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Our Ref: A16727013

Date: 22 March 2018

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

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

CONFIDENTIAL

Dear Sir/Madam,

Submission on the Vegetation Management and Other Legislation Amendment Bill 2018

Thank you for the opportunity to make a submission on the *Vegetation Management and Other Legislation Amendment Bill 2018 (Bill)*.

Moreton Bay Regional Council (**Council**) operates in an area of South East Queensland that experiences competing pressures of conserving high biodiversity values while accommodating development. Council therefore seeks a balanced outcome in the Bill.

Council wishes to make the Committee aware that it made a submission to the Agriculture and Environment Committee in early 2016 on the *Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016 (2016 Bill)*. It is noted that, except for a few issues, the amendments proposed under this Bill are basically the same as those identified in the 2016 Bill. It is requested that Council's 2016 submission, a copy of which is attached, be considered by the Committee as part of this submission. It is our view, that while those previously identified issues still need to be considered, reproducing them in this submission would be an unnecessary waste of limited time and resources.

Further to Council's 2016 submission, Council supports the adoption of higher penalties for unlawful vegetation clearing. Where penalties are set too low they can be seen as a cost of business where it is cheaper to remove the vegetation and pay a fine than to obtain a development approval. Council requests the Committee review the penalties for unlawful vegetation clearing to ensure they are a sufficient deterrent to such action.

The remainder of this submission is confined to a matter that Council considers should have been included in this amendment package, which is the interaction between the *Planning Act 2016 and the Vegetation Management Act 1999 (Acts)*

and local categorising instruments, (such as planning schemes) in relation to the regulation of vegetation clearing.

Interaction between the Acts and local categorising instruments

The interaction between the Acts and local categorising instruments requires clarification. It is Council's view that perhaps this clarification has been somewhat eroded by the reduction over time of the explanation contained in explanatory notes and other supporting materials. In particular, we note that earlier versions of those documents included statements to the effect that planning schemes may regulate clearing of vegetation that is not otherwise made assessable by the *Integrated Planning Act 1997*. Those statements do not appear in current versions of those documents.

To support the Committee's consideration, Council's interpretation of the Acts is as follows:

- (1) Section 7(5) of the *Vegetation Management Act 1999* states that "...this Act does not prevent a local planning instrument under the *Planning Act* from imposing requirements on the clearing of vegetation in its local government area."
- (2) Schedule 6 of the *Planning Regulation 2017* provides a mechanism for prohibiting a local planning instrument from regulating a particular form of development. Except for Part 3, section 12 that schedule does not reference clearing native vegetation.
- (3) Schedule 10, Part 3, section 5 of the *Planning Regulation 2017* provides that certain clearing of native vegetation is assessable development unless the clearing is "exempt clearing work".
- (4) Schedule 21 of the *Planning Regulation 2017* lists various forms of clearing activities that fall within the scope of "exempt clearing work".
- (5) "Exempt clearing work" is not a category of development and does not attribute "accepted development" status to the clearing activities identified in schedule 21.
- (6) Where the *Planning Regulation 2017* does not regulate the clearing of native vegetation a categorising instrument, (such as planning scheme) may categorise the clearing as assessable development.

The suggested way forward

The scope of the amendments proposed under this Bill needs to be expanded to provide indisputable clarity on this integration issue. That clarity could be provided by:-

- (1) inserting a note in section 43(4) of the *Planning Act 2016* that local categorising instrument is not inconsistent with the *Planning Regulation 2017* where the *Planning Regulation 2017* does not categorise development as prohibited, assessable or accepted development.
- (2) inserting a note in schedule 21 of the *Planning Regulation 2017* explaining that another categorising instrument such as a planning scheme may make the clearing activities listed in that schedule "assessable development";
- (3) inserting a note in the PMAV provisions of the *Vegetation Management Act 1999* explaining that a local planning instrument under the *Planning Act 2016* may make the clearing of category X vegetation on a PMAV "assessable development";

- (4) reinforcing in fact sheets and other literature supporting the *Vegetation Management Act 1999* the ability of a local categorising instrument to trigger the need for a development approval for the clearing of native vegetation.

Once again, thank you for the opportunity to make a submission on the Bill and we trust that the representations outlined above and in the attached correspondence will receive favourable consideration.

For further information, please contact Ms Kate Isles, Manager Development Services on [REDACTED]

Yours faithfully,



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Our Ref: A13530554

Date: 28 April 2016

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Dear Sir/Madam,

Submission on the Vegetation Management (Reinstatement) and Other Legislation Amendment Bill

Thank you for the opportunity to make a submission on the *Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016 (the Bill)*.

Moreton Bay Regional Council operates in an area of South East Queensland that experiences competing pressures of conserving high biodiversity values while accommodating development. Council therefore seeks a balanced outcome in the proposed *Vegetation Management (Reinstatement) and Other Act Amendment Bill 2016*, and offers the following comments.

Removal of 'significant' from residual impact

The proposal to apply the offset provisions for vegetation clearing to all "residual impacts", rather than just the significant "residual impacts", provides some much needed clarity and is supported by Council. Council previously expressed concern about the definition of "significant" in the context of residual impacts during consultation regarding the *Environmental Offsets Act 2014*.

Retrospectivity Issues

Council raises concerns regarding the uncertainty regarding the proposed retrospectivity under the Bill. For example, an entity may have obtained a copy of the "regulated vegetation management map" just prior to 17 March 2016, established that no approval was required for the category of vegetation proposed to be cleared and contracted with another entity to undertake the clearing. It would be unreasonable to expect that the land owner/occupier check the government's website every day up until the clearing is completed for changes in the vegetation category. In this regard, Council's preferred position is that the Bill does not apply retrospectively.

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In addition, while the removal of “high value agriculture clearing” and “irrigated high value agriculture clearing” as “relevant purposes” under the *Vegetation Management Act 1999* has been widely anticipated by most elements of the community, the expanded scope of what constitutes “high value regrowth vegetation” to encompass specific regrowth on freehold land and indigenous land was not.

Limits of the Transitional Provisions

The transitional provisions proposed for the *Sustainable Planning Act 2009* make it clear that a development application lodged prior to, or during, the “interim period” is to continue to be assessed and decided as though the changes proposed under this Bill did not apply.

However, many of those applications, such as applications for reconfiguring a lot (an RAL) or making a material change of use of premises (an MCU), will need to be followed by works needed to produce the approved end product. Some of those works require a separate approval while others are self-assessable. The transitional provisions do not address these subsequent works and need to be expanded to accommodate clearing of native vegetation required to act on the prior approvals.

The “Onus of Proof”

The changes to the “onus of proof” provisions of the *Vegetation Management Act 1999* put the onus on the “occupier” of the land (as the person who allegedly committed the offence), to prove that an offence did not occur. Council holds many properties in freehold title, or under a deed of grant in trust under the *Land Act 1994*, that it makes available for use by the general public (for example, parks, cemeteries and community centres).

For the freehold land, the category of some of the remnant vegetation on that land may have already changed to “category C” as a result of the amendments proposed under this Bill.

Damage to the extent that would constitute clearing for the *Vegetation Management Act 1999* may have been caused by members of the public, but Council would be held responsible under the changes proposed unless it can actually identify the entity responsible for the damage. The cost of installing and maintaining the infrastructure required to safeguard Council’s, and ultimately the community’s, interests against potential prosecution for unlawful clearing would be unjustifiable.

Exemptions

Council expresses concerns regarding the application of the new section 132 of the Bill which looks to limit compensation payable and that these provisions will also apply to the “interim period” of 17 March 2016 if the Bill was to pass.

A similarly worded provision is also proposed for the *Sustainable Planning Act 2009*.

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The restrictions applying to the clearing of some forms of vegetation during the “interim period” can be a significant impost on affected land owners and there is no set end date for that period (or guarantee that the Bill will actually be adopted in any form).

While it is acknowledged that Council also has the advantage of some exemptions from claims for compensation under the *Sustainable Planning Act 2009*, those exemptions only apply to instances where the change:

- (1) is required to reflect or comply with another statutory instrument; or
- (2) does not reduce the development yield for a property; or
- (3) is about a State community infrastructure designation; or
- (4) is in response to a significant risk to persons or property from natural processes such as flooding, land slippage or erosion, and the risk could not have been significantly reduced by attaching conditions to the approval for the development; or
- (5) is in response to the risk of serious environmental harm occurring and the risk could not have been significantly reduced by attaching conditions to the approval for the development.

While there is some similarity between the exemption provided under proposed section 132 and the exemption available to Council under (5) above, the test applying to Council is expressed in terms of “serious environmental harm”. The proposed exemption applying under section 132 of the *Vegetation Management Act 1999* and section 1005 of the *Sustainable Planning Act 2009* should be similarly constrained.

Restoration Issues

New provisions proposed to be inserted in the *Vegetation Management Act 1999* will provide the chief executive responsible for administering the *Vegetation Management Act 1999* with extended powers to impose requirements for vegetation restoration in instances where unlawful clearing has been undertaken. Those extended powers appear to go beyond mere restoration by incorporating what appears to be a penalty for unlawfully undertaking the clearing activity.

For example, clearing may have commenced as self-assessable or exempt development before, but continue into, the “interim period”. Other changes proposed by the Bill result in a subsequent change in the vegetation category. The proposed transitional provisions would subsequently make the clearing unlawful and give the chief executive extended restoration direction powers. Under those extended powers, the chief executive may impose requirements in addition to the restoration of the cleared land, for example, the restoration of additional land.

Penalties such as those described above, should be at the sole discretion of the Courts, not the chief executive responsible for administering the *Vegetation Management Act 1999*.

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Interaction Between the Environmental Offsets Act and Commonwealth Offset Conditions

One of the proposed changes to the *Environmental Offsets Act 2014* attempts to prescribe how “Commonwealth offset conditions” interact with that Act.


The new provisions include specific instances where the State will not accept a financial settlement offset for a “Commonwealth offset condition”, (such as instances where the chief executive responsible for administering the *Environmental Offsets Act* “...considers the amount is not likely to adequately deliver an environmental offset that achieves a conservation outcome...”).

The intent of this provision in its current form is unclear as the State is still restricted by section 15 of the *Environmental Offsets Act 2014* on what powers it has if the Commonwealth has already considered the issue that generated the offset requirement. Some additional clarity needs to be built into this provision.

Once again, I thank you for the opportunity to make a submission on this Bill and I trust that the concerns outlined above will receive favourable consideration.

For further information please contact Ms Kate Isles, Manager Strategic Planning on (07) or email

Yours faithfully



Daryl Hitzman
Chief Executive Officer