

RPI Act

Statutory Guideline 03/14

Carrying out resource activities in the Strategic Cropping Area

A guideline to assist in understanding when and how to apply for a Regional Interests Development Approval under the *Regional Planning Interests Act 2014* for proposed resource activities in the Strategic Cropping Area



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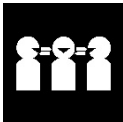


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The Strategic Cropping Area

The strategic cropping area (SCA) is an area of regional interest under the *Regional Planning Interests Act 2014* (RPI Act).

The SCA consists of the areas shown on the SCL Trigger Map as strategic cropping land (SCL). The SCL Trigger Map is an electronic map approved by the Chief Executive (Natural Resources) and can be found on the Department of Natural Resources, Mines and Energy (DNRME) website: www.dnrme.qld.gov.au

SCL means land that is, or is likely to be, highly suitable for cropping because of a combination of the land's soil, climate and landscape features.

Through the RPI Act, the government is seeking to manage the impact of resource activities on the SCA.

In order to achieve this, the RPI Act provides an assessment process to assess each proposed resource activity on its merits.

Restricted activities in the Strategic Cropping Area

The RPI Act restricts the carrying out of certain resource activities where the activity is not exempt from the provisions of the Act or a regional interests development approval has not been obtained.

Resource activities include any activity for which a resource authority is required. Resource activities do not include the following:

- a prospecting permit under the *Mineral Resources Act 1989*
- a petroleum survey licence, a data acquisition authority, or a water monitoring authority under the *Petroleum and Gas (Production and Safety) Act 2004*.

For the SCA, a compliance certificate or protection decision issued under the *Strategic Cropping Land Act 2011* becomes a regional interests development approval under the RPI Act.

Exempt activities in the strategic cropping area

The RPI Act makes the following resource activities exempt from the provisions of the RPI Act where located in the SCA. Exempt activities do not require a regional interests development approval.

1. a resource activity carried out for less than one year (Section 23 of RPI Act)
2. a pre-existing resource activity (Section 24 of RPI Act).

A resource activity is considered to be pre-existing if, immediately before the land becomes land in an area of regional interest, the activity may be carried out lawfully on the land.

A resource activity can be carried out lawfully on land if:

- it is carried out under a resource authority or environmental authority; and
 - the application for either authority adequately detailed the location, nature and/or extent of the expected surface impacts of the activity; and
 - no further authority or approval is required to be obtained in relation to the location, nature or extent of the expected surface impacts of the activity.
3. Activities carried out with the agreement of the land owner (refer Section 22 of RPI Act). This exemption provides for a resource activities in a SCA where:
 - the applicant is not the owner of the land and
 - the applicant has entered into a voluntary agreement with the land owner about the resource activity and
 - the resource activity is not likely to have a significant impact on the land and
 - the resource activity is not likely to have an impact on land owned by a person other than the land owner.

No formal written advice will be provided to applicants regarding whether an activity qualifies for an exemption under the RPI Act. If an applicant seeks confirmation that the activity can lawfully proceed, they can either—

- (a) lodge an assessment application to obtain a regional interests development approval or
- (b) seek a declaration from the Planning and Environment Court under Section 78(1)(c) of the RPI Act.

What constitutes a significant impact?

A significant impact is an impact which is important, notable or of consequence, having regard to its context or intensity. Whether or not an activity is likely to have a significant impact on the SCA depends on the scale and the effect of the impact on the SCA.

The Australian Government Department of Environment's Matters of National Environmental Significance *Significant impact guidelines 1.1* provide guidance on what may constitute a 'significant impact' on a matter of national environmental significance under the *Environment Protection and Biodiversity Conservation Act 1999*. This guidance has been used to assist with understanding the exemption under Section 22 of the RPI Act.

To determine whether an activity is *likely* to have a significant impact, consideration needs to be given to the probability of the negative effects of the impact occurring. For example, to be 'likely', it is not necessary for a significant impact to have a greater than 50 per cent chance of happening; it is sufficient if a significant impact on the area of regional interest is a real and not a remote chance or possibility.

If there is scientific uncertainty about the impacts of an activity and potential impacts are serious or irreversible, the precautionary principle is applicable. Accordingly, a lack of scientific certainty about the potential impacts of an activity will not itself justify that the activity is not likely to have a significant impact on the area of regional interest.

One example of where a resource activity may be considered not likely to have a significant impact on an area of the SCA may be where the proponent, could demonstrate that the land and soil over which the activity is proposed to occur will be returned to its pre-activity condition as soon as possible following completion of the activity. Refer to *RPI Act Guideline 09/14: How to determine if an activity has a permanent impact on strategic cropping land* for more information

A landowner under the RPI Act includes:

- (a) the person for the time being entitled to receive the rent for the land or who would be entitled to receive the rent for it if it were let to a tenant at a rent or
- (b) the lessee of a lease issued under the *Land Act 1994* for agricultural, grazing or pastoral purposes.

Note: the definition of landowner under the RPI Act is not as broad as the definition of landholder which is a commonly used term under other frameworks, including the Land Access Framework. The Land Access Code defines landholder as meaning an owner or occupier of private or public land in the area of, or access land for, a resource authority.

Making an assessment application

An assessment application for a regional interests development approval is required to be lodged with the Chief Executive of DSDMIP in the approved form. The RPI Act requires the assessment application must be accompanied by a report and the applicable fee.

The report must assess the activity's impact on the SCA and identify any constraints on the configuration or operation of the activity. The activity's impact on the SCA will be assessed against the SCA Assessment Criteria.

If the proposed activity is located within the SCA as well as another area of regional interest e.g. the priority agricultural area, different or additional requirements may apply.

For further information refer to *Guideline 01/14 how to make an assessment application under the RPI Act*.

A pre-application meeting is strongly recommended to discuss a proposed activity that is located in an area of regional interest.

Please email RPIAct@dsdmip.qld.gov.au or visit <https://planning.dsdmip.qld.gov.au/planning/regional-planning-interests-act> for further information and to arrange a pre-application meeting with the Department of State Development, Manufacturing, Infrastructure and Planning.

Requirement for public notification

Public notification may be required for an application for a resource activity in the SCA. Where public notification is required, the chief executive will issue a requirement notice under Section 44(1)(c) of the Act.

Refer to *RPI Act Guideline 06/14 Public notification of assessment applications* for further information.

Referral of application

In accordance with the Regional Planning Interests Regulation 2014 (RPI Regulation), the chief executive will refer all applications for resource activities in the SCA to the Department of Natural Resources, Mines and Energy.

Overlapping priority agricultural land use and applicability of the SCA Assessment Criteria

Where an application is for an activity that is to be carried out on land within the SCA and all or part of the land overlaps with land used for a priority agricultural land use (PALU) in a priority agricultural area (PAA), the assessor only needs be satisfied the activity meets the applicable PAA assessment criteria in deciding the application (relevant to the overlapping land). That is, whether the SCA criteria are met or not is not relevant in deciding that part of the application for where the overlap occurs, however the SCA criteria must be met for all areas where no overlap occurs.

In these scenarios and where the application is approved, the assessor may condition mitigation measures for any or all of the impacts to both areas of regional interest (i.e. both PAA and SCA), to manage the impacts to SCL and the coexistence of resource activities with the PALUs.

Further information on the Priority Agricultural Area Assessment Criteria can be found in the *RPI Act Guideline 02/14 carrying out resource activities in a priority agricultural area*.

Addressing the SCA Assessment Criteria

The SCA Assessment Criteria are made up of required outcomes and prescribed solutions. Only the applicable required outcome/s and prescribed solution/s are required to be addressed by the applicant in an application. The applicable required outcome and prescribed solution is dependent on the type and location of the proposed activity as identified below. The prescribed solution is the only way to meet the required outcome.

Determining the applicable required outcome and prescribed solution

Proposed activity	Required outcome to be addressed by applicant in application	Prescribed solution to be met
The activity will not impact on strategic cropping land because it is confirmed that the land is not SCL	Required outcome 1: The activity will not result in any impact on strategic cropping land in the strategic cropping area.	Refer to Table 1
The activity will, or is likely to, impact strategic cropping land and is being carried out on a property (SCL) in the strategic cropping area	Required outcome 2: The activity will not result in a material impact on strategic cropping land on the property (SCL). AND Required outcome 3: The activity will not result in a material impact on strategic cropping land in an area in the strategic cropping area.	Refer to Table 2 and Table 3
The activity will, or is likely to, impact strategic cropping land, or, the activity is being carried out over more than one property (SCL) in the strategic cropping area	Required outcome 3: The activity will not result in a material impact on strategic cropping land in an area in the strategic cropping area.	Refer to Table 3

The following tables provide guidance on how an applicant may address the prescribed solution for each required outcome.

Table 1 Guidance on how to meet the prescribed solution for Required Outcome 1

PRESCRIBED SOLUTION
<p>The application demonstrates the activity will not be carried out on SCL that meets the criteria for land stated in Schedule 3 of the RPI Regulation.</p> <p>To demonstrate compliance, an applicant must be able to provide evidence to support that all or part of the impacted land the subject of the application is not SCL.</p> <p>Evidence may include:</p> <ul style="list-style-type: none"> • field survey results • soil profile analysis • slope analysis • laboratory analysis • mapping • imagery (satellite and aerial). <p>Refer to <i>RPI Act Guideline 08/14 How to demonstrate that land in the strategic cropping area does not meet the criteria for strategic cropping land</i> for further information.</p>

Table 2 Guidance on how to meet prescribed solutions for Required Outcome 2

PRESCRIBED SOLUTION
<p>The application demonstrates—</p> <p>(a) if the applicant is not the owner of the land and has not entered into a voluntary agreement with the owner—the applicant has taken all reasonable steps to consult and negotiate with the owner of the land about the expected impact of carrying out the activity on SCL</p> <p>To demonstrate compliance, the applicant should carry out the following steps:</p> <ol style="list-style-type: none"> 1) write to the landowner seeking a meeting to: <ol style="list-style-type: none"> a. explain the nature and extent of the proposed activity and the likely impacts from the proposed activity b. discuss the nature of the activities conducted by the landowner on the land and the nature of the landowner's concerns 2) consider the information provided by the landowner and provide the landowner with a written strategy for addressing the landowner's concerns 3) provide sufficient time for the landowner to consider the strategy (i.e. a minimum of 20 business days) 4) consider and respond in writing to any concerns raised by the landowner in relation to the strategy 5) provide the landowner with sufficient time to consider the revised strategy (i.e. a minimum of 10 business days). <p>The applicant should then provide written documentation of the following with the application:</p> <ul style="list-style-type: none"> • the consultation and negotiation process • the strategy proposed to the landowner by the applicant • documentation of any concerns raised by the landowner about the strategy • the revised strategy responding to the concerns raised by the landowner. <p>The following may assist:</p> <p>http://mines.industry.qld.gov.au/assets/land-tenure-pdf/tips_landholders_negotiations.pdf</p>
PRESCRIBED SOLUTION
<p>The application demonstrates—</p> <p>(b) the activity can not be carried out on land that is not SCL, including for example, land elsewhere on the property (SCL), on adjacent land or at another nearby location</p> <p>To demonstrate compliance, the applicant should detail what alternative sites were investigated, and why the alternative sites are not suitable.</p> <p>The applicant may provide evidence to support that the activity cannot be carried out elsewhere. Examples of evidence may include:</p> <ul style="list-style-type: none"> • a detailed map which shows at a macro scale (e.g. location of the resource) and at a micro scale (location of ancillary infrastructure used to service the activity) scale constraints alongside the footprint of the activity and the SCL • the applicant's operational procedures/policies which state an activity has to be carried out in a certain way and justification that supports this requirement • engineering and design requirements (including summary of seismic and/or geophysical analysis) and justification that supports this requirement.

PRESCRIBED SOLUTION

The application demonstrates—

- (c) the construction and operation footprint of the activity on SCL on the property (SCL) is minimised to the greatest extent possible

To demonstrate compliance, the applicant may provide an explanation of how the construction and operational footprint of the activity have been minimised.

The application should distinguish between impacts associated with construction and those associated with operation.

The application should also describe any changes to the construction and operation footprint that have been made to minimise the activity's impact on the SCL.

Footprint is defined as the area of land directly impacted by the construction and operation of the resource activity.

Examples of minimising the construction and operation footprint of an activity may include:

- locating infrastructure associated with the activity on land that is not SCL (e.g. parking areas, dams, compression stations, access roads, stockpiles, laydown areas, water treatment plants, mine industrial areas and impoundments)
- locating infrastructure associated with the activity in existing infrastructure corridors
- reducing the construction width of a right of way for a pipeline
- for a CSG well, using pad drilling
- locating CSG wells by the edge of farm paddocks and maximising spacing between wells
- increasing the depth to which activities are buried to allow greater opportunity for agricultural activities to continue over the top once restoration is complete
- minimising the size of well pads
- carrying out restoration progressively throughout the project life.

PRESCRIBED SOLUTION

The application demonstrates—

- (d) if the activity will have a permanent impact on SCL on a property (SCL)—no more than 2 per cent of the SCL on the property (SCL) will be impacted

The extent of permanent impact on SCL is calculated as follows:

- 1) Identify the extent of the property (SCL) with reference to the definition contained in the RPI Regulation, Schedule 2, section 1(1).
- 2) Identify the area of SCL on the property with reference to the SCL Trigger Map
- 3) Identify the area of impact of the proposed activities with reference to the SCL

Area of impact means the area of land which will potentially have its pre-activity condition altered by the activity, whether or not the land can be restored to its pre-activity condition after the activity ceases.

Pre-activity condition means the condition of the land's soil as identified and analysed within 1 year before the making of an assessment application for a resource activity to be carried out on the land.

The total area of impact may include:

- The footprint of the activity e.g. wells, cuttings, pits, voids, waste rock dumps, impoundments, rail, roads, access tracks, set down areas, camps, ancillary infrastructure, pipelines (surface or buried), power lines, service corridors, industrial and processing facilities
- land used or disturbed during construction or operation
- areas outside of the construction and operation footprint where the pre-activity condition of the land may be consequentially altered as a result of the activity, for example: by way of modification to overland flow or subsurface flow, sedimentation, erosion, discharge of wastewater or potential soil contaminants.

4) Establish whether the proposed activities will have a permanent impact on SCL.

A *permanent impact* will occur where the SCL impacted cannot be returned to its pre-activity condition following the carrying out of the activity. To determine whether SCL will be able to be returned to its pre-activity condition, refer to *RPI Act Guideline 09/14 How to determine if an activity has a permanent impact on strategic cropping land*.

5) Identify the area of permanent impact on SCL.

6) Calculate the area of SCL that will be permanently impacted as a percentage of the SCL on the property.

In order to meet the prescribed solution for required outcome 2, the area of SCL that is permanently impacted must be no more than 2% of the SCL on the property.

A restoration plan should be used to demonstrate how permanent impacts will be avoided. A restoration plan should include:

- general details of the proposed activity including tenure and tenure holder details, applicant details, real property descriptions of the impacted land and contact details for all land owners and other interested parties
- an appropriately detailed description of the general environment and the proposed activity
- suitably detailed maps or plans, drawn to scale, showing the proposed location of the activity and the relationship to SCL (including SCL on adjacent land, not the subject of the application)
- a detailed characterisation of the current (pre-activity) condition of the land and soils
- an evaluation of the nature and risk of any predicted impacts on SCL
- evidence that scientifically proven and practical methods do exist for the restoration of each area of impacted land to its pre-activity condition
- specific detail of how the identified restoration methods are to be applied and the time period which restoration will be completed in each of the affected areas
- a monitoring program that will comprehensively and clearly demonstrate benchmarked, time-bound progress in restoring the areas of affected land
- a fully costed estimate, prepared by a suitably qualified third party, detailing the cost of undertaking the identified restoration works
- provision of a set of restoration criteria that will need to be met to demonstrate the successful restoration has been achieved.

Table 3 Guidance on how to meet prescribed solutions for required outcome 3

PRESCRIBED SOLUTION
<p>The application demonstrates—</p> <p>(a) the activity cannot be carried out on other land in the area that is not SCL, including for example, land elsewhere on the property (SCL), on adjacent land or at another nearby location</p>
<p>To demonstrate compliance, the applicant should detail what alternative sites were investigated, and why the alternative sites are not suitable.</p> <p>The applicant may provide evidence to support that the activity cannot be carried out elsewhere. Examples of evidence may include:</p> <ul style="list-style-type: none"> • a detailed map which shows at a macro scale (e.g. location of the resource) and at a micro scale (location of ancillary infrastructure used to service the activity) scale constraints alongside the footprint of the activity and the SCL • the applicant's operational procedures/policies which state an activity has to be carried out in a certain way and justification that supports this requirement • engineering and design requirements (including summary of seismic and/or geophysical analysis) and justification that supports this requirement.
PRESCRIBED SOLUTION
<p>The application demonstrates—</p> <p>(b) any regional outcome or regional policies stated in a regional plan for the area have been adequately addressed</p>
<p>To meet this prescribed solution, an applicant may provide an explanation of how the regional outcomes and policies stated in the relevant regional plan are met.</p> <p>For example, where the activity is located within the Darling Downs region the following would apply—agriculture and resources industries within the Darling Downs region continue to grow with certainty and investor confidence.</p>
PRESCRIBED SOLUTION
<p>The application demonstrates—</p> <p>(c) the construction and operation footprint of the activity on SCL is minimised to the greatest extent possible</p>
<p>To demonstrate compliance, the applicant may provide an explanation of how the construction and operational footprint of the activity have been minimised.</p> <p>The application should distinguish between impacts associated with construction and those associated with operation.</p> <p>The application should also describe any changes to the construction and operation footprint that have been made to minimise the activity's impact on the SCL.</p> <p><i>Footprint</i> is defined as the area of land directly impacted by the construction and operation of the resource activity.</p> <p>Examples of minimising the construction and operation footprint of an activity may include:</p> <ul style="list-style-type: none"> • locating infrastructure associated with the activity on land that is not SCL (e.g. parking areas, dams, compression stations, access roads, stockpiles, laydown areas, water treatment plants, mine industrial areas and impoundments) • locating infrastructure associated with the activity in existing infrastructure corridors • reducing the construction width of a right of way for a pipeline • for a CSG well, using pad drilling • locating CSG wells by the edge of farm paddocks and maximising spacing between wells

- increasing the depth to which activities are buried to allow greater opportunity for agricultural activities to continue over the top once restoration is complete
- minimising the size of well pads
- carrying out restoration progressively throughout the project life.

PRESCRIBED SOLUTION

The application demonstrates—

(d) either—

- (i) the activity will not have a permanent impact on the SCL in the area or
- (ii) the mitigation measures proposed to be carried out if the chief executive decides the approval and impose an SCL mitigation condition

To meet part (i) of this prescribed solution, an applicant may provide evidence to establish whether the proposed activities will have a permanent impact on SCL.

A permanent impact will occur where the SCL impacted cannot be returned to its pre-activity condition following the carrying out of the activity. To determine whether SCL will be able to be returned to its pre-activity condition, refer to *RPI Act Guideline 09/14 How to determine if an activity has a permanent impact on strategic cropping land*.

Pre-activity condition means the condition of the land's soil as identified and analysed within 1 year before the making of an assessment application for a resource activity to be carried out on the land.

A restoration plan should be included in the application to demonstrate how permanent impacts will be avoided where possible. A restoration plan should include:

- general details of the proposed activity including tenure and tenure holder details, applicant details, real property descriptions of the impacted land and contact details for all land owners and other interested parties
- an appropriately detailed description of the general environment and the proposed activity
- suitably detailed maps or plans, drawn to scale, showing the proposed location of the activity and the relationship to SCL (including SCL on adjacent land, not the subject of the application)
- a detailed characterisation of the current (pre-activity) condition of the land and soils
- an evaluation of the nature and risk of any predicted impacts on SCL
- evidence that scientifically proven and practical methods do exist for the restoration of each area of impacted land to its pre-activity condition
- specific detail of how the identified restoration methods are to be applied and the time period which restoration will be completed in each of the affected areas
- a monitoring program that will comprehensively and clearly demonstrate benchmarked, time-bound progress in restoring the areas of affected land
- a fully costed estimate, prepared by a suitably qualified third party, detailing the cost of undertaking the identified restoration works
- provision of a set of restoration criteria that will need to be met to demonstrate the successful restoration has been achieved.

If the activity will have a permanent impact on SCL, the chief executive will impose a mitigation condition in accordance with the RPI Act, Section 50(1)(c).

The area of permanent impact on SCL must be calculated as follows:

- 1) Identify the extent of the property (SCL) with reference to the definition contained in the RPI Regulation, Schedule 2, section 1(1).
- 2) Identify the area of SCL on the property with reference to the SCL Trigger Map
- 3) Identify the area of impact of the proposed activities with reference to the SCL

Area of impact means the area of land which will potentially have its pre-activity condition altered by the activity, whether or not the land can be restored to its pre-activity condition after the activity ceases.

Pre-activity condition means the condition of the land's soil as identified and analysed within 1 year before the making of an assessment application for a resource activity to be carried out on the land.

The total area of impact may include:

- The footprint of the activity e.g.: wells, cuttings, pits, voids, waste rock dumps, impoundments, rail, roads, access tracks, set down areas, camps, ancillary infrastructure, pipelines (surface or buried), power lines, service corridors, industrial and processing facilities
- land used or disturbed during construction or operation
- areas outside of the construction and operation footprint where the pre-activity condition of the land may be consequentially altered as a result of the activity, for example: by way of modification to overland flow or subsurface flow, sedimentation, erosion, discharge of wastewater or potential soil contaminants.

4) Establish whether the proposed activities will have a permanent impact on SCL.

A permanent impact will occur where the SCL impacted cannot be returned to its pre-activity condition following the carrying out of the activity. To determine whether SCL will be able to be returned to its pre-activity condition, refer to *RPI Act Guideline 09/14 How to determine if an activity has a permanent impact on strategic cropping land*.

5) Identify the area of permanent impact on SCL in hectares.

To meet part (ii) of this prescribed solution, the applicant should indicate whether, if the activity is approved and the chief executive imposes a mitigation condition, the condition will be met by entering into a mitigation deed or making a mitigation payment (RPI Act s.62).

Further information on SCL mitigation conditions can be found in the RPI Act, Part 4 Division 1. The SCL Mitigation Values are prescribed in the RPI Regulation, Part 6.

PRESCRIBED SOLUTION

Where the applicant is not the owner of the land and has not entered into a voluntary agreement with the owner, the application demonstrates—

(e) the matters listed in Table 2.

Refer to **Table 2** for guidance on how to demonstrate compliance.

Further information

Visit: <https://planning.dsdmip.qld.gov.au/planning/regional-planning-interests-act>

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