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The draft SEQ Plan: A Conservation Lawyer's Perspective

Prepared by Jo Bragg, Principal Solicitor, 2 February 2005

1. Legal Framework of the SEQ Plan

Changes to Integrated Planning Act

In 2004 the *Integrated Planning Act* 1997 was amended by an insertion of a new Chapter 2, Part 5A to provide the legal framework for the SEQ Regional Plan ("Plan"). Before the changes, regional planning under that Act consisted of mere advisory reports to the Planning Minister.

Plan must be reflected in local planning schemes

SEQ local governments are each obliged to reflect the final Plan in the local planning scheme¹. Until that occurs, when development applications are assessed, the draft regulatory provisions of the draft Plan and when made the whole final Plan prevail over inconsistent local planning schemes. A practical difficulty is working out where the local planning scheme and the draft or final Plan conflict. When the Minister receives a proposed new local planning scheme reflecting the final Plan from a local government, the Minister has powers to decide if the new proposed local planning scheme needs to go out for public notification and submissions².

Lodging Submissions

The final SEQ Plan might be different to the draft as a result of public submissions and political pressure. Lodge your submission by the due date of 28 February 2005. The Regional Planning Minister Terry Mackenroth is obliged to consider all "properly made submissions"³. (An example submission is attached). The Minister, not the whole Queensland Ministerial Cabinet, has the power to make the final Plan⁴. The Minister receives advice from a committee called the SEQ Regional Coordinating Committee.

Contents of Plan and Regulatory Provisions

The draft and final Plan must contain "key elements" to the satisfaction of the regional planning Minister⁵ and may include regulatory provisions⁶. Key elements relate to desired regional outcomes, a future regional landuse pattern, provision for regional infrastructure to service that land use pattern and key regional environmental, economic and cultural resources and landscape areas⁷. The regulatory provisions, (amongst other things) may state aspects of development that may not occur in stated localities⁸. In other words, those provisions may prohibit development or types of development, whereas the local planning schemes may not (presumably unless when incorporating the Plan). Under the legal framework, the regulatory provisions *may* apply to development applications which were lodged before 27 October 2004

¹ S2.5A.22 (2) IPA

² S2.5A.21 IPA, s2.5A.22 IPA, s10 of Schedule 1 IPA

³ S2.5A.15 IPA for meaning of properly made submission, see notes on example submission

⁴ S2.5A.15(2) IPA

⁵ S2.5A.11 IPA

⁶ S2.5A.12 IPA

⁷ S2.5A.11 IPA

⁸ S2.5A.12 IPA

when the draft regulatory provisions commenced⁹. The draft regulatory provisions however state they do not apply to those applications¹⁰.

Compensation and Review of Plan

The provisions of the SEQ Plan, even when reflected in a local planning scheme, do not give rise to any legal obligation to compensate the relevant land owner¹¹. The final Plan is proposed to be reviewed every 5 years.

2. Commentary on the released Draft SEQ Plan

Ecologically sustainable Carrying Capacity needed

The draft Plan states it is based on current regional forecasts of population growth (total population of 3,709,000 by 2026). While it envisages necessary increased efficiency in the use of water it appears that no comprehensive study of the ecologically sustainable carrying capacity of the region has occurred. The draft Plan is about managing the growth, not questioning the growth.

The draft Plan contains seven parts, A-G, a total of approximately 80 pages, including various maps.

No priorities set between outcomes, nature conservation will lose

Part E, “Regional Growth Management Strategy” is by far the largest part and contains seven desired regional outcomes, each with principles and strategies. Interpretation of outcomes is very important when a local council is assessing an individual development application. The outcomes in the draft Plan cover a range of subject matter, including social, economic, environment, transportation, urban form, infrastructure and indigenous engagement. However the draft Plan sets no priorities between outcomes and the outcomes are expressed in general terms. The regional vision at Part C is very broadly worded and therefore rather unhelpful in any attempt to resolve a conflict between outcomes. Overall, there is uncertainty as to what values will be given priority when a local government is amending its local planning scheme to reflect the final SEQ Plan. Thus for example there is no certainty whatsoever that the nature conservation areas identified on Map 3 page 22 of the draft Plan will be preserved.

When development applications are lodged and decided by Council, or decided on appeal in the Planning and Environment Court, any uncertainty in the planning instruments as to what values should predominate is usually resolved in favour of development. This is partly because major developers, driven by the profit motive, use tax deductible resources to employ consultants and lawyers to assist them to make the best case. Community group submitters and in many cases councils rarely have the same resources to mount the opposing argument.

Need to Protect Nature Conservation Areas using the Regulatory Provisions

Part G of the draft Plan contains the “Draft Regulatory Provisions”. The Draft Regulatory Provisions divide the SEQ area into 5 area designations comprising the “Urban Footprint”, two “Investigation areas”, the “Rural Living Area” and the “Regional Landscape and Rural Production Area”. The Draft Regulatory Provisions are worded to apply outside the Urban Footprint only. Certain material changes of use for urban purposes are made “impact assessable” with additional mandatory criteria to be satisfied for the development to “comply” with the Draft Regulatory Provisions. There are also prohibitions on certain reconfiguration of lots in the Investigation Area and the Regional Landscape and Rural Production Area and for

⁹ S2.5A.12(2)(e)

¹⁰ S6 Draft Regulatory Provisions

¹¹ S 5.44.1(a) IPA

an 18 month period, restrictions on reconfiguration of lots in the Mt Lindsay/North Beaudesert Investigation Area.

Nature conservation areas inside the “Urban Footprint” are vulnerable to development and are not protected from development by the draft Plan. Nature conservation areas outside the “Urban Footprint” are threatened by urban development and this is partly controlled by the Draft Regulatory Provisions. The values of those nature conservation areas are however also frequently threatened by some intensive rural developments and tourist type developments which are not controlled. In fact the area designation of “Regional Landscape and Rural Production Area” in the Draft Regulatory Provisions includes those often conflicting nature conservation and rural values. This is why in the powerful regulatory provisions all nature conservation areas in SEQ need to be separately identified by way of a precise map and expressly protected from development.

3. For More Information

EDO Qld's website <http://www.edo.org.au/edoqld>. (including a more detailed submission)

Queensland Conservation Council's website <http://www.qccqld.org.au>

The Office of Urban Management's website <http://www.oum.qld.gov.au>

4. EDO QLD EXAMPLE PROPERLY MADE SUBMISSION ON DRAFT SEQ PLAN

[# include the name and address of all
submitters]

[# address to the Office of Urban Management and ensure its receipt prior to 28 February 2005]

The Hon. Terry Mackenroth MP
Regional Planning Minister
Draft Regional Plan Feedback
Office of Urban Management
Reply Paid 31
Brisbane Albert Street BC QLD 4002

[draft Plan says you can provide feedback by fax 3235 4563 or email
feedback@oum.qld.gov.au]

Dear Terry,

[# include the grounds of the submission and the facts and circumstances relied on in support of the grounds- the following are examples but include your own personal comments]

1. I generally support your initiative in taking a regional approach to planning to stop urban sprawl. Thank you for taking this long needed initiative. But the content of the draft Plan falls far short of what is needed. I do not agree that we should automatically allow the predicted population growth for the region. First we need a thorough study of the ecological carrying capacity (population level) of the region and public discussion of the impacts of different population levels.
2. Nature conservation areas and riparian areas are poorly protected under this regional plan inside and outside the Urban Footprint and this is just not good enough for the future of this region. This is because despite the desired regional outcome 1 and presence of map 3 there are 6 other competing conflicting outcomes and no priorities are set. This means developers with more resources to mount an argument will usually win out when development applications are considered.
3. So I urge you to change the powerful draft regulatory provisions to specifically identify nature conservation areas and riparian areas by way of a map and to specifically state those areas are not to be developed. Rural uses (e.g. feedlots) or tourist development often threaten nature conservation values so these areas need to be separately identified and treated.
4. I need a chance to make a submission on the amended plan my local government must prepare to reflect the final regional plan. I urge you to require local governments to release draft amended local planning schemes for public comment before they send the draft to you for your approval.

Yours faithfully,

[## include signature of each submitter]

- Cc local councillor, CEO of your local government, Premier Beattie, Minister Desley Boyle, local State MP, local paper

COMMUNITY PLANNING ADVOCACY CENTRE
A SPECIALISED PROGRAM OF THE EDO Qld
Resourcing Community Participation in Planning

Prepared by Brian Feeney, Principal Planner, CPAC

The draft SEQ Regional Plan falls short of best practice with regard to the following:

1. Public participation in choosing preferred option

- best practice (Vancouver & Portland (USA)) includes extensive public participation in deciding the preferred option

2. Promoting ecologically sustainable development (ESD)

- doesn't recognise that the maintenance of ecological processes is fundamental not something to be balanced with economic development and cultural/social well-being

3. Protecting regional nature conservation areas

- internal conflicts in the draft Regional Plan, which affect land with regional nature conservation significance are unresolved, leaving these areas vulnerable

4. Limiting the size of the Urban Footprint

- best practice (Melbourne & Portland (USA)) is that no more than 20 years supply of residential land is earmarked; in SEQ the Urban Footprint and Investigation Areas probably have up to 50 years supply (Minister Mackenroth (28/10/04))