GPO Box 2279
Brisbane QLD 4001
Level 12, 120 Edward Street
Brisbane QLD 4000

T: 07 3229 1589
F: 07 3229 7857
E: udia@udiaqld.com.au

www.udiaqld.com.au

ACN 010 007 084
ABN 32 885 108 968

22 March 2018

Committee Secretary
State Development, Natural Resources
and Agricultural Industry Development Committee
Parliament House
BRISBANE QLD 4000

BY POST/EMAIL – sdnraidc@parliament.qld.gov.au

Dear Committee,

Vegetation Management and Other Legislation Amendment Bill 2018

This submission is made to you following an examination by the Urban Development Institute of Australia Queensland (the Institute) of the contents of the Vegetation Management and Other Legislation Amendment Bill 2018 (the Bill).

The Urban Development Institute of Australia (the Institute) is a national not-for-profit organisation representing the property development industry and the Queensland office is the largest of the state bodies. The role of the Institute is to assist our members to deliver jobs, diverse housing and thriving communities.

Independent economic modelling commissioned by the Institute shows that the development industry in 2016, was the third largest generator of jobs in Queensland. Research reveals that 10 per cent of Queenslanders' jobs are directly linked to property development and indirectly supports a further 13 per cent. When building approximately 85 per cent of industry expenditure is spent on local goods and services. Our industry therefore is very important to the economy and legislative changes that undermine its operation are a substantial concern to our members and the Government.

After a thorough review of the contents of the Bill, the Institute holds significant concerns in regard to the Bill and calls on the Committee to address these concerns before further progress of the Bill. If passed, as proposed the amendments may directly affect our members' ability to plan, design and deliver appropriate, diverse and affordable housing for Queenslanders, as well as impact on lending decisions made by financial institutions.

The Bill has critical differences from that presented in 2016 and requires thorough examination and testing of details with department staff, a range of specific projects and against expert legal interpretation. The present period of consultation is unsatisfactory. The Bill is complex and the period for submissions has been extremely limited which has not enabled proper consideration of the Bill nor its effects on an industry which makes a substantial contribution to the Queensland economy.

The following submission is made on behalf of the Institute's members, provides feedback on the Bill and identifies several aspects which are likely to impede the ability of the industry to build affordable and

Urban Development Institute of Australia Queensland submission to the State Development, Natural Resources and Agricultural Industry Development Committee on the Vegetation Management and Other Legislation Amendment Bill 2018

diverse communities and continue to be a leading generator of jobs and economic activity for the State. We have identified a number of issues and uncertainties that should be addressed.

The Institute's concerns are included below:

- The Bill should be stalled until adequate consultation including assessment of code changes and testing of scenarios is undertaken and separate consultation for the additional mapping changes undertaken
- The Bill should not impact near urban and Potential Future Growth Areas of the South-East Queensland Regional Plan and urban development should be exempted from local environmental overlays
- The Bill should amend the Vegetation Management Act section 19Q to clarify that exempt clearing work is not an activity that is deemed accepted development subject to the code, assessable development or prohibited development
- Near Threatened plants and animals and High Value Regrowth should not require the provision of offsets or affect development in near urban areas
- The Category C code (interim period) should contain provisions for clearing for urban purposes along with the current necessary infrastructure. The self-auditing process associated with Category C should also be made clearer for landholders
- Proposed changes to limit remapping to Category X (Part 2, s 7, clauses 7 & 8) of lawfully cleared areas within the last 15 years be removed as likely to lead to uncertainty and costs on disturbed land to be used for urban purposes
- Proposed amendments to the Water Act 2000 relating to Riverine Protection Permits should be changed to clearly exempt Urban Areas/Urban Purposes (Part 5, s 54, clause 55 and Part 5, s55) and avoid delays to development
- Further approvals reasonably associated with existing approvals and applications should be permitted to occur.

More specific detail is provided on the following pages.

The Institute is appreciative of the opportunity to comment on the Bills. The Institute does not consider this submission as confidential and would welcome the opportunity to discuss this matter further, or to provide any other assistance during the consultation process. If you have any questions relating to this submission, please contact me on

Yours sincerely
Urban Development Institute of Australia Queensland

Kirsty Chessher-Brown
Chief Executive Officer

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Urban Development Institute of Australia Queensland comments on the Vegetation Management and Other Legislation Amendment Bill 2018

Consultation

The Institute notes that this substantially revised Bill was introduced into Parliament on 8 March 2018 and that consultation is closed in two weeks. This is inadequate consultation. The Bill also entails substantial change to development codes and the creation of the Accepted development code - Managing Category C regrowth vegetation dated 8 March 2018. Insufficient detail of the changes relative to the previous has been provided and insufficient time given to assess the new codes. It also seems likely that the accepted development vegetation clearing codes will be remade after the Bill becomes law, to deal with the new areas of essential habitat.

The Institute has been working to understand the community's views, associated with the current consultation and engagement processes, as part of the Institute's Research Foundation and Industry Leaders Research Group. In 2017 the Industry Leaders Research Group obtained critical insights into community consultation and community views on development and our urban environment. Limited public consultation on any matter related to urban development is rightly viewed as inadequate by the community and creates a perception that an outcome is a foregone conclusion. The consultation involved with this Bill is an example of a public consultation process which creates scepticism amongst all stakeholders regarding the intent and purpose of consultation. Future consultation processes undertaken by the Government and related Parliamentary Committees should be cognisant of the findings of this independent research and seek to create an environment which provides adequate opportunity to consider the effects of changes to the urban environment.

The Bill requires explanation and testing with the relevant government departments. Without adequate consultation this significant change to the legislation can cause disruption and uncertainty within the industry and the community.

The Bill should be stalled until adequate consultation including assessment of code changes and testing of scenarios is undertaken.

Background

The Institute's developer members in Queensland act in accord with relevant environmental and planning legislation and in general seek to develop in areas such as city locations or sites which have limited ecological value. However, the location of existing urban areas and the spacial strategy of government regional and local government plans directs that development occurs in some areas of environmental value. These conflicting objectives occur for a range of valid planning reasons and acknowledging the effect on native vegetation represents only a relatively small proportion of the overall sensitive vegetation. In urban and near urban locations the provisions of the Vegetation Management Act should not usurp detailed landscape planning that has been undertaken for planning schemes.

The industry sees this proposed legislation as another layer of constraint being applied, through the development process which further fragments the ability of developers to develop well planned compact urban development. To achieve the desired ecological outcomes, it is the Institute's view that the government would be better placed in focusing their efforts on conservation activity away from urban areas, such as in consolidating vegetation, buying back properties to form ecologically significant

corridors, wildlife reserves rather than in imposing the regrowth provisions on developing within the urban footprint.

Ramifications for near Urban Areas

The Institute is particularly concerned that the proposed changes will have substantial impact for the South-East Queensland Regional Plan area. This area provides accommodation for around 75 per cent of Queensland's growing population. High Value Regrowth (Category C) will now be mapped and limit development in close proximity to a number of urban areas. Also, essential habitat for near threatened wildlife will now also be mapped, in addition to the already mapped essential habitat for endangered wildlife and vulnerable wildlife. An additional 232,000 hectares of trees across Queensland are expected to be controlled by the regrowth changes alone.

These changes are unnecessary for urban and near urban areas as state and local government detailed planning and environment controls already apply. The changes in the Bill will destabilise the urban land market in these areas. The result of this can be investment and actions to provide homes being abandoned or lost and local housing needs not being met. Development in these areas will also be subject to additional offsetting costs when development is permitted.

The recent release of a new South-East Queensland Regional Plan, provides some extension of the urban footprint and identifies 'Potential Future Growth Areas'. The Bill should not subvert the detailed planning approach provided by the recent State plan with impact on near urban areas that may later be required for urban development. In particular the South-East Queensland Regional Plan designates some areas as Potential Future Growth Areas to provide for necessary urban expansion. These areas should not be further constrained by the Bill's provisions.

The Bill should not impact near urban and Potential Future Growth Areas of the South-East Queensland Regional Plan.

Application of the Bill to development

The following is our understanding of the effect of the Bill on development if passed:

- High Value Regrowth and Least Concern and Of Concern Remnant Regional Ecosystems are not regulated in Urban Areas for development that is for Urban Purposes. Endangered Regional Ecosystems in Urban Areas/Urban Purposes do however remain assessable (Part 4, s47, clause 48)
- Rural/rural residential areas will be subject to High Value Regrowth regulation as well as continued regulation of Least Concern and Of Concern Remnant Regional Ecosystems under State Code 16 – Native Vegetation Clearing and accepted development vegetation clearing codes. This would have an impact on development of the 'urban fringe'
- Essential Habitat associated with Remnant Regional Ecosystems continues to be regulated however, Essential Habitat now includes Near Threatened wildlife (as scheduled under the Nature Conservation Act 1992).
- In non-urban areas the Queensland Environmental Offsets Policy applies as if section 4.3.6 of the policy provides for a multiplier of 4 for essential habitat for near threatened wildlife and Table 1 in section 4.3.13.2 (sliding scale rules for determining overall per hectare costs) applies to near threatened wildlife.

- The drafting of Schedule 10 Part 3 of the Planning Regulation 2017 to determine whether proposed clearing is prohibited, exempt, accepted or assessable is poor and unclear. Determining the appropriate classification can be circular, and is reliant upon understanding the nuances between a range of defined terms spread between the VMA, Planning Act and Planning Regulation. Definitions include 'accepted operational work', 'essential management', 'non-referable building work', 'non-referable material change of use', 'prescribed clearing', 'relevant clearing activities', 'relevant purpose', 'routine management' and 'relevant infrastructure activities'
- The relationship of the prohibited development and referral triggers in Schedule 10 Part 3 is complex and would benefit from redrafting. For example, the prohibition of a material change of use that involves prohibited operational work (other operational work approved under a development approval) and would have triggered a referral, appears to be internally inconsistent. The shift from a merits assessment of development to a blanket prohibition is not advantageous to the operation of a robust planning system that meets community expectations.

Schedule 10 Part 3 of the Planning Regulation *should be redrafted to provide more clarity around the categorisation of clearing, referral triggers. The Institute would be pleased to assist the Government with such drafting.*

The Bill should amend the Vegetation Management Act section 19Q to clarify that exempt clearing work is not an activity that is deemed accepted development subject to the code, assessable development or prohibited development

Relevant Purposes

The Bill seeks to revise the scope of a relevant purpose (Section 22A), to strengthen the connection that clearing must be a necessary part of development to be assessed. This approach is supported and underpins a logical, scientific and merits based assessment of the impacts of development on vegetation. However, the proposed amendment to Section 22A(2B) to expressly exclude all Category C vegetation from the scope of a relevant purpose is in practice a prohibition of clearing of this Category. This drafting is at odds with the ability to undertake measured clearing of Category C areas through the accepted development vegetation clearing codes and the exempt clearing provisions. An ability for clearing of category C to be sought and determined would allow greater flexibility in a proponent's approach to clearing and, through the relevant codes, may provide a better environmental outcome than a default reliance upon the accepted development or exempt outcomes.

Within the SEQ Urban Footprint and in areas surrounding major towns and cities, existing rural residential areas are in transition to more intensive residential uses, but are not necessarily reflected yet in a planning scheme for urban purposes. In such areas, clearing does not benefit from the 'urban purposes in urban areas' exempt clearing provisions. The proposition that any clearing of Category C vegetation is not a relevant purpose is likely to prevent the effective structure planning of these areas, as the accepted development vegetation clearing codes do not allow for a pattern of clearing to be assessed on its merits.

A case study, in considering a rural residential area featuring a mixture of Category B and Proposed Category C vegetation determined that a subdivision proposal would need to seek to clear the Category B remnant vegetation, in order to navigate the complexities of the referral triggers contained in Schedule 10 Part 3 of the Planning Regulation.

A second case study, of proposed privately owned linear infrastructure (ie, not otherwise exempt) in a rural area may be able to proceed through Proposed Category C areas through the accepted clearing codes, but remains uncertain as the area of clearing may exceed the thresholds in the code. These works would otherwise be necessary built infrastructure, and would need to be realigned at significant expense.

Finally, as drafted Section 22A(2B) prevents clearing of Category C from occurring in situations where it has previously been authorised, for example through the State Development Act or IPA approvals, or for reasons of public safety.

Section 22A (2B)(a) and (b) should be amended to apply only to (2)(e),(f),(g) and(h).

State Development Assessment Provisions (SDAP) State Code 16

SDAP State Code 16 was amended on 9 March 2018 (version 2.2). It does not appear to make specific reference to Category C (High Value Regrowth). However, performance criteria refers to 'regional ecosystems' (rather than remnant regional ecosystems or high value regrowth regional ecosystems). This is confusing but in looking in definitions appears to be a collective term (remnant and High Value Regrowth).

SDAP code 16 should simplify and make more explicit when the term 'regional ecosystems' (rather than remnant regional ecosystems or high value regrowth regional ecosystems) is used.

The revised State Code 16 makes provisions for the requirement to offset 'significant residual impacts' on habitat of Essential Habitat. Given the relatively large number of near threatened wildlife and range of habitat preferences; this could significantly affect development of the rural/rural residential fringe through costs associated with offsetting as well as development planning constraints called up via State Code 16 (e.g. retention of connectivity, habitats etc). It is foreseeable that large areas of the urban fringe will ultimately be mapped as Essential Habitat for a near threatened species thus significantly reducing lands available for delivering diverse and affordable housing.

The inclusion of 'near threatened' plants and animals in these controls will result in wide areas of landscape near urban areas being affected and requiring the provision of offsets. 'Near threatened' should not be incorporated in near urban areas, including within Potential Future Growth Areas, that are the subject of significant development.

Similar to above, State Code 16 calls High Value Regrowth in as an offset theme wherever a requirement to offset regional ecosystems is provided. This is also raised in the self-assessable development code (Category C management code) as an 'exchange area'. This will apply substantial offsetting costs on development of urban fringe sites that have been historically disturbed (>15years).

The State Code 16 should be clarified regarding when offsets are required for High Value Regrowth and they should not be required for near urban areas subject to urban development.

Accepted development vegetation clearing Self-assessable code for managing Category C (High Value Regrowth) during the Interim Period (Part 2, s 37 c132).

The acceptable development code (self-assessable code) for managing Category C (High Value Regrowth) applies during the Interim Period (Part 2, s 37 c132). The Category C code has been updated (8 March). The Category C code is concerned with management activities associated with areas such as public safety, weed control, necessary infrastructure, thinning, encroachment. This could be used by landowners in rural/rural residential areas for land management however does not contain provisions for clearing for urban purposes. Also the self-auditing process associated with Category C is an onerous and uncertain requirement for landholders.

The Category C code (interim period) should contain provisions for clearing for urban purposes along with the current necessary infrastructure. The self-auditing process associated with Category C should also be made clearer for landholders.

Thinning and Thickened

The amended Vegetation Management Act will include new requirements for applications for 'managing thickened vegetation' (the new and extended definition which covers activities previously captured by the 'thinning' definition). It appears there are varying terms used in the Bill and related legislation and codes. This is confusing and likely to have unintended consequences and should be reviewed.

Review the use of terms thinning and thickened to ensure consistency and clarity across the Bill and related legislation and codes.

Mapping

The Bill appears to carry limitations to grounds for remapping of a site as Category X or non-remnant. We note new regulatory vegetation mapping has been released and includes new remnant vegetation areas, and not just the new category of 'high value regrowth vegetation'. The transitional provisions indicate that the maps may also be re-published during the interim period, suggesting the mapping is not yet set in stone. This existing and projected change separate from the purposes of the Bill creates unnecessary industry and community uncertainty, is unclear in extent and unexplained.

Mapping not specifically related to this Bill should not be changed at this stage. Separate consultation of any mapping changes should be made.

The Institute notes that, when provided with photographs and GIS points, mapping inaccuracies can be discussed with the department and if it is incorrect, the mapping will be corrected fee-free.

The Institute supports the arrangements that allow for correction of vegetation mapping and recommends a similar approach be available to other government mapping layers.

Matters of State Environmental Significance

The mapping of Matters of State Environmental Significance (MSES), in part, largely adopts the pattern of vegetation and associated watercourses shown on the VMA mapping. In the preparation or review of local planning instruments, Councils are required to reflect State interests, such that biodiversity values in planning scheme overlays commonly are a re-presentation of the MSES mapping.

The Institute is concerned that as the MSES mapping is likely to be revised to include the Proposed Category C vegetation, that this will firstly extend into urban areas, and secondly, will be reflected by local

government in the planning scheme without consideration of the environmental values of these areas. Such overlay mapping of Category C vegetation in urban areas would expand the regulation of vegetation that may not currently be controlled. Overlays in planning schemes do not always include mechanisms for the mapping to be challenged or ground truthed, and could lead to local governments seeking offsets.

It is a key concern to the industry that local government overlays (Matters of Local Environment Significance (MLES)) are proliferating and this additional mapping will most likely result in additional local government controls. The urban purpose in an urban area exemption should not be undermined MLES local government overlays.

The urban purpose in an urban area exemption should also apply to local government environmental overlays and MLES.

Remapping of a site as Category X or non-remnant (Part 2, s 7, clauses 7 & 8)

The Bill appears to carry limitations to grounds for remapping of a site as Category X or non-remnant. These grounds are based on land-use (Part 2, s 7, clauses 7 & 8). For example, if a (now cleared) site was cleared within the last 15 years for purposes such as native forestry, thinning, management of encroachment, public safety, the site would not be eligible to be designated as Category X. This change makes a determination of whether the land can be Category X uncertain. This would particularly impact developers in the land acquisition process and affect the ability to meet the community's housing and development needs. It particularly would also trigger offset costs it would make these disturbed lands costly or unviable for development. This change would also impact lands currently or in the future being lawfully managed under a 'relevant clearing activity' (Part 2, s38, definition) prior to use for urban purposes.

Proposed changes to limit remapping to Category X (Part 2, s 7, clauses 7 & 8) of lawfully cleared areas within the last 15 years be removed as likely to lead to uncertainty and costs on disturbed land to be used for urban purposes.

Further in regard to the change to define regrowth as greater than 15 years old, concern is expressed as to how that is measured. That is unless a single date is chosen (15 years ago) and remaining static it would be better to clarify an anniversary for the 15 years. This is considered necessary to reduce uncertainty in working out if the site has regrowth or not.

A single anniversary date be provided to clarify the 15 years regrowth definition.

Water Act 2000 (Part 5, s 54, clause 55 and Part 5, s55)

The proposed amendments to the Water Act 2000 relating to Riverine Protection Permits do not exempt Urban Areas/Urban Purposes (Part 5, s 54, clause 55 and Part 5, s55). In addition, the definitions of vegetation (Part 5, s 56, clause 56), watercourse, spring and lake are general. As such, it appears that any vegetation clearing (not just remnant or High Value Regrowth) in a watercourse/spring/lake (even highly disturbed man-made water features) would trigger requirement for Riverine Protection Permit. This would result in additional and unnecessary uncertainty, time and cost delays for urban development.

Proposed amendments to the Water Act 2000 relating to Riverine Protection Permits should be changed to clearly exempt Urban Areas/Urban Purposes (Part 5, s 54, clause 55 and Part 5, s55). In addition, the

definitions of vegetation (Part 5, s 56, clause 56), watercourse, spring and lake are too general to avoid additional and unnecessary uncertainty, time and cost delays for urban development.
The Institute further considers a review in general should apply to waterways controls. the Institute is aware of a range of outdated, unnecessarily constricting and duplicative controls on waterway management. These should be rationalised and simplified.

Interim period between 8 March 2018 and the date of assent of the VMOLA Act.

The Bill includes transitional provisions which will be inserted into the Vegetation Management Act 1999 (VMA) and the Planning Act 2016 (Planning Act). These are expected to protect existing development approvals that had effect immediately before 8 March 2018 and applications that were 'properly made' before 8 March 2018 are to be dealt with as if the changes introduced by the Bill do not apply.

However, the exemption for existing approvals only applies to 'development' under the 'development approval'. It does not extend to other development that may be required to implement an approval. For instance, an existing approval for material change of use or reconfiguration of a lot is not affected, but if further approvals are required for operational work to clear vegetation, those approvals will not be covered by the exemption in the transitional provisions.

Further approvals reasonably associated with existing approvals and applications should be permitted to occur as if the changes introduced by the Bill do not apply; or compensation should be paid.

Use of High Value Regrowth as Offsets

The Institute also holds concerns that the amendments to the Vegetation Management Act and the reintroduction of high value regrowth will reduce proponents' ability to use regrowth areas as a proponent-driven offset, thereby further directing projects to the financial settlement delivery option.

The Institute recommends the Government explore the potential for Category C areas to be used as offset or exchange areas, augmenting the protection of these areas with active management regimes.

Penalties

The Institute notes the Bill would almost treble the maximum penalties courts could impose for illegal clearing to more than half-a-million-dollars. It is considered this penalty is excessive for some circumstances for example in regard to inadvertent clearing of disturbed vegetation.

It is recommended the Bill or explanatory notes give guidance that some regrowth or other clearing circumstances may warrant lesser penalties.