

**The Final SEQ Plan: A Conservation Lawyer's Perspective and the Way Forward for
Environmental Groups**

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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 lodged after 30 June 2005 when the final Plan was made are assessed, the regulatory provisions of the Plan and the whole final Plan prevail over inconsistent local planning schemes. For applications lodged after 26 October 2004 up to and including on 30 June 2005, the draft regulatory provisions and matters under the local planning scheme apply to the assessment². A practical difficulty is working out where the local planning scheme and the 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 submissions³.

What happened to your Submission?

The Regional Planning Minister was obliged to consider all "properly made submissions" but was not legally obliged to follow majority views. The Minister, not the whole Queensland Ministerial Cabinet, made the final Plan⁴. The Minister receives advice from a committee called the SEQ Regional Coordinating Committee.

Contents of Plan and Regulatory Provisions

The 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).

¹ S2.5A.22 (2) IPA

² s7(1) Regulatory Provisions SEQ Regional Plan however note the Minister may exempt some applications if there were in an advanced state of readiness at 26/10/04, see s5(3)(f) Regulatory Provisions SEQ Regional Plan

³ S2.5A.21 IPA, s2.5A.22 IPA, s10 of Schedule 1 IPA

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

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 owner⁹. The final Plan is proposed to be reviewed every 5 years.

2. Commentary on the FINAL SEQ Plan

Ecologically sustainable Carrying Capacity needed

The Plan predicts the SEQ population to be 3.5 to 4 million 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 Plan is about managing the growth, not questioning the growth. The Plan contains eight parts, A-H, a total of approximately 135 pages, including various maps. It is around 50 pages longer than the draft, with the main changes being that there are now 12 regional policies instead of 7 regional outcomes. The Plan compared to the draft Plan has separate regional policies on Natural Environment, Regional Landscape and Natural Resources.

Nature conservation provisions expand, but still no priorities set between regional policies

Part F, “Regional Policies” is by far the largest part section and contains 12 regional policies, each with an outcome, then a number of principles, policies and non-binding notes. The regional policies in the draft Plan cover a range of subject matter, including social, economic, environment, transportation, urban form, infrastructure and indigenous engagement. There is encouragingly now a separate policy on nature conservation. Taken as a whole the Koala Conservation provisions as part of the nature conservation policy manifest a strong intention to protect Koalas in defined circumstances. There is no strong policy to address greenhouse. However the Plan expressly states there is no intended priority between the policies. The overriding intent of the Plan is expressed to be to ensure that the region grows and changes in a sustainable way¹⁰ which sounds good but can mean many things. 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 guarantee that the significant biodiversity areas identified on Map 4 page 29 of the 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.

Nature Conservation Areas still not protected using the Regulatory Provisions

Part H of the Plan contains the “Regulatory Provisions”. The Regulatory Provisions divide the SEQ area into 5 area designations comprising the “Urban Footprint”, an “Investigation area”, the “Mt Lindsay/North Beaudesert Study Area”, the “Rural Living Area” and the “Regional Landscape and Rural Production Area”. The Regulatory Provisions apply outside the Urban

⁹ S 5.44.1(a) IPA

¹⁰ Page 22 SEQ Regional Plan

Footprint only. Certain material changes of use for “urban activities” (a new term with a long definition) and for rural residential purposes are made “impact assessable” with additional mandatory criteria to be satisfied for the development to “comply” with the Regulatory Provisions. The Office of Urban Management has “concurrence” powers for parts of the regulatory provisions. There are also prohibitions on certain subdivisions for the Mt Lindsay/North Beaudesert Study Area, which prohibitions expire on 26 April 2006.

Nature conservation areas inside the “Urban Footprint” are vulnerable to development and are not protected from development by the Plan. Nature conservation areas outside the “Urban Footprint” are threatened by urban activities and this is partly controlled by the Regulatory Provisions. The values of those nature conservation areas are however also frequently threatened by some intensive rural developments and small but impactful tourist developments which are not controlled by the Regulatory Provisions. In fact the area designation of “Regional Landscape and Rural Production Area” in the Regulatory Provisions includes those often conflicting nature conservation and rural values. This is why it is unacceptable that in the powerful regulatory provisions all nature conservation areas in SEQ are not separately identified by way of a precise map and expressly protected from development. We are told by the Office of Urban Management that the reason is that there were no cadastrally based maps identifying nature conservation areas and there was “not time” to prepare a code to identify those areas in lieu of a map.

3. What you can do

Attached overleaf is a table with some deadlines relating to implementation of the Plan or its policies and suggestions on what you can do to help achieve better environmental outcomes.

4. For More Information

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

Queensland Conservation Council's website www.qccqld.org.au

The Office of Urban Management's website www.oum.qld.gov.au

TIMETABLE AND DRAFT RESPONSE - FINAL SEQ REGIONAL PLAN			
1. ACTIONS BY STATE GOVERNMENT OR STATE WITH LOCAL GOVERNMENT			
Action	Deadline	By	Draft Response by Environment Sector
Final Nature Cons. Koala Conservation Plan & Management Program	-	EPA	Respond to EPA on Interim Guidelines
Develop integrated regional biodiversity information system	-	State government	
Seek funds for State agency Data and mapping	Annual budget Process	Departments such as EPA and NRME	Support if agree these are lacking
Amend planning schemes if local governments fail to act	Up to Regional Planning Minister	Regional Planning Minister	As above
Various SEQ Water Initiatives: SEQRW Supply Strategy, SEQRW Quality MA, SEQ Water Recycling Action Plan, Sustainable Housing Policy		State and local govt.	
SEQ Integrated Regional Transport Strategy 1997	Update	State government	
Transport: Green Paper to reduce car dependence	End of 2005	State government	
Review of SEQ Regional Plan	By July 2010	OUM	
2. ACTIONS BY LOCAL GOVERNMENT			
Action	Deadline	By	Draft Response by Environment Sector
Develop local nature conservation strategy	-	Each local govt., unless have one	Advocate to local govt. on preparation & quality
<u>HIGH PRIORITY</u> <u>Notify Office of Urban Management of changes needed to local planning scheme to comply with SEQ Regional Plan and proposed process to implement the changes</u>	<u>90 business days ie by 3 November 2005</u>	<u>18 SEQ Local governments</u>	<u>*Urgently ask local gov't for consultation with your group (or better still public) on changes.</u> <u>*Advocate to local govt. & Office of Urban Management positive parts of SEQ Plan to be added to changes</u>
Local Growth Management Strategies	30 June 2007	All 18 local governments	Get in first & advocate for "appropriate" levels of growth
Local Priority Infrastructure Plans	-	Local government	
Local infrastructure agreements		Local Government	
Integrated Local Transport Plans		Local government	
State of the Region Report (Sustainability Indicators)	By July 2010 and Regularly		Write in to suggest Improvements to Table 3 initial indicators
Infrastructure Plan 2005-2026	April 05 & updated annually in context of State budget		Seek "environmental Infrastructure", Greenhouse impact statement & better environmental assessment of infrastructure.