



ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC.

Planning Schemes and Other Planning Instruments

Factsheet 3

This factsheet describes what is meant by planning instruments under the Integrated Planning Act 1997 (IPA) and explains the preparation and operation of planning instruments. See also factsheet 5 on making submissions on the preparation of planning schemes.

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- 1 An introduction to the Integrated Planning Act 1997 ("IPA")*
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SUMMARY

What are the benefits of participating in planning?

Planning is critical in determining the future use and development of communities, areas and regions, often for generations. If you have participated in planning processes, it may enhance your ability to have your say on individual development applications.

What do I need to know to be involved in planning?

Effective involvement is enhanced by knowing what is happening or what is proposed for an area. Councils are obliged to provide you with certain information.

What are planning instruments?

Planning instruments are the documents which set out government (state or local) objectives for an area and the means by which these objectives are to be achieved.

What types of planning instruments are there?

Under *Integrated Planning Act 1997*, planning instruments are:

- Planning schemes (commonly referred to as local town plans);
- Temporary local planning instruments (these are rare);
- Planning scheme policies;
- State planning policies; and
- The South East Queensland (“SEQ”) Regional Plan

What elements must be present in planning schemes?

Planning schemes prepared under the *Integrated Planning Act 1997* must:

- Coordinate and integrate matters (including core matters) dealt with by the scheme;
- Identify desired environmental outcomes (DEOs) for the area or localities within the area;
- Include measures to help achieve the DEOs;
- Include a priority infrastructure plan

Temporary local planning instruments can suspend a planning scheme over an area for up to a year in cases where there is a significant risk of serious environmental, social, economic or cultural degradation.

Planning scheme policies support planning schemes by providing guidance in dealing with development applications.

State planning policies are concerned with matters of State interest and planning schemes must identify those policies the Minister is satisfied are appropriately reflected in the scheme.

SEQ Regional Plan is a regional plan for population growth and future development covering 18 local government council areas in South East Queensland.

Some plans and planning processes are not planning instruments under the *Integrated Planning Act 1997*, although they should be taken into account in the preparation of planning schemes. Examples include: catchment management plans; and reports of Regional Planning Advisory Committees.

The *Integrated Planning Act 1997* makes provision for compensation to be paid to land owners adversely affected by changes in planning schemes. Such

injurious affection provisions might be a barrier to reversing unwise former planning decisions when planning schemes are being devised or updated.

The Minister for Local Government and Planning has broad powers to direct a Council to:

- Make, amend or review its planning scheme;
- Make, amend or repeal a planning;
- scheme policy;
- Make or repeal a temporary local planning instrument; and
- Prepare a consolidated planning scheme.

Designation is a process by which a minister or local government can amend a planning scheme to provide for community infrastructure items. Decision makers under *Integrated Planning Act 1997* must "seek to achieve ecological sustainability" when preparing, amending or approving planning. schemes or policies (*see factsheet 2*).

Planning Schemes and Other Planning Instruments

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.

Why participate in planning?

Planning is an attempt to guide and control the future use and development of a town or area. The uses to which land is put and how areas are developed are things that affect us all. They might affect us directly, such as in the case of whether a dump should be constructed on bushland near your suburb. They might also affect us indirectly such as in the case of how much space should be allotted for public park or recreation facilities.

By participating in planning, you are able to have your say and influence the planning process. You can either have input yourself or as part of a larger group of people. If you do not participate, then you run the risk that development will

occur which will have bad effects on you and your family and possibly future generations.

How can you insist on knowing what is happening in planning in your area?

You need to have sufficient knowledge of what is happening in or planned for your area before you can provide constructive input into the planning and development occurring there.

Usually in addition to newspaper notices there will be public meetings organised by the council about proposed changes to the planning scheme.

Your local government must keep certain types of documents available for inspection and purchase by the public, such as the planning scheme, planning scheme policies, its annual report, corporate plan and State planning policies (*see factsheet 8 Public Access to Information*).

However, there is no requirement that the local government explain all those documents to you. So, you will have to make your own inquiries in order to become familiar with what is happening in planning in your area. Try the following:

- You could establish contacts with local groups active in planning and environmental matters. Tell them you are keen and ask them to show you the ropes;
- Ask your local government councillor (you can find out who this is and what their contact details are by phoning your local government's general enquiries line);
- Ask your local government's planning division (again, phone the general enquiries line of your council and ask to be put through to the planning area). Alternatively, there may be a direct listing for the planning area in the phone book. You could also find out the contact details and write to the person in charge of the planning area;
- Ask your local government to send you a copy of its corporate plan. This should give a broad guideline about what the local government plans for the future;
- Put yourself on local government mailing lists or check local government web sites regularly for information (you could ask your local councillor or the planning division about which lists exist); and
- You could also attend meetings of the local government or its planning committee to see how decisions are made.

What is a planning instrument?

By 'instruments' we mean formal legal documents which have undergone a process of approval.

In the most general sense, planning instruments are documents which set out the government's (whether it be local or State) objectives for an area and the means by which those objectives are to be achieved. Their purpose is to give effect to the framework laid down by *Integrated Planning Act 1997*.

The *Integrated Planning Act 1997* sets out the basic elements of planning schemes and other planning instruments and the processes (including in most cases public consultation) by which planning instruments now come into force in your area.

There are a number of types of planning instruments under the *Integrated Planning Act 1997*:

- a planning scheme, (commonly referred to as a town plan);
- a temporary local planning instrument;
- a planning scheme policy;
- a State planning policy;
- the South East Queensland ("SEQ") Regional Plan and regulatory provisions.

Are catchment management plans planning instruments?

No. Be aware that many plans, such as catchment management plans, even if drawn up by government with public input are not planning instruments and do not have the force of law. If you are going to spend time contributing to such plans it is therefore vital that you spend an equivalent amount of time ensuring that their contents are incorporated into planning schemes, such as by an amendment to the planning scheme.

What about the Wet Tropics Management Plan?

The Wet Tropics Management Plan is made under its own Act of Parliament which provides that if there is any inconsistency between the Wet Tropics Management Plan and a planning scheme (whether made before or after the plan), the plan prevails over the planning scheme to the extent of the inconsistency. A local government must not issue or give any approval, consent, permit or other authority in relation to development on land in the wet tropics area, that is inconsistent with the management plan, (ss49 and 50 of the *Wet Tropics World Heritage Protection and Management Act 1993*).

Planning schemes

What are the contents of planning schemes?

Traditionally, the planning scheme has been the local government's plan for the future development of an area. This was aided by, among other things, zones which allowed certain types of development in certain areas and prohibited other types of development.

In contrast, any new planning schemes made under the *Integrated Planning Act 1997* need not have tables of zones or areas (in practice some do have 'areas', some do not) but must have certain elements. The scheme must, to the satisfaction of the local government and the Minister:

- co-ordinate and integrate the matters dealt with by the scheme, including the core matters, and any State and regional dimensions of the matters. Core matters include land use and development infrastructure and valuable features of social, heritage, economic and ecological significance;
- identify the desired environmental outcomes (DEOs) for the planning scheme area;
- include measures that facilitate achievement of the desired environmental outcomes;
- include a priority infrastructure plan.

The *Integrated Planning Act 1997* does not allow development to be prohibited by planning instruments in the same way as previous legislation. However, a development application must be refused if its approval would compromise the achievement of the desired environmental outcomes. An application requiring impact assessment must also be refused if its approval would conflict with any other provision of the planning scheme and there are insufficient planning grounds to justify approval.

Planning schemes can regulate clearing vegetation on freehold land as the definition of 'operational work' has expanded after amendments to the *Integrated Planning Act 1997* in consequence of the *Vegetation Management Act 1999*.

What is the process for preparing a planning scheme?

A planning scheme must be created or amended using the process in *Integrated Planning Act 1997*. The three stages for making or amending a planning scheme are:

- preliminary public consultation (on the statement of proposals for preparing a planning scheme) and preparation of a draft planning scheme;
- consideration by State government of whether State interests are adversely affected by the draft planning scheme followed by public consultation on the draft scheme and consideration of modifications to the draft scheme; and
- adoption by local government.

Preparing a planning scheme

Part 1 - Preliminary Consultation and Preparation Stage

- Resolution to prepare planning scheme
- Statement of proposals for preparing planning scheme
- Public notice of proposal
- Public access to statement of proposal
- Consideration of all submissions
- Requirements for priority infrastructure plans
- Resolution proposing planning scheme

Part 2 - Consideration of State interests and consultation stage

- Ensuring proposed planning scheme does not adversely affect State interests
- Public notice of, and access to, proposed planning scheme
- Consideration of all submissions
- Decision on proceeding with proposed planning scheme
- Reporting to persons who made submissions about proposed planning scheme
- Reconsidering proposed planning scheme for adverse effects on State interests

Part 3 - Adoption Stage

- Resolution to adopt proposed planning scheme
- Public notice of adoption of, and access to, planning schemes
- Copy of notice and planning scheme to chief executive

Changes to planning schemes

A local government must review a planning scheme every eight years (s2.2.1 *IPA*) and review its priority infrastructure plan every four years (s2.2.5 *IPA*).

The review of the planning scheme must include an assessment of the achievement of the desired environmental outcomes stated in the planning scheme. After the planning scheme review the government may prepare a new scheme, amend the scheme, or take no further action (s2.2.2 *IPA*). If it decides to take no further action, a local government must prepare a report stating its reasons for that decision and make that report available for public inspection and purchase.

A local government may also initiate an amendment to a planning scheme at any time. You could request the Council to propose an amendment to address an issue of importance to you.

What are temporary local planning instruments?

A local government may make a temporary local planning instrument that will suspend or alter the effect of the current planning scheme for a period of not more than 1 year. A temporary local planning instrument can only be made if the Minister for Local Government and Planning is satisfied of two things:

- There is a significant risk of serious environmental harm (as defined in the Environmental Protection Act 1994 s17) or serious adverse cultural, economic or social conditions occurring in the scheme's area; and
- The time taken to amend the planning scheme by the normal procedure would increase the risk of the environmental harm occurring or adverse conditions occurring.

Because it is designed for use in urgent situations only, public consultation is not part of the preparation of a temporary local planning instrument. However, you could try approaching the Minister and your local government asking that one is made if you detect a significant risk of serious environmental harm or adverse conditions.

Remember, ordinarily you must convince both your local government and the Minister for Local Government and Planning that a temporary local planning instrument is required.

What are planning scheme policies?

A planning scheme policy is an instrument made by the local government to support the local dimensions of the planning scheme. It is used in conjunction with the planning scheme to provide guidance in deciding or dealing with local development applications.

Planning scheme policies cannot regulate development or the use of premises and can only support the local dimension of a scheme. Generally they will deal with procedural and information requirements and aspects of detailed interpretation of the planning scheme. For example, the Brisbane City Council Planning Scheme includes, (amongst other things), an Environmental Impact Assessment Planning Scheme Policy and a Consultation Planning Scheme Policy. To the extent a Planning Scheme Policy is inconsistent with another planning instrument, the other planning instrument prevails (s2.1.17A IPA).

The process for a council to prepare a planning scheme policy requires public notification and the opportunity for public submissions (schedule 3 of IPA).

What are State planning policies?

A State planning policy is a planning instrument made by the Minister for Local Government and Planning about matters of State interest. State interest is defined very broadly to mean:

- an interest that in the Minister's opinion affects an economic or environmental interest of the State or a region; or
- an interest in ensuring there is an efficient, effective and accountable planning and development assessment system.

In effect, relevant State planning policies must be reflected in planning schemes and regard must be had to them for some decisions on development applications.

The process for preparing a State planning policy includes public notification and consideration of submissions (see schedule 4 of IPA).

As at August 2007, the State planning policies in force in Queensland are: SPP 1/92 Development and Conservation of Agricultural Land; SPP 1/02 Development in the Vicinity of Certain Airports and Aviation Facilities; SPP 2/02 Planning and Managing Development Involving Acid Sulfate Soils; SPP 1/03 Mitigating the Adverse Impacts of Flood, Bushfire and Landslide; SPP 1/07 Housing and Residential Development; and SPP 2/07 Protection of Extractive Resources. The State & Regional Coastal Management Plans and subsequent Regional Coastal Management Plans also have the effect of State Planning Policies for the purpose of making and amending planning schemes and assessing and deciding development applications. There are various commencement dates for the regional coastal management plans. Check the EPA website for more information.

For a list of current, proposed and repealed State planning policies, see: <http://www.ipa.qld.gov.au/codes/codespolicies.asp>

Regional planning

Regional planning advisory committees may be established at the discretion of the Minister for Local Government and Planning. There are no fixed geographical areas of the State constituting regions. The Minister decides upon the region, local governments likely to be affected, the terms of reference of the Committee and membership of the Committee. The Committee must include representatives of appropriate local governments without limiting the scope of other possible membership.

Prior to establishing the Committee, the Minister must consult with local governments and interest groups the Minister considers appropriate about aspects of the Committee. After establishing the Committee, the Minister may change any aspect of the Committee, including membership, after consulting the Committee and other entities that the Minister considers appropriate.

The Committee may gather information and opinions in the way it considers appropriate but should operate in an open and participatory way.

If you have relevant points to make to the Committee, it is reasonable to expect the Committee to receive and consider your submissions even if it did not ask for them. It is also reasonable for you to be allowed to address the Committee on some matter within its terms of reference, to listen in as a quiet observer and to inspect copies of minutes of meetings of the Committee.

The report of a Regional Planning Advisory Committee is not a planning instrument. However, planning schemes are effectively required to coordinate and integrate the recommendations of such a report with other matters dealt with by the scheme.

The SEQ Regional Plan

The South East Queensland (“SEQ”) Regional Plan includes the area of 18 local government councils in South East Queensland. The SEQ Regional Plan took effect on 30 June 2005. A copy of the SEQ Regional Plan is available online at: www.oum.qld.gov.au.

The primary purpose of the SEQ Regional Plan is to provide a sustainable growth management strategy for the next 20 years. The plan identifies trends in population growth (1 million more people by 2026) and attempts to provide for this growth by identifying urban land for growth and protecting regional landscape and rural production areas.

The SEQ plan divides land into five regional land use categories, such as the urban footprint and rural living areas, and identifies desired regional outcomes, principals and policies to address growth management in SEQ.

The SEQ plan contains regulatory provisions which have the capacity to directly regulate development, for example, by prohibiting aspects of development in specified locations. Unlike planning schemes, the SEQ Regional Plan therefore has the power to prohibit development.

Where the SEQ Regional Plan conflicts with a planning scheme, the SEQ Regional Plan prevails. Local governments within the area of the SEQ Regional Plan must amend their planning schemes to reflect the SEQ Regional Plan.

How do the laws of compensation apply to changing a planning scheme?

The *Integrated Planning Act 1997* provides a procedure for awarding compensation to those owners of an interest in land affected by changes to a planning scheme.

This is commonly referred to as *injurious affection*.

The owner is entitled to reasonable compensation if:

- the value of their interest in land is reduced because of a change to a planning scheme or planning scheme policy affecting land; and
- they have made an application, within 2 years of the change, for development under the superseded planning scheme; and
- the application is refused or only partly approved or is subject to conditions.

The potential for compensation claims may be a barrier to convincing the local government to make the changes to the planning scheme. However, the effect of the requirement to seek development approval within 2 years of the change to the planning scheme will reduce the likely compensation liability compared to a similar change under the previous system. It also improves the local governments' capacity to efficiently manage the level of compensation liability. If your local government is proposing to make major changes to its scheme, ask it how it is intending to deal with the compensation issue. In the event of a development application being made, local governments have the option to apply the old scheme and avoid any compensation claim or to apply the changed scheme and face a compensation liability.

An owner of land is also entitled to compensation where their land under a new planning scheme may only be used for a public purpose (s5.4.3 of *Integrated Planning Act 1997*).

What are the powers of the Minister for Local Government and Planning?

The Minister for Local Government and Planning has broad powers to oversee the operations of local government. Specifically, in order to protect or give effect to a State interest the Minister may direct a local government to:

- Review its planning scheme;
- Make a planning scheme or amend its planning scheme;
- Make or repeal a temporary local planning instrument;
- Make, amend or repeal a planning scheme policy;
- Prepare a consolidated planning scheme.

Where the local government fails to comply with the Minister's direction, the Minister may take the directed action at the local government's cost. In addition, the Minister has the power to direct changes to draft planning scheme either prior to public consultation or prior to its adoption.

How does designation change a planning scheme?

Designation is a process allowing a Minister or a relevant local government to change a planning scheme by designating land within the planning scheme for various items of community infrastructure such as parks, railway lines or hospitals.

The local government may only designate by the process of preparing or making an amendment to a planning scheme and by complying with extra procedural obligations such as notifying the owner of the land.

A Minister follows a different designation process that includes (amongst other things) public notification and opportunities for public submissions. However, the Minister may proceed straight to designation if the Minister is satisfied that there has been adequate environmental assessment and public consultation by, amongst other matters:

- the environmental effects of the community infrastructure or construction of the infrastructure have been assessed under the *State Development and Public Works Organisation Act 1971* Part 4; or
- the impacts of the infrastructure or the construction of the infrastructure have been assessed under Chapter 3.

What can I do about a bad planning?

If you are not happy with the application of the planning scheme or a planning scheme policy to an area you could try to convince the council to amend its planning instruments.

Further information and references

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Your local government

Your local non-government environment council

Kingham F and Environmental Defenders Office (Qld), *Getting Involved in Planning under the Integrated Planning Act 1997 - A Guide for the Community*, 1999.

Relevant laws

Integrated Planning Act 1997
South East Queensland Regional Plan