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Subject: Nature Conservation Act 1992 – Protected Plants

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In formulating a policy for dealing with protected plants under the Nature Conservation Act 1992 (NCA), the AgForce Vegetation Management Committee recommends the following principles be adopted:

1. AgForce believes the Department of Environment and Heritage Protection (DEHP) must be able to provide the following, up-to-date detail to landholders wishing to manage vegetation/conduct clearing in a high-risk area (within a Blue Dot):
    a. Name of the protected species of plant/plants and the EVNT status, associated with the Blue Dot/high risk area.
    b. Distribution of the species.
    c. Density of the species.
    d. Viability of the species in situ.
    e. Date the species was identified within the Blue Dot area.
2. AgForce supports landholders having the ability to enter a voluntary "comprehensive stewardship arrangement" with DEHP.
3. AgForce believes category X areas should be exempt from the protected plants regulation.
4. AgForce believes land that is subject to fodder harvesting, as per the VMA Accepted Development Vegetation Clearing Codes (previously Self-Assessable Code) should be exempt from the protected plants regulations.

Principle 1 – expanded information for landholders

A recent AgForce vegetation survey indicated 64 per cent of landholders were unaware of the Trigger Map associated with the protected plants framework, 81pc had not requested or seen these maps, and a further 73pc were unaware of the compliance requirements to manage these areas under the *Nature Conservation Act 1992 (*NCA).

Worryingly, despite lengthy and ongoing lobbying efforts by AgForce, DEHP have not appropriately communicated the details of the NCA to the agricultural sector and appear unconcerned with the lack of awareness and education of landholders.

It is AgForce's belief that the government is currently falling short of achieving the Object of the NCA and would, at a minimum, make steps towards this by agreeing to the following:

> Provide the following, up-to-date detail to landholders wishing to manage vegetation/conduct clearing in a high-risk area (within a Blue Dot):
>
> a. Name of the protected species of plant/plants and the EVNT status, associated with the Blue Dot/high risk area.
> b. Distribution of the species.
> c. Density of the species.
> d. Viability of the species in situ.
> e. Date the species was identified within the Blue Dot area.

Section 5 of the NCA details how the Object of the Act is to be achieved. Of particular relevance to Policy 1 is:

- 5(a)*…gathering of information and community education,* and
- 5(g*)…cooperative involvement of landholders*.

It has been made clear by DEHP that the NCA protects all native species in Queensland. As per the requirements within the protected plants framework, a flora survey is required if a landholder is wanting to undertake any clearing of native vegetation within the Blue Dot (including common species) other than clearing covered by an exemption. A flora survey may find a range of additional species other than the one that created the Blue Dot record and as a result DEHP claim that understanding the species involved won't currently make a significant difference to the options and outcomes for the landholder.

AgForce argues that there are a number of reasons this information should be provided to landholders.

Landholders have spent many years working to understand and comply with the *Vegetation Management Act 1999* (VMA), they are therefore insensitive to another legislative restriction to vegetation management (as has been highlighted by the previous survey results). Because of this the concept most landholders are familiar with is the vegetation management maps provided by the Department of Natural Resources and Mines (DNRM). These maps show the Regional Ecosystems (RE) found on individual properties.

REs are vegetation communities in a bioregion that are consistently associated with a particular combination of geology, landform and soil[1]. Each RE is given a three-part number based on the following:

- Bioregion – the primary level of biodiversity classification
- Land Zone – a simplified geology classification
- Vegetation – or the ecosystem number that denotes the different vegetation.

It looks at the biodiversity as a community and the associated conditions in which the vegetation exists. Landholders have a good understanding of the REs found on their properties, even in areas of vegetation unregulated by the VMA. They use REs to assist in determining the management activities they can undertake based on the requirements of the vegetation management framework.

The NCA defines biological diversity and its related landscape components similar to the methodology used for Regional Ecosystem mapping. However, it fails to appropriately implement this concept by treating species on a plant by plant approach in the associated regulations.

The density, distribution and viability of a species is directly related to its surrounding environment. By providing a landholder with this information it is an opportunity to raise awareness and education of the plant species.

This process would also compel government to undertake appropriate ground truthing of the species they are wanting to protect and conserve. The Blue Dot maps are records of EVNT plants, however some of these records are decades old and have had no further ground-truthing, following the initial recording of the species. Government are relying on these records to map and categorise EVNT species, yet, events may have occurred that mean these plants no longer exist or have changed classification. DEHP need to consider how genuine they are in their actions to achieve the Object of the NCA, the conservation of nature. Relying on information that may not be accurate to determine the classification and therefore the management requirements of EVNT plant species is highly inefficient.

AgForce questions the realistic and reasonable timeframe for using historical data to map, categorise and regulate EVNT species with no follow-up ground truthing.

[1] https://www.qld.gov.au/environment/plants-animals/plants/ecosystems/about

Further to this, under the current system the cost of ground-truthing the Flora Survey Trigger Map and the EVNT plant species on a property is placed solely on the landholder. The cost of a flora survey as per the Queensland Government's Flora Survey Guideline is significant. Estimates are anywhere from $5000 or more. If no EVNT species is found, the landholder is subject to undertaking another flora survey after 10 years. If an EVNT plant is found and the taking/clearing of this plant cannot be avoided, a landholder must then pay a permit fee, currently $2866.00. Additionally, the requirements to qualify as a Suitably Qualified Person to conduct a flora survey, as per the flora survey guidelines are too onerous. AgForce does not believe there would be a large pool of suitably qualified people available in Queensland, therefore driving costs up further for landholders needing to have a flora survey conducted on their properties.

As they stand, the protected plants regulations within the NCA are dysfunctional and counterproductive to the Objects of the Act. Furthermore, the risk of non-compliance based on cost of compliance alone is extremely high. Again, a first step in assisting landholders to make appropriate business and financial decisions directly related to vegetation management within the Blue Dots and possibly involving EVNT species is to provide detailed information. An informed landholder, taking an active role in managing a protected plant or plants assists the government in achieving the Object of the NCA. Additionally, conserving and protecting protected plants is a public good undertaken on private property and therefore the government should be appropriately supporting landholders financially as well as administratively to manage these plants, as it's in the public interest to do so.

Principle 1.1a Legislative provisions to remove the Blue Dot

Whilst the VMA mapping is not perfect, there are sections of that piece of legislation that allow for mapping errors to be appropriately ground-truthed and corrected. Currently there are no provisions in within the NCA to remove the Blue Dot from a Trigger Map. AgForce believes there must be a process within the legislation that recognises there may be errors with the mapping and a process to ground-truth, and amend maps should they be incorrect.

Principle 2 – Voluntary Stewardship Arrangements

As noted in Principle 1, conserving and protecting protected plants is a public good on private property. Landholders are acutely aware of their responsibilities to care for the land and to ensure the health of their environment. By making provisions in the NCA for a voluntary Comprehensive Stewardship Arrangement, the government is recognising the expense and impost on landholders to maintain and manage protected plants. These types of arrangements offer an avenue of opening negotiations between landholders and the government, which may offer alternate ways to manage and secure protected plant species. They are setting up a program that appropriately supports landholders and ensures the ongoing viability of true EVNT species. Under stewardship arrangements with open lines of communication and a building of trust, more favourable outcomes are likely.

Comprehensive stewardship programs are consistent with Section 5 of the NCA, how the Object of the Act is to be achieved, specifically:

- 5(g)…*cooperative involvement of landholders*, and
- 5(d) *Protection of native wildlife and its habitat*
  (iv) *entering a conservation agreement*.

The Vegetation Management Committee has developed an example Stewardship Program outline that could be used as the basis of developing a comprehensive program with DEHP.

Plant Preservation Scheme (PPS)

An incentive based partnership between the Queensland Government and landholders to preserve/protect EVNT plants.

- Based on Government financially contributing to the preservation of EVNT plants by landholders.
- PPS to be developed by a DEHP and AgForce working group.
- PPS to form the basis of a new protected plants legislation stewardship arrangement.
- DEHP to classify, by species, distribution, density, and EVNT status of all records associated with the protected plants flora survey trigger map. Ground truthing arrangements to be a shared Government/landholder cost, subject to the voluntary negotiated stewardship arrangement.

Benefits:

1. Demonstrates Queensland Government is serious about preserving EVNT plants in Queensland.
2. Landholders are given an incentive to protect/preserve EVNT plants.
3. Sets the approach for a cooperative Government/landholder partnership towards protected plants.
4. Removes the mystery of the "blue dot"; informs landholders; ignorance, uncertainty and therefore suspicion diminished; antagonistic and draconian legislation avoided.
5. Jobs and/or additional income streams are created.
6. EVNT plants are given appropriate protection based on their status.

New protected plants legislation stewardship arrangements

Approach:

1. Incentive based approach for preservation of plants by landholders.
2. Partnership approach by government and landholder for the preservation of plants – a "plant preservation scheme" - ***PPS***

- Government is preserving these plants because society or a section of society wants the plants protected.
- If plants are worth protecting, they should be fully protected according to their EVNT status. Partial protection is not an option.
- Landholders can be motivated to protect plants – Financial arrangement to allow for ongoing stewardship.

- Government identifies EVNT plants and identifies the distribution of EVNT plants – landholders voluntarily enter a comprehensive stewardship arrangement.

- Landholders identify EVNT plants – apply to join PPS scheme.

Plants Status: Endangered

Aim:

- To prevent extinction

How:

- Remove to botanical garden;

- Totally protect in situ e.g. fence in, remove competing species;

- Relocate to a protected area e.g. National Park;

- Propagate in situ or elsewhere;

Landholder role:

- Totally protect in situ

    1. Protective fencing

    2. Remove competition

    3. Fire protection

    4. Management strategies

    5. Permit government monitoring.

- Propagate in situ

    - As above.

Plants Status: Vulnerable

Aim:

- Maintain and/or improve density of plant

- Maintain and/or improve location diversity of plant.

How:

- Manage the plant habitat e.g. remove competition and threats to plant

- Relocate and propagate plant.

Landholder role:

- Manage the plant habitat

    1. Stocking rate adjustments

    2. Remove fire threat

    3. Control competition

4. Permit government monitoring.

- Relocate and propagate plant

1. Accept relocated plants

2. Manage threats to plant propagation.

Plants Status: Near threatened

Aim:

- Manage plant habitat to maximise protection of plant.

How:

- Control competition of both flora and fauna to the plant.

Landholder Role:

- Control plant competition.

1. Manage stock/ land use.

Plants Status: Least Concern

Aim:

- No action

Government Role:

- Locate plant in need of protection
- Identify EVNT status
- Consult with landholder to develop a conservation program for plant
- Compensate landholder for role in conservation program.

Landholder Role:

Enter and manage a conservation program for the plant.

Principle 3 – Exemption of category X areas

AgForce believes category X areas should be exempt from the protected plants regulation.

The NCA defines a protected plant as *a plant that is prescribed under this Act as threatened, near threatened or least concern wildlife*[2] with further expansion on this definition that a *protected plant means a protected plant that is in the wild*[3]. In the wild, as per the NCA is taken to mean *an independent state of natural liberty*[4].

The DEHP Operational Policy[5] for when a protected plant is taken to be in the wild looks at a number of contributing factors, including:

[2] Pg. 225, https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-1992-020
[3] Pg. 93, https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-1992-020
[4] Pg. 222, https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-1992-020
[5] https://www.ehp.qld.gov.au/licences-permits/plants-animals/documents/op-protected-plant-wild.pdf

- The process by which the plant has become established, i.e. naturally occurring or human intervention
- The natural range of the species
- The ecological situation in which the plant is found.

Specifically, the operation policy outlines that the VMA provides guidance on remnant ecosystems, and where this definition is met a protected plant is likely to be considered in the wild.

When considering category X vegetation, as per the VMA there are a number of contradictory descriptions to the NCA definitions.

The VMA defines a category X area as an area, other than a category A area, category B area, category C area or category R area, shown on the regulated vegetation management map as a category X area.[6]

- Category A – A declared area, an offset area, or an exchange area
- Category B – Remnant vegetation
- Category C – High value regrowth

Remnant vegetation is vegetation that is:

(i) an endangered regional ecosystem; or
(ii) an of concern regional ecosystem; or
(iii) a least concern regional ecosystem; and

(b) forming the predominant canopy of the vegetation

(i) covering more than 50% of the undisturbed predominant canopy; and
(ii) averaging more than 70% of the vegetation's undisturbed height; and
(iii) composed of species characteristic of the vegetation's undisturbed predominant canopy.

High value regrowth vegetation is vegetation that is located:

(a) on a lease issued under the Land Act 1994 for agriculture or grazing purposes; and
(b) in an area that has not been cleared since 31 December 1989 that is

(i) an endangered regional ecosystem; or
(ii) an of concern regional ecosystem; or
(iii) a least concern regional ecosystem

The VMA definitions therefore assume that the areas classified and mapped in Queensland as category X have been previously cleared, and/or no longer meet the definitions for remnant vegetation or high value regrowth. Further, a plant cannot be in an independent state of natural liberty if the ecosystem conditions of a given land area have changed so much that they cannot support the ongoing existence of an individual species. This is most definitely the case in areas where the landscape has changed significantly enough to no longer meet the criteria for all vegetation categories other than category X, thus supporting AgForce's case for exempting category X areas from the NCA legislative requirements for protected plants.

Principle 4 – Fodder harvesting exemptions

AgForce believes land that is subject to fodder harvesting, as per the VMA Accepted Development Vegetation Clearing Codes (previously Self-Assessable Code) should be exempt from the protected plants regulations.

While the current *Nature Conservation (Wildlife Management) Regulation 2006* appears to deal with fodder harvesting, the way in which it does so is unworkable and confusing. According to the Regulation a private landholder may take or use parts of a protected plant, other than a plant that is endangered or vulnerable.

[6] Pg. 33, https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-1999-090

Not only does this exemption imply the landholder has information related to the protected plants found on his/her property (which is not currently publicly available and an issue raised in Principle 1), it creates confusion around whether a flora survey is required or not? The assertion by DEHP regarding the plant that caused the Blue Dot trigger map, as per Principle 1, is that understanding the species involved won't currently make a significant difference to the options and outcomes for the landholder. However, in this case it does, which contradicts their lack of support for providing this detailed information to landholders. Additionally, regardless of the species that caused the record, if clearing is to be undertaken outside of an exemption a flora survey is required. In this case, the legislation is assuming that no other species, other than the species that caused the Blue Dot exists on the property – contradicting the requirements of the Flora Survey Guidelines that all native species must be surveyed and recorded.

Furthermore, there are currently exemptions that allow a person to take a protected plant in any area by clearing if the taking complies with the VMA self-assessable codes for thinning, weed control or managing encroachment. AgForce questions why fodder harvesting was not included in this exemption? Fodder harvesting is in response to drought to feed stock, and by definition is carried out in a way that conserves the vegetation and the regional ecosystem in which the vegetation is situated. The way in which fodder is harvested also allows for regeneration over time.

AgForce believes the current exemption, s261ZE – taking a protected plant under a self-assessable vegetation clearing code must be expanded to include fodder harvesting.

Key Questions for Department of Environment and Heritage Protection

Many questions related to the protected plants framework that AgForce is seeking feedback on, these include:

- How is the protected plants regulation audited? How does the DEHP detect actions of clearing and apply these to the high-risk areas?
- Is there a publicly published process for the recording of protected plants? If not, why? If there is, what is the level of field verification that has been/is undertaken?
- What has the department done to achieve the object of the Act in relation to s5(a*) Gathering of information and community education etc*… and 5(g) *Cooperative involvement of landholders…*?
- Does the DEHP have data on how often a nil-finding survey occurs in high-risk areas?