend can only continue; especially now the scope of exempt activities has been dramatically increased through recent regulatory changes.

An important aspect to improving the framework is to clearly establish its performance requirements. Specifically, the framework needs to establish a set of clear targets or outcomes which can be directly measured. For example, a target such as "By 2040, Queensland will maintain or improve the nature and extent of its strategic cropping lands" allows a series of clear interim targets to be set and factors involved in the viability of cropping lands to be developed and measured. While the State has a target already established for agriculture in general; that is, "By 2040, Queensland will double it agricultural production", the relationship between such a target and the SCL framework is unclear, and nor would the target be easy to measure meaningfully under the current framework given the many variables which might contribute to its achievement.

In short, all the work underway to protect our high value agricultural lands by the many different State Government agencies covering what clearly seems to be the same outcome on the ground appears uncoordinated and disconnected. While there are no doubt many well-meaning people working on well-meaning policy, the result is most likely a continued confusion for the landholder and others, unless these efforts are brought together and coordinated. The SCL review offers an important opportunity to do something about the situation and SEQ Catchments urges the State Government to use it.

The other recent development in the regulatory planning framework which has negatively affected the SCL framework is the recent changes to the *Sustainable Planning Regulations 2009* (SPA regulations) effective on 2 August 2013. The greatly increased definition for community infrastructure and its exemption from assessment under SCL Act will have far reaching and long term impacts on the framework. There is little doubt that the regulatory changes will ensure more strategic cropping land is lost without any need for assessment.

Improving the trigger maps (Q.3)

We note the ideas about using land use mapping, digital elevation mapping and so on; however, the importance of the land resource itself is critical to being able to define the extent of SCL. There are many aspects to healthy soils which are optimal for cropping and existing use may not be a useful measure of soil health or underlying geology or landscape processes and therefore SCL land capability. The difficulties recently encountered in the Queensland Agricultural Land Audit highlight a different issue – the lack of appropriately scaled soils information and knowledge. In this sense, using Queensland Land Use Mapping Project (QLUMP) data may not deliver the appropriate outcomes for the State.

The only viable and scientifically sensible way to improve the accuracy and quality of the trigger maps is to improve the soils information first. In South East Queensland, this lack of soils information is more pronounced due to long term decision-making about priorities. South East Queensland has been seen as a peri-urban area which does not need very good soils information. The agricultural production facts listed in the introduction shows the weakness of decision-making. We strongly argue for the need for better soils information as a pivotal requirement for the SCL framework as well as the policy outcomes being sought in regional planning, and the QALA for South East Queensland.

We also understand that recent advances in soil information gathering, modelling and analysis techniques perfected by the State government and CSIRO for the Flinders-Gilbert systems means that the quality and speed with which the soils information can be gathered has been revolutionised. As an aside, we also sadly note the significant reduction to State Government funding for Landscape Sciences, and therefore, this critical information gap in the accuracy and quality of the framework. We urge the State to reconsider its withdrawal of funding to the Department of Science Information Technology, Innovation and the Arts, Landscape Sciences business unit in order to facilitate the generation of the needed soils information. The involved skills for this sort of work are not widespread in the private sector yet.

SEQ Catchments also notes there are a number of data sets which seem to be used interchangeably by many proponents, landholders and even State Government personnel. For example, the discussion paper suggests using QLUMP data because it is seen as an updated dataset when compared to the SCL datasets. Other soils products dealing with land resource capability using the standard agricultural land classes (revised earlier this year on a state-wide basis) are available through individual local government efforts and special project work and may offer more relevant information as land use is not necessarily a pointer to land capability and land resource. In all, there appears to be confusion over land use, land capability/suitability and land resource information products and datasets.

Soils criteria (Q.4)

SEQ Catchments understands the scientists associated with land processes have consistently held a view about the best criteria for assessing SCL; however that the State Government previously chose not to accept this advice in full. Regardless of scientific views, we believe there is confusion between the definitions and interpretations for the same resource across different policy platforms. For example, the QALA uses an 8% slope criteria

when the SCL framework only uses a 3% or 5% criteria depending on the region. This obviously creates confusion for all.

SEQ Catchments believes the State needs to identify and agree on a single, scientifically validated and practically tested set of criteria for determining high value agriculture as the basis for the SCL framework, the new agriculture purposes in the *Vegetation Management Act 1999* (VMA) and the QALA. In this sense, the term agriculture, while having a number of slightly different definitions under different jurisdictions in Queensland, means activities associated with the production of a commodity for food, fibre, fodder, or medicinal purposes, up until the product leaves the farm gate. Regional NRM groups in concert with scientific experts could assist the State Government with this task given their extensive community and industry networks.

Once these criteria are established, the State Government can then work through ways it wishes to favour one land use or industry over another through the regional planning system. It could be argued that the former State Government used bad policy to define the criteria with the aim of including or excluding high value agriculture to balance competing interests, hence the 3% and 5% thresholds which currently exist. The SCL framework should not be the avenue to do anything other than meet its stated aim of ensuring a finite and diminishing cropping land resource is protected now and into the future.

Identifying SCL (Q.5)

Again, the key to ensuring the intent of the SCL framework is achieved lies in holding good quality information about the land resource. Because this is not the case for much of Queensland, the framework places the burden of proof for determination of SCL onto the proponent. As a principle, this is sound; however the process to achieve it is costly and largely inefficient from a systems point of view.

The recent QALA which is based on the QLUMP work defines Important Agricultural Areas (IAAs) while the SCL mapping is based on different criteria and data layers and the two draft regional plan mapping on yet another set of criteria – all giving different spatial results for the same resource. In the end, the best place to reflect the nature, extent and protections for our high value agricultural lands are local government planning schemes. Right now, we believe it is very confusing for local governments to decide how to reflect the need to protection our valuable agricultural resource given the number and nature of existing Queensland Government policies and regulation covering high value agricultural land including strategic cropping land.

With the new digital soils attribute mapping processes now developed, a business case needs to be developed to determine whether the application of this mapping based on prioritisation of land use conflicts is more efficient and effective than the current applicant driven piecemeal approach inherent in the current framework. We suggest the State consider such a business case as part of its review.

Temporary and permanent impacts on SCL (Q.6&7)

The argument about temporary and permanent alienation will depend on which viewpoint is taken. For the development proponent, securing funding and gaining certainty requires a long term view be taken of temporary versus permanent impact given some mines have a 100 year life. For the landholders who enjoys all the common law rights associated with their strategic cropping land now, taking away their livelihood for 50 years, which is longer than the average person's complete working life, could not be considered temporary. For that person,

their land and right to farm has been taken from them for the whole of their working life potentially. These two views are very unlikely to be reconciled for obvious reasons.

While the attempt to classify impacts on SCL into temporary and permanent is understandable, it is unlikely that it will be accepted, especially by those landholders who are potentially losing their livelihood because of a development proposal which covers their SCL. It may be more reasonable to assume a much shorter timeframe (such as temporary being 10 years or less) and leaving it up to the proponent if they wish to find market mechanisms to encourage them to re-instate the land to its predevelopment condition. This would allow landholders who stand to lose their SCL to development a chance to receive appropriate recognition and damages so they can consider other options for their enterprise.

At the very least, the types of activities which are classified temporary or permanent do need to be clarified. While underground mining can have long term impacts through ongoing sink hole issues for example, the surface infrastructure to support underground mining will certainly be a long term feature of the landscape from the start of the project. In the end, Queensland's SCL is very valuable and will become more so as food production and population requirements increase. The SCL framework should place this concern above all others. As it is, the SCL framework contains a "grandfather clause" for development proponents based on "overriding need". Surely the *Mineral Resource Act 1989* gives mining proponents more than enough power to demonstrate overriding need when appropriate, and the new exemptions for community infrastructure will account most of the other land uses overriding the need for SCL.

Protection and Management Areas (Q.8)

In essence, the function of the protection and management areas is to provide a spatial classification of importance of, and risk to SCL, based on impact or code assessment. The policy work currently underway by the department for the two new high value agricultural purposes for the VMA may provide a more appropriate way of spatially classifying SCL and how it should be treated and assessed. As argued above, bringing the SCL Framework and the high value agriculture work together to be coincident and/or, complementary makes sense.

This would mean that there are three classifications for the SCL asset based on quality of information and risks to the asset. Perhaps a third criterion for these classifications could be land use conflict. In essence, the job of the SCL framework is to protect a diminishing valuable resource. Its job should not be to resolve land use conflicts. In the same way, the job of the Mineral Resources Act is to protect interests in mineral resources, not resolve land use conflicts. We would strongly argue that it is the job of well-structured and scientifically rigorous regional plans to resolve land use conflicts.

So, SEQ Catchments would like to see the QALA approach (IAAs), the SCL framework, the regional planning framework (PAAs) and the VMA efforts (high value (irrigated) agriculture) brought together into an integrated and simplified approach. Each Act takes care of each interest and the regional planning system resolves the conflicts at the landscape scale.

Exceptional circumstances and mitigation (Q.9 & 10)

With the new exemptions under the SPA regulations, this question seems to be no longer relevant. Again, the purpose of the SCL framework should be focused on the protection of the cropping land resource. Now that the community infrastructure exemptions are in force, it is very difficult to see why there needs to be exceptional circumstances clauses in the framework.

There are numerous pieces of State legislation which encourage and facilitate development while the SCL Act is the only one which seeks to protect valuable strategic cropping lands. So, exceptional circumstances should be kept only for exceptional circumstances – not for facilitating development. If this carries a cost for those seeking this exemption from the framework, then this cost should be weighed against the costs associated with losing highly productive agricultural land forever. As a result, SEQ Catchments believes the current tight process and mitigation funding approach is justified and should continue. If the developer is unable to afford to pay the mitigation, perhaps the viability of the development is questionable from the start. While some argument could have been made for these costs being significant for community infrastructure, the new SPA regulations exempt this type of development now.

While the mining lobby has maintained for many years (and will continue to do so) that it must be exempt from planning law and requirements, when it comes to food and fibre production, recent history confirms the community holds a different view. SEQ Catchments believes the exceptional circumstances provisions should be removed from the SCL framework now that the new SPA regulations have exempted activities which deal with several animal industries and a wide range of community purposes.

SCL assessment and Environmental Authority (Q.12 & 13)

The performance requirements associated with a development proposal which may involve strategic cropping land in a number of cases is likely to also involve the VMA's two new agriculture purposes as well as the environmental authority. As argued earlier in our submission, bringing together these performance requirements makes sense. This performance regime should be based on whether the proposal is to be impact assessed, codes assessed or self-assessable code assessed.

Where one or more of the performance requirements have been addressed, it makes little sense to revisit them because of another process coming into play. From this aspect, de-coupling the SCL assessment from the EA will make sense when the SCL assessment or EA assessment requirements are already addressed through another process.

Lastly, the need for prescription in the code mainly lies around the costs of assessment, compliance and auditing. While innovation is to be encouraged, the way government is structured usually results in greater time delays and process requirements due to the increased uncertainty inherent in an innovative approach. Before SEQ Catchments support a less prescriptive and more performance based approach for the codes, the State Government would need to make arrangements for sufficient assessment and compliance resources. If these resources are not available within the State, then perhaps organisations such as regional NRM groups could be accredited to assist proponents in meeting their SCL and environmental obligations.

SCL development exclusions (Q.14)

With the recent changes to the SPA regulations, this question is now largely not relevant. The exclusions from development under the SPA regulations are wide ranging. The only outstanding matter in this area of assessment is reconfiguring a lot (RaL). Allowing a discretion at the time of application for an RaL application which is clearly in pursuit of the intentions of the SCL Act, should be introduced. This discretion must lie with an appropriate assessing officer and could be exercised during a pre-lodgement meeting. The criteria for the exemption must be directly built to facilitate the purposes of the Act.

SCL validation and assessments fees (Q.15)

While there will be a strong view from proponents that the fees are way too high, it is likely that any fees associated with these processes will be seen as an impost given they are framed to ensure the State Government recovers its costs in regulating the activity. No doubt all the submissions from industry will reflect this view. While SEQ Catchments has some sympathy for this view, it really comes down to whether the State Government wishes the process to be based on cost recovery or not. The notion of public versus private benefit must be weight up and considered in this discussion. Given the State has now exempted the vast majority of public benefit developments (Community Infrastructure) through the SPA regulations, the majority of costs for this process are likely to lie against private benefit.

Regardless of how the State government decides (whether to fund private benefits from the public purse by lowering fees to satisfy the industry lobbies or not), SEQ Catchments believes the State needs to hold the appropriate resource levels and expertise to ensure the performance outcomes for the SCL framework are funded and in place.

Conclusion

SEQ Catchments is happy to support any State Government efforts to streamline and make its regulatory frameworks more practical and easily understood and applied. We believe organisations such as our have a major contribution to make to ensure the success of the SCL framework and coordination with other regulatory objectives. We welcome any opportunity to work with the State to improve the regulatory framework and strongly urge the State Government to bring together the other elements relating to high value agricultural land together into a single sensible approach which landholder and proponents can understand and work within.

We thank the government for the opportunity to comment on the SCL framework and look forward to the outcomes.

Yours sincerely

Simon Warner

Chief Executive Officer