

Land clearing battle moves to High Court

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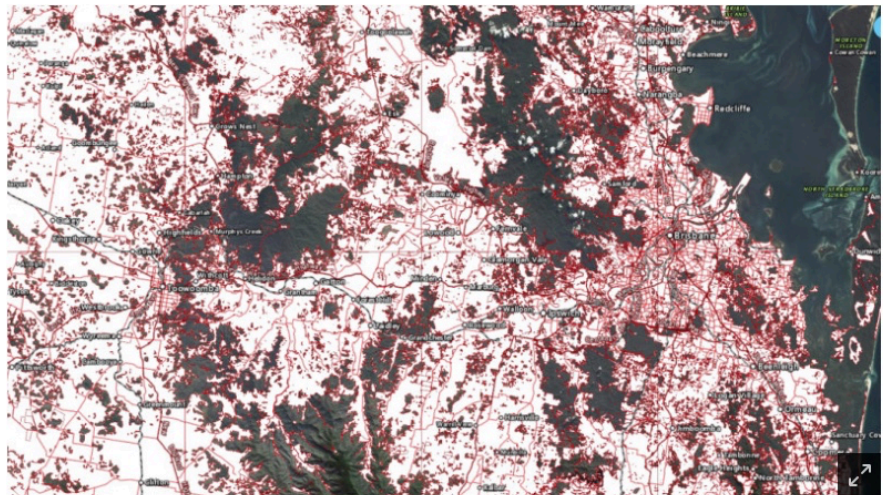
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A battle over how land clearing is regulated across Queensland has moved to Australia's highest court.

It pits the development industry and farming lobby against a south-east Queensland council in a fight to decide whether local governments can enforce their own rules to protect the environment even where the state has imposed no restrictions on clearing.



About half of the land in southeast Queensland is designated "Category X" (areas shown in white) and potentially affected by the Court of Appeal ruling in the Fairmont case. QUEENSLAND DEPARTMENT OF NATURAL RESOURCES, MINES AND ENERGY

The dispute, between South Australia-based developer Fairmont Pty Ltd and Moreton Bay Regional Council over a housing scheme north of Brisbane, has implications for one-fifth of the total land in Queensland, or 33 million hectares, an area the size of Malaysia, according to state government data.

In the heavily populated south-east corner of the state, it affects half of all land.

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Last month the Queensland Court of Appeal [upheld an earlier finding in the Planning and Environment Court](#) reinforcing the powers of local councils to prevent the clearing of so-called “Category X” land, described on state maps as where clearing is considered “exempt development”.

Moreton Bay Regional Council successfully argued that it could require landholders to seek development approval for clearing work regardless, and impose local government planning rules.

Environmental groups have welcomed the ruling but the property and farming lobbies reacted angrily, [warning that all landholders, including “mum and dad” property owners, faced fines of almost \\$600,000 per breach](#), including for clearing that has already taken place.

Developers and rural land groups have begun lobbying the Palaszczuk state Labor government to introduce legislation to reverse the decision.

Friday's filing of an application for special leave to appeal the decision in the High Court, observers say, will create a window of opportunity in which to ramp up the lobbying effort.

The costs of the application are being shared between Fairmont and David Trask, a prolific developer in the Moreton Bay region who has been the main financial backer of long-serving mayor Allan Sutherland.

Typically, developers and other landholders have cleared Category X land on the assumption that they only needed to have regard to the state government mapping of the block of land in question.

In their application to the High Court, lawyers for Fairmont argue that the case “involves a question of law that is of public importance” because of the amount of land affected, and because it could depress land values.

An affidavit provided by Fairmont operations manager Brenton Allen to the High Court as part of the application includes, as an exhibit, a letter from the Property Council of Australia, which represents the development industry, to Queensland Planning Minister Cameron Dick.

The Property Council told the minister the Court of Appeal decision would add to the cost and complexity of development in Queensland, for no ecological benefit, erode property rights and have an impact on housing supply and affordability. It called on Minister Dick to “review and rectify this matter urgently”.

Mr Dick's department said this month that the rules were working "as intended" and no changes to the law were required "at this stage".

The application also included a supporting letter from AgForce, the peak body for Queensland's broad-acre producers of wheat, beef and wool.

AgForce has [called the Court of Appeal decision a “power play” and “cash grab” by local councils](#) and claimed it has nothing to do with the environment.

Mr Allen's affidavit describes how Mr Trask is the subject of enforcement proceedings brought by Moreton Bay council over the clearing of Category X land but that these cases are “in abeyance” pending the outcome of the application.

Mr Trask told *Brisbane Times* he had spent \$200,000 to \$300,000 on legal costs on the cases to date and expected to spend up to \$500,000 in total on the disputes.

"I get that there's got to be an ecological protection, I've got no issues with that," Mr Trask said.

"But as a developer we don't buy blocks of land that have high ecological protection on them.

"We stay away from that stuff, because that's a whole bunch of headaches that we don't need to know about.

"So when I look at a vegetation map and I see that it's all Category X, and knowing how the legislation has worked forever and a day, there's an expectation that ... if there is any vegetation there, I can knock it over."

Fairmont declined to comment, citing the court proceedings.

Comment has been sought from Moreton Bay, Brisbane City and Redland City councils.

Ipswich's acting general manager of regulatory services Brett Davey said the city's land clearing is regulated by the Vegetation Management Act 1999, as well as local planning schemes.

"In Ipswich, where an landowner or applicant proposes to clear Category X vegetation, it would be classified as exempt clearing works under the Vegetation Management Act and also assessed by Council through the Planning Scheme as a matter of local significance," he said.

"In practice, this means that clearing Category X land for any purpose will require approval from Council, unless it is specifically excluded from assessment requirements for vegetation clearing under the Planning Scheme."

The City of Gold Coast said it "regulates vegetation through the City Plan and investigates any complaints received in relation to clearing of vegetation and where appropriate takes action pursuant to Planning Act 2016".

A spokesperson for Sunshine Coast Council said: "In addition to complying with the State vegetation clearing requirements, landholders and contractors are required to comply with vegetation clearing requirements in council's planning scheme."