



ENQUIRIES:

Sarah Cook



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Research Director
Agriculture and Environment Committee
Parliament House
BRISBANE QLD 4000

Email: vminquiry@parliament.qld.gov.au

Dear Sir/Madam,

Submission – Parliamentary committee inquiry into the Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016

Thank you for the opportunity to make a submission to the inquiry into the Vegetation Management (Reinstatement) and Other Legislation amendment Bill 2016.

Cairns Regional Council would like to make the following submission to the Agriculture and Environment Committee for its consideration.

Clause 2

Clause 2 provides for a commencement date of 17 March 2016 for identified parts of the Bill including the amendments to the *Sustainable Planning Act* proposed within Part 3.

However, discussions with officers from the Department of Natural Resources and Mines suggest that only Clause 10 of Part 3 is intended to have retrospective applicability, this is in conflict with the provisions contained within Clause 2.

The inquiry should confirm the extent of Part 3 intended to be retrospectively applicable and ensure that Clause 2 is accurate in identifying the extent of retrospective applicability.

Clause 10

Proposed s1002 of Clause 10 of the Bill identifies that unlawful clearing is not an offence under s578(1) or s581(1) of SPA during the interim period. s578(1) of SPA relates to undertaking assessable development without a development permit and s581(1) of SPA relates to undertaking prohibited development. Proposed s1002 includes a note referring to restoration notices under the *Vegetation Management Act*.

Clause 7 of the Bill provides for a new section 131 of the Vegetation Management Act. Section 131 of the VMA requires restoration notices and other requirements to be issued by the Chief executive if unlawful clearing is undertaken during the interim period.

For the purposes of the Bill unlawful clearing defined is development that becomes prohibited because of the amendments (contained within the Bill) and the interim period is the period from 17 March 2016 to immediately before the date of assent.

As the definition of unlawful clearing contained within Clause 10 is specific in reference to development that becomes prohibited because of the amendments, it is unclear why s1002 includes reference to section 578(1) of SPA as opposed to solely referencing s581(1).

It is recommended that s1002 be reviewed and amended as necessary.

Clause 11

Clause 11 proposes additions to Schedule 1 of the Sustainable Planning Act to identify certain Material Change of Use Applications as prohibited development. The proposed amendments within Clause 11 would prohibit:

Material change of use that is assessable development, other than development prescribed under section 232(1), if –

- (a) The material change of use involves operational work that is clearing vegetation; and*
- (b) Because of the clearing the chief executive would be a concurrence agency for the material change of use if a development application were made for material change of use; and*
- (c) The operational work is not for a relevant purpose under the Vegetation Management Act, section 22A.*

It is understood from a review of the explanatory notes to the Bill and from discussions with officers from the Department of Natural Resources and Mines, that the intent of this Clause is to prohibit Material Change of Use applications for agricultural activities, specifically high value agriculture and irrigated high value agriculture, that include vegetation clearing of native vegetation, where the vegetation clearing is not for a relevant purpose.

However, the broad drafting of the proposed provision, as opposed to specific reference to the MCU types intended to be prohibited is likely to result in prohibition of a broader extent of Material Change of Use applications than was intended.

Clause 11, as proposed appears to prohibit any Material Change of Use for which the Chief Executive is a concurrence agency under Sch 7, Table 3, Item 10 of the SP Regs, provided the clearing associated with the MCU is not for a relevant purpose.

A review of the proposed relevant purpose provisions of the Vegetation Management Act, as amended by Clause 4 of the Bill, identifies that few relevant purposes would apply to vegetation clearing associated with Material Change of Use applications. It is likely that only s22A(2)(d) is an applicable relevant purpose, save for where a Material Change of Use application is made for an Extractive Industry. s22A(2)(d) provides that vegetation clearing is for a relevant purpose where for *relevant infrastructure activities and the clearing can not be reasonably avoided or minimised*.

The Vegetation Management Act defines *relevant infrastructure activities* as –

- a) *Establishing and maintaining a necessary fence, firebreak, road, vehicular track;*
or
- b) *Constructing and maintaining necessary built infrastructure*

Necessary built infrastructure is not defined. However, it would be difficult to interpret that vegetation clearing for the construction or maintenance of built infrastructure proposed by a Material Change of Use (where the MCU satisfies the balance of the proposed prohibited development provisions), that has not yet been lodged, assessed or approved is for a relevant purpose. Specifically the words ‘constructing’ or ‘maintaining’ describe actions that can only be taken after all necessary approvals, including a Material Change of Use, have been issued. However, when development is prohibited, an application can not be made and when an application can not be made an approval can not be issued. Built infrastructure proposed within an MCU that has not yet been approved can not be considered to be necessary built infrastructure and therefore is can not be for a relevant purpose.

Furthermore the subjective terminology used within s22A(2)(d), specifically ‘*can not be reasonably avoided or minimised*’, does not assist in clarifying explicitly what is prohibited development. It is uncertain what is ‘reasonable’ in ‘avoiding or minimising’ clearing, or in who’s opinion is reasonable.

In all circumstances where a Material Change of Use that includes vegetation clearing would be prohibited, the Chief Executive would otherwise be a referral agency with concurrence powers. It seems unusual that development which is afforded a referral and assessment process under the balance of the provisions of the SP Regulation would be declared to be prohibited development.

It is submitted that the extent of Material Change of Use applications intended to be prohibited should be reviewed and the proposed provisions within Clause 11 be amended to be an inclusive list of what is to be prohibited to ensure that other Material Change of Use applications are not unintentionally prohibited.

Clause 14

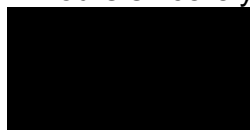
The amending provisions reference s218 of the *Water Act*, however, this should reference s266 of the *Water Act* as s266 is the provision relating to *Applying for permit to excavate or place fill in a watercourse, lake or spring*.

The proposed amendments introduce the requirement for a riverine protection permit to be sought for destroying vegetation in a watercourse, lake or spring in addition to the existing requirements for a riverine protection permit to be sought for excavating or placing fill. Under the current provisions exemptions from seeking a riverine protection permit are provided for certain excavation and filling activities within a watercourse, lake or spring by Local Governments.

It is submitted that guidelines should be prepared to provide for similar exemptions for destroying vegetation in certain circumstances.

Should you have any further enquiries or require additional information, please contact Sarah Cook from Council's Strategic Planning team on the above phone number.

Yours sincerely

A black rectangular box redacting the signature of Peter Boyd.

Peter Boyd
Manager Strategic Planning and Approvals