3 Planning framework

A number of chapters in this report make findings and recommendations about aspects of the planning framework. To give context to these findings, this chapter sets out an overview of the planning framework in Queensland.

The principal piece of planning legislation in Queensland is the *Sustainable Planning Act 2009*.[1] It provides for the regulation of land use planning at the state, regional and local levels through what are known as 'planning instruments'. In essence, land use planning under the *Sustainable Planning Act* comprises two elements: the preparation of planning instruments and the assessment of applications for proposed development against the standards set out in those instruments. The Minister responsible for exercising the powers set out in the *Sustainable Planning Act 2009* is the Minister for Local Government.[2]

State planning instruments set out planning rules that apply across Queensland or within a region; local planning instruments set out planning rules that apply to each council area. In the event of any inconsistency, state planning instruments prevail over local planning instruments.[3]

State planning instruments are considered in detail in chapter 4 and local planning instruments in chapter 5.

3.1 State planning instruments

There are four categories of state planning instruments:[4]

- regional plans
- state planning regulatory provisions
- state planning policies
- the standard planning scheme provisions.

3.1.1 Regional plans

For planning purposes, Queensland is divided into a number of regions; examples are far north Queensland and south-east Queensland. Separate regional plans have been prepared for each area. The first regional plan came into effect in 2005.[5]

Regional plans provide the framework for land use and infrastructure planning at a regional level. A regional plan sets out the 'desired regional outcomes' and the policy for achieving those outcomes for a particular region. The plan describes future land uses, provides for adequate infrastructure and nominates the environmental, economic and cultural resources that should be maintained or developed.[6]

For example, the *South East Queensland Regional Plan 2009 – 2031* establishes desired regional outcomes for three categories of land use: 'Urban footprint', 'Rural living area' and 'Regional landscape and rural production area'. The categories relate to the expected level of development that will occur in each; as the names suggest, land in the 'urban footprint' is designated for urban development, 'rural living areas' for rural-residential development, and 'regional landscape and rural production area' for non-urban uses, such as agriculture and conservation.

Regional plans also identify growth centres, called 'regional activity centres': areas where growth is encouraged. For example, Goodna is marked as a major regional activity centre in the *South East Queensland Regional Plan 2009 – 2031*.[7] Regional plans are discussed in more detail in section 4.4.

Local planning instruments must be amended to reflect a regional plan.[8] In the absence of that amendment, development applications must be assessed against the regional plan[9] as well as the local planning instrument.

3.1.2 State planning regulatory provisions

A state planning regulatory provision is a type of planning instrument that the Minister may make,[10] for purposes identified in the *Sustainable Planning Act*, in relation to any area in Queensland.[11] State planning regulatory provisions can be used, among other things, to implement regional plans.[12] In that case, the state planning regulatory provision will contain the operative provisions of the regional plan setting out the rules that regulate how the regional plan is implemented in practice. It might, for example, prohibit the making of certain development applications, such as an application for urban development outside of the urban footprint.

3.1.3 State planning policies

State planning policies are planning instruments that are made to protect and regulate matters known as 'state interests'.

A 'state interest' is defined by the *Sustainable Planning Act 2009* as 'an interest that the Minister considers affects an economic or environmental interest of the State or a part of the State, including sustainable development; or an interest that the Minister considers affects the interest of ensuring there is an efficient, effective and accountable planning and development assessment system'.[13] Examples of state interests include koala conservation, management of acid sulfate soils, coastal management and the management of good quality agricultural land.

State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* is the state planning instrument most relevant to flood. It was made under the now-repealed *Integrated Planning Act 1997*, and continues as a state planning policy under the *Sustainable Planning Act 2009*.[14]

Councils should ensure their planning schemes reflect state planning policies. If a planning scheme does not reflect a state planning policy, the state planning policy will apply in assessing development applications,[15] together with the criteria in the planning scheme.

3.1.4 Standard planning scheme provisions

The standard planning scheme provisions, known as the 'Queensland Planning Provisions', are made by the Minister for Local Government. They act as template planning scheme provisions and are intended to provide a consistent structure for all planning schemes across Queensland. To that end, the Queensland Planning Provisions provide standardised definitions, zones, overlays, and development assessment codes.

More detailed information about the Queensland Planning Provisions is in section 4.3.

3.2 Local planning instruments

Local planning instruments regulate land use at the council level and include:[16]

- planning schemes
- planning scheme policies
- temporary local planning instruments.

Local planning instruments are considered in more detail in chapter 5.

3.2.1 Planning schemes

The planning scheme is the principal planning instrument for regulating development in Queensland. Planning schemes regulate which development must be assessed before it can be undertaken, the type of assessment required and the criteria used in an assessment.[17]

The process for making a planning scheme is set out in the *Sustainable Planning Act 2009* and the Statutory Guideline 01/12 *Making and amending local planning instruments*.[18]

The *Sustainable Planning Act* contains a list of matters that a planning scheme must address in order to provide an integrated planning policy for a council region.[19] However, flooding considerations are not included (or at least not expressly) in this list. When drafting planning schemes, councils must consider the 'core matters' listed in the Act: land use and development, infrastructure and valuable features.[20] Again, they do not include any explicit requirement to consider flooding. The Queensland Government Planner suggested, in evidence before the Commission, that flooding might fall within the term 'valuable feature'[21] (as concerning 'resources or areas … of ecological significance'), but that seems a rather tenuous connection. It might be argued, however, that flooding is a development constraint and thus part of the core matter of 'land use and development'.

If there is an inconsistency between a regional plan and a planning scheme (or another planning instrument), the regional plan prevails.[22] Similarly, if there is an inconsistency between a state planning policy and a planning scheme (or another local planning instrument), the state planning policy prevails.[23]

A planning scheme regulates land use and development primarily through a system of zones, often represented as different areas on a map. Land is allocated a zone (such as a residential zone) in the planning scheme. Zoning is the principal means by which planning schemes establish the type of assessment which a development application should undergo: different rules apply to each zone. Overlay maps are also included in planning schemes; these maps depict extra information superimposed on zoning maps. The various parts of a planning scheme and how they operate are explained further in section *4.3 Queensland Planning Provisions;* for an explanation of the development assessment process see *3.3.2 Development assessment*.

Planning schemes prepared under the *Sustainable Planning Act* must be consistent with the Queensland Planning Provisions (the standard planning scheme provisions).[24] This requirement does not apply to planning schemes prepared under the repealed *Integrated Planning Act 1997*, which was the legislation in force before the *Sustainable Planning Act*. If the Queensland Planning Provisions are amended, a planning scheme made under the *Sustainable Planning Act 2009* must be amended within 90 days to reflect the change.[25]

In 2008, councils across Queensland were amalgamated in order to create larger local government areas. As a result, most councils are now responsible for the administration of a number of planning schemes. Each of these planning schemes is likely to be underpinned by different information and, as a result, may approach flood differently. For example, Bundaberg Regional Council administers the Kolan Shire Planning Scheme 2006, Isis Shire Planning Scheme 2007, Burnett Shire Planning Scheme 2006 and the Bundaberg Planning Scheme 2004; these planning schemes have varying standards and criteria to address flood and development.

The Queensland Government envisages that with time, and as planning schemes are reviewed,[26] each council will prepare a single planning scheme in accordance with the Queensland Planning Provisions to cover the whole of its area.[27]

3.2.2 Planning scheme policies

A planning scheme policy is a policy made by a council to support its planning scheme.[28]

Substantive planning content should be contained in the planning scheme, not the policy. The planning scheme policy supports the planning scheme by among other things:

- stating the information a council may request as part of a development application, such as a flood study
- containing standards identified in a planning scheme code, for example construction standards or flood hazard standards
- including guidelines or advice about how to satisfy assessment criteria in a planning scheme, including, for example, those relating to flooding.[29]

3.2.3 Temporary local planning instruments

A temporary local planning instrument is a tool councils can use to temporarily suspend and replace part of a planning scheme. It does not amend the planning scheme and will expire after 12 months.[30]

For example, after the 2010/2011 floods, the Department of Local Government and Planning worked with councils to develop temporary local planning instruments to help resolve rebuilding and development issues in flood affected areas.[31]

More detailed information on temporary local planning instruments is found in chapter *5 Local planning instruments*.

3.3 Types of development and development assessment

3.3.1 Categories of development

The *Sustainable Planning Act 2009* provides for a number of categories of development:

- exempt development
- self-assessable development
- development requiring compliance assessment
- assessable development (which is further categorised into code assessable and impact assessable development)
- prohibited development.[32]

The category of development will determine whether the development needs to be assessed before it can be undertaken and how that assessment will occur. Each category of development is explained in more detail below.

Exempt development

Exempt development does not require any development approval to proceed.[33] It is defined in the *Sustainable Planning Act* as being a type of development that is not assessable, self-assessable or prohibited development or development requiring compliance assessment.[34]

The *Sustainable Planning Regulation* lists types of exempt development.[35] The list includes operational work that the Queensland Government is authorised to do under another state law;[36] an example would be the placement of fill for the purposes of building a state highway. This type of exempt development is the subject of further consideration in section *7.6 Placement of fill in the floodplain*.

Self-assessable development

Self-assessable development means the person undertaking the development is responsible for ensuring that it complies with all applicable codes.[37] The council is not involved; it is a self-regulating process.

An example of development that may be self-assessable is the addition of a verandah to a house. This may not require a development approval but may nevertheless need to comply with requirements of a code, such as a requirement that the verandah be constructed no closer than a certain distance from the boundary of the property.

Development requiring compliance assessment

Development requiring compliance assessment does not require a development approval, but must be authorised by a compliance permit[38] granted by a council.[39]

This type of development concerns prescribed (usually simple) types of development in particular areas. The compliance assessment process allows councils to assess technical aspects of a development before it proceeds.

Assessable development

Assessable development is development for which development approval is needed before it can proceed.[40]

In order to obtain a development approval, the applicant submits to council[41] a development application that then must undergo the assessment procedure stipulated in the *Sustainable Planning Act*. This may involve 'code assessment', 'impact assessment', or both.

Code assessment involves a basic assessment of the information contained in the application against the applicable assessment criteria set out in codes in a planning scheme. The application must also be assessed against other matters specified in the Act; including any state planning instruments, such as a state planning policy.[42]

If an applicant meets the criteria in the codes, the council may give a development approval that authorises the development to take place.

Impact assessment applies where it is anticipated that the development may affect the surrounding area in a way that requires closer scrutiny; for example, where an industrial development is proposed in a residential area. The prospective 'impact' on the surrounding area means that the application is subject to more intense consideration. It must be assessed against the whole planning scheme, including not just the codes, but also broader statements of intent and policy in the planning scheme, and against other matters referred to in the *Sustainable Planning Act 2009,*[43] including state planning instruments. Impact assessable development is required to undergo a 'notification stage' (discussed further at 3.3.2).

Prohibited development

Prohibited development is, self-evidently, development that is prohibited: no application can be made to authorise it.[44]

3.3.2 Development assessment

Applications for assessable development are generally, but not always, assessed by the responsible council.[45] In the usual case, the council receives an application seeking approval for a type of development, assesses and decides it. There are up to five stages in the assessment process:

- application stage
- information and referral stage
- notification stage
- decision stage
- compliance stage.

Each of these stages is described in more detail below.

The application stage involves lodging an application with the assessment manager. The application must meet certain legislative requirements in order to progress to subsequent stages.[46] If it does not, the assessment manager must give the applicant a notice that sets out how to fix the application so that it will meet those requirements.

The second stage is the information and referral stage. At this stage the assessment manager requests any further information necessary to complete the assessment. The application is also, at this stage, sent to 'referral agencies' for their assessment. Referral agencies are bodies that have an interest in some aspect of the type of development that is being considered; typically they are Queensland Government departments. For example, the Department of Transport and Main Roads may assess the traffic impacts of a development on a main road.[47] Referral agencies, like the assessment manager, are able to make information requests and assess certain aspects of the application.

The third stage is the notification stage, when a development application is put to the public for comment. The notification stage applies to impact assessable development. By making a submission on a development application, members of the public can secure a right to appeal the assessment manager's decision to the Planning and Environment Court (a specialist court constituted by District Court judges).

In the decision stage, the assessment manager must decide to approve all or part of the application, approve all or part of the application with conditions, or refuse the application.

The compliance stage is only applicable to compliance assessment. Here, the decision is made whether to grant the applicant a compliance permit, the document which authorises the development.

3.3.3 Referral agencies

As explained earlier, referral agencies are bodies that have an interest in certain aspects of development. They include Queensland Government agencies, government owned corporations and certain private sector corporations. For example, vegetation management is overseen by the Department of Environment and Resource Management (DERM); some development applications that involve vegetation management are referred to DERM during the development assessment process for assessment and comment.

There are two types of referral agencies: concurrence agencies and advice agencies.[48]

Concurrence agencies have the power to direct the outcome of an application, by requiring that development conditions be imposed on any approval, or directing that the application be refused.[49] A concurrence agency may also ask an applicant for further information about an application.

Advice agencies provide non-binding advice to an assessment manager.[50] Advice agencies only provide advice in their areas of expertise; for example, the Department of Transport and Main Roads might provide advice on the impact of the development on roads, but would not comment on its impact on the electrical network.

The referral process's purpose is to streamline the development application system by allowing more than one regulatory entity to assess the development application at the one time.[51]

There is currently no referral agency with respect to flood.[52] As a part of its inquiries, the Commission considered whether a 'flood referral agency' should be established.

The Queensland Government Planner's view was that the referral of a development application to an entity set up for the purpose of assessing flooding issues would not be necessary if planning schemes contained adequate controls.[53] The absence of a referral trigger does not prevent a council from seeking advice from a particular Queensland Government department on an ad hoc basis.[54] Queensland Government departments also have an opportunity to consider the planning mechanisms proposed for a scheme as part of the procedure for making a planning scheme. This involvement is addressed in more detail in section *4.1 State Planning Policy 1/03*.

The Commission considers that the introduction of a 'flood referral agency' would place an unnecessary burden on the development process and on Queensland Government resources.[55]

(Endnotes)

1 The *Sustainable Planning Act 2009* replaced the now repealed *Integrated Planning Act 1997*.

2 Schedule, *Administrative Arrangements Order (No.2) 2011*.

3 Sections 19(1), 26(3), 43 and 53, *Sustainable Planning Act 2009*.

4 Section 15, *Sustainable Planning Act 2009*.

5 Exhibit 532, Statement of Gary White, 2 September 2011 [p5: para 25].

6 Section 28, *Sustainable Planning Act 2009*.

7 The State of Queensland (Queensland Department of Infrastructure and Planning), *South East Queensland Regional Plan 2009-2031,* July 2009 [p32].

8 Section 29(2), *Sustainable Planning Act 2009*.

9 Sections 313(2)(b), 314(2)(b) and 316(4)(c)(ii), *Sustainable Planning Act 2009*.

10 Or in some instances, the Minister jointly with another 'eligible' Minister who is responsible for administering the subject matter of the state planning regulatory provision, see: Section 20(3), *Sustainable Planning Act 2009*.

11 Section 20(1), *Sustainable Planning Act 2009*.

12 Sections 16 and 20, *Sustainable Planning Act 2009*.

13 Schedule 3, *Sustainable Planning Act 2009*.

14 Section 773, *Sustainable Planning Act 2009*.

15 Sections 313(2)(d), 314(2)(d) and 316(4)(c)(iii), *Sustainable Planning Act 2009*.

16 Section 77, *Sustainable Planning Act 2009*.

17 These matters are also dealt with, to a much more limited extent, in the *Sustainable Planning Regulation 2009* and in regional plans.

18 Section 117(1), *Sustainable Planning Act 2009*; Section 5, *Sustainable Planning Regulation 2009*.

19 Sections 79, 88 and 89, *Sustainable Planning Act 2009*.

20 Section 89, *Sustainable Planning Act 2009*.

21 Transcript, Gary White, 19 September 2011, Brisbane [p 2746: line 47].

22 Section 26(3), *Sustainable Planning Act 2009*.

23 Section 43, *Sustainable Planning Act 2009*.

24 Section 55, *Sustainable Planning Act 2009*.

25 Section 55(2), *Sustainable Planning Act 2009*; Exhibit 532, Statement of Gary White, 2 September 2011 [p22: para 122].

26 Planning schemes made under the *Integrated Planning Act 1997* are required to be reviewed every 8 years, see: Section 2.2.1, *Integrated Planning Act 1997*. Planning schemes made under the *Sustainable Planning Act 2009* are required to be reviewed every 10 years, see: Section 91, *Sustainable Planning Act 2009*.

27 Section 55, *Sustainable Planning Act 2009*.

28 Section 113, *Sustainable Planning Act 2009*.

29 Section 114, *Sustainable Planning Act 2009*; Exhibit 962, Humphreys Reynolds Perkins Planning Consultants, Steve Reynolds, *Flood Mapping in Queensland Planning Schemes: Recommendations for the Queensland Floods Commission of Inquiry*, 9 November 2011 [p33: para 123].

30 Section 104, *Sustainable Planning Act 2009*.

31 Exhibit 532, Statement of Gary White, 2 September 2011 [p57: para 320].

32 Section 231, *Sustainable Planning Act 2009*.

33 Section 235(1), *Sustainable Planning Act 2009*.

34 Section 231(2), *Sustainable Planning Act 2009*.

35 Schedule 4, *Sustainable Planning Regulation 2009*.

36 Schedule 4, Table 4, 'By or on behalf of a public sector entity', *Sustainable Planning Regulation 2009*.

37 Section 236, *Sustainable Planning Act 2009*.

38 Section 237, *Sustainable Planning Act 2009*.

39 Sometimes developments can be assessed by an agency other than a council, for example a Queensland Government department.

40 Section 238, *Sustainable Planning Act 2009*.

41 Sometimes developments can be assessed by an agency other than a council, for example a Queensland Government department.

42 Section 313, *Sustainable Planning Act 2009*.

43 Section 314, *Sustainable Planning Act 2009*.

44 Section 239, *Sustainable Planning Act 2009*.

45 In some cases the assessment manager is the chief executive of a Queensland Government department which administers relevant legislation: Section 246, *Sustainable Planning Act 2009;* Section 12 and Schedule 6, Column 2, *Sustainable Planning Regulation 2009*.

46 Sections 260 and 261, *Sustainable Planning Act 2009*.

47 By applying the provisions of the *Transport Infrastructure Act 1994* within the jurisdiction of the Department of Transport and Main Roads.

48 Section 252, *Sustainable Planning Act 2009*.

49 Section 285, *Sustainable Planning Act 2009*.

50 Section 291, *Sustainable Planning Act 2009*.

51 Clause 270, Explanatory Notes, *Sustainable Planning Bill 2009*.

52 Schedule 7 of the *Sustainable Planning Regulation 2009* sets out when a referral agency will be triggered to assess a development application within the terms of its jurisdiction.

53 Transcript, Gary White, 7 November 2011, Brisbane [p4624: lines 3-25]; Town Planning experts, Greg Vann and Steve Reynolds agreed with Mr White's view, see: Transcript, Greg Vann, 11 November 2011, Brisbane [p4992: lines 27-50]; Transcript, Steve Reynolds, 11 November 2011, Brisbane [p4963: lines 10-32]; Similarly, town planner, Paul Grech, also says that if a competent flood risk management plan has been prepared and the recommendations of the plan are implemented the relevant agency should have had appropriate input to that process at the planning scheme preparation stage and should not normally have a role at the development application stage, see: Transcript, Paul Grech, 11 November 2011, Brisbane [p4987: lines 18-50].

54 Transcript, Greg Vann, 11 November 2011, Brisbane [p4992: lines 36-47].

55 This view is supported by the Queensland Government Planner, Gary White, and town planner, Steve Reynolds, see: Transcript, Gary White, 7 November 2011, Brisbane [p4624: lines 3-25]; Transcript, Steve Reynolds, 11 November 2011, Brisbane [p4963: lines 10-32].