Native Vegetation and Threatened Species

Overview

- The preservation and protection of our native flora and fauna is important to all Australians and is something that the residential building industry manages on an almost daily basis as part of its building and planning system.
- Development needs to balance the dual priorities of providing affordable housing to the nation's growing population whilst managing the potential removal of native vegetation and threatened species on land which is zoned for residential.
- The complex environmental arrangements that are in place between the Commonwealth, State and Local Governments are responsible for causing significant delays, adding costs to the development process and affecting housing affordability. Yet there is arguably no increase in environmental outcomes, despite the increased administration.

Policy Background

- There are two types of environmental legislation generally in place to deal with protecting native vegetation and managing threatened species on land zoned residential.
- The first is the traditional area of native vegetation management. These provisions focus on tree and vegetation removal, on any parcel of land, whether on agricultural land, in managed forests and national parks, or on future industrial, residential and commercial land.
- The second area of legislation is more specific and focuses on threatened species – including both flora and fauna. This legislation also applies to all land, but has approval processes focused on actions that will damage or remove a threatened species.
- The controls are usually triggered by the activities associated with clearing land as part of subdivision works, and at times, can apply to the construction of an individual dwelling. Under both types of legislation these issues affect residential development in a range of ways as follows:
    - Prohibiting the removal of flora and fauna results in the loss of developable land;
    - Engaging consultants for the purpose of undertaking assessments, which is costly;
    - Various agencies and approval processes mean that the one piece of land is assessed for flora and fauna significance more than once;
    - There are inconsistent approaches between regions and different levels of government;
    - There are inconsistencies between approvals processes for matters of national significance across states because some Commonwealth functions are delegated to State governments;
    - Flora and Fauna protection objectives often take precedence over other social and economic considerations when authorities are making decisions;
    - There is often a lack of transparency regarding the effectiveness of offset solutions proposed or required.

- With threatened species management, the process is very complex and duplicative. Depending on the significance of the species identified, approval may be required from all levels of government – Commonwealth, State and/or Local. The current process involves:
    - The Commonwealth Government – which is responsible for identifying nationally significant threatened species and where they will be affected by a proposal, for granting permission to remove or relocate a threatened species. Whilst there are no national provisions in relation to native vegetation and clearing of land per se, the Commonwealth's role is to ensure the protection of national flora and fauna which is considered significant and does this under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act);
    - State Governments – which are responsible for identifying species of local and state significance and managing native vegetation removal and where required, for granting permission to remove or relocate a threatened species. Their role is implemented through either the zoning process or the development approval process and in some states arranging for the provision of any offsets; and
    - Local Governments – which are responsible for the zoning and development approval processes (in the main) and can require environmental assessments of any flora and fauna impacts, as part of these processes. In some states, local government determine development potential, identify vegetation or habitat to be retained, and identify offsets that may need to be provided. This information can then be reconsidered for any subsequent approval by either the State or Commonwealth Government.
- Adding to the complexity of this issue is that in some States and Territories there are bilateral agreements in place under the Commonwealth Act. Under these agreements some State Governments are delegated the power of granting environmental approvals under the (Commonwealth) EPBC Act. In theory this should streamline the approvals process so that only one assessment of land and species is required to be undertaken. However, the changes are still being implemented and have been "in progress" for almost a decade.
- There are also other changes underway to the Federal Legislation aimed at increasing the cooperation between the Commonwealth and the States. One of the more controversial changes is the introduction of a "fee for service" – meaning that any proposal requiring an assessment from the Federal Government would attract a fee from the applicant (developer). HIA's policy opposes this approach as this type of service should be covered under general taxation measures.

Policy Issues

- HIA's approach is to streamline the process and reduce regulatory burden associated with environmental assessment for native vegetation removal and management of threatened species.
- HIA's policy advocates for the Commonwealth and the States working together to strategically identify significant species or tracts of land to be retained at the start of the rezoning process.
- It also advocates that once a species is identified, and its location mapped, authorities should not have the ability to constantly revisit their findings and broaden the spectrum of species to be relocated or land to be retained (or rendered undevelopable), which adds delay, cost and uncertainty to the development process. HIA also advocates for voluntary offsets. This is where developers are required to provide offsets – which they can elect to provide these on their own land.
- Local Governments should improve their capacity to manage applications for single tree removals.

HIA's Policy Position on Management of Native Vegetation and Threatened Species

1. In relation to the management of native vegetation and threatened species on land designated for residential development, HIA supports:
    - Accurate designation through state planning mechanisms of land that has undergone a strategic environmental assessment and has therefore been identified as available for housing development without the need for further investigation, mapping, offsets, or assessments;

- A strategic approach to the management of environmental issues relating to land clearing on land designated for residential development at the time of zoning;
- Cooperation between state and federal agencies to streamline processes relating to the management of flora and fauna where approval is required under both jurisdictions;
- The establishment of voluntary 'offsets' policies and mechanisms that allows a development to nominate where and whether it will seek to provide 'offsets' as part of the approval process; and
- A streamlined and timely process for development assessment on an individual housing allotment where local government is the responsible authority.

2. In relation to the operation of legislation for native vegetation management and the protection of threatened species, State/Territory Governments should:

   - Ensure a strategic approach to flora and fauna management which provides certainty regarding how much land is required for conservation purposes, how much land is available for development and what other mechanisms, such as offsets, can be utilised. This approach should:
     - be delivered within the normal planning processes and occur at the earliest stage possible in the land development process e.g. designation for urban development or rezoning;
     - provide for decisions made as part of a rezoning to be binding on all future applications, thereby removing the need for new mapping, assessments or removal of land previously available for development; and
     - be facilitated through a regional approach by providing timely and independent mapping which is subject to a landowner review process and recognises land already designated for residential development;
     - ensure there is the option for voluntary offset management that is:
       i. subject to a full cost benefit and environmental analysis;
       ii. standardised on a state-wide basis;
       iii. cost effective; and
       iv. does not adversely affect housing affordability.
   - Ensure that the cost of offsetting vegetation and loss of developable land is shared fairly between government and new developments and does not adversely affect housing affordability.
   - Where land is identified as containing flora or fauna of significance on land already designated for urban development the legislation/requirements should only apply where subdivision approvals have not been commenced. Also individual housing allotments should be exempt from the need to undertake site specific assessments of flora and fauna.
   - Decisions by authorities around flora and fauna including offsets should be made separately from environmental agencies – by either planning agencies or a central agency, such as the Premier's Department, so that decisions are balanced and take into consideration the strategic and economic benefits of a development and remove the need for multiple state agency involvement.
   - Where the State's existing policy or legislation does not act as an impediment to development then the status quo should remain.

3. In relation to the operation of the Environment Protection & Biodiversity Conservation Act, the Federal Government should:

   - Continue to support strategic assessments of land therefore reducing the need for individual environmental assessments for each species within a region or area and removing the need for the development to be 'referred' to the Federal Government for a separate approval;
   - Ensure state governments are undertaking delegated responsibilities under the Commonwealth EPBC Act for strategic assessments of land thereby limiting the need for proponents to gain separate approval from the Commonwealth;

- Adopt an integrated, whole of government and balanced approach to implementing environmental policy and law. Decisions should balance all policy objectives and consider the economic and social benefits as well as the environmental significance of a development to a region; and
- Not pursue or implement the current proposal to levy a full cost recovery fee for EPBC Act activities as these are a core function of Government and provide a broader community benefit that should be funded from general taxation measures.