planning, environment & native title law

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Committee Secretary
State Development, Natural Resources
And Agricultural Industry Development Committee
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Dear Sir

VEGETATION MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL 2018

If the State of Queensland representing the people of Queensland decides to protect the natural vegetation based upon good science, then the current vegetation management regime is ineffective.

Governments of different political persuasions take different views in relation to what ought to be protected and how it ought to be protected.

Since the commencement of State vegetation management legislation, the frequency of change to accommodate different policy approaches has failed both conservation and commercial interests. Natural cycles of vegetation growth and regrowth cannot be accommodated during one political party's term/s in office. The nature of the vegetation growth and regrowth is not secured over time and the environmental values are not given the time to be effective. Commercial interests such as farming cannot proceed with certainty in relation to acquisition, maintenance and operation of farms. The commercial return becomes fraught with sovereign risk in circumstances where clearing which was previously permitted subsequently cannot occur.

There is a need to achieve long term stability to better serve all those interested in conservation and commercial returns from the land.

There is a significant failing in equity in the current vegetation management regime.

A purchaser of land under a vegetation management regime at a time when vegetation can be cleared is denied the value of the land where subsequently the vegetation management regime changes and that vegetation cannot be cleared. There is no compensation payable to the individual landowner in circumstances where the State acting on behalf the community has benefited.

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The sovereign risk in relation to vegetation management is significant and will continue to be so unless the basis upon which the vegetation management regime operates is changed.

Regulation of clearing, without explicitly acquiring an interest in land, is not "taking" for the purpose of an acquisition of land.[1]

A profit a prende is an interest in land recognised in Queensland. It is based on feudal history where a Lord provided the right to harvest a copse of timber to a serf. The trees are the interest in land.

A prosecution under an earthworks by-law succeeded where trees were cleared on the basis that the trees were part of the land.[2]

There are numerous instances under the current vegetation management regime where matters pertaining to vegetation are identified on title to land and run with the land.[3]

The recognition of vegetation as an interest in land is appropriate.

It is absurd that prevention of clearing by way of regulation does not amount to a "taking" merely because the property does not pass to the State. By analogy, if a person holding money, in a bank account was prohibited by regulation from withdrawing that money, the State could say it had not taken those funds because the funds were still held in that person's bank account. No compensation would be payable by the State for preventing a person from accessing their money.

The inequity created by the State is not appropriate and underlies the political divide in policy. Until such time as that inequity is remedied it is probable that vegetation management regimes will continue to change with political cycles, satisfying neither conservation nor commercial interests.

Recognition should be given to vegetation as a commercial interest in land for which compensation under the Acquisition of Land Act 1967 should be paid.

Once acquired by payment of compensation for that interest in land, it is secured by tenure on title. The State on behalf of the people of Queensland would own that interest in the land.

With ownership of that interest in the land comes security of tenure and the ability to maintain the land without reference to political cycles.

[1] *Bone v Mothershaw [2002] QCA 120*

[2] *Mills v Caravonica Pty Ltd; ex parte Mills [1992] QCA 429*

[3] for example see sections 19 (F), 55 and 70B of the *Vegetation Management Act 1999*

Owners of land with vegetation which is of value have an interest in land which is worth preserving because of its value.

The risk of inappropriate clearing is reduced as maintenance of the vegetation is given its proper value to the land owner.

The scientific debate about rates of clearing, regrowth, thickening and run-off would be less important.

The scientific debate would be about the value of the vegetation either for its rarity, scientific values or outcomes, such as sedimentation of the Great Barrier Reef Marine Park. That debate would enable the identification of interests in land that the State ought to prioritise for acquisition.

We note the following:

- there should not be a capacity to unilaterally change enforceable undertakings;
- the legislation should not provide a power of entry without a warrant, a Court review is an appropriate check.

Yours faithfully

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