

What can Landholders Do? – Legal Options including “Carbon Offsets”

Paul Leadbeter – Partner

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Landholders

- Consider options to reduce emissions
- Implement adaptation mechanisms
- Focus in presentation on reduction of emissions and use of carbon offsets
 - Some legal perspectives
 - Voluntary carbon offset markets cf. regulated markets e.g. CPRS proposal

What are “Carbon Offsets”

- An investment in a project or activity that reduces GHG emissions or sequesters carbon from the atmosphere that is used to compensate for GHG emissions from your own activities
- Can be compensating for:
 - All your activities
 - Specific activities – such as air travel, fuel use
 - Lifecycle emissions associated with a business product or service

“Carbon Offsets” *continued*

- Process involves:
 - Calculating the emissions
 - Purchasing “credits” from emissions reduction or carbon sequestration activities at another location – offsets calculated emissions

“Carbon Offsets” *continued*

- Offsets – measured in metric tonnes of carbon dioxide-equivalent (Co²e)

Thus – can relate to GHG other than Co² e.g. Methane

- 3 typical components:
 - A “vintage” – year in which carbon reduction occurs
 - A “source” – project which achieves the reduction
 - Certification – mechanism to quantify and verify reduction

- “Source” type projects include:
 - Projects to increase energy efficiency
 - Alternative energy production (hydro, wind, solar,)
 - Forestry/Biosequestration (afforestation, reforestation, retention of existing forest)
 - Methane projects (agriculture, flaring/conversion)

- In SA landowners could consider:
 - Reforestation and retention of existing forest
 - Reduction in Methane
 - Possible alternative energy production projects

Reduction in Methane

- Landfill
 - Flare into atmosphere, or
 - Burn to generate energy
- Need
 - Legal agreements – strict procedures, indemnities
 - Any EPA authorisations
 - Any development authorisations
 - Verification requirements

Reduction in Methane *continued*

- Must prove project is “additional” to what would have occurred anyway e.g: Must be more than simply:
 - routine equipment upgrade
 - Response to regulatory requirements

Alternative Energy Production Projects

- Solar, wind, tidal,
- Consider is project additional to what would have occurred anyway?
- Usually not project sole landowner can undertake
- Usually requirements for:
 - Development approval
 - Environmental authorisation
 - Written agreement (eg. With electricity retailers)

Reforestation/Biosequestration

- Most popular option
- Trees soak up carbon – reduce quantity of GHG in atmosphere
- Private landholders can:
 - Establish permanent plantings of native trees
 - Establish commercial plantations for future harvest
 - Encourage regeneration of native trees and shrubs (fence stock out)
 - Protect existing native forest

Reforestation/Biosequestration

continued

- Arrangements can be facilitated by Forest Property Agreements in S.A.
- To qualify for carbon offsets – certain standards for tree planting

Forest Property Agreements

- Under Forest Property Act 2000
 - Capacity of tree to absorb carbon is a property right (s.3A)
 - That right can be separated from ownership of tree and land by Forest Property Agreement (s.5)

Forest Property Agreements

continued

- 2 types
 - Forest Property (Vegetation) Agreement
 - Forest Property (Carbon Rights) Agreement
- Vegetation Agreement – Ownership of vegetation separate from ownership of land
- Carbon Rights Agreement – Ownership of carbon rights can be separated from ownership of vegetation & ownership of land

Forest Property Agreements

Must be:

- In writing
- Identify land (title reference)& area on land where trees planted
- Identify trees (plans-species, age at first planting etc))
- Set out rights and obligations of respective parties
- Can be registered on title to land

Forest Property Agreement

continued

- Requires consents from persons with interest in land (for registration)
- Can bind persons who gave consent
- Will take priority over interests of those persons
- If registered – binds purchasers of land
- Carbon/vegetation rights – can be assigned, mortgaged or charged

Issues with Biosequestration Arrangements

- Landholder plants or permits others to plant
- Standards for planting, tree types etc
- Maintenance – weeds, pests, stock, water, fire, storm damage-who manages what?
- Permanence of offsets-once planted must remain for generations

Issues with Biosequestration

Arrangements *continued*

- Need for planning approvals? Is it commercial forestry?
- Monoculture or biodiverse plantings?
- Liability issues e.g. accidental release of carbon to atmosphere
- Is insurance needed?
- Standards and verification?

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