

# Economic Development (Vegetation Management) By-law 2023

## Human Rights Certificate

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Steven Miles, Deputy Premier, Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympic and Paralympic Games Infrastructure provide this human rights certificate with respect to the *Economic Development (Vegetation Management) By-law 2023* (By-law) made under the *Economic Development Act 2012* (ED Act).

In my opinion, the By-law is compatible with the human rights protected by the *Human Rights Act 2019* (Human Rights Act). I base my opinion on the reasons outlined in this statement.

### Overview of the Subordinate Legislation

The By-law repeals and replaces the *Economic Development (Vegetation Management) By-law 2013* (the repealed by-law) that would have otherwise expired on 1 September 2023. The By-law carries forward policy from the repealed by-law with changes that are necessary and consistent to provide for its continued application.

The By-law identifies vegetation within declared priority development areas that is to be managed to maintain biodiversity, preserve natural landforms, ensure its continued contribution to the character of the landscape or protect its historical, cultural heritage or amenity value to the public.

The By-law provides for the management of such vegetation by:

- allowing the Minister for Economic Development Queensland (MEDQ) to give notices (controlled vegetation notices) to owners of land in a priority development area in the Brisbane local government area (relevant priority development area) declaring vegetation on the land to be controlled vegetation;
- regulating interference with controlled vegetation; and
- regulating activities in relation to other particular vegetation.

### Human Rights Issues

#### Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 Human Rights Act)

In my opinion, the human rights relevant to the By-law are:

- Section 23 – Taking part in public life
- Section 24 – Property rights
- Section 25 – Privacy and reputation

- Section 28 – Cultural rights—Aboriginal peoples and Torres Strait Islander peoples

## **Consideration of reasonable limitations on human rights (section 13 Human Rights Act)**

### ***Section 23 – Taking part in public life***

#### **(a) the nature of the right**

The right stated in section 23(1) of the Human Rights Act to participate in the conduct of public affairs through freely chosen representatives is central to the functioning of a system of representative democracy.

Section 4 of the By-law provides that the Brisbane City Council’s local law called ‘Natural Assets Local Law 2003’ does not apply to vegetation in a relevant priority development area.

By disapplying the local law, section 4 of the By-law limits the human rights of individuals who own property in the Brisbane local government area to participate in the conduct of public affairs through their freely chosen representatives who are part of the Brisbane City Council.

#### **(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom**

MEDQ is responsible for making planning and land use decisions relating to priority development areas under the ED Act (decision-making framework).

The By-law disapplies the local law to ensure that vegetation management decisions within the relevant priority development area are made within the same decision-making framework as other planning and land use decisions in the relevant priority development area, therefore avoiding the risk of inconsistency in decision-making. Promoting consistency of administrative decision-making is consistent with a free and democratic society based on human dignity, equality and freedom.

#### **(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose**

The limitation helps to achieve the purpose because it operates to bring decisions about the management of vegetation in the relevant priority development area within the same decision-making framework as other planning and land use decisions in the relevant priority development area.

#### **(d) whether there are any less restrictive and reasonably available ways to achieve the purpose**

Consistency between decisions about the management of vegetation in the relevant priority development area and other planning and land use decisions relating to the priority development area can only be assured if the decisions are brought within the same decision-making framework. Therefore, there is no less restrictive way reasonably available to achieve the purpose of the limitation other than to disapply the local law.

- (e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The limitation is necessary to ensure consistency in decision-making in the relevant priority development area. Like all priority development areas declared under the ED Act, the relevant priority development area has been declared to facilitate economic development and development for community purposes in the State. In my opinion, the By-law strikes a fair balance between the importance of the right to participate in public life through chosen representatives and the importance of having a consistent planning and land use decision-making framework in the relevant priority development area.

- (f) any other relevant factors

Nil.

### ***Section 24 – Property rights***

Section 24(2) of the Human Rights Act states that a person must not be arbitrarily deprived of the person's property.

The By-law potentially limits this right by giving MEDQ power to control the management of vegetation on land within the relevant priority development area and by giving authorised persons power to require landowners to take action in relation to hazardous vegetation or pest vegetation (e.g., action to control the hazardous vegetation or pest vegetation).

However, the right stated in section 24(2) of the Human Rights Act protects against *arbitrary* deprivation of property. In the context of human rights jurisprudence, 'arbitrary' means capricious, unpredictable, unjust or disproportionate to a legitimate aim sought.

In my opinion, any deprivation of property rights resulting from the making of the By-law is not 'arbitrary' in this sense.

The purpose of the limitation is to maintain biodiversity in the relevant priority development areas and to preserve character, amenity, natural landforms and to protect historical and cultural heritage. The protection of the natural environment, the preservation of features of cultural and historical significance and ensuring character and amenity are purposes consistent with a free and democratic society based on human dignity, equality and freedom.

The limitation helps to the achieve the purpose by giving MEDQ the power to regulate activities affecting controlled vegetation and other particular vegetation including hazardous and pest vegetation.

The By-law provides a system of permits under which people, including landowners, can obtain permits to lawfully interfere with controlled vegetation. It also provides a mechanism for review of decisions by MEDQ and authorised persons.

Therefore, the limitation cannot be characterised as 'capricious, arbitrary and unjust'. It is also proportionate to the objectives the By-law seeks to achieve.

In my opinion, the By-law does not limit the rights stated in section 24(2) of the Human Rights Act or limits them only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Human Rights Act.

***Section 25 – Privacy and reputation***

Section 25(a) of the Human Rights Act states that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

The By-law potentially limits this right by facilitating restrictions on the ability of homeowners within the relevant priority development area to manage vegetation in and around their homes and by giving authorised officers the power to make directions to such homeowners to deal with hazardous vegetation and pest vegetation.

However, like the property right stated in section 24(2) of the Human Rights Act, the right stated in section 25(a) is subject to internal modification. Section 25(a) in fact has two internal modifiers, because the limitation can arise either through *unlawful* interference or *arbitrary* interference.

In the case of the By-law, the interference is lawful. The By-law is made under the authority of section 54 of the ED Act.

In my opinion, the interference is also not *arbitrary* in the sense described above. The limitation restricts landowners' privacy rights only to the extent necessary to achieve the objectives stated in section 2 of the By-law, or to prevent hazards to the health, safety and property of other landowners or persons in the relevant priority development area.

Therefore, I am satisfied that the By-law is compatible with the right stated in section 25 of the Human Rights Act.

***Section 28 – Cultural rights—Aboriginal peoples and Torres Strait Islander peoples***

None of the information available suggests that making the By-law will limit the cultural rights of Aboriginal peoples or Torres Strait Islander peoples.

However, if the By-law does have that effect, I consider the limitation will be reasonable and demonstrably justifiable in accordance with section 13 of the Human Rights Act, for the following reasons.

**(a) the nature of the right**

Section 28 of the Human Rights Act recognises the rights of Aboriginal peoples and Torres Strait Islander peoples to maintain, develop and protect their language, kinship ties, cultural heritage, traditional practices and distinctive relationship to traditional or customary lands and waters.

The special importance of human rights to Aboriginal peoples and Torres Strait Islander peoples, including the cultural rights stated in section 28 of the Human Rights Act, is acknowledged in the Preamble to the Human Rights Act.

**(b) the nature of the purpose of the limitation**

The purpose of the limitation is set out above in paragraph (b) under the heading 'Section 23 – Taking part in public life'.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The relationship between the limitation and the purpose is set out above in paragraph (c) under the heading ‘Section 23 – Taking part in public life’.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

The By-law provides a process under which decisions to declare vegetation to be controlled vegetation, to grant, suspend and cancel controlled vegetation permits and to give management notices, can be made and reviewed. If any of these kinds of decisions were to inadvertently limit the cultural rights of Aboriginal peoples or Torres Strait Islander peoples, the limitation can be raised in the decision-making or review process and can be addressed at that time. This manages the risk that vegetation or other elements of the environment that have cultural significance for Aboriginal peoples or Torres Strait Islander peoples could be damaged or destroyed.

These safeguards on the exercise of power under the By-law by MEDQ and authorised officers ensure that the By-law imposes the least possible restriction reasonable available to achieve the purpose of the By-law in the absence of information about relevant cultural rights.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

I am satisfied that in the circumstances the By-law strikes a fair balance between the preservation of the cultural rights of Aboriginal peoples and Torres Strait Islander peoples and achieving the purposes of the By-law.

(f) any other relevant factors

Nil.

I am satisfied that the By-Law is compatible with the cultural rights of Aboriginal peoples and Torres Strait Islander peoples stated in section 28 of the Human Rights Act.

## Conclusion

I consider that the By-law is compatible with the Human Rights Act because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

**STEVEN MILES MP**

Deputy Premier, Minister for State Development,  
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