

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

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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 2013⁹), 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 2013¹⁰ 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.

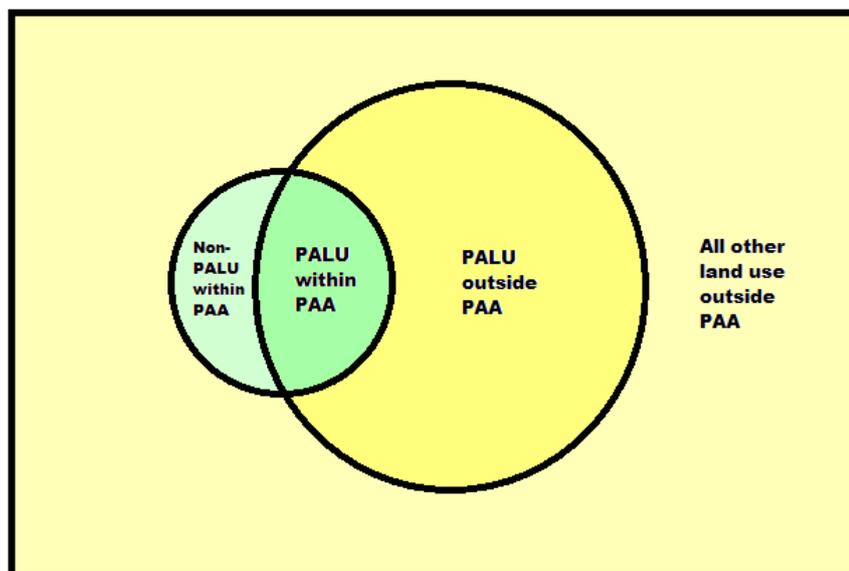
Powerlink have a proven history of poor consultation with landowners, disregard for how the project will affect the ongoing management of agricultural production on that land, and a failure to even consider alternative routes that would minimise inconvenience to the land use, avoid good GQAL and avoid 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 framework¹¹ 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 2010¹² 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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Vice Chairman

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

² <http://www.dsdiq.qld.gov.au/resources/policy/plng-guide-identif-ag-land.pdf>

³ <http://www.dsdiq.qld.gov.au/resources/plan/darling-downs/draft-darling-downs-regional-plan.pdf>

⁴ <http://www.dsdiq.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.dsdiq.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.dsdiq.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