

## LOGAN CITY COUNCIL SUBMISSION ON THE VEGETATION MANAGEMENT FRAMEWORK AMENDMENT BILL 2013

Contact Officer: Lee-Anne Veage, Environment Officer Phone: 07 3412 4382 Email: [Lee-AnneVeage@logan.qld.gov.au](mailto:Lee-AnneVeage@logan.qld.gov.au)

### General Comments:

Logan City Council (LCC) is generally supportive of the proposed changes with respect to the Vegetation Management Framework Amendment Bill 2013 (VMFAB 2013), however do raise concerns regarding:

- the protection of remnant vegetation and high value regrowth vegetation;
- uncertainty on the protection of essential regrowth habitat and vegetation along waterways and
- uncertainty on the changes to penalties for vegetation clearing offences,

The following comments are provided hereunder, which seek clarification and make recommendations around these issues.

### Part 1 Preliminary

#### Clause 2 - Commencement

This was omitted from the document, assuming as the VMFA Bill 2013 has yet to be fixed by proclamation?

#### Amendment of s3 (Purpose of the Act)

Under the VMFA Bill 2013, this section may have been incorrectly listed under Part 2. Recommend including a definition of 'sustainable development / sustainable land use' in the Dictionary, given the new inclusion of (h) allowing for sustainable land use.

### Part 2 Amendment of Vegetation Management Act 1999

#### Amendment of s11 (Minister must make regional vegetation management codes)

Suggest retaining reference to 'near threatened' species as this aligns with consistent usage and regulation under the *Nature Conservation Act 1992*. Retaining the reference and status 'near threatened' is considered good biodiversity management practice from both a species and vegetation perspective. It enables the monitoring of the species and/or vegetation from clearing and threatening processes to reduce the near threatened status increasing to vulnerable status. 'Near threatened plant communities' are repositories of great species diversity with most animals residing/inhabiting/utilising this vegetation. How would State Government recognise when 'near threatened' species and vegetation status become 'of concern'? Will there be regular monitoring, mapping and reporting updates to observe and keep track of these changes? Clarification is further sought for the reasoning of the change. An additional concern is that by removing reference to 'near threatened' under the *Vegetation Management Act 1999* will this trigger a review and potentially remove the 'near threatened' status under the *Nature Conservation Act 1992*.

#### Amendment of Part 2, Division 4 heading (Declaration of areas of high nature conservation value and areas vulnerable to land degradation)

The State proposes to omit the above heading and replace it with 'Declaration of particular areas'. It is recommended that an explanation in the Dictionary &/or under the heading of that section explain that particular areas refer to high nature conservation value, areas vulnerable to land degradation and the new inclusion of restricted high value agriculture area.

### **Replacement of pt 2, divisions 4B and 4C (from 19O)**

**Removes the whole section 4B and 4C, which relate to:**

- *Subdivision 1* Conducting native forest practice;
- *Subdivision 2* Clearing regulated regrowth vegetation under the regrowth vegetation code; and
- Authorisation to clear regulated regrowth vegetation other than under the regrowth code

Council seek clarification on how the State Government will prevent degradation of remnant vegetation from thinning, necessary environmental clearing, fodder harvesting and/or native forest practice to the point where the remnant vegetation status or vegetation type is altered.

### **Removal of 4B and 4C**

LCC are concerned that the removal of regulated regrowth vegetation on freehold land will result in the clearing of more vegetation including "High Value Regrowth Vegetation that is an Endangered Regional Ecosystem" and "Essential regrowth habitat" which would have previously required an exchange area. It would be preferred that the current provisions for clearing High Value Regrowth Vegetation that is an Endangered Regional Ecosystem" and "Essential regrowth habitat" be retained to ensure the protection of these at risk ecosystems. LCC are also concerned that regrowth vegetation along waterways outside of the Great Barrier Reef areas, will not be protected. What mechanisms will ensure the maintenance of bank stability, water quality and habitat connectivity? Council queries what implications this will mean for its own conservation programs and land acquisition.

### **Insertion of new Division 4B Self-assessable codes**

The Minister is to make a code for self assessable vegetation clearing. This provides some difficulty in responding, given the self assessable code has not yet been written. LCC would request the opportunity to provide comments on the Code.

LCC would also recommend introducing restrictions on clearing regulated regrowth. Regrowth vegetation plays an important role in maintaining the overall landscape both within the urban and rural context, providing current and future ecosystem services, quality buffer vegetation and supporting species habitat.

LCC also seek clarification on the insertion of Division 4B. Currently Division 4B self-assessable codes do not reference regulated regrowth or remnant vegetation. Is it proposed that Division 4B will also apply to remnant vegetation?

### **Replacement of ss19Q Code compliant clearing and native forest practices self-assessable**

The removal and replacement of this section, 'offence to conduct native forest practice without giving notice', which declares that a person must not conduct a native forest practice in an area of remnant vegetation or regulated regrowth unless given Chief Executive notice, makes no mention of how the State Government intends to protect remnant vegetation. Further clarification regarding the protection of remnant vegetation when self assessing and/or conducting native forest practices is sought.

### **Insertion of 19R Register of self-assessable notices given under the code**

Given that a register/record keeping will now be replacing the State assessing any regrowth vegetation clearing:

- How will regrowth vegetation clearing be managed &/or monitored, how will records be substantiated?

**Replacement of ss 20A-20AB**

Logan City Council would request opportunity to review and provide comment on the proposed new mapping, before it is implemented.

With the introduction of a new mapping - Category X, which locks in all non-assessable vegetation at the commencement of the Bill, this effectively means these areas cannot be 'clawed back' over time to be remapped as remnant vegetation. By locking this in, this would appear to mean that remnant vegetation cannot increase as no future mapping updates to the *Regulated Vegetation Management Map* would take place. There is also concern that if a new patch of Remnant Vegetation is discovered within the Category X area, then it can't be included in the *Regulated Vegetation Management Map* and therefore won't be protected from clearing.

It is also recommended that "High Value Regrowth Vegetation that is an Endangered Regional Ecosystem", "Essential regrowth habitat" and "Regrowth Waterway Vegetation" be retained at Category C on all freehold and indigenous land to ensure the protection of these at risk ecosystems.

With reference to the *Regulated Vegetation Management Map*, and respective categories A, B, C, R and X. The understanding is that there is to be no overlap on the regulated vegetation management map, however there is exception to allow transition between categories to occur.

Category C (high value regrowth) - can be identified as category A (offset /declared/exchange area).

Category B (remnant) - can be amended as Category X.

Category C (high value regrowth) - can be amended as Category X.

Council seeks further information if Category C (high value regrowth) vegetation can readily transition to Category B (remnant vegetation) and if Category X can transition to Category B or C.

The *Regulated Vegetation Management Map* doesn't display the vegetation management regional ecosystem (RE) conservation status. We query, will there be another mapping layer which defines the RE conservation status?

The removal of section 20AB references the regrowth vegetation map and its definition as high value regrowth vegetation comprising endangered, of concern or a least concern RE and areas which have not been cleared since 31 December 1989.

The explanation paper now defines high value regrowth vegetation (Category C) to only apply on leasehold land for agriculture and grazing and indigenous land. It doesn't state that an underlying map showing the conservation status of the high value regrowth areas will be available. LCC recommend a clear definition of what 'high value regrowth' vegetation is and where it covers. For example will high value regrowth vegetation be mapped on National Parks, State Land or Reserves owned by the State Government but managed by Local Governments?

**Amendment of s 20AC (What is the essential habitat map)**

Unclear on the implications of removing essential habitat and essential regrowth habitat section in regards to mapping and introducing reference to its applicability to Category's B & C. LCC seek clarification if essential habitat will be identified on the *Regulated Vegetation Management Map* or elsewhere.

**Replacement of s 20AN (What is a Category C area)**

Reference to Category C areas has removed regional ecosystem status on all regrowth vegetation and replaced it with 'containing high value regrowth vegetation'. LCC seek clarification on if the regional ecosystem vegetation status' still be captured somewhere.

**Insertion of new Part 2, Division 5B, Subdivision 2A****New section 20UA - Chief executive may make area management plans**

Regarding necessary environmental clearing and clearing for relevant infrastructure activities, greater clarity is sought if these categories are self assessable. Further advice is sought if a landowner/land manager is to seek approval or provide notice that they are undertaking these works. In addition to the chief executive formulating a management plan for these areas where clearing is to take place, Council questions the capacity of the State to administer, monitor and report compliance of the management plans, given the area management plan will be in force for a period of up to 10 years.

**Removal of Part 2, Division 5B, Subdivision 4 (Notifying clearing under plans)**

The removal of these clauses (20W - 20Y) means no requirement is on the landowner/land manager to notify the chief executive of clearing under an area management plan. Instead, the section 20R (3)(d) provides the chief executive the ability to condition an area management plan requiring the owner to give notice of any intended clearing. We interpret this to mean the latter would be the exception rather than the rule. Council would recommend these clauses be retained and rewritten to be in line with other amendments of the VMFAB 2013, specifically advising that landowners/land managers must give notice of any intended clearing. Given the purpose of area management plans relate to managing necessary environmental clearing and clearing for relevant infrastructure, concern is raised as these activities could occur on remnant vegetation, thereby eroding any protection on this vegetation and overall integrity of the landscape. We would ask, what the purpose of the area management plan would be, if the landowners/land managers do not have to therefore advise intent to clear vegetation in this area. Would this not contradict the purpose and intent of the area management plan?

Clarification is sought on whether the chief executive will be making the notice of intent to clear vegetation, within an area management plan, mandatory. Further clarification and understanding is sought on the purpose of the area management plan.

**Amendment of s 20ZC (Amendment application for particular plans)**

Greater understanding is sought on whether the State re-assesses area management plans, when a neighbouring landowner proposes to include their subject land in the original area?

**Division 6 - Relationship with Planning Act****Amendment of s22A (Particular vegetation clearing applications may be assessed)****Section 22A(2)(d)**

Clarity is sought on the removal of defining relevant infrastructure activities for the purpose of clearing. This would include previously specified: fence, firebreak, roads, vehicle tracks and necessary infrastructure. Recommend defining in the Dictionary or retain in the section what 'relevant infrastructure activities' comprise.

**Section 22A(2)(j)**

Removes reference to applications for vegetation clearing of regrowth vegetation on freehold land, indigenous land or leases issued under the *Land Act 1994* for agriculture or grazing purposes, in land registered for agriculture.

Introduces three new clearing purposes, high value agriculture clearing, irrigated high value agriculture clearing and necessary environmental clearing:

- High value agriculture clearing. Only includes clearing for annual and perennial horticulture and broad acre cropping, not clearing to establish pastures for livestock, or plantation forestry.
- Irrigated high value agriculture clearing. As above, with the inclusion of pasture-based dairy farms, which requires irrigation, however excludes plantation forestry establishment.
- Necessary environmental clearing. The explanatory notes advise the intent is for land owner/managers to undertake necessary clearing to restore ecological or environmental conditions of land, including the diversion of existing natural channels to replicate its form, in preparation of likely natural disasters. Recommend subclause 2 having definitions of what necessary environmental clearing is.

Whilst this appears to assist Council's rapid response and ability to clean up riverbanks and waterways after flood inundation, does this remove protection from all waterway vegetation (including protected native vegetation)? What protection is there for regrowth vegetation on watercourses?

Council raises its concern on the self assessable code for clearing pre natural disaster, as this may instigate pre-emptive clearing of waterways which would in turn increase sediment and erosion. Equally it may be said in post natural disaster situations, landowners who may not understand the ecology of riverine and waterway systems, may broad-scale clear along a waterway.

Whilst Council recognises it will not likely be informed of clearing activities in this regard, within their local government area, recommendations are made that a 2:1 replacement ratio of native vegetation which has been cleared along the waterway, be proposed to enhance and restore environmental conditions.

Council seek clarity on where "high value agriculture clearing" and "irrigated high value agriculture clearing" will be either defined or mapped?

### **Insertion of new Part 2, Division 6, Subdivision 1A (After Section 22D)**

#### **22DAB Requirements for making application**

Any application to clear particular vegetation (high value agriculture clearing or irrigated high value agriculture clearing) must be accompanied by a development plan. LCC recommend including in the development plan, reference to the status of and type of regional ecosystem the landowner intends to clear. Would the requirements also stipulate if vegetation offsets are to be undertaken?

### **Part 3 Enforcement, investigations and offences**

#### **Amendment of Subdivision 2, s 30 (Power to enter places), remove sections 30 (1)(f) (g) & (h)**

Suggest retaining section (h) as it relates to Council's earlier recommendation for retaining the notice to clear within the area management plan.

Council would also seek understanding on the decision to remove section (f) - *a person proposing to conduct a native forest practice at the place has given the chief executive a notice under section 19Q for the place*. Council has reservations on the removal of 19Q, specifically that *'a person must not conduct a native forest practice in an area of remnant*

*vegetation...*' We reiterate the question by removing reference to remnant vegetation, how will the State protect it? By what other mechanism will the clearing of remnant vegetation for the purpose of native forestry establishment be assessed?

#### **Amendment of s 51 (Power to require information)**

##### **Amendment s 51 (6)**

Suggest an error was made in renumbering the reference to section 51 (5) as this section 51 (5) has also been designated to be removed.

Council disagrees with regard to the edit of 51 (4) removal of 51 (5). In editing section 51 (4), this contradicts the former section, with it now being condoned as a reasonable excuse for an individual not to comply, if doing so may incriminate the individual to a penalty. How does the editing of this enable authorised officers to adequately gather evidence in undertaking compliance work against the proponent of suspected illegal activities? LCC recommend the original statement be upheld.

Clarification is sought on whether section 51 (5) will remain or be removed.

Further explanation is sought on the impact of removing section 51 (5)? In removing this, can the State advise/confirm, that any information which may incriminate the proponent is now allowed as evidence? Further consideration should be given to the potential implications of amending s51 on Local Governments during illegal clearing prosecutions.

#### **Amendment of s 53 (Failure to certify copy of document); and**

##### **Amendment of s 54 (Failure to produce document)**

The amendment which now provides a person with the power not to comply with document certification requirements and which reduces the requirements to produce a document on the basis that this may incriminate the person (a 'reasonable excuse') further erodes the legislation in protecting vegetation against illegal activities. Recommend that the original statements be retained.

Again, Council asks that it be made clear on the impact of removing section 54 (3), if any information which may incriminate the proponent is now allowed as evidence?

#### **Removal of s 60B (Guide for deciding penalty for vegetation clearing offence)**

Council is concerned with the removal of section 60B and the effect it will have on the sentencing of unlawful clearing. Mention is made that the sentencing of unlawful clearing will revert to the existing *Penalties and Sentences Act 1992*. No specific reference was made to which section in this Act nor was it stated that this legislation is robust in penalising those undertaking illegal clearing activities.

#### **Removal of s 67A and part 4, Division 2A**

The removal of these sections further erodes the legislation in protecting vegetation against illegal activities.

#### **Replacement of s 68CB (Non-application of Judicial Review Act 1991); and**

##### **Removal of s 68CC (No appeals about relevant vegetation maps and particular PMAV applications)**

Council has great concern in the removal of these two sections which relate to the removal of the ability to review and appeal relevant vegetation maps and PMAVs. For example, if a map has designated land as Category X, and local government identify on ground it to comprise remnant vegetation, under the proposed amendments, Category X cannot be reclassified as Category B (ie. it cannot be reclassified as remnant). Council would therefore seek the reinstatement of this and/or the amendment to include local government authorities,

as a reputable authority, to recommend a review on vegetation classification should they encounter error.

### **General Comments**

How frequently and at what scale would the proposed 'satellite monitoring' be undertaken to ensure illegal clearing and/or false reporting is not occurring? What resources are at the State Government's disposal for compliance, auditing & site evaluations?

### **CONCLUSION**

Whilst Logan City Council is generally supportive of the State Government's proposed legislative reform associated with the Vegetation Management Framework under the *Vegetation Management Act 1999*. There remain significant concerns relating to the mapping and protection of remnant vegetation and high value regrowth vegetation, uncertainty on the protection of essential regrowth habitat and vegetation along waterways and the changes to penalties for vegetation clearing offences.

Additional clarification is sought on several points as detailed above to ensure the intent of the vegetation management framework in regulating vegetation clearing is achieved.