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25 September 2014

The Research Director
Agriculture, Resources and Environment Committee
Parliament House
Cnr George and Alice Streets
BRISBANE QLD 4000

Via email: AREC@parliament.qld.gov.au

Dear Sir/Madam

ENVIRONMENTAL PROTECTION AND OTHER LEGISLATION AMENDMENT BILL 2014

On behalf of Logan City Council, the *Environmental Protection and Other Legislation Amendment Bill 2014* has been reviewed and the following comments are provided. Please be advised that due to the tight timeframes for submissions, the following comments are not endorsed Council policy but are based on previously endorsed policy positions wherever possible.

Environmental Offsets Act 2014

Logan City Council having attended the SEQ Regional Offsets Working Group, has previously provided many comments in regards to the State government's Environmental Offsets Policy, and would advise that those comments still stand.

In relation to the *Environmental Offsets Act 2014*, Council understands the need to avoid duplication. However, Logan City Council is concerned about the impact of this new Act on sustainable growth management within Logan City, a priority development corridor. It is disappointing that even after emails to the State Government that there is still no clarity about when and what local governments can map as Matters of Local Environmental Significance (MLES). For example it is unclear when a MLES would be considered "substantially the same" as a Matter of State Environmental Significance (MSES).

Council is particularly concerned that the State Government may choose to exempt or, not require an offset for certain vegetation clearing applications. This would result in much of the vegetation being cleared without it being offset because Council is not allowed to offset the same matter, irrespective of locally significant vegetation on site. As a result, it is suspected that there will be a net loss of vegetation, particularly koala habitat and this will lead to significant environmental and biodiversity impacts for local communities.

Another consequential issue for local governments associated with the *Environmental Offsets Act 2014* is that if the State Government were to exempt a developer to clear large extents of a 'vegetation community' and the local government conditions local residents for smaller scale clearing (ie a few trees) and thus less impact clearing in the long term, the intent is not consistent from a biodiversity and 'no net loss' perspective and has the potential to cause significant conflict and dissatisfaction in the local communities.

Council does not support, in any way, offsets of any kind associated with development in Logan being sited outside of Logan. That is, if the State Government requires an offset for development in Logan, the offsets should be delivered in Logan. It would have greater benefit for that local community to have vegetation replanted in the same bioregion from which it was cleared. The replanting of vegetation in another ecosystem and different region does not replace the biodiversity lost from the local area. Furthermore, often when

developers or large scale companies need to revegetate conditioning a stand of monoculture should be avoided, and mixed species planting supported.

It is also suspected that costs associated with the *Environmental Offsets Act 2014* are going to be cost prohibitive resulting in more proponent driven offsets rather than financial contributions. This will take more time to complete an application rather than reduce time/'greentape' for developers.

Logan City Council's planning scheme and offset policy have already been submitted for the first State Interest Check and undergone significant community consultation. The introduction of the *Environmental Offsets Act 2014* in July 2014 has given Council limited time to amend and align its offset policy with the Act or road test and consult on the new policy.

Environmental Protection Act 1994

In reference to Clause 123 Amendment of section 320A, there appears to be a reliance of when a Local Government Authority 'becomes aware'. However, in many situations for contaminated land there are industry bodies and companies that would be better suited to notifying the State Government directly as they have already have a licensing relationship with the industry. For example, for Notifiable Activity 29: Petroleum product or oil storage - storing petroleum or oil' it would be logical for the tank installer or tank supplier to notify the State Government of a fuel tank being installed on a site. In other cases, the industry does not have an established relationship with either the local government or the State Government however, it would still seem more efficient to require notification direct to the State Government rather than the double handling required if notifications are made to the local government, for example a tank installer, tank supplier or halogenated hydrocarbon chemical supplier in relation to 'Notifiable Activity 12: Dry Cleaning'. Indeed this would apply for most Councils in Queensland, unless they have instigated a local law or created a code in their planning scheme. There are many more examples where the owner, supplier or installer would have better knowledge and be in a better position to notify the State Government directly. Council therefore recommends that the State Government utilises information already ascertained from the respective industry bodies and subsequent companies, pertinent to the relevant activity.

Council would like to raise a long standing issue with Section 371, Grounds for including land in the environmental management register (EMR). This section states 'a notifiable activity has been, or is being, carried out on the land', however many notifiable activities are uses that do not require licences, for example, dry cleaners. If State government believes that the activities on the list of notifiable activities are ones to be recorded on a register, then Council recommends there should be a form of licencing or registration of those activities. Since, the greentape reform, more of the notifiable activities are being missed by local governments as the licensing requirement was removed. For example, 'petroleum product storage', without ERA 8 Chemical Storage or Flammable and Combustible Liquid licences, many smaller sites which store fuel can be missed. Another example, is with motor vehicle workshops that have underground waste oil tanks. These should be on the EMR but currently are being missed as Council's do not have either an ERA (ERA 21 was deleted) nor a flammable and combustible liquid licence.

Logan City Council agrees with the change under section 320DB, *Duty of local government to notify administering authority*, with the notification timeframe changing to 20 business days, which is consistent with *Sustainable Planning Act 2009* timeframes. In reference to section 408 *Owner to give notice to proposed purchaser*, Council also agrees that the owner must provide written notice to a buyer.

Logan City Council strongly recommends that as part of this process, section 514 of the *Environmental Protection Act 1994* be amended to ensure that local governments can use section 363N *Administering authority may issue cost recovery notice*. While the state government's orphan fund can be accessed where an offender cannot be identified, as it stands, local governments do not have the power to recover costs as the result of environmental harm where an offender has been identified. While it is acknowledged that there may be potential to recover costs through prosecution in the Courts, there is a need for a more cost-effective and streamlined option, particularly where the costs to be recovered are relatively small.

Logan City Council supports the new enforcement tool of Part 5, *Enforceable Undertakings*. The enforcement undertakings agreement is an alternative to legal proceedings which will benefit the operator and Council.

Logan City Council supports the proposed increases to penalties under the *Environmental Protection Act 1994* however is intrigued to see that the *State Penalties Enforcement Regulation 2014* was amended to reflect higher penalty values **before** the *Environmental Protection Act 1994* has been amended.

Nature Conservation Act 1992

Logan City Council restates its disappointment in the State Government for putting Council in an untenable position by creating the expectation to the community that we are solely responsible for flying-foxes. Council remains concerned about the cost burden this move has placed on Council and the policy shift from the State has clearly resulted in the community holding an expectation that local governments are now the "flying-fox roost managers" with no budgetary support.

Council objects to the inclusion of provisions (Division 10) for the Minister to be able to require a local government to prepare and publish a statement of management intent (SOMI). In this regard, the legislation has moved from a voluntary framework which provides local government with the capacity to manage flying fox roosts in State-defined urban areas to a requirement for Councils to develop and publish their management intent/policy position.

With particular reference to the proposed new section, we question what the penalty is and/or ramification if a local government does not prepare and publish a SOMI for the protected wildlife? Would the 'reasonable period' stated in the notice from the Minister, be negotiable? Clarity is sought as to what information under subsection (3) would be required and what expected information the SOMI may contain? It should be noted that local governments are still awaiting the template for the SOMI from State government to assist in this regard.

Should you have any questions, I can be contacted directly on (07) 3412 4968.

Yours faithfully

Claire Moffat
Acting Manager, Environment and Sustainability
(on behalf of Chris Rose, Chief Executive Officer)