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Basin Sustainability Alliance Submission on the Review of the Strategic Cropping Land Framework Discussion Paper

SCL Review
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Introduction

Basin Sustainability Alliance (BSA) welcomes the Queensland Government's recognition of the global demands on the natural resources required for increasing food production and that there is a need to protect high quality soils for agriculture. Furthermore, that Queensland's agricultural sector is currently facing major challenges in the form of access to and security of the natural resources critical to food production.

Context for the review

In light of the above, it is disturbing to BSA then that this early statutory review of the SCL framework has arisen as a result of concerns about the SCL framework on development proposals on these critical natural resources.

The SCL framework acknowledges the finite nature of the land resource but inherent in that is its capacity for continued use into the future. Preserving the soil therefore means our community can benefit repeatedly. On the other hand resources, whilst finite, once used are lost. They do not have ongoing benefits. Priority must therefore be given to soil considerations above resource extraction considerations until the two are equally imperative. Where there is doubt as to the impacts of resource extraction upon the soil and in particular where there are other energy resources available in other areas of the state they must surely be accessed first or at least until there is an absolute imperative for resource extraction matching the imperative of the preservation of the soil. The SCL framework, whilst apparently based on similar considerations is currently being used in a way that actually undermines that intent and entrenches resource extraction over SCL preservation.

BSA is concerned that further weakening of the framework may work against achieving the goal of protecting good quality agricultural land for food and fibre production.

Streamlining regulatory frameworks and providing regulatory certainty to stakeholders

This discussion paper provides no information on the numbers of the various stakeholder categories that have provided significant comment about the additional administrative processes, delays and costs associated with the implementation of the SCL framework.

It is difficult to comment without proper insight into those comments. Proper community discussion makes it imperative that your submitters have access to comments from the resource industry in particular but also from all stakeholders. We urge ready access in the ongoing process to all submissions.

As current experience reflects, there is a real danger that the current SCL framework, implemented as it has been to date and at a time of limited understanding of the extensive issues facing the farming sector's co-existence, will in fact act to undermine the intent of the legislation. It adds to the perception that extensive preference is given to resource development and extraction in a way that completely undermines the stated intent.

Single State Planning Policy and State assessment and Referral Agency

If a single State Planning Policy is currently being developed which will replace the current SPP 1/12 (Strategic Cropping Land) Policy, BSA is unclear why a review of the SCL framework is being undertaken earlier than is statutorily required? Are the outcomes of this SCL framework review going to be incorporated into the single State Planning Policy? BSA has some concern that the development of a streamlined process underplays the importance of the SCL considerations and the preservation of SCL generally. Refer to the response to Question 1 in this regard.

Statutory Regional Planning

BSA has doubts that the Statutory Regional Planning (SRP) process will provide any additional protection to agriculture. There is confusion in the language used in the draft regional plans and the SCL framework. The SCL framework seeks to protect valuable soils from inappropriate development, whilst the draft Darling Downs Regional Plan aims to support "coexistence" of agriculture and resource activities over a very small subset of SCL, whilst the remaining area is not considered to be Priority Agricultural Land.

This is a significant watering down of the protections that SCL purports to afford, and regardless, both the proposed State Planning Policy and the Regional Plan are subordinate legislations and do not enjoy any retrospective power, so many current and future resource developments are exempt from these policies anyway. Does the government intend to amend the superior legislations to give the SCL framework and the draft Regional Plans the power they will require to achieve their stated objectives of protecting valuable agricultural resources?

Outcomes sought by the review

The Queensland government must provide a clear definition of 'protect' and 'protection'. Since the aim of the SCL framework is to protect SCL it must be made clear what this actually means.

Similarly, greater clarity must be given to the term 'coexistence'. Unfortunately, the development needs and the rights of landholders are quite often the direct opposite to the

development needs and rights of the resource sector, and balancing the two, under the current legislative framework is not possible. The resources sector currently enjoys significant power and is afforded in some instances unfettered rights, at the landholder's expense.

BSA gladly welcomes the Queensland Government's goal to achieve a balance between landholders' and resource sector needs and rights through this review process and strongly encourages the government to give real meaning and power to this balance by amending other legislations as is necessary. It is imperative that the SCL framework achieve the stated intent given the importance that government itself attaches to it. The current framework unfortunately appears to be completely unsuccessful for the reasons outlined in the answers that follow.

Question 1:

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

The SCL Framework has not achieved the intent and purpose because of a number of things:

1. Sections 286 and 287 of the Act effectively exempted all the foreseeable intended CSG activity in most areas of the Surat Basin into the foreseeable future. These are the sections that excluded the APLNG, QCLNG and GLNG projects and even Arrow's Surat Gas project from scrutiny under the legislation. Those exemptions relate to a wide area of SCL land throughout southern Queensland.

2. This arises by virtue of the provisions of Section 78 of the SCL Act which exempts any activities conducted under a resource authority.

3. Even in respect of the few CSG activities that are not already exempt in the Surat Basin, the new standard conditions code for resource activities enables things as intrusive as sample pits and geotechnical pits, well leases, laydown areas, chemical and fuel storage, sumps, access tracks (formed or gravelled) can be undertaken by mere reference to compliance with a code. That is not an approach reflective of protecting SCL. It requires extensive policing if it is to be effective but given the exceptionally sensitive nature of the receiving environment whereby leaks into the underlying aquifers or contact of salty water with clay soils can have permanent and untold damage, the better approach is simply to not allow activity on the relevant soils at all. The implementation of the code in fact undermines and belittles the importance of the SCL considerations.

4. The only relevance of the SCL framework to the extensive CSG impacts on strategic cropping land through the Surat Basin is in respect of the very limited activities that will impact on SCL land that are not automatically permitted under the relevance authority. The P & G Act authorises "authorised activities" and "incidental activities" under that legislation so no Sustainable Planning Act approval is required for any of the existing projects referred to at 1 above save for limited infrastructure for those

projects such as office or residential accommodation etc – see for instance Section 403(4) of the P & G Act.

5. Even those activities are now effectively exempt from the sustainable Planning Act / SCL considerations by virtue of amendments made under the Sustainable Planning Amendment Regulation (No. 4) 2013 which in turn amended the Sustainable Planning Regulation 2009. These amendments came into being on 2 August 2013.

6. Whilst these amendments looked comparatively innocuous by reference to "community infrastructure" being exempted, in fact they have significant implications for the further loss of protection of SCL. In particular the definition of community infrastructure was amended to include a whole host of things relevant to the CSG projects and future CSG activity and meant that even those limited CSG activities that could be captured by SCL are now effectively removed from its import.

7. In particular the definition of community infrastructure was broadened to include airports, oil and gas pipelines, power, gas wells, light rail, state roads, operating works under the Electricity Act and the like. This has meant that projects that support the CSG projects will effectively also be exempted from the usual concurrence agency process and from planning considerations which would otherwise necessarily involve SCL assessment. Because such matters would ordinarily have a permanent impact, but for these amendments, they would surely have fallen foul of SCL protection criteria.

8. Referring to such matters as "community infrastructure" belies the benefits conferred by it upon the individual project operators – i.e. in the sense of protecting SCL they override any consideration of the issues that gave rise to SCL protection that are to be underpin the legislation. The nature and extent of this infrastructure was not disclosed in the original EIS procedures for the projects and only further entrenches the perception that CSG activity overrides the stated intent of the Act. Because the footprint is potentially so extensive, without serious constraints and protection of SCL in appropriate areas from CSG, the purpose and intent of the legislation will not be realised.

9. This exemption also accentuates concerns in respect of the broader impacts of the CSG projects on underground water resources not only generally but also specifically in respect of highly productive areas where water is accessed for intensive livestock activities or for irrigation enabling double cropping and maximum food and fibre productivity from the lands overlying them in various areas.

The following comments relate substantially to planning considerations. As indicated above, unless a proposed resources development is classed as assessable development, then resources developments are exempt from the SCL framework anyway, which basically neutralises the objective of the SCL framework in so far as it interacts and seeks to protect SCL from resources development:

- Prior to the introduction of the SCL framework, productive arable lands were classified under the Good Quality Agricultural Land (GQAL) Policy. Good quality

agricultural lands in Queensland were classified by experts in the field according to their ability to grow crops and this classification system was well regarded and successfully used to make determinations about development and planning. The SCL framework limited those areas recognised as GQAL by introducing eight soil criteria to measure SCL, as opposed to the outcomes based approach of GQAL.

- The policy intent is muddied because of the uncertainty surrounding the definition of 'protect'. Protection is defined as keeping from harm, and according to this definition, no activities should occur on SCL, particularly permanent or irreversibly damaging activities. However, there are a number of exemptions to this under the current framework, and therefore one must conclude that either the government's definition of protect is different from this, or the policy intent has not been achieved.
- The Queensland Government has recently amended the SCL Regulation to exempt "community developments" from the SCL framework. This can only be seen as a dilution of the policy intent.
- The definition of permanent impact is not strong enough. A 50 year timeframe as the definition of permanent impact is too long, particularly given the acknowledgement of urgent requirements to double global food production within the next 30 years.
- Unless a proposed resources development is classed as assessable development, then resources developments are exempt from the SCL framework anyway, which basically neutralises the objective of the SCL framework in so far as it interacts and seeks to protect SCL from resources development.

Question 2:

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

The answer to this question depends on the policy change being referred to. The discussion paper alone refers to two separate and opposing policy changes.

If the policy change referred to relates to concern about the protection of Queensland's agricultural resources as per the Introduction on page 2, then the changes needed are to strengthen the power of the framework so that it can meaningfully influence resources development on SCL.

If the policy change referred to relates to the concerns by stakeholders that the framework negatively impacts on development because the legislation is prescriptive and inflexible and adds significant costs and time delays to projects and development proposals as per the context for the review on page 2, then the answer is no. To make changes to the framework on this basis will serve to completely undermine the intent and objective of the SCL Act and framework.

Question 3:

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

Yes. More consideration should be given to reverting to the GQAL maps and definitions – which have longstanding meaning and application by local authorities, courts and the

community generally. The SCL criteria makes incorrect assumptions about what constitutes arable land that is suitable for repeated cropping. For example, lands with a slope greater than a certain threshold are not considered SCL. However, during periods of flooding, these sloping lands are more productive than flatter cropping country, and the increased drainage that sloping country promotes is more suitable to growing particular crops than flatter land with less drainage. If the emphasis is on preserving agricultural productivity, then the productivity of the land should be the measure of SCL, not some arbitrary soil characteristics. Therefore, BSA sees no reason why the GQAL maps and definitions shouldn't be reinstated.

Furthermore, changes in technology and farming practices have seen vast improvements in yield and cropping opportunities from all different soil types. It is impossible to predict all future advances.

Question 4:

Do the eight SCL soil criteria adequately reflect what should be considered Queensland's best cropping land? If not, what changes or additions are required?

The eight soil criteria do not adequately reflect what should be considered Queensland's best cropping land. Please see Question 3 for explanation.

Question 6:

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

BSA has concerns with the current definitions of temporary and permanent impact.

Temporary – It is at this time not possible to conclude for many of the resource activities that are currently occurring on SCL whether they have a temporary impact. Because many of these activities have not yet been rehabilitated, (e.g. a well head on heavy, black vertosol soils) we are unable at this time to conclude whether they can be successfully rehabilitated, or whether these activities will have a longer lasting impact.

Permanent – The timeframe for permanent impact of 50 years is too long. This is 2 generations, and much longer than many resource activities will actually last, thus allowing resource authorities a very long time to restore SCL to its previous productive abilities. This may cause a delay in rehabilitation past that which is necessary or desirable.

Further BSA is concerned at the approach to permanent impact. Considerations of soil compaction appear to be underplayed and little assessment of the permanence of impact could have been made on the basis of the limited knowledge of CSG implications for the particular soil and water conditions in SCL areas as at the date that the CSG projects were given exemption. The same now applies – there are very few worldwide situations that compare with the situation in Queensland and nor the scale and extent of the intended activity. As better understanding has arisen so too should there now be capacity to revisit the consideration of permanent impacts.

BSA seeks detailed disclosure of the basis on which conclusions were reached and the logic behind the conclusion regarding CSG activity such as wells and pipelines.

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. Not only should greater clarity be given, but the determinations as to what constitutes a temporary or permanent impact should be done scientifically. BSA is concerned with the way certain activities have been arbitrarily deemed to be either temporary or permanent. BSA would like to have science determine what constitutes a temporary or permanent impact.

Question 8:

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

There should not be a distinction between protection areas and management areas. If the lands are suitable for multi-year cropping, then there should be no need to distinguish between protection areas and management areas, if the policy intent is the preservation of productive capacity. GQAL maps should be used.

Question 9:

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

No. BSA believes the test should be tightened to provide agriculture with more certainty. Exceptional circumstances must be a highly unusual and rare event, not some loose criteria that could be used as a loop hole or ready means of subverting the SCL intent.

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?

BSA thinks that the mitigation process is ineffective for several reasons.

- It appears that mitigation occurs through payment to government into a fund. Therefore actual, physical mitigation of impacts to SCL does not occur. This provides no incentive for the developers to adopt best practice to minimise disturbance and harm.

- The mitigation payment is paid to the government, and not to the landholder, who may be an independent third party to the development. This is a most unsatisfactory situation.
- If developers are concerned about the cost of providing funds to a mitigation fund, then there needs to be even greater emphasis on restricting activities on SCL

Question 11:

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

The discussion paper does not make clear the difference between performance-based and outcome-based approaches. It is BSA's understanding that resource companies seek far more generalised conditioning than the prescriptive approach sometimes adopted. Any generalised conditioning has the risk of undermining the protection it is meant to afford. BSA rather supports site specific evaluation and conditioning, or at least setting the general conditioning to capture the best protection. For instance at condition that merely requires "minimal interference" is inadequate as it is open to misuse and misinterpretation.

There is debate as to whether many activities that are proposed for SCL and are occurring on SCL are capable of being rehabilitated. There is no science and no evidence that temporary activities can even by rehabilitated so that the lands impacted can be restored to their formed productive capacity. And as mentioned in the notes explaining Question 10 above, the mitigation of impacts to SCL is currently in the form of a monetary payment to the government. History has shown, that once we move toward a performance based approach, then we move from a situation where we are protecting something of value, to attempting to manage the impacts. Where such a limited but crucial resource as food producing soils are concerned, a performance based approach to regulation is unacceptable.

Question 12:

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

This question assumes that EAs still have relevance to the resource activities. It is assumed that EAs will still be required even where a code can be observed however that is not immediately clear. The standard conditions code may mean that EAs become largely meaningless.

The full extent of the SCL regime, and the interplay of the various approaches, is very confusing to the general public. It must be better explained to be understood by the community it is to serve. In so far as the EAs are assumed to remain relevant to the CSG projects and all resource activities, it is the BSA's view that the SCL assessment process must not be de-coupled from the EA. The EA is currently the only way that compliance by resource authorities can be measured. If the SCL assessment process is separated from the EA, then the ability to require a set standard, and the ability to punish non-conformance is removed. The EA specifies the limits to environmental harm that are acceptable. Without

certain conditions in an EA imposing limits to harm of SCL, then there is no capacity to regulate effectively, and the situation may arise as for groundwater, where there are no limits to the amount of harm that can occur. This is unacceptable in light of the fact that even currently, mitigation is provided to the state in the form of a monetary payment and the third party on whose lands these activities may be occurring has no right of recourse and has no ability to refuse the proposed activities.

Question 14:

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

Yes. A landholder's activities proposed on his/her own farm that are essential to his/her business or will enhance agricultural production should be exempted from SCL framework.

Question 15:

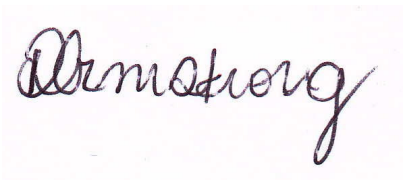
Do you think that the fees associated with SCL validation and assessments are too high?

If the applicant is a landholder who is seeking a SCL determination on his property specifically in response to proposed resource sector activities, then the fee should be waived. After all, the law does not give landholders the right to refuse resource sector developments from occurring on his property. It is a different case if the landholder proposes a development of his own, however see response to question 14. Agricultural related developments that will improve agricultural production or are essential to the farm property should also be exempted.

In closing

The Basin Sustainability Alliance committee is available to be contacted to discuss any matters raised in this submission.

Submitted on behalf of BSA by



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