

Quote in reply: Planning and Environment Law Committee

5 October 2010

The Hon Stephen Robertson MP
Minister for Natural Resources, Mines and Energy and Minister for Trade
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Dear Minister

**SUBMISSION ON PROTECTING QUEENSLAND'S STRATEGIC CROPPING LAND: A POLICY
FRAMEWORK – AUGUST 2010**

The following comments and questions on the proposed legislative framework outlined in *Protecting Queensland's strategic cropping land: A Policy Framework* have been prepared by the Queensland Law Society's Planning and Environmental Law Committee. It is not the role of the Queensland Law Society (QLS) to have a view either way on the fundamental policy of whether or not to provide special legislative protection to 'strategic cropping land' and the committee does not have expertise in agricultural science. Accordingly, this submission is intended to be from a more limited legal perspective, assisting the Government with comments on:

- Fundamental legislative principles (FLPs) under the *Legislative Standards Act 1992* (Qld);
- Technical legal issues involved in structuring and drafting the legislative framework;
- Any obvious inconsistencies, either within the document, or between the document and the Government's announcement of its policy intentions, or between the document and other legislation or instruments;
- Implications for commercial transactions, such as ease of public access to relevant information upon property purchases;
- A robust, transparent and consistent procedural framework, which is important for giving public confidence in the legislation.

Thank you for agreeing to a short extension of time to lodge this submission.

Summary

Essentially, this submission addresses the following issues:

- A definition of 'strategic cropping land', the associated criteria and the 'trigger mapping' approach;
- Potential cropping land - the unaddressed question of offsets and legal mechanisms for management of offsets;

- QLS support for the procedure to review and correct the 'trigger mapping', together with suggestions to make this procedure adequately robust, timely and transparent;
- In relation to 'exempt' and 'excepted development', a consideration of the interface between FLPs, competition policy, existing legislation and implications for the lists of exempt or excepted development, and a recommendation to take account of the existing history of the Planning and Environment Court's detailed consideration of concepts such as 'alternative sites', 'site suitability', 'planning need' or 'community need', and 'overwhelming/overriding planning need'; and
- Characterisation of the procedural steps involved in the process of 'impact assessment' and assessing conditions, together with the implications for the recommended structure of the legislation, minimising unnecessary duplication and delay; and
- General comments on the proposed legislative schedule, together with some suggested solutions to protect the State's draft policy position, while taking the time to get the legislation right.

1. A definition of 'strategic cropping land', criteria and 'trigger mapping'

For the purposes of discussing a definition of 'strategic cropping land', a suggested starting point is the Queensland Government's February announcement of its policy position, which was as follows:

'The government considers that the best cropping land, defined as strategic cropping land, is a finite resource that must be conserved and managed for the longer term. As a general aim, planning and approval powers should be used to protect such land from those developments that lead to its permanent alienation or diminished productivity.'

The original purpose of protecting strategic cropping land appears to have become confused, and we draw attention to the following apparent anomalies:

(a) What type of agricultural resource is the policy aiming to protect?

It is not clear from either the February policy or the August policy framework paper, precisely what type of public interest the policy is aimed at protecting. If further analysis is given to this issue, then that would greatly assist with working out the criteria and mapping. For example, at present, the net seems to be cast considerably wider than the protection of food security for Australia. Obviously, there are other types of crops apart from food and most Australian agricultural output is for export purposes. If the intended protection is intended to extend to cover the public economic interest in strong export earnings and regional employment, it is unclear whether the State has analysed whether the public benefit in profits and employment from these agricultural exports is greater than the public benefit from a range of competing land uses, such as urban development or mining, or that the costs are lower. This is simply raised as a definitional issue.

QLS does not have an overall position on the policy of 'casting the net widely' or not, but just suggests that it would be helpful to analyse the policy purpose of the protection as a starting point, and then consider the implications in terms of consistency with other legislation, instruments and policies.

(b) Implications of casting the net to cover 'potential' land as well as existing cropping land

The approach of attempting to protect 'potential' cropping land as well as existing cropping land appears to be logically inconsistent with the stated purpose of the policy to protect this land from 'permanent alienation or diminished productivity'.

Alienation is a legal term. If the land is already owned or subject to interests for purposes other than cropping (eg, reserves or Crown leases for other purposes), then the land cannot logically be at risk of

'alienation' from cropping. It has already been 'alienated', so it does not make sense to protect it from 'alienation'.

Similarly, if the land is not subject to the current use of cropping, it cannot logically be at risk of 'diminished productivity' for that purpose.

Apart from this, the ordinary meaning of the term 'cropping land' would be land which is used for cropping.

In addition, the wide band of mapped 'strategic cropping land' located immediately adjoining numerous regional towns would seem to be inconsistent with the State's various policies relating to decentralisation and regional growth, on the face of it.

(c) Land which is subject to legal constraints preventing or severely restricting the ability to use the land for cropping, should not be mapped for cropping

The most obvious example is protection under environmental legislation. It is logically inconsistent to map the same area of land for both vegetation protection and strategic cropping. Given the legal constraints on farmers for clearing of remnant vegetation, the land must be either one or the other. Given that the same department is responsible for maintaining both sets of mapping, it should not be difficult to undertake the comparison.

A similar task could be undertaken in relation to an overlay of Crown tenures for specific purposes other than cropping, such as reserves and Crown leasehold.

In case of any remaining errors (either when the initial mapping is finalised, or in the longer-term), the legislation should expressly override the mapping in relation to these sorts of inconsistencies, and provide a quick procedure enabling corrections to be registered immediately.

(d) Towards a definition of 'strategic' cropping land

According to the Introduction, paragraph 2, of the Policy Framework document, '*Currently, 2.2 per cent of Queensland is estimated as being used for cropping. The best of this land will be identified as strategic cropping land. Strategic cropping land includes the best land currently being cropped as well as the best cropping land resources that could be cropped in the future.*'

Given that the public interest in question appears to relate to the protection of actual cropping land, it would follow that the term 'best cropping land' would logically mean a sub-set of existing cropping land, rather than taking the current area of cropping land and doubling it.

As a rough estimate (and it is emphasised that QLS has not undertaken its own calculations), the mapping included in the Policy Framework appears to cover closer to 4 or 5% of the State, including a wide band of mapped land tightly fitted around the perimeters of numerous regional cities and towns. By simply comparing random samples of this mapping with a combination of Google Earth aerial photography, titles mapping and DERM mapping of 'environmentally sensitive areas', as well as by comparing the draft 'trigger mapping' with the Policy Framework paper's own estimate that currently only about 2.2% of the State is subject to cropping and not all of this is 'best' quality, it becomes quickly apparent that:

- (i) About half of the land mapped is not currently used for actual cropping;
- (ii) A significant proportion of the mapped land is used for grazing purposes, not cropping;

- (iii) There is a considerable overlap between mapped 'cropping land' and mapped 'environmentally sensitive areas', such as remnant vegetation and even marine plants;
- (iv) A significant proportion is already held in titles which are for purposes other than cropping or otherwise is subject to planning controls which are for purposes other than cropping.

These observations are not intended as criticisms of the work of those people responsible for undertaking mapping, who must have been subject to a difficult timetable for publication of the Policy Framework document. The difficulty is that the brief or instructions given to the cartographers appears to have exceeded the scope of the 'best' of 'cropping land'.

The legal difficulties with the approach of casting the net too widely, and then attempting to provide a list of exceptions or exemptions from that overly wide net, are that:

- (i) While casting the net widely may work for prohibiting land from being used for purposes other than cropping, it will not, in itself, have the effect of compelling landowners positively to use their non-cropping land for cropping purposes, which will either lead to sterilisation of the use of that land when it could otherwise have been put to an alternative beneficial use, or alternatively, unnecessary expense and delay in order to restore the landowner's ability to put the land to those other beneficial uses.
- (ii) Inevitably, from a legislative drafting perspective, some justifiable exceptions relating to existing rights and privileges will be overlooked, even if an attempt is made to draft for every conceivable existing right and privilege which ought to be preserved for the non-cropping land, and an oversight in relation to any one or two existing rights or privileges would lead to a breach of FLPs (unintentionally or not). This issue is discussed further in section 4 of this submission – Exempt and excepted development.

There would be no legal difficulty with undertaking a separate mapping exercise to identify land which is not currently used for cropping, which could potentially be used in the future for cropping, from an agricultural science perspective, if this exercise is kept distinct from the protection of genuinely strategic existing cropping land. The separate mapping for potential cropping land could be used as a basis for creating a system of offsets.

(d) Criteria and flexibility to take account of changed circumstances

For the purposes of transparency, accountability and public confidence, criteria would need to be objective and not limited to agricultural science, for example, taking into account legal constraints as outlined above.

It would be desirable to ensure that regular Government-initiated reviews are required to be undertaken to check that the mapping remains accurate over time. For example, changes in access to infrastructure or technology could make land which is currently not 'strategic' become so in the future. Conversely, factors such as natural disasters, salinity or disuse could mean that land ceases to be properly characterised as 'strategic'.

It is recommended that any Government-initiated reviews should be subject to notification to landholders and tenement holders, and should also be subject to objections. (In the experience of members, this has been one of the shortfalls in updating of remnant vegetation mapping, as the State is obviously not always in possession of all relevant local facts, which would have become readily apparent, if there had been a transparent consultation and review process available.)

2. Potential cropping land - the unaddressed question of offsets and legal mechanisms for 'management' of offsets

The paper does not address a framework for offsets. Unless the State proposes to prevent the natural growth of numerous regional and rural towns in response to demand, it will be inevitable that existing cropping land, including some high quality existing cropping land, will need to be redeveloped. Sometimes, the growth may have been planned and at other times it may be in response to unanticipated demand.

If the policy intention is, as stated, to ensure the protection of the agricultural resource, in the public interest, then it would logically follow that cropping land which is overtaken in one location needs to be replaced by an equivalent standard of cropping land elsewhere. Logically, the same public interest in the resource would be applicable whether this strategically valuable cropping land is overtaken by State infrastructure, private infrastructure or by some other development. Any different approach would be inconsistent with competition policy.

If there is a separate mapping system for 'potential cropping land', just based on agricultural science criteria, this could form the basis for an offsets system. Of course, offsets would not necessarily have to be limited to this land, given that future improved access to infrastructure (such as water supply) or technology could create potential cropping land which is not initially mapped.

If an offsets system is created, it is suggested that a system of registered agreements, essentially similar to the system of conservation agreements under the *Nature Conservation Act 1992*, could ensure the State's objective of managing this land for actual cropping purposes, including standards for appropriate standards of stewardship and yield.

3. Procedure to correct 'trigger mapping'

The Queensland Law Society welcomes and supports the proposal for a procedure for applicants to seek corrections to the 'trigger mapping', relying on assessment against a set of objective criteria, as outlined on p11 of the Policy Framework.

Applicants should not be restricted to landholders (the term currently used on p11). For example, given that SCL mapping is proposed to impact severely on developments 'near' the SCL (p16), it would be fair to allow neighbouring developers to have this application right, as should applicants for development on the SCL. Local governments may have an interest in seeking the correction of mapping, for their planning scheme growth strategy purposes. It would be simplest if any person can lodge an application, on the basis that the landholder (and preferably also the local government) must be notified of the application, similar to the process for contaminated land notifications under the *Environmental Protection Act 1994*. If so, then there should also be an objections process available.

There is a roughly analogous procedure under the *Vegetation Management Act 1999*, known as the 'PMAV' system. Based on members' experience with the PMAV system, we would offer the following suggestions for procedural improvements in relation to strategic cropping land (apart from the suggestions outlined above):

- (a) Statutory timeframes for processing applications (subject to extensions similar to the *Sustainable Planning Act 2009*), so that projects are not potentially delayed for years pending corrections of incorrect mapping;
- (b) Rights of review/appeal, to ensure transparency and accountability.

Both 'trigger mapping' and current applications to amend trigger mapping, should be readily **searchable**, against both land titles and resources tenements. For example, in relation to tenements, the issue could be added as an item searchable on the ITRM system.

4. Exempt and excepted development

(a) Excepted development

This term is defined on p16 as '*In special circumstances, the Minister may declare a project to be Excepted Development if there is no alternative site and there is a significant community benefit.*'

(i) *Concerns about establishing this as a Ministerial power subject to such a broad and subjective discretion*

The Queensland Law Society is opposed to such a significant and ambiguous increase in Ministerial powers and would have a concern that this would be a breach of FLPs.¹ Over time, the Ministerial exceptions process is likely to lead to community perceptions of 'special favours', lack of transparency and accountability, similar to community concerns about historic Ministerial rezonings in the 1980s.

Apart from this, there are likely to be numerous quite minor developments on the outskirts of rural and regional towns, for which there is a genuine community need, but which would be an administrative nightmare for the Minister's in-box. Examples might include minor rural service industries, veterinary clinics, private childcare centres, convenience shopping and the like. In rural and regional areas, these sorts of minor developments are not necessarily envisaged by an 'urban footprint' or by planning instruments generally, and they need to be able to respond to local needs. We note that the UDIA has also raised a similar concern in its submission, when commenting on the need for greater flexibility.

Development applications on strategic cropping land should be left to the normal IDAS process² and accordingly should be subject to the normal submissions and appeal processes, while simply adding a layer of assessment against the objectives and code requirements of the proposed State planning policy. If there is found to be a community need for the development and no practicable suitable alternative site to meet that community need (ie, within that local area), then the application should be able to be approved in the normal way, but subject to offset requirements if it leads to a loss of genuinely strategic actual cropping land.

(ii) *Concerns about the definitions of 'significant community benefit' and 'alternative sites'*

There is no need for statutory codification of the terms 'alternative sites' or 'significant community benefit'. This would just be 're-inventing the wheel', and would inevitably lead to the attempted definitions overlooking relevant circumstances.

There have been many examples throughout the history of Queensland planning law where there has been a requirement to give paramount importance to one instrument, subject to 'sufficient grounds' justifying a departure on the merits. A current example is Section 329 of the *Sustainable Planning Act 2009*, which allows an assessment manager to make a decision conflicting with an instrument where there are sufficient grounds to justify the decision. Historically, there were similar requirements giving paramount status to strategic plans, subject to justification for the conflict; and there were similar caselaw rules about rezoning applications.

¹ For example, section 4(3)(a) *Legislative Standards Act 1992*

² Integrated Development Assessment System

The most common example (throughout Queensland planning history) of a 'sufficient ground' has always been 'planning need' and there are already hundreds of cases about the meaning of this term. It would be fair to say that judicial definition of the term has been considerably more nuanced than the draft definition in the Planning Framework paper, taking into account: a variety of types of need, which elements of the community have the need and how this balances against the concerns of other elements of the community, which catchment area is relevant to determine need for the type of development involved (eg, a small neighbourhood may be relevant to a convenience store, but an entire region may be relevant when considering a landfill) and how the issue of need should be balanced against other considerations, that is, even where a community need is demonstrated this may not necessarily be the paramount consideration.

Both the courts and subsequently the *Sustainable Planning Act 2009* have also taken a more nuanced approach to the question of 'economic need' as an element of planning need, compared with the dismissal of this element in the definition of 'significant community benefit' in the Policy Framework. In the *Sustainable Planning Act 2009*, the definition of 'grounds' has essentially summarised the principle previously established by the courts that 'grounds' does not include the personal circumstances of the applicant, owner or interested party'. That is very different from dismissing 'economic need', taking into account a broader understanding of the meaning of 'economics' (which is not just about individual profits). Taking the hypothetical example of a private childcare centre, the community need for a conveniently located centre could be entirely characterised as an 'economic need' for those families, that is, a childcare centre is not a 'necessity of life' such as water, food and shelter, but it does help parents to return to work or attend to other economic activities.

Some planning schemes have expressly increased the standard of planning need to 'overwhelming need', which is perhaps what the drafters of the Policy Framework had in mind. There are also many cases on what this term means, for example, in *Bundaberg City Council v Burnett Shire Council* [2004] QPELR 459, Skoien SJDC found an 'overwhelming need' for a regional municipal landfill, to be located on rural zoned land in an adjoining local government area. The Queensland Law Society has no view as to whether this standard of need is an appropriate standard in relation to alternative uses of strategic cropping land, but is merely noting that the concept already exists and has received extensive judicial interpretation which should not be overlooked. When the term 'overwhelming' is not specified, the courts have been able to take a more nuanced approach to weighing the standard of need that is appropriate against other factors, for example, a higher standard of need has to be demonstrated in relation to overriding correct mapping, rather than overriding factually incorrect mapping.

When considering whether there is sufficient planning need, the Court already takes into account the factor whether there is no sufficient land available at relevant alternative locations. For example, a case where this was considered in detail in relation to a question of 'overwhelming need' was *Wincam Developments No. 3 Pty Ltd v Brisbane City Council* [2004] QPELR 474. The question in relation to each proposal is not whether there is no alternative site in the whole of the State, but whether there are no relevant practicable alternative sites, which are not subject to other constraints, within the area that is relevant to the demonstrated community need. The constraints relevant to the alternative site are not necessarily legal constraints, but rather there may be physical or infrastructure constraints that are relevant.

Again, taking the hypothetical example of a private childcare centre proposal, it is not relevant to look at whether a childcare centre could be established 100km away, but rather, whether there is a planning need (ie, a community need) for a childcare centre within a reasonably convenient distance of the families who would be served by it and no suitable available land within that distance which is not already subject to other constraints (as an example of a constraint, a suggested alternative site next to an existing shopping centre may have unacceptable traffic issues).

It is also worth noting that 'planning need' (together with no alternative sites) is not the only 'sufficient ground' normally available under planning law. Fundamentally, the ground needs to be a matter of 'public interest', and this has always been the relevant caselaw requirement. Other examples have included: errors in the instrument creating the requirement, the instrument having become outdated or overtaken by events, the unsuitability of the land for its existing designation, and whether the only available alternative sites would lead to less satisfactory outcomes for other reasons. The categories of 'sufficient grounds' are not closed, provided that the public interest is addressed. This approach has worked well in allowing decision-makers the flexibility to take account of unforeseen circumstances.

(iii) An inconsistent approach between assessment of 'excepted circumstances' for the resources sector and other sectors

In the definition of 'alternative site', the QLS notes two significant inconsistencies between the approach for resources development and the approach for all other development:

- 'For other development', there is a proviso 'where the development is not prevented on these alternative sites by other laws', and inexplicably this proviso does not appear in the sentence relating to resource development; and
- 'For other development' there does not appear to be a requirement that the alternative site could be obtained anywhere 'elsewhere in Queensland', whereas this more stringent standard does appear in relation to resource development.

If it is intended to follow the normal approach to planning need and the related question of alternative sites, in relation to non-resource development applications, but adopt a more stringent test in relation to resource developments (as appears to be indicated by the definition of 'alternative site' in the Glossary), then this would conflict with the commitment given in the Minister's Forward to providing 'a consistent process for assessing and deciding the merits of whether developments are able to proceed on strategic cropping land'.

The proposed test for 'alternative sites' in relation to resource developments would have absurd results, for example, if a particular type of gem is discovered at only one spot in Queensland, then a company could be permitted to mine and export the gem, but not the coal located next-door to a power station (because coal is available elsewhere in Queensland) - even though this would ultimately lead to increased costs to the public. Similarly, as noted in the QRC submission, the definition does not take account of whether the alternative resource is the same type of resource and whether its recovery is economic (that is, the distinction between a 'resource' and a 'reserve'). For example it would be an illogical outcome if a resource was only able to be recovered economically in one location, but could not meet the exceptional circumstances category because the same mineral was present elsewhere even though its recovery is uneconomic.

It is also noted that there would be no need for such stringent tests in relation to 'excepted development' if the legislative framework instead provides for an offset procedure, so that the public interest continues to be protected by an adequate supply of cropping land which is actually used for strategic cropping purposes.

(b) Exempt development –

The Queensland Law Society supports the protection of each of the items listed as 'exempt development' but suggests that they will need considerable fine-tuning in order to protect adequately all relevant existing rights and liberties, avoiding a breach of FLPs, as discussed below.

(i) *Protection of existing rights and privileges*

The definition of 'exempt development' does not go far enough in protecting existing rights and liberties, as required by Section 4(2)(a) *Legislative Standards Act 1992*.

The definition does protect existing development approvals and areas which are designated for urban development under existing planning instruments. (Presumably, this is also intended to include urban development areas under the *Urban Land Development Authority Act 2007*?)

So as to avoid impacting on existing rights and liberties, in addition to protecting existing development approvals, the legislation should also protect existing lawful uses, existing development applications and 'implied and uncommenced uses' in the same way as usual under the *Sustainable Planning Act 2009*.

A consistent approach should also be taken to preserving existing rights and liberties for the resources industries, for example, there should be express preservation of existing mining tenements and environmental authorities, published key resource areas and existing applications. In particular, care should be taken to avoid adversely affect rights and liberties, or impose obligations, retrospectively.³ (Nothing prevents terms of reference for applications in the meantime from requiring EISs to address questions about strategic cropping land, and nothing prevents the imposition of conditions relating to environmental impacts, management and restoration to cropping land standards, so there is no logical reason why existing application processes should not be preserved upon commencement of the legislation.)

(ii) *Infrastructure*

The infrastructure exemption is expressed on page 16 as: '*Infrastructure that is required to deliver essential services to the community such as energy and transport, where the infrastructure is being developed under the Electricity Act 1994 or Transport Infrastructure Act 1994.*' In the Minister's Forward, it is expressed as: '*State infrastructure that provides significant community benefits such as roads, rail and powerlines, will also be exempt from the framework.*'

It is noted that there is a range of other 'community infrastructure' listed under the *Sustainable Planning Regulation 2009*, apart from roads, rails and powerlines. It is not clear why roads, rail and powerlines would have been singled out. In drawing attention to the list of 'community infrastructure', it is not intended to imply that the community infrastructure designation procedure should be utilised in order to obtain the exemption, but rather that this is a convenient existing list of infrastructure which is likely to be relevant to the public interest.

For consistency with competition policy, the Queensland Law Society would oppose an exemption limited to State infrastructure, which does not also encompass the same range of infrastructure owned or constructed by other entities, whether these are local governments, government-owned corporations, PPPs or the private sector.

If there is any concern that a more broadly framed infrastructure exemption could lead to too much strategic cropping land being overtaken for infrastructure purposes, then it is suggested that an offsets

³ As required by Section 4(3)(g) *Legislative Standards Act 1992*.

procedure which applies equally to all development located on actual top quality cropping land would adequately protect the public interest in preserving sufficient stocks of cropping land.

5. Impact assessment and conditions

We have a concern about the unworkability of the proposal in the current Policy Framework that: *'The decision about strategic cropping land will be made as early as possible in the development or tenure assessment process to provide certainty regarding development prospects.'* (p11 paragraph 3 under the heading 'Decision-making process').

The most common example of a development proposal on cropping land would be the landholder's development application for what is known as a 'family subdivision' perhaps with an associated material change of use application for one or two houses. Essentially, this means that either the parents would like to build one or two houses for their children on the farm, or that an adult child will take over the family homestead and a retired parent will live in the new house. The way that the development application procedure works under the *Sustainable Planning Act 2009* involves an information and referral process, possibly notification, possibly some changes to the application in response to either the information and referral process or the notification process (which could include changes in response to cropping land considerations, such as changes to layout), then the decision is at the end. There are two possible ways the decision could be forced to an earlier stage:

- (a) By forcing the farmer to delay the application for a development permit, while a preliminary approval application is processed first; or
- (b) By providing that all applications on strategic cropping land are 'not properly made'.

It is submitted that either approach would be ridiculous. IDAS should proceed in the normal way.

The answer to the above example is not to try to create more and more exceptions, because it is impossible to plan in advance for every type of reasonable development on cropping land (for example, where should the line be drawn about how many of the farmers' children should have houses on the land?) Each application should be assessed on its merits, consistent with the normal IDAS process. If genuinely valuable cropping land is taken up by the development (eg, from the perspective of food security, if this is the reason for the policy), then an even-handed approach would require that the farmer should have to provide an offset, in the same way as anyone else.

For resource tenure applications, the equivalent to the development application process is not the tenure application under the resources legislation itself, but rather, the assessment and conditioning process under the *Environmental Protection Act 1994* (Qld). For example, for mining exploration and mineral development tenements, there are code requirements under the EP Act, which could readily be adapted to provide any necessary increased environmental protection required for strategic cropping land. Any acceptable adaptations from the code requirements could be addressed by environmental authority conditions and an environmental management plan. For mining leases, there is normally an EIS process, which already covers a variety of non-environmental issues such as infrastructure requirements and social impact. If the State is sincere about a 'consistent process for assessing and deciding the merits' (as suggested in the Minister's forward on page 3), then the suggestion on p7 that SCL would be a tenure issue for resources development, but not for other development, would be inconsistent with such a 'level playing field'. Just like non-resource developments during the development application process, it is normal for resource proposals to undergo fine-tuning and modifications during the EIS process, leading to ultimate improved outcomes in which both submitters and government agencies have added their input. Then the conditions are imposed (and often further negotiated) at the end.

As an example, if objections are raised during an EIS process relating to the location of particular infrastructure and if the mine is able to accommodate a change of layout in response to this concern, this is the type of change which can be made before draft conditions are issued. Similarly, it is normal during the EIS process for neighbouring landowners to raise questions of environmental impact or operational management relating to the interface with neighbouring land uses, and often neither the applicant nor the administering authority would necessarily have been aware of all these local facts until the objections are raised. Part of the purpose of the EIS objections process is to provide the opportunity for this type of consultation, and then work through the various options to identify the best solutions.

6. Timeframe issues

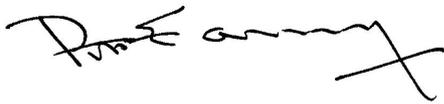
A very tight timeframe is proposed on pp14-15 of the Policy Framework, for further consultation, refinement of the mapping and legislative drafting, with the new legislation to be introduced 'early 2011'. The Queensland Law Society is not unaware of the media focus on this issue, so the State's anxiety to reach a legislative solution as early as possible is understandable. However, we do have a concern that this rush may be at the expense of adequate consultation, thorough analysis of the options and their respective costs and benefits, sufficient time for the cartographers and agricultural scientists to get the mapping to a stage which is adequate for public confidence, or sufficient time for OQPC to prepare properly considered legislative drafting.

Mechanisms would be available under existing legislation, or with only minor amendments to current regulations, to provide adequate protection for strategic cropping land 'trigger mapping' in the interim, while more time is taken to get the legislation right. For example, the mapping could be overlaid on existing mapping published under the *Environmental Protection Regulation 2008*, as an interim measure and used as a guideline when preparing terms of reference for environmental impact assessment for resource industry applications. For the purpose of development applications, we would suggest interim reliance on the 'Coty' principle, which allows decision-makers and the Courts to have regard to draft policies.

This proposed new regime has very significant implications for Queensland landowners and development. It is worth devoting the resources and the time to get it right.

We would appreciate an acknowledgement of receipt of this submission. The Queensland Law Society would also appreciate an opportunity to be consulted at future stages of the legislative process.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Peter Eardley', with a long horizontal flourish extending to the right.

Peter Eardley
President