



ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC.

Ecological Sustainability: the Purpose of the Integrated Planning Act 1997

Factsheet 2

This factsheet explores the concept of ecological sustainability – the purpose of the Integrated Planning Act 1997 (“IPA”). The factsheet details how the purpose of achieving ecological sustainability is relevant to planning and development.

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SUMMARY

What is "ecological sustainability?"

As defined in the IPA, ecological sustainability is 'a balance that integrates':

- Protection of ecological processes and natural systems at local, regional, State and wider levels;
- Economic development; and

- Maintenance of the cultural, economic, physical and social wellbeing of people and communities.

What does this mean?

According to the IPA:

Ecological processes and natural systems are protected if the life supporting capacities of air, ecosystems, soil and water are conserved, enhanced or restored and biological diversity is protected.

Economic development occurs if there are diverse, efficient, resilient and strong economies enabling communities to meet their present needs without compromising the ability of future generations to meet their needs.

The **cultural, economic, physical and social wellbeing of people and communities** is maintained through the creation and maintenance of viable communities, the protection of areas and places of cultural, historic and other significance and the provisions of integrated networks of public areas for various purposes.

"A **balance that integrates**" implies that environmental considerations should not be neglected in favour of short-term economic objectives.

Ecological sustainability under the IPA differs from the more widely used concept of "ecologically sustainable development".

How is ecological sustainability to be achieved?

IPA's purpose is to be achieved by:

- coordinating and integrating planning at the local, regional and State levels;
- managing the processes by which development occurs; and
- managing the effects of development on the environment (including managing the use of premises).

More particularly, the Integrated Planning Act 1997 imposes a **duty** on planners, assessment managers and the Planning and Environment Court to advance the purposes of the Act. It sets out a number of relevant considerations, including:

- an accountable, coordinated and efficient decision making process;
- application of the **precautionary principle**;
- application of the concept of intergenerational equity;
- ensuring sustainable use of renewable natural resources and prudent use of non-renewable natural resources; and
- Avoiding or lessening adverse environmental effects of development.

Decision makers under the Integrated Planning Act 1997 must seek to achieve ecological sustainability in circumstances which include:

- making or amending **planning schemes** and **planning policies** (see *factsheets 3,4&5*);
- making decisions on development applications which are subject to impact assessment (see *factsheets 6 and 7*); and
- Some appeals and enforcement actions under the Integrated Planning Act 1997 (see *factsheet 10*).

Decisions under Integrated Planning Act 1997 which are inconsistent with the achievement of ecological sustainability may be open to challenge in the Planning and Environment Court (see *factsheets 9 & 10*).

Ecological Sustainability : The Purpose of the IPA

FULL TEXT

This Factsheet is for general information purposes and is not legal advice. Important legal details have been omitted to provide a brief overview of this area of the law. If you require legal advice relating to your particular circumstances you should contact the EDO or your solicitor.

The purpose of the *Integrated Planning Act 1997*

The stated purpose of the *Integrated Planning Act 1997* is to '**seek to achieve ecological sustainability**'.

Three mechanisms are identified by which that purpose is to be achieved:

- Coordinating and integrating planning at the local, regional and State levels;
- Managing the process by which development occurs; and
- Managing the effects of development on the environment (including managing the use of premises) (s1.2.1 of the *Integrated Planning Act 1997*).

Knowledge of the Act's purpose and what it means can be of significance when you are evaluating the decisions made by responsible authorities under the Act. You can (and often should) refer to the Act's purpose when you are:

- making a submission on a development application subject to impact assessment (*see factsheet 7*);
- making a submission on a draft planning scheme (*see factsheet 5*); and
- considering, challenging or appealing a decision made under the *Integrated Planning Act 1997*.

What is ecological sustainability?

Ecological sustainability as defined in the *Integrated Planning Act 1997* is related to the better known and much more widely used concept '*ecologically sustainable development*' but there are significant and critical differences between the two concepts.

According to the Minister who introduced the *Integrated Planning Act 1997* to State parliament:

"the term 'ecological sustainability' seeks to marry core concepts contained in the national strategy for ecological sustainable development and the more traditional land use planning concepts such as servicing of development and preserving the amenity, character and quality of natural and built environments..."
 (*Integrated Planning Bill 1997* second reading speech by the Honourable Di McCauley MLA Minister for Local Government and Planning 30 October 1997).

The IPA defines '**ecological sustainability**' as a balance that integrates:

- protection of ecological processes and natural systems at local, regional, State and wider levels;
- economic development; and
- maintenance of the cultural, economic, physical and social wellbeing of people and communities (s1.3.3 of the *Integrated Planning Act 1997*).

We shall call these components the three arms of ecological sustainability: ecological, economic and social/cultural, and explain the scope of each individually before later discussing what *balance that integrates* means.

Ecologically sustainable development (ESD) is an internationally recognised concept. There are a number of definitions. The Queensland Environmental Protection Agency in its landmark initial State of the Environment Report (1999) describes ESD as "*using, conserving and enhancing resources so that ecological processes, on which life depends, are maintained and the total quality of life, now and in the future, can be improved*". This definition has legal force due to its incorporation into legislation and use in national and international agreements. For

example, you will find the concept has a central role in:

- The **Intergovernmental Agreement on the Environment (1992)** and the **National Strategy for Ecologically Sustainable Development** endorsed by the Council of Australian Governments (December 1992). Queensland has endorsed or signed both of those Commonwealth documents.
- The ***Environment Protection and Biodiversity Conservation Act 1999***, the major piece of Commonwealth legislation on the environment, which deals with, among other things, the division of powers in relation to development between the State and Federal governments, Federal requirements for environmental protection and impact assessment.

The three arms of ecological sustainability explained individually

1. The ecological arm

The *Integrated Planning Act 1997* states that ecological processes and natural systems are protected if:

- the life supporting capacities of air, ecosystems, soil and water are conserved, enhanced or restored for present and future generations; and
- biological diversity is protected.

The use of the words 'protected', 'conserved', 'enhanced' and 'restored' all point uncompromisingly towards keeping ecological process and natural systems safe from harm and improving or restoring their life supporting capacities.

As the arm refers to 'local, regional, State and wider levels', the protection must occur from the local level (e.g. a locally significant ecosystem), to the widest levels being national (e.g. adverse impacts on interstate water quality, if relevant) or international.

Thus to properly consider the ecological arm before balancing it and integrating it, a great deal of information may need to be obtained. The amount to be obtained will depend on the type of development proposed and its potential impacts on natural processes and ecological systems at the local, regional, State and wider levels.

2. The economic arm

The *Integrated Planning Act 1997* states that economic development occurs if there are diverse, efficient, resilient and strong economies (including local, regional and State economies) enabling communities to meet their present needs while not compromising the ability of future generations to meet their needs.

So, the economic arm includes development that meets the present needs of communities, such as development that creates new jobs and demand for local supplies, so long as that development does not compromise the ability of future generations to meet their needs. By implication, not all types of development will necessarily fit within the scope of the economic arm if they do compromise the ability of future generations to meet their needs.

For a hypothetical example, suppose the offshore fishing industry suspected that coastal aquaculture operations posed a threat to the fishing stock relied upon by the offshore fishing industry. Let us assume this suspicion was backed by evidence, for example, evidence of the risk of nutrient rich runoff entering the sea and its impacts on the off shore fishing industry, or some evidence of the likelihood of non indigenous species entering the sea and their impacts. If the evidence is there, then the industry could argue that planning for more aquaculture facilities on parts of the coast might be outside the definition of economic development on the basis that it compromises the ability of future generations to meet their economic needs through a sustainable local fishing industry.

3. The social/cultural arm

The *Integrated Planning Act 1997* states that the cultural, economic, physical and social well being of people and communities is maintained if:

- well-serviced communities with affordable, efficient, safe and sustainable development are created and maintained;
- areas and places of special aesthetic, architectural, cultural, historic, scientific, social or spiritual significance are conserved or enhanced; and
- integrated networks of pleasant and safe public areas for aesthetic enjoyment; and cultural, recreational or social interaction are provided.

There is no reference to levels of communities (e.g. local, regional, State, etc) unlike the other two arms.

What is a balance that integrates?

Ecological sustainability is a balance that integrates the ecological, economic and social/cultural arms discussed above. Interpreting this phrase is crucial to understanding the purpose of the *Integrated Planning Act 1997* and what weight to give the three different arms.

Integrate means to combine or to bring together parts into a whole (Macquarie Concise Dictionary, 3rd Edition, p 587). The use of the word 'integrates' and the use of the word 'and' between each of the three arms in s.1.3.3 of the *Integrated*

Planning Act 1997 makes it clear that none of the three arms of ecological sustainability may be disregarded entirely in the balance.

The word *balance* has a number of possible meanings, for example, to estimate the relative weight or importance of; and compare, which seems to allow for a subjective decision as to the weight to give the three arms, or, for example, to be equal or proportionate to, which seems to suggest each arm must be given equal weight (Macquarie Concise Dictionary 3rd Edition p 74).

Given the diverse meanings of *balance* it is hard to know what the purpose of the *Integrated Planning Act 1997* means. However as a practical matter, before striking the balance that integrates, a great deal of information (if relevant) about protection of natural processes and ecological systems at various levels (local, State, national and wider levels) must be gathered in order for a decision maker to consider the ecological arm. This reduces the risk for community groups and the environment, that decisions on development applications and planning might be made that routinely favour short term economic development considerations over requirements to protect ecological, social or cultural assets and processes. Another factor mitigating against favouring short term economic benefits over environmental protection is that the economic arm (by implication) only includes development that does not compromise the ability of future generations to meet their needs.

When the *Integrated Planning Act 1997* was being considered by State parliament, the then State Planning Minister the Honourable Di McCauley rejected suggestions that the Bill lacks an environmental bottom line and rejected the idea that protection of ecological processes can be traded away in pursuit of economic or social ends:

"This is simply not the case. Trading away one of the factors of ecological sustainability would be antithetical to achieving the balance required by this legislation.

Rather the Bill seeks to achieve an appropriate and pragmatic balance between meeting present day human needs, mitigating the adverse effects of development on the environment and taking an intergenerational perspective in respect of ecological systems and processes."

(Integrated Planning Bill 1997 Second reading speech by the Honourable Di McCauley MLA Minister for Local Government and Planning 30 October 1997).

That second reading speech may be used to help interpret the purpose statement (s14B Acts Interpretation Act 1954).

What the duty to advance the Act's purpose includes

Under the *Integrated Planning Act 1997*, decision makers have a duty to advance the Act's purpose, and this duty can or must be fulfilled in certain ways. A non-exhaustive list of what decision makers must do to advance the Act's purpose is provided in s1.2.3 of the Act.

The particular occasions when decision makers have a duty to seek to achieve ecological sustainability are set out later in this fact sheet.

Non-exhaustive list of how decision makers advance the Act's purpose (s.1.2.3)

- By accountable, coordinated and efficient decision making processes;
- By taking account of short and long term environmental effects of development at local, regional, State and wider levels;
- By applying the precautionary principle (explained later in this fact sheet);
- By seeking to provide for equity between present and future generations, (i.e. the idea that the current generation should not leave an impoverished environment for the next);
- By ensuring the sustainable use of renewable natural resources and the prudent use of non-renewable natural resources;
- By avoiding, if practicable, or otherwise lessening, adverse environmental effects of development;
- By supplying infrastructure in a coordinated, efficient and orderly way, including encouraging urban development in areas where adequate infrastructure exists or can be provided efficiently;
- By applying standards of amenity, conservation, energy, health and safety in the built environment that are cost effective and for the public benefit; and
- By providing opportunities for community involvement in decision-making.

This list is a mixture of outcomes and processes, not all of which may be relevant to a particular decision. Remember, this list is not exhaustive and other actions may be necessary by the decision maker in order to achieve ecological sustainability. Comments on some particular duties that may be useful in the consideration of proposed planning schemes or developments, or in challenging or appealing decisions under *Integrated Planning Act 1997* follow.

The environmental effects of development must be considered at regional, State and wider levels as well as locally.

So, for example, if a proposed development in Caboolture will cause a discharge to air which ultimately affects the air shed in Ipswich that **MUST** be taken account

of by Caboolture Council, when making their decision on the development application.

Or, if a proposed major feedlot adjacent to a river in Southern Queensland may cause a detrimental effect on river water quality, that has implications for ecosystems or sustainable industries in New South Wales, then that MUST be taken into account when deciding the application.

Or, if a significant energy inefficient industry is proposed in Queensland, the decision maker must take into account evidence of the global implications of greenhouse gas production.

Applying the precautionary principle under the *Integrated Planning Act 1997*

The precautionary principle is an internationally recognised principle that has been reflected in Australian policy, case law and some legislation. At a national level, both the National Strategy for Ecologically Sustainable Development (1992) and the Intergovernmental Agreement on the Environment (1992) include references to the precautionary principle.

As defined in IPA the precautionary principle is:

"the principle that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment if there are threats of serious or irreversible environmental damage." (s1.2.3(2) Integrated Planning Act 1997).

We make the following comments about the principle:

- it has wide application, as many proposed developments will entail threats of irreversible environmental damage (e.g. clearing of remnant vegetation and ecosystems destruction is irreversible damage to the environment);
- examination of the ecological arm of ecological sustainability (above) may assist interpretation of what is 'serious environmental damage';
- a careful evaluation by the decision maker needs (as a precondition) adequate information about the effects of a proposal. If the decision maker is unable to carry out the evaluation of the threat of significant damage due to lack of information on some significant element of a proposal, then as the purpose of the evaluation is to avoid the environmental damage, refusal should be obligatory;
- a careful evaluation of a development application necessitates careful scrutiny of the proposal and information supplied by developers. If the decision maker does not have the expertise to do this, then to carry out this evaluation it is necessary to seek information from independent sources and expert assistance.

Remember the precautionary principle applies not just to assessment of impact assessable developments, but also to making planning schemes.

When must decision makers seek to achieve ecological sustainability?

The occasions when the duty to seek to achieve ecological sustainability arise are set out below. Be aware however, that as well as the duty, additional specific legal provisions apply to the various decisions and processes under the Integrated Planning Act 1997 (for example, see *factsheet 5 Making submissions on Planning Schemes*).

Seeking ecological sustainability in planning decisions

Decision makers under *Integrated Planning Act 1997* must seek to achieve ecological sustainability when:

- making or amending a planning scheme, (including a statement of proposals), temporary local planning instrument, local planning policy and State planning policy;
- the Minister for Local Government and Planning directs a local government about local planning instruments;
- reporting by a Regional Planning Advisory Committee to the Minister; and
- designating land for community infrastructure by the Minister or local government.

Seeking ecological sustainability in development decisions

Decision makers under the *Integrated Planning Act 1997* must seek to achieve ecological sustainability when:

- making decisions on development applications subject to 'impact assessment' (the ones where any person has rights of submission and appeal - see *factsheet 10*) but not development applications subject to 'code assessment';
- the Minister directs a local government about a development application or calls in a development application.

Seeking ecological sustainability in enforcement or appeal decisions

Decision makers under *Integrated Planning Act 1997* must seek to achieve ecological sustainability when:

- a local government issues an enforcement notice under IPA;
- the Planning and Environment Court issues a declaration or an enforcement order to remedy or restrain a development offence; and

- the Planning and Environment Court decides an appeal on development applications subject to 'impact assessment' (*see fact sheet 5 in relation to the different types of assessable development*).

Do referral agencies have to seek ecological sustainability?

Many development approval decisions under the *Integrated Planning Act 1997* are only taken after applications are first considered by other relevant agencies. These referral agencies are known as *advice agencies* (if they have advice power only) or *concurrence agencies* (if the agency has power to direct refusal of the application or to direct conditions be attached) (*see factsheet 6*).

If part of a decision on a development application is referred to a referral agency, for example to the Environmental Protection Agency for a concurrence decision in accordance with the *Environmental Protection Act 1994*, then the duty to advance the purpose of the *Integrated Planning Act 1997* does not apply to the decision by that agency.

That concurrence agency is subject to a different duty, to 'have regard to' i.e. 'consider' the purpose of IPA which is merely a procedural requirement. For example, the Environmental Protection Agency must look to the purpose of the *Environmental Protection Act 1994* and the other elements of law and policy in that Act (amongst other matters, as referred to by s3.3.15 *Integrated Planning Act 1997*) for guidance in its decision making.

Sometimes it can be confusing when a local government has a number of different decision making powers on a development application. For example, if the local government has been delegated responsibility from the Environmental Protection Agency in relation to a proposed poultry farm (of over 1000 birds) AS WELL as assessing the application for the poultry farm against the planning scheme as an assessment manager under IPA, different duties and criteria apply to the different hats of responsibility.

What can you do if plans or development approvals do not "seek to achieve ecological sustainability"?

To try to prevent deficient plans or development approvals in the first place, it is advisable to utilise rights of public submission on statements of proposals, draft planning schemes and development applications (*see factsheets 5 and 7*). However there are other options if submissions do not succeed.

Professor Douglas Fisher gave this opinion on the purpose statement:

While it may not be directly enforceable as a matter of law, any decision, which can be shown to be inconsistent with ecological sustainability, would clearly be at risk of challenge for invalidity.

(Queensland Environmental Practice Reporter, Vol 4, 1998 Issue 19, p129).

So, for example, if you thought that a statement of proposals (this is part of the process of scheme preparation new under the Integrated Planning Act 1997) or draft planning scheme was not consistent with ecological sustainability, after obtaining legal and expert advice, you could consider going to the Planning and Environment Court to seek a declaration to that effect. If the local government's statement of proposals or scheme was invalid then it would be necessary for them to prepare a new one.

So, for example you may think that a decision on a development application (impact assessment) was not consistent with ecological sustainability. If you had made a submission on that development application, then after obtaining legal and expert advice, you could consider appealing the decision to the Planning and Environment Court and raising the invalidity as a preliminary point of law in that merit appeal. Another option would be seeking a declaration of invalidity (*see factsheet 10 Appealing and Enforcing development approvals*).

Further information and references

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Your local government

Your local non-government environment council

National Strategy for Ecologically Sustainable Development (December 1992)
Australian Government Publishing Service GPO Box 84, Canberra, ACT 2601.

England P., "Toolbox or tightrope? The Status of Environmental Protection in Queensland's Integrated Planning Act", *Environmental and Planning Law Journal*, Volume 16, No 2.

Fisher D.E., "Planning for the Environment under the Integrated Planning Act 1997", *Queensland Environmental Practice Reporter*, Vol 4, Issue 19, 1998, p129.

Meurling R.M., "The Precautionary Principle- Look before you leap", Queensland Paper given at the Queensland Environmental Law Association Conference 1999.

Relevant laws

Environmental Protection Act 1994
Integrated Planning Act 1997