Vegetation Management and Other Legislation Amendment Bill 2005

Explanatory Notes

General Outline

Title of the Bill

Vegetation Management and Other Legislation Amendment Bill 2005.

Objective of the Bill

The objectives of the Bill are to amend to *Vegetation Management Act 1999* and the *Integrated Planning Act 1997* to address operational and implementation issues that have arisen since commencement of the *Vegetation Management and Other Legislation Amendment Act 2004* (VMOLAA 2004).

Reasons for the Bill

In March 2004, the *Vegetation Management and Other Legislation Amendment Bill 2004* was introduced into Parliament to implement the Government's election commitment to phase out broadscale clearing of remnant vegetation in Queensland by December 2006 and to protect "of concern" regional ecosystems on freehold land, whilst allowing clearing for necessary ongoing or "relevant" purposes and management activities.

Since the VMOLAA 2004 commenced on 21 May 2004 a number of operational and implementation issues have arisen that need to be addressed to ensure the effective implementation of the new vegetation management framework. A recent court case has also raised the need for amendments to clarify the intent of transitional provisions in the original *Vegetation Management Act 1999* (VMA).

Ways in which the policy objectives are to be achieved

The Bill will achieve the objectives by:

Amending the *Vegetation Management Act 1999* to:

- remove doubt that the chief executive has the jurisdiction to consider the existence of commercial timber when assessing clearing applications on State land where the State owns the trees;
- clarify the application of transitional provisions in the original VMA relating to areas designated as special facilities zones under local government planning schemes;
- validate the clearing of native vegetation in a State watercourse or lake under the authority of a riverine protection permit issued under the Water Act before the commencement of the Bill as an Act; and
- validate the clearing of native vegetation in a State watercourse or lake associated with an activity approved under the Water Act, or another Act, before the commencement of the Bill as an Act.

Amending the *Integrated Planning Act 1997* to:

- exempt the clearing of native vegetation for establishing a single residence on a lot where the building work is self-assessable and is carried out by the State, a public sector entity or a local government or is for public housing;
- prescribe a specified activity exemption for low impact clearing in a watercourse or lake for activities approved under the Water Act, or another Act.

Alternative ways of achieving the objectives

There is no alternative way of achieving the policy objectives other than the Bill.

Estimated cost for government of implementation

Implementation of the Bill will be met from Departmental resources.

Compliance with fundamental legislation principles

The Bill has been drafted with due regard to the fundamental legislative principles as outlined in section 4 of the *Legislative Standards Act 1992*. It is considered the Bill does not breach fundamental legislative principles.

Consultation

- The following State agencies were consulted during preparation of the Bill:
- Department of the Premier and Cabinet
- Office of the Queensland Parliamentary Counsel
- Department of Local Government, Planning, Sport and Recreation
- Department of Primary Industries and Fisheries
- Department of Public Works
- Department of Housing
- Environmental Protection Agency

The following external organisations were consulted during preparation of the Bill:

- Business Advisory Committee – Vegetation Management (BAC). The BAC comprises representatives of AgForce, Queensland Farmers Federation, The Wilderness Society and Queensland Conservation Council.
- Extractive Industries Queensland
- State Council for River Trusts Queensland Inc.

Analysis of the Bill

Part 1—Preliminary

Clause 1 states that the Bill may be cited as the *Vegetation Management and Other Legislation Amendment Act 2005* (the Act).

Part 2—Amendment of Vegetation Management Act 1999

Clause 2 states that part 2 of the Bill amends the *Vegetation Management Act 1999* (VMA).

Clause 3 amends the heading to section 22 and inserts new subclauses (2) to (5). Before the tree-clearing provisions of the *Land Act 1974* were incorporated into the VMA, the existence of commercial timber was considered as part of assessing tree-clearing applications over State land. Commercial timber includes a range of tree species that the State, through Forestry Queensland, has an interest in harvesting commercially on land where the State owns the trees.

It continues to be the responsibility of the Department of Natural Resources and Mines (NR&M) to assess the impacts of clearing on commercial timber. However, because of the legislative changes made under the VMOLAA 2004, there is a need to amend the VMA to remove doubt that the chief executive of NR&M can continue to consider the existence of commercial timber when assessing applications to clear native vegetation on State land. Subclauses (2) and (3) address the situation where the chief executive is the assessment manager for a vegetation clearing application. Subclauses (4) and (5) address the situation where the chief executive is a concurrence agency for either a vegetation clearing application, a material change of use application or a lot reconfiguration application.

Clause 4 amends section 74 to clarify the application of subsection (1)(b) relating to special facilities zones by inserting new subclause (2). Currently under the VMA a clearing permit is not needed for clearing native vegetation on freehold land, if the land was zoned under a planning scheme as a special facilities zone, or like zone, immediately before the VMA commenced (15 September 2000). The intent of this transitional provision was that the VMA not have retrospective effect on developments that had received a certain level of approval by way of the special facilities designation. In a recent case before the Planning and Environment Court however the provision has been interpreted as continuing to apply despite a planning scheme change to rezone an area from special facilities to rural. The amendments will clarify the exemption applies only if the land continues to be zoned special facilities, or, if a planning scheme change is made, the exemption continues to apply if the development rights conferred

by the special facilities designation are recognised or preserved. For example, this may be where the designation is removed but an applicant obtains a development permit under the superseded planning scheme, or where the planning scheme designation is changed but the local government preserves the development rights conferred by the special facilities designation in another form, such as a notation in the planning scheme.

Clause 5 inserts a new division heading for transitional provisions for the *Vegetation Management and Other Legislation Amendment Act 2005* and inserts new sections 81 and 82.

As a result of the legislative changes made on 21 May 2004, there is now a requirement for approvals under both the *Water Act 2000,* or another Act, and the VMA for activities involving vegetation clearing in State watercourses and lakes. To address possible compliance issues arising from people not realising they needed approvals under the VMA as well as other Acts, transitional provisions validate clearing that was otherwise lawfully done after 20 May 2004. Specifically, new section 81 is inserted to validate the clearing of native vegetation in State watercourses and lakes under the authority of a permit issued under section 269 of the Water Act before the commencement of the Act and which remains current. New section 82 is inserted to validate the clearing of native vegetation in State watercourses and lakes, carried out after 20 May 2004 but before the commencement of the Bill as an Act, where the clearing is for an activity approved under an Act.

Clause 6 amends the schedule (Dictionary) to insert definitions for "bed and banks", "commercial timber", "lake" and "watercourse". The definitions for "bed and banks" and "lake" are as defined under the Water Act. The definition of "watercourse" is based on the definition contained in the Water Act but does not include the upstream or downstream limits imposed by the Water Act's jurisdiction.

Part 3—Amendment of Integrated Planning Act 1997

Clause 7 states that part 3 amends the *Integrated Planning Act 1997* (IPA).

Clause 8 amends schedule 8, part 1, table 4, items 1A(c), 1B(b) and 1C(b). Prior to 21 May 2004, clearing to establish a single residence on freehold land was exempt development under schedule 8 of the IPA. At 21 May 2004, the conditions under which this exemption applies were amended to require that a building development permit be in place before the clearing commenced. At that time, the exemption was also extended to leasehold land. However, an unintended consequence of the change is that the exemption does not apply where the building work is self-assessable. This affects housing that is constructed by or on behalf of the State, a public sector entity or a local government (which is self-assessable building work) for example, employee housing, public housing or housing for disabled clients. The amendments address this by extending the exemption to housing that is self-assessable building work and to public housing.

Clause 9 amends schedule 10 (Dictionary).

Subclauses (1) and (2) provide definitions for "bed and banks", "lake" and "watercourse". The definitions for "bed and banks" and "lake" are as defined under the Water Act. The definition of "watercourse" numbered "2" in the Bill is inserted for the purpose of the specified activity exemption under clause 3, is based on the definition contained in the Water Act but does not include the upstream or downstream limits imposed the Water Act's jurisdiction.

Subclause (3) amends the definition of "quarry material" to correct an error identified by the Office of the Queensland Parliamentary Counsel

Subclause (4) amends the definition of "specified activity". A permit to clear vegetation regulated by the VMA is not required where the clearing is for a specified activity.

There is overlap between the jurisdiction of the Water Act and the VMA in relation to clearing vegetation in watercourses and lakes. Other Acts also regulate activities in watercourses, such as the *River Improvement Trust Act 1940* (RITA), the *Coastal Protection and Management Act 1995,* the *Environmental Protection Act 1994* and the IPA. To address the issue of overlap in jurisdiction and to remove some of the duplication, subclause (4) amends the definition of "specified activity" to provide a new exemption for clearing associated with activities that are subject to an approval process and are approved under an Act, eg the Water Act, to take place in a watercourse or lake and which are of low impact. Low impact is deemed to be clearing less than 0.125 hectares of not of concern regional ecosystems or non-remnant vegetation. However, the exemption is not intended to apply to activities or works that are self-assessable under an Act.

The effect of this new exemption will mean that if a landholder has approval to construct works for taking or interfering with water (an IPA permit), a permit for any associated clearing in the watercourse or lake will not be needed if it is low impact, ie, it is below the specified threshold. Similarly, works carried out by river improvement trusts, such as removal of in-stream vegetation or flood mitigation work authorised by "works approvals" under the RITA, will not need a permit for clearing vegetation if the clearing is below the threshold.