

AMENDING THE INTEGRATED PLANNING ACT 1997 TO MITIGATE THE IMPACTS OF CLIMATE CHANGE

A submission to the 2006 review of the Integrated Planning Act 1997
from the Wildlife Preservation Society of Queensland.

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RECOMMENDATIONS

The Wildlife Preservation Society of Queensland makes the following recommendations for changes to the Integrated Planning Act and its subordinate legislation in order to mitigate the impacts of climate change upon our native vegetation:

RECOMMENDATION 1:

That "natural environment" be defined in the dictionary (Schedule 10) of the Integrated Planning Act 1997.

The recommended definition of "natural environment" is:

natural environment is ecosystems and their constituent parts (excluding people and communities), ecological processes, natural resources and natural systems.

At the moment there is no definition for natural environment, and many people reading the IPA would assume that the word "environment" in the IPA means the natural environment. Defining natural environment permits the resolution of the problems caused by the IPA's all-encompassing definition of the word "environment".

The definition of "environment" in the Act is as follows:

environment includes—

- (a) ecosystems and their constituent parts including people and communities; and
- (b) all natural and physical resources; and
- (c) those qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony, and sense of community; and
- (d) the social, economic, aesthetic and cultural conditions affecting the matters in paragraphs (a), (b) and (c) or affected by those matters¹

RECOMMENDATION 2:

That s1.2.1 of the Integrated Planning Act 1997 be amended to declare the protection of the natural environment as a Purpose of the Act.

S1.2.1 as it stands at the moment is as follows:

1.2.1 Purpose of Act

The purpose of this Act is to seek to achieve ecological sustainability by—

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

The recommended change to s1.2.1 is the addition of an item (d), as follows:

(d) minimising or avoiding the consequences of development upon the natural environment.

The inclusion of item (d) in the purpose of the Act is essential in order to solve some of the problems caused by later sections of the Act. In particular, s 1.2.2, which requires advancing the Act's purpose.

As presently written, s1.2.1 (purpose of the Act), in conjunction with s1.2.2, suggests that the Act requires sustainable development that is sensitive to the needs of the natural environment, but because the word "environment" has a much broader meaning in the Act than natural environment, and because the IPA definition of "ecological sustainability" is much broader in scope than the phrase suggests, and because managing the effects of development on the environment doesn't necessarily do anything to protect the natural environment anyway, and because s1.2.2 requires advancing the Act's purpose, then improving protection for the natural environment necessitates amending the Purpose of the Act.

¹ *Integrated Planning Act 1997* (Qld), Schedule 10 (Dictionary)

Hence the need for the inclusion of the recommended item (d).

The relevant portion of s1.2.2 as it stands at the moment is as follows:

1.2.2 Advancing Act's purpose

(1) If, under this Act, a function or power is conferred on an entity, the entity must—

(a) unless paragraph (b) or (c) applies—perform the function or exercise the power in a way that advances this Act's purpose; or...

RECOMMENDATION 3:

That s1.2.3 of the Integrated Planning Act 1997 be amended to better protect the natural environment.

S1.2.3 as it stands at the moment is as follows:

1.2.3 What advancing this Act's purpose includes

(1) Advancing this Act's purpose includes—

(a) ensuring decision-making processes—

(i) are accountable, coordinated and efficient; and

(ii) take account of short and long-term environmental effects of development at local, regional, State and wider levels; and

(iii) apply the precautionary principle; and

(iv) seek to provide for equity between present and future generations; and

(b) ensuring the sustainable use of renewable natural resources and the prudent use of non-renewable natural resources; and

(c) avoiding, if practicable, or otherwise lessening, adverse environmental effects of development; and

(d) supplying infrastructure in a coordinated, efficient and orderly way, including encouraging urban development in areas where adequate infrastructure exists or can be provided efficiently; and

(e) applying standards of amenity, conservation, energy, health and safety in the built environment that are cost effective and for the public benefit; and

(f) providing opportunities for community involvement in decision making.

(2) For subsection (1)(a)(iii), 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.

(3) In subsection (1)(b)—

natural resources includes biological, energy, extractive, land and water resources that are important to economic development because of their contribution to employment generation and wealth creation.

On the face of it, this section doesn't seem too bad - but reality is quite different. Because the Act's definition of "environment" is considerably broader than just the natural environment, this section of the Act doesn't do as much to protect the natural environment as one might think. The protection of the natural environment can be improved considerably by specifying two additional items, 1(g) and 1(h).

The recommended change is to insert additional items (1)(g) and (1)(h) as follows:

(g) permitting development only under conditions which will protect the natural environment from degradation.

(h) rejecting development in order to protect the natural environment from degradation.

RECOMMENDATION 4:

That the definition of ecological sustainability in s1.3.3 of the Integrated Planning Act 1997 be redefined.

S 1.3.3 as it stands at the moment is as follows:

1.3.3 Meaning of ecological sustainability

Ecological sustainability is a balance that integrates—

(a) protection of ecological processes and natural systems at local, regional, State and wider levels; and

(b) economic development; and

(c) maintenance of the cultural, economic, physical and social wellbeing of people and communities.

There are a number of problems with s1.3.3, not the least of which arises from the fact that the label does not reflect the meaning. The label implies that only the ecological environment is sustained, but in reality, the ecological environment is, at best, one third of what is protected. The meaning has to be changed so that the label is correct.

And what on earth is "a balance that integrates?" The literature on the IPA contains a spread of views on what the phrase might mean, and states that the Court has never been asked to define it. It's a vague, ambiguous phrase that has no place in legislation. At best one might assume that it grants "protection of ecological processes and natural systems" a one-third weighting in decision making, but a one-third weighting is not enough. Not in the face of rapid

population growth and rapidly onsetting climate change. The natural environment needs a much stronger weighting in the decision making process than that if it is to survive the impacts of population growth and climate change!

The recommended amendments to s1.3.3 are as follows:

1.3.3 Meaning of ecological sustainability

Ecological sustainability encourages economic development and the maintenance of the cultural, economic, physical, and social wellbeing of people and communities subject to the condition that ecological processes and natural systems at local, regional, State and wider levels are protected to the greatest extent possible.

The recommended replacement definition will still encourage economic development and consideration of the needs of people and communities, but whenever the proposed development may adversely affect the natural environment, then the needs of the natural environment will receive appropriate consideration in the decision making process.

And this replacement definition is entirely consistent with s1.3.6, which, as it stands at the moment, is as follows:

1.3.6 Explanation of terms used in ecological sustainability

For section 1.3.3—

(a) ecological processes and natural systems are protected if—

(i) the life supporting capacities of air, ecosystems, soil and water are conserved, enhanced or restored for present and future generations; and

(ii) biological diversity is protected; and

(b) 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; and

(c) the cultural, economic, physical and social wellbeing of people and communities is maintained if—

(i) well-serviced communities with affordable, efficient, safe and sustainable development are created and maintained; and

(ii) areas and places of special aesthetic, architectural, cultural, historic, scientific, social or spiritual significance are conserved or enhanced; and

(iii) integrated networks of pleasant and safe public areas for aesthetic enjoyment and cultural, recreational or social interaction are provided.

RECOMMENDATION 5:

That s2.1.23 of the Integrated Planning Act 1997 be amended to increase local government powers to protect land from development.

S 2.1.23 as it stands at the moment is as follows:

Division 6 Local planning instruments generally

2.1.23 Local planning instruments have force of law

(1) A local planning instrument is a statutory instrument under the *Statutory Instruments Act 1992* and has the force of law.

(2) A local planning instrument may not prohibit development on, or the use of, premises.

(3) A planning scheme or a temporary local planning instrument can regulate a use of premises, but only—

(a) by applying to the use a code identified in the planning scheme or temporary local planning instrument; and

(b) if—

(i) the use is a natural and ordinary consequence of making a material change of use of the premises happening after the code took effect; and

(ii) the making of the material change of use is assessable or self-assessable development.

(4) A planning scheme policy may only do 1 or more of the following—

(a) state information a local government may request for a development application;

(b) state the consultation the local government may carry out under section 3.2.5;

(c) state actions a local government may take to support the process for making or amending its planning scheme;

(d) contain standards identified in a code;

(e) include guidelines or advice about satisfying assessment criteria in the planning scheme.

(5) Subsections (2) to (4) apply despite subsection (1).

The problem areas in s 2.1.23 are as follows:

- Item (2) prevents Councils from prohibiting development on environmentally valuable land, which makes protection of that land extremely difficult for them, if not impossible.
- Item (3)(b)(ii) effectively prevents Council regulating the use of premises covered in native vegetation because

operational works in urban areas, which is the category of works which covers vegetation clearing, is not currently assessable development unless the vegetation is classified as "endangered".

- Item (4) prevents Councils using policy to protect environmentally valuable land from development - and they need all the tools for protecting environmentally valuable land that they can get!

The recommended changes to s2.1.23 are as follows:

- delete item (2)
- change item (3)(b)(ii) to:
*(ii) (a) the making of the material change of use is assessable or self-assessable development; or
(b) the making of the material change of use requires operational works.*
- adding a (4)(f) as follows:
(f) specify requirements which will help protect the natural environment

RECOMMENDATION 6:

That s 3.1.6 of the Integrated Planning Act 1997 and all sections of the Act and the Regulations that relate specifically to s 3.1.6 be deleted.

Section 3.1.6 as it stands at the moment is as follows:

3.1.6 Preliminary approval may override a local planning instrument

(1) This section applies if—

(a) an applicant applies for a preliminary approval; and

(b) part of the application states the way in which the applicant seeks the approval to vary the effect of any local planning instrument for the land.

It is recommended that s 3.1.6 be deleted, because it provides a way to get development approval contrary to the provisions of a local planning instrument - which can only mean increased leniency for the development. And in all likelihood, the obstacle planning instrument has the objective of protecting the natural environment, which means that increased leniency means increased damage to the natural environment.

And for the very same reasons, it is recommended that the sections that become irrelevant once s 3.1.6 is deleted should also be deleted from the Act and the Regulations. For example, s3.5.5a, s3.5.11(5), and s3.5.14a of the Act..

RECOMMENDATION 7:

That s 3.5.21 item (6) (a) of the Integrated Planning Act 1997 be amended to reduce the currency period from 4 years to 2 years.

At the moment, the currency period for a development application that involves the clearing of native vegetation is four years. Reducing it to two years will have the effect of limiting the loss of native vegetation through development for which a development approval pre-existed at the time of enactment of the amending legislation.

It is recommended that s3.5.21 item (6) (a) of the Integrated Planning Act 1997 be amended by substituting "2 years" for "4 years".

Section 3.5.21 as it stands at the moment is as follows:

3.5.21 When approval lapses

(1) The development approval for the application lapses at the end of the currency period for the approval unless—

(a) for development that is a material change of use—the change of use happens before the end of the currency period; or

(b) for a development permit that is reconfiguring a lot—the plan mentioned in section 3.7.2 for the reconfiguration of the lot is given to the local government for its approval before the end of the currency period; or

(c) for development not mentioned in paragraphs (a) and

(b)—development under the approval substantially starts before the end of the currency period.

(3) To the extent the approval is for development other than a material change of use, the currency period is, if the application was not a development application (superseded planning scheme)—

(a) the 2 years starting the day the approval takes effect; or

(b) if the approval states or implies a time for the approval to lapse—the period from the day the approval takes effect until the stated or implied time.

(6) Despite subsections (2) to (5), to the extent the approval is for development that is reconfiguring a lot and the reconfiguration requires operational works, the currency period is—

(a) the 4 years starting the day the approval takes effect; or

(b) if the approval states or implies a time for the approval to lapse—the period from the day the approval takes effect until the stated or implied time.

RECOMMENDATION 8:

That s3.5.23 of the Integrated Planning Act 1997 be amended to prohibit the extension of the currency period for any development application to the extent that that development application involves operational works.

Preventing the extension of the currency period will limit the loss of native vegetation from existing development approvals. There are very few options available for limiting the loss of native vegetation from existing development approvals, because the IPA is founded on the principle that once approval is granted, approval can not be withdrawn - but there is no moral obligation upon the government to permit vegetation clearing to occur in the event that the developer has not proceeded with the development prior to lapse of the development approval. Denying an application to extend currency is thus one of very few means available to limit vegetation loss from pre-existing development approvals.

Section 3.5.23 as it stands now is as follows:

3.5.23 Deciding request to extend currency period

- (1) If there was no concurrence agency, the assessment manager must approve or refuse the extension within 30 business days after receiving the request.
- (2) If there was a concurrence agency, the assessment manager—
 - (a) must not approve or refuse the extension until at least 20 business days after receiving the request; but
 - (b) must approve or refuse the extension within 30 business days after receiving the request.
- (3) The assessment manager and the person making the request may agree to extend the period within which the assessment manager must decide the request.
- (4) A concurrence agency given a notice under section 3.5.22(1)(a) may give the assessment manager a written notice advising—
 - (a) it has no objection to the extension being approved; or
 - (b) it objects to the extension being approved and give reasons for the objection.
- (5) If the assessment manager does not receive a written notice within 20 business days after the day the request was received by the assessment manager, the assessment manager must decide the request as if the concurrence agency had no objection to the request.
- (6) Despite subsection (5), if the development approval was subject to a concurrence agency condition about the currency period, the assessment manager must not approve the request unless the concurrence agency advises it has no objection to the extension being approved.
- (7) If the assessment manager receives a written notice from a concurrence agency within 20 business days after the day the request was received by the assessment manager, the assessment manager must have regard to the notice when deciding the request.
- (8) The assessment manager may make a decision under this section even if the development approval was granted by the court.
- (9) Despite section 3.5.21, the development approval does not lapse until the assessment manager decides the request.
- (10) After deciding the request, the assessment manager must give written notice of the decision to the person asking for the extension and any concurrence agency that gave the assessment manager a notice under subsection (4).

The recommended amendment is the addition of the following as a new and additional item (11):

(11) In spite of subsections 1 through 10, if the development approval was for operational works involving vegetation clearing, the request to extend the currency period must be refused.

RECOMMENDATION 9:

That s 3.5.30 of the Integrated Planning Act 1997 be amended to redefine conditions that may be applied to a development approval.

S 3.5.30 as it stands now is as follows:

3.5.30 Conditions must be relevant or reasonable

- (1) A condition must—
 - (a) be relevant to, but not an unreasonable imposition on, the development or use of premises as a consequence of the development; or
 - (b) be reasonably required in respect of the development or use of premises as a consequence of the development.
- (2) Subsection (1) applies despite the laws that are administered by, and the policies that are reasonably identifiable as policies applied by, an assessment manager or concurrence agency.

This section seriously limits the protection that an assessment manager or concurrence agency can provide for environmentally-valuable land, and environmentally valuable land needs all the protection that it can get.

The recommended amendments to s3.5.30 are as follows:

- delete the words ", but not an unreasonable imposition on," from item (1)(a) because what is "unreasonable" is entirely subjective, and what is reasonable to one person (or even the Court) is very likely totally unreasonable to another.
- delete Item (2), because there should be no exception to the laws and policies.

RECOMMENDATION 10:

That s3.5.31 of the Integrated Planning Act 1997 be amended to allow any condition at all to be imposed on a development approval.

S3.5.31 as it stands now is as follows:

3.5.31 Conditions generally

(1) A condition may—

- (a) place a limit on how long a lawful use may continue or works may remain in place; or
- (b) state a development may not start until other development permits, for development on the same premises, have been given or other development on the same premises (including development not covered by the development application) has been substantially started or completed; or
- (c) require development, or an aspect of development, to be completed within a particular time and require the payment of security under an agreement under section 3.5.34 73 to support the condition.

There should be no limit upon the conditions that may be imposed on a development approval, because conditions may make the difference between a development damaging the natural environment and not damaging the natural environment.

Accordingly, it is recommended that an item (d) be added to s3.5.31 as follows:

(d) specify requirements that are directed towards the protection of the natural environment.

RECOMMENDATION 11:

That additional limitations on compensation under ss 5.4.2 and 5.4.3 be added to s 5.4.4.

It is recommended that s 5.4.4 be amended from:

5.4.4 Limitations on compensation under ss 5.4.2 and 5.4.3

(1) Despite sections 5.4.2 and 5.4.3, compensation is not payable if the change—

- (a) has the same effect as another statutory instrument, in respect of which compensation is not payable; or
- (b) is about a type of development that, before the coming into effect of this Act, would normally have been dealt with under a local law, including, for example, the filling or drainage of land or the clearing of vegetation; or
- (c) is about the relationships between, the location of, or the physical characteristics of buildings, works or lots, but the yield achievable is substantially the same as it would have been before the change; or
- (d) is about a designation made under chapter 2, part 6; or
- (e) is about the matters comprising a priority infrastructure plan; or
- (g) removes or changes an item of infrastructure shown in the scheme; or
- (h) affects development that, had it happened under the superseded planning scheme—
 - (i) would have led to significant risk to persons or property from natural processes (including flooding, land slippage or erosion) and the risk could not have been significantly reduced by conditions attached to a development approval; or
 - (ii) would have caused serious environmental harm, as defined in the Environmental Protection Act 1994, section 17, 128 and the harm could not have been significantly reduced by conditions attached to a development approval.

(2) For subsection (1)(c), yield for residential building work is substantially the same if—

- (a) the proposed residential building has a gross floor area of not more than 2000m²; and
- (b) the gross floor area of the proposed residential building is reduced by not more than 15%.

(3) Also, compensation is not payable—

- (a) for a matter under this part if compensation has already been paid for the matter to a previous owner of the interest in land; or
- (b) for anything done in contravention of this Act; or
- (c) if infrastructure shown in a planning scheme is not supplied, or supplied to a different standard, or supplied at a different time than the time stated in the planning scheme.

(4) If a matter for which compensation is payable under this part is also a matter for which compensation is payable under another Act, the claim for the compensation must be made under the other Act.

(5) In this section—

gross floor area means the sum of the floor areas (inclusive of all walls, columns and balconies, whether roofed or not) of all stories of every building located on a site, excluding the areas (if any) used for building

services, a ground floor public lobby, a public mall in a shopping centre, and areas associated with the parking, loading and manoeuvring of motor vehicles.

yield means—

(a) for buildings and works—the gross floor area, or density of buildings or persons, or plot ratio, achievable for premises; and

(b) for reconfiguration—the number of lots in a given area of land.

to:

5.4.4 Limitations on compensation under ss 5.4.2 and 5.4.3

(1) Despite sections 5.4.2 and 5.4.3, compensation is not payable if the change—

(a) has the same effect as another statutory instrument, in respect of which compensation is not payable; or

(b) is about a type of development that, before the coming into effect of this Act, would normally have been dealt with under a local law, including, for example, the filling or drainage of land or the clearing of vegetation;

(c) is about the relationships between, the location of, or the physical characteristics of buildings, works or lots, but the yield achievable is substantially the same as it would have been before the change; or

(d) is about a designation made under chapter 2, part 6; or

(e) is about the matters comprising a priority infrastructure plan; or

(g) removes or changes an item of infrastructure shown in the scheme; or

(h) affects development that—

(i) would have led to significant risk to persons or property from natural processes (including flooding, land slippage or erosion) and the risk could not have been significantly reduced by conditions attached to a development approval; or

(ii) would have caused serious environmental harm, as defined in the Environmental Protection Act 1994, section 17, 128 and the harm could not have been significantly reduced by conditions attached to a development approval.

(i) is declared by the Council to have been done in order to protect ecological processes and natural systems in accordance with s1.3.6 of this Act.

(j) is declared by the Council to have been done in order to protect flora and/ or fauna which are protected wildlife under s71 of the Nature Conservation Act 1992.

(k) is declared by the Council to have been done for the purpose of vegetation management as defined in s9 of the Vegetation Management Act 199.

(2) For subsection (1)(c), yield for residential building work is substantially the same if—

(a) the proposed residential building has a gross floor area of not more than 2000m²; and

(b) the gross floor area of the proposed residential building is reduced by not more than 15%.

(3) Also, compensation is not payable—

(a) for a matter under this part if compensation has already been paid for the matter to a previous owner of the interest in land; or

(b) for anything done in contravention of this Act; or

(c) if infrastructure shown in a planning scheme is not supplied, or supplied to a different standard, or supplied at a different time than the time stated in the planning scheme.

(4) If a matter for which compensation is payable under this part is also a matter for which compensation is payable under another Act, the claim for the compensation must be made under the other Act.

(5) In this section—

gross floor area means the sum of the floor areas (inclusive of all walls, columns and balconies, whether roofed or not) of all stories of every building located on a site, excluding the areas (if any) used for building services, a ground floor public lobby, a public mall in a shopping centre, and areas associated with the parking, loading and manoeuvring of motor vehicles.

yield means—

(a) for buildings and works—the gross floor area, or density of buildings or persons, or plot ratio, achievable for premises; and

(b) for reconfiguration—the number of lots in a given area of land.

by amending item 1(h) and adding items 1(i), 1(j), and 1(k).

The recommended amendments are designed to disallow from compensation Council actions which may, in some instances, be disallowed under item 1(b) anyway. So the basic principle behind the proposed amendments is already evident in this section. The difference between 1(b) and the recommended amendments is that the recommended amendments will cover every Council, not just those which had a relevant local law; and they will provide much broader protection for the natural environment than many Councils ever had local laws providing.

The case for making these amendments is as follows:

Item 1(h):

The reasons for disallowing compensation under section 1(h) are valid under any planning scheme, and it should

make no difference which planning scheme is considered. Accordingly, it is recommended that the condition "had it happened under the superseded planning scheme" be deleted from item 1(h).

Deleting this condition from item 1(h) will have the effect of disallowing compensation if the development would have caused serious environmental harm, which is defined in s17 of the Environmental Protection Act 1994 as follows:

17 Serious environmental harm

(1) Serious environmental harm is environmental harm (other than environmental nuisance)—

(a) that causes actual or potential harm to environmental values that is irreversible, of a high impact or widespread; or

(b) that causes actual or potential harm to environmental values of an area of high conservation value or special significance; or

(c) that causes actual or potential loss or damage to property of an amount of, or amounts totalling, more than the threshold amount; or

(d) that results in costs of more than the threshold amount being incurred in taking appropriate action to—

(i) prevent or minimise the harm; and

(ii) rehabilitate or restore the environment to its condition before the harm.

(2) In this section—

threshold amount means \$50000 or, if a greater amount is prescribed by regulation, the greater amount.

Item 1(i):

It is recommended that a new item, item 1(i), be added as follows:

(i) is declared by the Council to have been done in order to protect ecological processes and natural systems in accordance with s1.3.6 of this Act.

Under s1.2.1 of the Act, the purpose of the Act is to seek to achieve ecological sustainability. Under s1.3.3, a key component of ecological sustainability is the "protection of ecological processes and natural systems at local, regional, State and wider levels."

The insertion of item 1(i), as recommended, is consistent with s1.2.1 and s1.3.3 of the Act, and has the effect of protecting Councils from compensation claims if they reject or impose conditions on an application in order to protect ecological processes and natural systems.

Ecological sustainability is defined in s1.3.6. The relevant portion of s1.3.6 is as follows:

1.3.6 Explanation of terms used in ecological sustainability

For section 1.3.3—

(a) ecological processes and natural systems are protected if—

(i) the life supporting capacities of air, ecosystems, soil and water are conserved, enhanced or restored for present and future generations; and

(ii) biological diversity is protected

Item 1(j):

It is recommended that a new item, item 1(j), be added as follows:

(j) is declared by the Council to have been done in order to protect flora and/ or fauna which are protected wildlife under s71 of the Nature Conservation Act 1992.

The Nature Conservation Act 1992 protects most flora and fauna, yet the Integrated Planning Act 1997 presently offers no protection from compensation claims to Councils if they make a planning decision that will protect the habitat of flora and fauna that are granted protection under the Nature Conservation Act 1992. This amendment will remedy that situation.

Section 71 of the Nature Conservation Act 1992 is as follows:

Part 5 Wildlife and habitat conservation

Division 1 Basic concepts

71 Classes of wildlife to which Act applies

The classes of wildlife to which this Act applies are—

(a) protected wildlife, that is—

(i) extinct in the wild wildlife; and

(ii) endangered wildlife; and

(iii) vulnerable wildlife; and

- (iv) rare wildlife; and
- (v) near threatened wildlife; and
- (vi) least concern wildlife; and
- (b) international wildlife; and
- (c) prohibited wildlife.

Item 1(k):

It is recommended that a new item, item 1(k), be added as follows:

(k) is declared by the Council to have been done for the purpose of vegetation management as defined in s9 of the Vegetation Management Act 1999.

The purpose of the Vegetation Management Act 1999 is to regulate the clearing of vegetation. Vegetation management is defined in s9 of that Act as the management of vegetation in a way that achieves the purpose of the Act. Yet Councils are presently not protected from compensation claims if they make planning decisions for the purpose of vegetation management. This amendment will remedy that situation.

Section 9 of the Vegetation Management Act 1999 is as follows:

9 What is vegetation management

- (1) Vegetation management is the management of vegetation in a way that achieves the purpose of this Act.
- (2) For subsection (1), the management of vegetation may include, for example, the following—
 - (a) the retention or maintenance of vegetation to—
 - (i) avoid land degradation; or
 - (ii) maintain or increase biodiversity; or
 - (iii) maintain ecological processes;
 - (b) the retention of riparian vegetation;
 - (c) the retention of vegetation clumps or corridors.

The purpose of the Vegetation Management Act 1999, as defined in s3 of that Act, is as follows:

3 Purpose of Act

- (1) The purpose of this Act is to regulate the clearing of vegetation in a way that—
 - (a) conserves the following—
 - (i) remnant endangered regional ecosystems;
 - (ii) remnant of concern regional ecosystems;
 - (iii) remnant not of concern regional ecosystems; and
 - (b) conserves vegetation in declared areas;¹ and
 - (c) ensures the clearing does not cause land degradation; and
 - (d) prevents the loss of biodiversity; and
 - (e) maintains ecological processes; and
 - (f) manages the environmental effects of the clearing to achieve the matters mentioned in paragraphs (a) to (e);
 and
 - (g) reduces greenhouse gas emissions.
- (2) The purpose is achieved mainly by providing for—
 - (a) codes for the Planning Act relating to the clearing of vegetation that are applicable codes for the assessment of vegetation clearing applications under IDAS; and
 - (b) the enforcement of vegetation clearing provisions; and
 - (c) declared areas; and
 - (d) a framework for decision making that, in achieving this Act's purpose in relation to subsection (1)(a) to (e), applies the precautionary 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; and
 - (e) the phasing out of broadscale clearing of remnant vegetation by 31 December 2006.
- (3) In this section—
 - environment includes—
 - (a) ecosystems and their constituent parts including people and communities; and
 - (b) all natural and physical resources; and
 - (c) those qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community; and
 - (d) the social, economic, aesthetic and cultural conditions affecting the matters in paragraphs (a) to (c) or affected by those matters.

RECOMMENDATION 12:

That the time limit for claiming compensation under s5.4.6(b) be reduced to match that in s5.4.6(a).

Six months is sufficient time to claim compensation regardless of whether the grounds are 5.4.2 or 5.4.3.

It is therefore recommended that the compensation period specified in s5.4.6(b) be reduced from 2 years to 6 months, to match the compensation period that applies under s5.4.6(a).

Section 5.4.6 as it stands at the moment is as follows:

5.4.6 Time limits for claiming compensation

A claim for compensation under this part must be given to the local government—

- (a) if the entitlement to claim the compensation is under section 5.4.2—within 6 months after the day the application mentioned in section 5.4.2(b) is refused or approved in part, or subject to conditions or approved both in part and subject to conditions; or
- (b) if the entitlement to claim the compensation is under section 5.4.3—within 2 years after the day the change came into effect; or
- (c) if the entitlement to claim the compensation is under section 5.4.5—at any time after the day the certificate is given.

Sections 5.4.2 is as follows:

5.4.2 Compensation for reduced value of interest in land

An owner of an interest in land is entitled to be paid reasonable compensation by a local government if—

- (a) a change reduces the value of the interest; and
- (b) a development application (superseded planning scheme) for a development permit relating to the land has been made; and
- (c) the application is assessed having regard to the planning scheme and planning scheme policies in effect when the application was made; and
- (d) the assessment manager, or, on appeal, the court—
 - (i) refuses the application; or
 - (ii) approves the application in part or subject to conditions or both in part and subject to conditions.

Sections 5.4.3 is as follows:

5.4.3 Compensation for interest in land being changed to public purpose

An owner of an interest in land is entitled to be paid reasonable compensation by a local government if because of a change, the only purpose for which the land could be used (other than the purpose for which it was lawfully being used when the change was made) is for a public purpose.

RECOMMENDATION 13:

That s 5.6.3 of the Integrated Planning Act 1997 be amended to remove the exemption for public housing that makes operational works (which includes vegetation clearing) for public housing exempt development.

Even public housing should not be exempt development if it includes Operational Works. At least that part of it which is Operational Works should be assessable development.

S 5.6.3 as it stands now is as follows:

Part 6 Public housing

5.6.3 How IDAS applies to development under pt 6

Development to which this part applies is, to the extent the development is self-assessable development or assessable development under a planning scheme, exempt development.

The recommended amendment is as follows:

Part 6 Public housing

5.6.3 How IDAS applies to development under pt 6

Development to which this part applies is, to the extent the development is self-assessable development or assessable development under a planning scheme, exempt development to the extent that the development is not operational works.

RECOMMENDATION 14:

That s 5.8.6 of the Integrated Planning Act 1997 be amended to require the Environmental Protection Agency to prepare all EISs at the expense of the proponent of the development application.

S 5.8.6 as it stands at the moment is as follows:

5.8.6 Preparation of draft EIS

(1) The proponent must prepare a draft EIS and give it to the chief executive together with the fee prescribed under a regulation for administering the remaining EIS process.

There's a fundamental flaw here. Namely, the entity in whose interest it is to have an EIS that gives no cause for criticism of the development is the same entity responsible for preparing the EIS. This is Caesar judging Caesar. There is absolutely no cause to trust the EIS produced when it is produced by the entity with most at stake if the EIS is not favourable to their interests. It is very easy to write an EIS that simply leaves out anything that might be contrary to the interests of the person paying for the EIS to be prepared. And even if the entity responsible for preparing the EIS hires someone else to prepare the EIS on their behalf, there is considerable pressure on the people preparing the EIS to prepare an EIS that pleases the people paying them to prepare it - otherwise they won't be employed to do such work again. It's simply protecting their reputation in the industry. If they get a reputation for writing EISs that result in the project being rejected, then very quickly they'll find nobody hiring them any more to prepare an EIS.

The recommended solution is to have EPA prepare ALL EISs, for a fee that more than covers their expenses in doing so. And it has to be ALL EIS's, otherwise they won't get enough work to provide steady work for their employees who have been engaged to do the EISs. Democracy demands that the public service, in their capacity as instruments of our elected representatives, have a key role in the EIS process. Not just scrutinising the EISs, but actually preparing them, to ensure that they have been prepared to consistent standards without leaving anything out that might be contrary to the interests of the proponent to include.

The recommended amendment to S 5.8.6 is as follows:

5.8.6 Preparation of draft EIS

(1) The proponent must apply for the preparation and evaluation of an EIS by the Environmental Protection Agency for the fee prescribed under a regulation for preparing and evaluating that EIS and for administering the remaining EIS process.

RECOMMENDATION 15:

That s 5.8.8 of the Integrated Planning Act 1997 be amended to ensure that the authors of all submissions on any draft EIS are protected by law from legal action by any person on the grounds of libel, defamation, or damages.

It is recommended that submissions on an EIS should receive legal protection from libel, defamation, and damages suits. In the past that has never been a problem, but Australia is becoming more and more litigious with every passing day, and it is only a matter of time before the risk inhibits responses to draft EISs. Now is the time to anticipate that future problem and amend the Act accordingly.

RECOMMENDATION 16:

That item (g) be deleted from Schedule 8 Table 4 (1A) of the Integrated Planning Act 1997.

Schedule 8 Table 4 is the part of the Act most responsible for the continuing clearing of remnant native vegetation in Queensland, particularly in urban areas. For that reason, it will be examined here in some depth. Schedule 8 of the Act defines what is and is not assessable development, and Table 4 of Schedule 8 defines what is and is not assessable development if the development involves clearing of vegetation on freehold land and indigenous land. (The full definition of operational works is contained in the glossary of this paper, but the important part of it for the purposes of this paper is that it includes "clearing vegetation, including vegetation to which VMA applies".)

It is the exceptions specified in Schedule 8 Table 4 (1A) that allow land clearing in urban areas to happen. But for the exceptions, land clearing in urban areas would be assessable development, and under Schedule 8A, the application would be assessed by Local Government (unless it's only land clearing, in which case it's assessed by NRM). But Schedule 8 Table 4 (1A) exempts it and makes it non-assessable development.

Schedule 8: Assessable Development

Table 4 (1A): Operational works - for clearing native vegetation on freehold land and indigenous land
Operational work that is the clearing of native vegetation on freehold land and indigenous land [is assessable development], unless the clearing is—

- (a) the clearing of vegetation to which VMA does not apply; or
- (b) for a forest practice, other than on indigenous land on which the State owns the trees; or
- (c) to the extent necessary for building on a lot a single residence, and any reasonably associated building or structure, if the building of the residence—
 - (i) is building work for which a development permit for a building development application under the Standard Building Regulation has been issued; or

- (ii) is building work mentioned in part 2, table 1, item 1; or
- (iii) is development to which chapter 5, part 6 a applies; or
- (d) necessary for essential management; or
- (e) in an area shown on a property map of assessable vegetation as a category X area; or
- (f) in an area for which there is no property map of assessable vegetation and the vegetation is not remnant vegetation; or
- (g) for urban purposes in an urban area that is—
 - (i) shown on a property map of assessable vegetation as a category 2 area or a category 3 area; or
 - (ii) if there is no property map of assessable vegetation for the area—a remnant of concern regional ecosystem or a remnant not of concern regional ecosystem; or
- (h) necessary for routine management in an area of the land—
 - (i) shown on a property map of assessable vegetation as a category 3 area; or
 - (ii) for which there is no property map of assessable vegetation and the vegetation is a remnant not of concern regional ecosystem; or
- (i) on indigenous land, gathering, digging or removing forest products for—
 - (i) the purpose of improving the land or for use under the *Local Government (Aboriginal Lands) Act 1978*, section 28; or
 - (ii) use under the *Community Services (Aborigines) Act 1984*, section 175; or
 - (iii) use under the *Community Services (Torres Strait) Act 1984*, section 185; or
- (j) for a specified activity.

(Note that item (c), which exempts the clearing of vegetation for a house site, is not affected by any of the recommendations of this paper.)

The Act defines "specified activity", but, broadly speaking, the label covers activity by government. (It's full definition is contained in the glossary of this paper.) "Category 2", "Category 3", and "category x" are defined in both the Vegetation Management Act 1999 and the Integrated Planning Act 1997, and are crucial to understanding Schedule 8 Table 4, so the definitions of them (and the other categories) are reproduced here.

- category 1* is an area that contains an endangered regional ecosystem.
- category 2* is an area that contains an of concern regional ecosystem.
- category 3* is area that contains an a not of concern regional ecosystem.
- category 4* is an area that has been cleared and does not contain remnant vegetation.
- category X* is an area that has been cleared and contains regrowth vegetation.

So, translated into plain English with the trivial bits discarded, Schedule 8 Table 4 (1A) means that:

Operational work that is the clearing of native vegetation is assessable development unless the clearing is:

- (a) the clearing of vegetation to which VMA does not apply (eg, plantation); or
- (e) land that has been cleared and contains regrowth vegetation; or
- (f) land containing vegetation that is not remnant (ie, original Australian native) vegetation; or
- (g) for urban purposes in an urban area that contains vegetation classified as either of concern or not of concern

("Urban purposes" and "urban area" are precisely defined in the Integrated Planning Act 1997, and their definitions can be found in the glossary of this paper. Broadly speaking, they mean what you would expect them to mean.)

So according to Schedule 8 Table 4 (1A), just when is urban operational work assessable development?

Once you translate it and convert the jargon into plain English, then one discovers that if the development application is for "urban purposes in an urban area", then it is only assessable development if there is no vegetation there anyway (category 4), or if the vegetation there is officially classified as "endangered" (category 1). Otherwise it is "exempt development", which is development that doesn't require assessment of any kind whatsoever!

And if it's exempt development, then there is absolutely no opportunity for any public servant in any part of the Government at any level of Government to reject the application even if they could find a valid reason to do so if given the opportunity - because the clearing of the vegetation can quite legally be done without the developer even having to lodge an application for development approval in order to do it!

So what will be the process once the recommended change (ie, the deletion of item (g)) has been made to Schedule 8 Table 4 (1A) of the Integrated Planning Act 1997? Well, then the Vegetation Management Act 1999 becomes authoritative in the matter. Division 6 Section 21 of that Act modifies the Integrated Planning Act 1997 as it applies to vegetation clearing applications and requires that assessment of the development application comply with the applicable Vegetation Management Act 1999 code. And under most circumstances, the application must be refused.

21 Modifying effect on vegetation clearing applications

(1) This section applies for a vegetation clearing application.

(2) If the chief executive is the assessment manager for the application, a property vegetation management plan is a mandatory requirement in addition to the requirements stated in the Planning Act, section 3.2.1(3)(a).

(3) If the chief executive is a concurrence agency for the application, the applicant must give the chief executive a property vegetation management plan in addition to the things mentioned in section 3.3.3(1) of that Act.

(4) For the aspect of the application relating to the clearing of vegetation—

(a) section 3.5.13 of that Act does not apply; and

(b) the assessment manager's decision must comply with the applicable code.

22A Particular vegetation clearing applications may be assessed

(1) Despite the Planning Act, section 3.2.1, 4 if a vegetation clearing application is not for a relevant purpose under this section—

(a) the application is taken, for the Planning Act, not to be a properly made application; and

(b) the assessment manager must refuse to receive the application.

(2) A vegetation clearing application is for a relevant purpose under this section if the applicant satisfies the chief executive that the development applied for is [basically, for a reasonable purpose]

And thus, native vegetation in urban areas becomes protected simply by deleting one tiny item of Schedule 8 Table 4 (1A) of the Integrated Planning Act 1997.

Accordingly, it is recommended that item (g) be deleted from Schedule 8 Table 4 (1A) of the Integrated Planning Act 1997.

RECOMMENDATION 17:

That Schedule 8 Section 7 item (c) be amended to require referral coordination if the development shares a common boundary with or is within 1km of the boundary of the nominated areas, instead of just 100m.

From the perspective of the natural environment, 100 metres is so close that it might as well be zero. One kilometre (1km) is a much more realistic rule-of-thumb distance to use as a binary measure of impact upon the natural environment. (But in many instances even 1 km is far too close!)

10.2 THE INTEGRATED PLANNING ACT 1997 REGULATIONS

RECOMMENDATION 18:

That the Regulations of the Integrated Planning Act 1997 be amended to require Environmental Impact Statements for all development applications that have the potential to damage the natural environment.

At present the Integrated Planning Act 1997 includes provision for EISs through the IPA Regulations, but at present the Regulations include no mention of EIS at all.

The relevant section of the Integrated Planning Act 1997 is as follows:

Part 8 Environmental impact statements

Division 1 Preliminary

5.8.1 When EIS process applies

This part applies for development prescribed under a regulation, if the development is—

(a) or is proposed to be, the subject of a development application; or

(b) for community infrastructure intended to be carried out on land proposed to be designated for the infrastructure.

EIS's provide for improved environmental protection. *It is recommended that the IPA Regulations be amended to require an EIS whenever there is potential for the natural environment to be damaged.*

RECOMMENDATION 19:

That Schedule 2 Table 3 Item 4 (Acid sulfate soils) of the IPA Regulations be amended to make the chief executive under the Land Act 1994 a concurrence agency instead of an advice agency.

Acid sulfate soil is an environmental nightmare. Development in regions of acid sulfate soil has the potential to cause damage to the natural environment that is so widespread and so severe that it would be nothing short of disastrous, with permanent ill consequences. It is imperative that the chief executive under the Land Act 1994 have the powers of a full concurrence agency, so that his opinion of whether a development should proceed, and the conditions under which it may proceed, can not be disregarded.

10.3 SOUTH EAST QUEENSLAND REGIONAL PLAN 2005-2026

The recommended changes to the Integrated Planning Act 1997 will improve the protection of all native vegetation in Queensland - unless the land falls within the scope of the South East Queensland Regional Plan 2005-2026. Those changes are not sufficient if the urban native vegetation happens to be in South East Queensland.

Accordingly, this paper also addresses the changes necessary to the South East Queensland Regional Plan 2005-2026 that are necessary to protect native vegetation in south east Queensland.

A basic understanding of the role of regional land use categories is essential for understanding the regulatory provisions of the South East Queensland Regional Plan 2005-2026, so that will be very briefly presented first before the recommended changes to the Plan are presented.

Which regional land use category a particular parcel of land lies within defines what development is permitted on it and whether development approval is required before development can proceed.

"Regional land use categories

The Regional Plan allocates all land in SEQ into one of five regional land use categories. These categories provide the spatial context for the Regulatory Provisions of the Regional Plan. The land use categories are shown in Map 2 and are more precisely defined on the Regulatory Maps (at 1:50,000 scale) that form part of the Regional Plan. The regional land use categories are:

- Regional Landscape and Rural Production Area;
- Urban Footprint;
- Rural Living Area;
- Investigation Area; and
- Mt Lindesay/North Beaudesert Study Area."²

RECOMMENDATION 20:

That native vegetation be protected in South East Queensland by amending the South East Queensland Regional Plan 2005-2026 in the manner described in recommendations 20(a), 20(b), 20(c), and 20(d).

In spite of all the wonderful promises to look after the environment that abound in the text of the South East Queensland Regional Plan 2005-2026, an examination of the Part H Regulatory Provisions of the Plan reveals that the real truth is somewhat different. And it is the Regulatory Provisions that determine what the Plan really does and how it really works, so it is the Regulatory Provisions that need to be amended in order to achieve real, meaningful changes in the impact of the Plan upon South East Queensland.

Full implementation of the recommendations of this paper requires no changes to principles, and no changes to policies. No changes are required to any portion of the South East Queensland Regional Plan 2005-2026 outside of the Regulatory Provisions except to a couple of sentences buried deep within the descriptions of each regional land use category that describe what the regulatory provisions actually do for that land use category. Everything else in the Plan is already entirely consistent with the recommended amendments to the Regulatory Provisions.

In fact, because the Plan promises to do far more for the natural environment than the Part H Regulatory Provisions actually permit it to do, making the recommended amendments to the Regulatory Provisions will cause the Plan to actually do what the rest of the Plan says it already does (but doesn't). And that is the reason that so few changes are required to the rest of the Plan in order to accommodate the recommended amendments to the Part H Regulatory Provisions.

Desired Regional Outcome 2, its principle, and its policies are a classic example of how the Plan promises much more than the Part H Regulatory Provisions actually permit the Plan to deliver. According to it, the Plan already does what the recommended amendments to the Part H Regulatory Provisions are designed to achieve, but in reality, Desired Regional Outcome 2 can not be achieved without implementing the recommendations of this paper.

SEQ REGIONAL PLAN 2005-2026

"Desired regional outcome 2

A healthy natural environment supports the region's rich biodiversity, clean air and water; and is sustainably managed to support economic development, outdoor lifestyles and community needs.

Natural environment

2.1 Biodiversity

Principle

Conserve and manage the region 's biodiversity values and maintain supporting ecological processes.

Policies

² *South East Queensland Regional Plan 2005-2026*, Office of Urban Management, Department of Local Government, Planning, Sport and Recreation, Queensland, June 2005, p13.

- 2.1.1 Protect, manage and enhance the region's nature conservation and biodiversity values and supporting ecological processes, including areas of state, regional and local biodiversity significance.
- 2.1.2 Ensure land use planning and development activities within areas of state or regional biodiversity significance respect identified biodiversity values, taking account of existing land use rights.
- 2.1.3 Protect, manage and enhance areas of state, regional and local biodiversity significance in areas outside the Urban Footprint, having regard to the Vegetation Management Act 1999 and existing land use rights.
- 2.1.4 Avoid or mitigate potential adverse impacts in areas of state or regional biodiversity significance inside the Urban Footprint, having regard to the development intent for the land in local government planning schemes and associated planning instruments.
- 2.1.5 Develop and implement local nature conservation strategies, addressing biodiversity values within the regional nature conservation framework.
- 2.1.6 Develop an integrated, accessible regional biodiversity information system and associated guidelines to assist planning and decision making."³

Note that all the changes proposed in recommendation 7 are entirely consistent with Desired Regional Outcome 2, its biodiversity principle, and its policies.

The protection of native vegetation in South East Queensland can not be achieved without amending the Regulatory Provisions of the South East Queensland Regional Plan 2005-2026 to require that all development applications which involve operational works in South East Queensland are assessed, and are code assessed. Recommendations 7(a) to 7(d) inclusive document the changes necessary to the Part H Regulatory Provisions in order to achieve that outcome.

RECOMMENDATION 20(a): Make the following amendment to Part H Regulatory Provisions, Division 2, Provisions affecting planning schemes

It is recommended that item (1) of 3. Urban activities be amended as follows:

from:

- (1) A material change of use of premises for urban activities is assessable development requiring impact assessment to the extent the premises are in the -
 - (a) Regional Landscape and Rural Production Area;
 - (b) Rural Living Area; or
 - (c) Investigation Area; or
 - (d) Mt Lindesay/North Beaudesert Study Area.

to:

- (1) A material change of use of premises for urban activities is assessable development requiring impact assessment to the extent the development does not involve operational works and to the extent the premises are in the -
 - (a) Regional Landscape and Rural Production Area;
 - (b) Rural Living Area; or
 - (c) Investigation Area; or
 - (d) Mt Lindesay/North Beaudesert Study Area.

Note that as this regulation stands now, a material change of use for urban activities is exempt development in the Urban Footprint. (In other words, no development assessment is required whatsoever!) As a result, there is absolutely no protection for native vegetation in the Urban Footprint.

The addition of the operational works condition in the proposed new form of this provision will exclude land requiring clearing of vegetation from the provisions of this regulation. Recommendation 7(b) relies upon that exclusion to require that land requiring clearing of vegetation is assessed, and is code assessed, not impact assessed.

RECOMMENDATION 20(b): Make the following addition to Part H Regulatory Provisions, Division 2, Provisions affecting planning schemes

It is recommended that an item (4) be added to 3. Urban activities as follows:

- (4) A material change of use of premises for urban activities is assessable development requiring code assessment to the extent the development involves operational works.

In conjunction with recommendation 7(a), this recommendation will ensure that applications to clear land containing native vegetation are assessed, and are code assessed, not impact assessed. Code assessment will ensure that the

³ South East Queensland Regional Plan 2005-2026, Office of Urban Management, Department of Local Government, Planning, Sport and Recreation, Queensland, June 2005, p26.

assessment process takes full account of the requirements and provisions of the Vegetation Management Act 1999, whereas impact assessment is much broader and requires so many other factors to be taken into account in deciding whether or not to approve the application that it offers negligible protection for native vegetation.

RECOMMENDATION 20(c): Make the following amendment to Part H Regulatory Provisions, Division 2, Provisions affecting planning schemes

It is recommended that item (1) of 4. Rural residential purposes be amended as follows:

from:

- (1) A material change of use of premises for rural residential purposes is assessable development requiring impact assessment to the extent -*
 - (a) the premises are not zoned for rural residential purposes; and*
 - (b) the premises are in the -*
 - (i) Regional Landscape and Rural Production Area; or*
 - (ii) Investigation Area; or*
 - (iii) Mt Lindesay/North Beaudesert Study Area.*

to:

- (1) A material change of use of premises for rural residential purposes is assessable development requiring impact assessment to the extent -*
 - (a) the premises are not zoned for rural residential purposes; and*
 - (b) the premises are in the -*
 - (i) Regional Landscape and Rural Production Area; or*
 - (ii) Investigation Area; or*
 - (iii) Mt Lindesay/North Beaudesert Study Area.*
 - (c) the development does not involve operational works.*

Note that as this regulation stands now, a material change of use for rural residential purposes is impact assessable development in all areas except the Urban Footprint. Impact assessment offers inferior protection to native vegetation than code assessment.

The addition of the operational works condition in the proposed new form of this provision will exclude land requiring clearing of vegetation from the provisions of this regulation. Recommendation 7(d) relies upon that exclusion to require that land requiring clearing of vegetation is assessed, and is code assessed, not impact assessed.

RECOMMENDATION 20(d): Make the following addition to Part H Regulatory Provisions, Division 2, Provisions affecting planning schemes

It is recommended that an item (3) be added to 4. Rural residential purposes as follows:

- (3) A material change of use of premises for rural residential purposes is assessable development requiring code assessment to the extent the development involves operational works.*

In conjunction with recommendation 7(c), this recommendation will ensure that applications to clear land containing native vegetation are assessed, and are code assessed, not impact assessed. Code assessment will ensure that the assessment process takes full account of the requirements and provisions of the Vegetation Management Act 1999, whereas impact assessment is much broader and requires so many other factors to be taken into account in deciding whether or not to approve the application that it offers negligible protection for native vegetation.

RECOMMENDATION 21:

That the maps associated with the South East Queensland Regional Plan be made available on paper at cost, and digitally free of charge.

When the draft South East Queensland Regional Plan was released for consultation, assessment of the impact of it was made extremely difficult by the fact that the relevant maps for it were only available on paper, and only available at considerable cost.

That situation has not changed. Those maps are still only available at a price, and for a considerable price at that. For effective public scrutiny, they must be available free of charge, and available digitally in a form suitable for examination in GIS software. (eg, as ESRI .shp shapefiles and georeferenced raster images.) Anything less than that is an inhibition of the public's democratic right to scrutinise the actions of their elected representatives and their employees.

Accordingly, it is recommended that the maps associated with the South East Queensland Regional Plan be made available on paper at cost, and be made available digitally free of charge.