

SEQ Catchments



Submission on: Vegetation Management Framework Amendment Bill 2013

Simon Warner
Chief Executive Officer
SEQ Catchments
183 North Quay Brisbane
swarner@seqcatchments.com.au
www.seqcatchments.com.au
07 3211 4404



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Introduction

SEQ Catchments congratulates the Minister for Natural Resources and Mines in taking steps to reduce red tape, streamline systems, and simplify the vegetation management framework. The *Vegetation Management Act 1999* has at times not achieved its objectives in South East Queensland and has created confusion and concern with landholders, proponents and environmentalists.

Many in South East Queensland have voiced concerns the Act has inefficiencies and unintended consequences built into it for an already developed and highly regulated region such as South East Queensland. This submission presents SEQ Catchments position on the proposed changes to the vegetation framework particularly as they relate to South East Queensland's natural assets and catchment management in general.

SEQ Catchments is a natural resource management organisation, which works with the community, the corporate sector and all levels of Government to ensure the long term sustainability of our natural assets in South East Queensland. The importance of these assets to the region's economy and social stability is well documented and increasingly understood¹.

South East Queensland's natural assets and their importance

Three million residents in South East Queensland depend on the region's natural assets to supply clean water, clean air, fruit, vegetables, meat, fish and other specialty foods, energy, landscape amenity, tourism, healthy flora and fauna, jobs and economic outcomes and abatement for development impacts. The regional population relies heavily on its catchments and the landscapes within South East Queensland to provide these services without diminution. Again, research indicates that the people of South East Queensland do not want to see the environment and liveability of the region to deteriorate any further².

The unprecedented level of development of all types in South East Queensland in the past 20 years has added to many years of, at times, inappropriate land management decisions which have impacted on the ability of the region to maintain its natural assets. These assets need to be in a condition which continues to support and allow the production of clean air, water, food and landscape amenity while supporting tourism, the economy and the

¹ Marsden Jacob and Associates (April 2010), *Managing what matters: The cost of environmental decline in South East Queensland*, Brisbane.

² See note 1

abatement services required for the region of the size and complexity of South East Queensland to be sustainable into the future. Of all our assets, vegetation has been one of the most impacted during South East Queensland's recent history.

South East Queensland's natural assets have been so modified, that to provide the base needs to support the services provided by its natural assets, the region needs to be viewed and managed differently to the rest of Queensland. In South East Queensland, 70% of the State's 4.474 million population is located within only 1.2% (22,433.6 km²) of its total land mass. This leads to land use conflict and competition for natural resources and threats to delivery of the services provided by the regional's natural assets³. No other region in Queensland deals with these circumstances.

While the region has been modified to the stage where the provision of natural asset services is increasingly challenging, SEQ Catchments understands and supports the need for planned, considered and appropriate development of the region to encourage economic growth. SEQ Catchments believes that continued growth to support the economy while supporting and enhancing the natural assets of the region which underpin it is feasible and certainly desirable. SEQ Catchments is also pleased to see support for the State's predominant land stewards over the past century, food and fibre producers. This submission raises relevant points in order to support this need while Table 1 contains SEQ Catchments views on various aspects of the Bill.

Vegetation Management in South East Queensland

Urban and peri-urban development with small acreage "lifestyle" properties, along with major road, rail and power infrastructure and cropping and grazing to the west are defining characteristics of the region. The regional vegetation and ecosystems which rely on it have been highly modified to the extent where many of the remaining remnant vegetated areas result from some form of re-growth or forest practice. Large areas have been long ago cleared for agricultural production or urban development making these remaining areas very important resources for the developing region⁴

Many riparian zones and hill slopes have been cleared resulting in increased soil loss during flood events such as that experienced in 2011 and again in 2013. Many species associated with native vegetation in South East Queensland are no longer viable or vulnerable such as the koala. The need to preserve species in the region along with scenic amenity, biodiversity outcomes and outdoor recreation is important to the economy and people of

³ State of Queensland (Queensland Treasury and Trade), 2013, Queensland Regional Profile, South East Queensland Region, Brisbane.

⁴ Michaels K, Lacey M, Norton T and Williams J (2008). Vegetation Futures for Tasmania, Veg Futures Conference, Toowoomba.

South East Queensland⁵.

There is an increasing body of scientific knowledge which agrees on the role vegetation plays in ameliorating the impacts of climate variability, air and water quality impacts and creating resilience in our landscapes. Our tourism industry relies on images of healthy vegetation and good water and air quality while our outdoor lifestyle is underpinned by green vistas, clean blue water, white sandy beaches and beautiful forests⁶.

While many of these issues exist to some degree across Queensland, the concentration of people and development in South East Queensland necessitates a specific and targeted approach for the region. SEQ Catchments is aware of the great work by the Government to ensure the impacts of development of all types are delivered in a way which ensures Queensland's long term health and sustainability; however strongly believes a coordinated and regional specific approach is needed to handle the unique circumstances in South East Queensland.

A way forward

The Bill proposes a number of sensible process and cost efficiencies and aims to simplify a number complex concepts contained within the vegetation framework. Most of the amendments are supported by SEQ Catchments; however, there a number of concerns relating to the Act's effectiveness in South East Queensland given the region's unique circumstances when compared with the rest of Queensland given the high potential for cumulative impacts creating unintended consequences.

New trigger

While the Bill does not deal with the proposed amendment to the minimum trigger for the provisions of the Act, the Minister's speech introducing the Bill to Parliament stated that the minimum trigger will be increased from 2 hectares up to 5 hectares (Table 2, Item 4, Sustainable Planning Regulation 2009). Again, in many instances in regions outside South East Queensland, this represents significant efficiencies in process with minimal impacts on natural asset outcomes.

It is useful to present some facts derived from the SEQ Catchments geographic information system. The average lot size in South East Queensland is 2.0487 hectares. The estimate for the total amount of remnant vegetation left in South East Queensland is now less than 30%. There are 107, 840 lots of between 1-5 hectares of which 42,800 have some form of

⁵ Marsden Jacob and Associates (April 2010), *Managing what matters: The cost of environmental decline in South East Queensland*, Brisbane.

⁶ Department of the Environment, Water, Heritage and the Arts (2009). *Ecosystem Services: Key Concepts and Applications*, Occasional Paper No 1, Department of the Environment, Water, Heritage and the Arts, Canberra.

remnant vegetation within them. Importantly, the amount of remnant vegetation contained on lots from 1-5 hectares in South East Queensland is 42,260 hectares which potentially comes under threat should the trigger be increased.

A five hectare blanket trigger as proposed will have a major impact in South East Queensland and is highly likely to compromise the purposes of the Act. If everyone in South East Queensland availed themselves of the trigger, theoretically, the region could lose large amounts of its vegetation except for that contained in the protected area estate and those protected under Category A.

Given this high potential for unintended consequences, SEQ Catchments is assuming the Government is relying on local government to ensure the region does not lose its remnant vegetation given much of it is held in 5 hectares or less remnants. Some local government areas such as Brisbane City Council have the local regulation and/or expertise to take care of the remnants in line with the Act's purposes; however, others have little or no capacity to do this.

SEQ Catchments believes it is prudent to consider an alternative approach in South East Queensland given the increased importance of the remnant vegetation to the region, particularly for local governments which do not have the capacity to regulate clearing. The Act contains a number of provisions and proposed provisions which would make alternative approaches possible and feasible including urban designations, area management plans and the like.

Abatement of development impacts

The provisions dealing with the new clearing purposes of agriculture (Clause 47) contain options for a proponent to show how they intend (if at all) to account for clearing of remnant vegetation. The proposed section 22DAB(3) seeks the “..nature and extent of any thing proposed to be done as well as the clearing that will have a significant beneficial impact on the biodiversity values of the land.”

Presumably, this new sub-section is designed to provide a proponent the opportunity to outline what is proposed by way of abatement for the impact created by the vegetation clearing. Given there is up to 1.5 million hectares of land under the *Strategic Cropping Land Act 2011* footprint which may still have remnant vegetation, and therefore available for increasing agricultural production, the importance of section 22DAB(3) cannot be understated.

SEQ Catchments is aware of the work being undertaken by the Ministers for Environment and Heritage Protection and natural Resources and Mines to improve the environment and vegetation offset policy framework which supports abatement of vegetation and other

natural asset losses. In South East Queensland, we believe this work is crucial to ensuring a healthy and prosperous region and congratulate the Ministers on their efforts to simplify and clarify the environmental offsets policy. We also believe this policy should be used as the guide (or indeed policy) to inform a proponent's abatement proposals under s22DAB(3).

The strategic approach taken by the new offsets policy provides particular opportunities in South East Queensland to optimise the balance between development and natural assets. We understand local governments, through work underway by Council of Mayors SEQ and others, and the Minister for Environment and Heritage Protection, to spatially represent how such a strategic approach would unfold is well advanced. This work may well offer a proponent further efficiencies if undertaken in the region.

Regrowth

The proposals to remove the regrowth provisions contained in the Act are understood and return the Act to its pre-2009 status, except in high risk catchments in the Great Barrier Reef (Category R), and on land under the *Land Act 1994* (Category C) and other specific tenures (excluding freehold). When taken together with the environmental offsets policy and the relationship of offsets and Category A, SEQ Catchments is pleased that the abovementioned strategic approach to terrestrial offsets and approaches is effective and efficient. The main concern expressed to SEQ Catchments regarding terrestrial based regrowth being removed in the region relates to high value regrowth habitat for koala. SEQ Catchments believes there needs to be some recognition of the importance of encouraging koala regrowth habitat within Category C in South East Queensland.

SEQ Catchments is also very concerned about the lack of mechanisms which will now be available to protect and improve riparian vegetation which is vital to water quality in the region as demonstrated during the 2011 and 2013 flood events. The value of riparian vegetation to flood risk management is recognised throughout the world, as well as in South East Queensland⁷.

In our submission to the Land, Water and Other Legislation Amendment Bill 2013, we raised our concerns with the removal of the tools to better manage flood-based risk and associated issues in high risk catchments, as well as the need for a holistic approach (catchment management) to these matters. The submission suggested a combination of existing provisions in the relevant legislation be kept to facilitate these outcomes. In this light, SEQ Catchments is keen to explore ways to locate and agree Category R areas for at least high risk catchments in South East Queensland. Streams such as Lockyer Creek and Warrill Creek provide ready examples of this need.

⁷ R.G Sharpe, (2012) Back to nature – can revegetation of riparian zones benefit flood risk management?, Brisbane.

Compliance

SEQ Catchments is aware of a number of potentially perverse outcomes resulting from the vegetation compliance framework. As a result, we believe the aim of a robust compliance framework must not be based solely on a punitive remedy process for those who do not meet minimum community standards, it must predominantly educate and encourage more appropriate behaviour and facilitate on-ground outcomes regardless of the original harm created by illegal activity. In short, if the trees have been cleared illegally, the damage is done regardless of any punitive remedy apart from restoration requirements under s54B.

SEQ Catchments suggests that in certain circumstances, persons found to have committed an offence in terms of the Act be given the opportunity to agree to a negotiated outcome which delivers a better environmental outcome than simply restoring the original damage or applying a penalty. Part of the negotiated settlement may include agreement to not recording a conviction and other appropriate activities. Common law has precedent for negotiated outcomes when it can be demonstrated to result in better outcomes. We recognise there needs to be strict controls and criteria for negotiated outcomes, and that such provisions should not apply to repeat offenders, or where it is demonstrated there was initial intent to cause the environmental harm.

An example of a negotiated compliance outcome might be where a person has illegally cleared of concern vegetation on one part of the property through ignorance of the applicable legislation, and by agreement, negotiates to "make good" by fencing out and protecting under covenant another potentially larger part of the property which has riparian vegetation and an area where regeneration of endangered ecosystem could occur. The wording in s22DAB(3) could form the basis of a section which allowed such a trade-off.

Alternatively, the restoration requirements contained in s54B could be expanded to allow for negotiated outcomes to be used as an option in certain circumstances where the outcome clearly advances the purposes of the Act beyond all other available enforcement options. In line with some of the thinking behind the new environmental offsets policy, additional requirements could also form part of the negotiated outcome such as requiring the person to undertake a course in best practice land management with the aim of improving stewardship of the affected lands.

More detailed feedback

Clauses for Amended Sections	Commentary
Clause 4 (Section 3 - amendment to purpose)	The aim of changing the purpose of the Act to include a purpose around sustainable land use is laudable; however as there is no definition or agreement or explanation as to what is meant by the term generally or in literature, it is hard to understand what it means. For example, the carrying on of a noxious industry under approved and controlled circumstances

	<p>is a sustainable land use under many local government planning schemes by virtue of the <i>Sustainable Planning Act 2009</i> objects.</p> <p>The provision would make sense if a definition of “sustainable land use” for the purposes of the Act was provided.</p> <p>There is no reference to such a term in legal literature apart from general references to the concept in terms of planning schemes.</p> <p>Another option might be to add a purpose which better matches the government’s stated desire to allow clearing for high value agricultural pursuits under the four pillars such as “facilitates high value agriculture”, or “allows high value agriculture” or perhaps utilize the <i>Strategic Cropping Land Act 2011</i> to create the head of power and provisions which achieves the same result for agriculture without needing an additional purpose in the <i>Vegetation Management Act</i>.</p>
Clause 10 (Subdivision 1A addition)	<p>This section establishes a power to create high value areas for agriculture. In doing so, the overall purposes of the Act will rely heavily on the performance of the application process in proposed sections 22DAB and 22DAC to ensure an application does not defeat the purposes of the Act. Catchment management organisations such as SEQ catchments may have a significant role to play in assisting applicants in this regard.</p>
Clause 11 (Division 4B – Self-assessable codes)	<p>Vegetation management in Queensland over the past decade was moving toward self-assessable codes under the <i>Sustainable Planning Act 2009</i> under the previous government; however did not eventuate, so it is pleasing to see this Government putting the lessons into action and delivering.</p> <p>As with all self-assessable codes, their performance is generally only as good as the compliance activity which supports it. SEQ Catchments recommends careful consideration be given to compliance to support the codes. It urges the approach to be one of learning, education and support for code activities. As a potential applicant under the new environmental clearing purpose in Section 22A, SEQ Catchments is pleased to see the self-assessable code approach.</p>
Clause 12 (Section 20A to 20AB)	<p>This is a long overdue reform to the framework and will greatly assist landholder, proponents and others to understand where an application is needed and where it is not. SEQ Catchments congratulates the Government for this simplification.</p>
Clause 21, 22, 23, 24 and 25 (Sections 20AL, 20AM, 20AN, 20ANA and 20AO)	<p>Again, simplifying the category system is long overdue and will remove a great deal of confusion. SEQ Catchments does have concerns arising from the newly defined categories particularly as they relate to new Category C and Category R classifications. As high value regrowth provisions are proposed to be removed on freehold lands and from streams in South East Queensland, some of the tools now available to ensure least cost solutions</p>

	<p>for water quality outcomes may be compromised.</p> <p>SEQ Catchments is working closely with water service providers and others to determine the feasibility of catchment based solutions to deliver least cost abatement for nutrient and sediment target for environmental regulators. The regrowth provisions assisted this outcome efficiently in streams, for the same reasons that the Government has chosen to define Category R to include priority catchments in the Great Barrier Reef. Consequently, the body of this submission contains recommendations which are connected with our submission regarding the Land, Water and Other Legislation Amendment Bill 2013.</p>
Clause 27 (Section 20CA)	Protection of riparian vegetation regrowth in South East Queensland contributes greatly to water quality outcomes for Moreton Bay and would be best exempted from Category X.
Clause 38 (Subdivision 2A)	SEQ Catchments congratulates the government on adding this provision to provide flexibility in managing landscape outcomes when needed.
Clause 46 (Section 22A)	SEQ Catchments welcomes the additional purpose of environmental clearing (22A(2)j) as it will add efficiencies into a number of projects underway and proposed within the region. we note the introduction of the two new agricultural purposes; however, given the extensive modification to South East Queensland landscape and high value agriculture already in evidence, these two new purposes are not likely to have much impact.
Clause 47 (new Subdivision 1 A)	SEQ Catchments notes the requirements for an application to be properly made. The wording for s22DAB(3) and 22DAC(1)h is confusing and may be better expressed. We suggest the wording be amended to read "Also, if the application involves the clearing of native vegetation in an endangered regional ecosystem or an of concern regional ecosystem, in addition to the proposed clearing, the plan must show the nature and extent of anything proposed to be done that will have significant beneficial impact on the biodiversity values of the land to which the application attaches." The term "significant" is open to wide interpretation, and consideration to a clearer term such as "measurable" is suggested. We also suggest that restricting the plan to the land to which the application attaches could restrict the opportunity for broader regional outcomes so suggest including the words "or surrounding area" at the end of the sentence.
Proposed amendment to the Sustainable Planning Regulation	<p>While the proposal to amend the regulation to increase the trigger for applications for tree clearing from two hectares to five hectares will create many efficiencies for developers, it effectively means the many remnant and endangered regional ecosystems in South East Queensland may be lost without any form of review under the planning system.</p> <p>In regions outside South East Queensland, the lifting of the</p>

	trigger to five hectares will have minimal impact on the purpose of the act and create efficiencies which is supported; however, in South East Queensland, much of the remaining remnant vegetation is contained within lots smaller than five hectares and therefore, will work against the purpose of the Act and proposed new offsetting policy being developed.
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Table 1

Key Recommendations

SEQ Catchments recommends the Committee give serious consideration to the following:

- Given the unique circumstances surrounding South East Queensland, serious consideration be given to treating the region and its remaining natural assets including good quality agricultural land appropriately with recommendations as outlined below using a new schedule in the Sustainable Planning Regulation 2009 to ensure appropriate applicability to the local governments in the region.
- Serious consideration be given to an urgent assessment of the impacts of lifting the 2 hectare trigger to 5 hectares in South East Queensland. If the assessment confirms SEQ Catchment's concerns about the amount of remnant vegetation affected and is potentially at risk, an alternative approach to deliver the hoped for efficiencies needs to be established. The Act contains a number of provisions and proposed provisions which would make alternative approaches possible and feasible including urban designations, area management plans, etc.
- The strategic approach taken by the environmental offsets policy be used as the guide for any proponent seeking to engage in the proposed new clearing purposes of agriculture where s22DAB(3) is used (and 22DAC(1)h for assessment).
- Serious consideration be given to moving the new clearing purposes for agriculture to the *Strategic Cropping Land Act 2011* so there is no potential for conflict in the objects of the Vegetation Management Act. The provisions could operate in the same manner as set out in the Vegetation Framework Bill 2013 proposal; however apply in a similar way to the *Urban Development Act 2010* provisions for vegetation in that Act; that is, remove the Vegetation Act jurisdiction for areas containing High Value agriculture
- A major program of advanced catchment management be implemented in South East Queensland in high risk catchments (risk to be determined from science knowledge, local knowledge and standard matrix approach and consider impacts on infrastructure, safety and health issues, and water quality issues).
- A risk assessment be used as the basis for Category R classification for the vegetation in at risk catchments in the region. SEQ Catchments is keen to assist in the location of Category R areas for at least high risk catchments in South East Queensland. Streams such as Lockyer Creek and Warrill Creek provide ready examples of this need.
- Consideration be given to ensuring there is recognition of the importance of encouraging koala regrowth habitat utilising Category C in South East Queensland.
- Serious consideration be given to allowing negotiated settlements for compliance action where appropriate and feasible. Any person found to have committed an

offence in terms of the Act be given the opportunity to agree to a negotiated outcome which delivers a better environmental outcome than simply restoring the damage or applying a penalty.

- A compliance program which focuses on education and awareness of the rights and obligations conferred by the Act be established as a matter of priority for landholders in South East Queensland using existing networks available through industry groups such as Agforce, Local Government and regional bodies such as SEQ Catchments.
- A compliance program for self-assessable codes be established which focuses on assisting landholders and other entities deliver outcomes which meet code requirements.
- Serious consideration be given to regional groups and other suitably qualified catchment management groups to be accredited to assist with self-assessable code implementation and assessment and assisting landholders meet the proponent application criteria for the proposed agriculture purposes under the Act.
- The wording for s22DAB(3) and s22DAC(1)h be amended to be clearer. Suggested wording is contained in Table 1 Clause 47.



Simon Warner
Chief Executive Officer