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## 6 Satellite planning systems

Most development in Queensland is regulated by the *Sustainable Planning Act 2009*. However, there is a number of ‘satellite’ planning systems, created and regulated by separate legislation, and operating independently of the *Sustainable Planning Act*.

In particular, the Commission has considered evidence about the planning and development assessment systems governed by the *Urban Land Development Authority Act 2007*, the *South Bank Corporation Act 1989* and the *State Development and Public Works Organisation Act 1971*.

### 6.1 Urban Land Development Authority Act 2007

The *Urban Land Development Authority Act* was introduced as part of the Queensland Housing Affordability Strategy in 2007. The strategy and the Act aim to improve housing affordability by improving the efficiency of the planning and development, land supply, and infrastructure funding systems.<sup>1</sup> The Urban Land Development Authority planning system is designed to ensure that affordable land is brought to the market quickly, by removing inefficiencies in the approval of development applications and by providing a range of housing options for low to moderate income households.<sup>2</sup>

Once the Minister for Local Government and Planning declares an area to be an ‘urban development area’, the operation of the *Sustainable Planning Act* is ousted and development proposals are processed under the planning system provided for in the *Urban Land Development Authority Act*.<sup>3</sup>

The planning and co-ordination of development of land in declared urban development areas is the responsibility of the Urban Land Development Authority, established under the *Urban Land Development Authority Act*. For those declared areas, it is the authority, not the local government, which:

- makes the development schemes that regulate development
- assesses development applications.

The *Urban Land Development Authority Act* sets out the process for making the development schemes which regulate development. It involves a process of consultation but, unlike the procedure for making planning schemes under the *Sustainable Planning Act*,<sup>4</sup> does not entail mandatory referrals to Queensland Government departments.<sup>5</sup> In making a scheme the Urban Land Development Authority must consider, but is not bound by, the requirements of State Planning Policy 1/03.<sup>6</sup>

Development applications are assessed against a limited set of criteria.<sup>7</sup> The criteria require the authority to consider the relevant scheme but do not refer to State Planning Policy 1/03; flood risk is not a relevant criterion in the *Urban Land Development Authority Act*.

## 6.2 South Bank Corporation Act 1989

The South Bank Corporation was created by the *South Bank Corporation Act* to manage the development of a riverside area on the south bank of the Brisbane River opposite the central business district that was formerly occupied by World Expo '88.<sup>8</sup>

The *South Bank Corporation Act* empowers the corporation to:

- prepare a development plan,<sup>9</sup> which effectively operates as the planning scheme for the area
- implement the development plan, which includes regulating development within the area covered by the Act.<sup>10</sup>

The *South Bank Corporation Act* sets out the procedure for making a development plan.<sup>11</sup> It involves consultation with Brisbane City Council, but not with Queensland Government departments. A development plan is not required to reflect State Planning Policy 1/03 or to address flooding as a consideration.

There is also no requirement to consider the possible impacts of flood in implementing the development plan or in assessing development applications. South Bank Corporation's obligations, with respect to carrying out and regulating development, are:

- to ensure the development is carried out in accordance with the approved development plan<sup>12</sup>
- in deciding a development application, to consult with Brisbane City Council in the way the corporation considers appropriate.<sup>13</sup>

## 6.3 State Development and Public Works Organisation Act 1971

The original *State Development and Public Works Organisation Act* was passed in 1938 as a post-Depression measure to encourage public works and generate employment.<sup>14</sup> The current Act is administered by the Minister for State Development and Trade and the Coordinator-General.<sup>15</sup> The Act regulates a range of development types; those of most interest to the Commission are state development areas, significant projects and prescribed projects.

### 6.3.1 State development areas

The Governor in Council, on recommendation by the Minister, may declare a state development area when satisfied that it is required by the public interest or for the general welfare of Queensland residents.<sup>16</sup> To determine this, consideration may be given to any relevant matter, including the need to establish or relocate a population, industry or essential services.<sup>17</sup>

A state development area may be declared to promote economic development or address market failure.<sup>18</sup> Recently approved state development areas include the Queensland Children's Hospital State Development Area, which is intended to consolidate health services for children and young people, and the Abbot Point State Development Area, which provides for industrial development, including infrastructure corridors and essential services.<sup>19</sup>

For a state development area, the Coordinator-General:

- prepares a development scheme for the area which identifies land use precincts and specifies the purpose of those precincts; it overrides any planning scheme applicable to the land<sup>20</sup>
- assesses land use applications for a material change of use under the provisions of the development scheme to the extent provided in the scheme.<sup>21</sup>

The process for making a development scheme for a state development area is not prescribed by the Act. The Coordinator-General's evidence to the Commission is that he releases the draft development scheme for public and government comment and that he considers all submissions received.<sup>22</sup>

The Act does not require the Coordinator-General to consider State Planning Policy 1/03, or flooding more generally, when making a scheme for a state development area or assessing an application against a state development area scheme.

### 6.3.2 Significant projects

The Coordinator-General may declare a project to be a significant project under section 26 of the *State Development and Public Works Organisation Act*. A significant project typically involves:

- complex approval requirements involving all levels of government
- a capital investment of more than \$100 million
- potential effects on infrastructure or the environment
- the provision of substantial employment opportunities
- 'strategic significance' to a locality, region or the state.<sup>23</sup>

Recently declared significant projects include the Australia Pacific Curtis Liquefied Natural Gas and the Wandoan Coal Mine projects.

The assessment process for a significant project differs from the other processes discussed in this part. The declaration of a significant project does not exclude the *Sustainable Planning Act* provisions; its assessment process continues to apply, but is modified for different development types.

For example, an application for a material change of use for a significant project, although assessed under the *Sustainable Planning Act*, does not undergo mandatory referral to Queensland Government departments and is not the subject of public notice given under the *Sustainable Planning Act*. Instead, before the application is made:

- the Coordinator-General may (but is not required to) refer the project to Queensland Government departments under the *State Development and Public Works Organisation Act*<sup>24</sup>
- the applicant<sup>25</sup> must 'publicly notify' the environmental impact statement for the project.<sup>26</sup>

After these steps take place, the Coordinator-General evaluates the material and prepares a report that acts as a concurrence agency response for the application under the *Sustainable Planning Act*.<sup>27</sup> Any properly made submission received by the Coordinator-General (in response to the public notification) is also taken to be a properly made submission about the application under the *Sustainable Planning Act* assessment process.<sup>28</sup> The Coordinator-General's report may, but will not necessarily, address flooding.

In determining the application, the assessment manager must also take into account State Planning Policy 1/03 in the usual way.

### 6.3.3 Prescribed projects

A prescribed project generally has state or regional economic, social or environmental significance.<sup>29</sup>

The Coordinator-General's powers in respect of prescribed projects enable intervention in the statutory approvals process for development to ensure timely decision-making.

A recently prescribed project which has been the subject of evidence before the Commission is the Ensham Mine Flood Recovery Project, declared in April 2008 following the inundation of the mine and surrounding areas in January 2008.<sup>30</sup>

Once a prescribed project is declared, the Coordinator-General may issue a notice requiring the usual decision-maker to proceed with the decision-making process or to decide a development.<sup>31</sup> If the usual decision-maker does not comply with the notice, the Coordinator-General becomes the approval authority for the relevant application.<sup>32</sup> The Coordinator-General's decision making process and powers in respect of a prescribed project are prescribed by the statute applicable to the usual decision-maker<sup>33</sup> (usually the *Sustainable Planning Act*); thus, the planning and development assessment process for a prescribed project is not strictly an alternative system. For this reason, the Coordinator-General's decision-making (including consideration of flooding) for prescribed projects is not further discussed.

## 6.4 Consideration of flooding as part of satellite planning systems

### 6.4.1 Satellite planning systems generally

The alternative planning and development assessment systems established by the *Urban Land Development Authority Act*, the *South Bank Corporation Act*, and, for state development areas, by the *State Development and Public Works Organisation Act*, are not subject to the provisions of the *Sustainable Planning Act*.

Of the relevant entities (the authority, the corporation and the Coordinator-General), only the Urban Land Development Authority is required to consider State Planning Policy 1/03 in the preparation of a development scheme,<sup>34</sup> and none of the entities is required to consider the policy in the assessment of development applications<sup>35</sup> or to comply with the policy.

It follows that any improvements made to the way the planning systems under the *Sustainable Planning Act* deal with flood, for example through revision of State Planning Policy 1/03 or the Queensland Planning Provisions, will not flow through to these alternative planning systems.<sup>36</sup>

The Commission acknowledges that there may be legitimate reasons for different planning systems to apply in certain circumstances. For example, the goal of the *Urban Land Development Authority Act*, of streamlining the development application process to deliver more affordable housing, is a laudable one. And the Commission also recognises that, although neither South Bank Corporation nor the Coordinator-General is required to address flood, even generally, the relevant planning systems do not preclude consideration of flooding. All planning agencies established under satellite legislation do in fact consider issues associated with flooding, but to varying extents.

To illustrate, the chief executive officer of the Urban Land Development Authority indicated that the authority's typical practice, although not mandated by legislation,<sup>37</sup> is to:

- consider the susceptibility to flood of the land being investigated as an urban development area as part of a review of site characteristics<sup>38</sup>
- undertake 'assessment of flood impacts' and consider the need for additional flood information for an urban development area when preparing a development scheme<sup>39</sup>
- include in development schemes for urban development areas where flooding is identified as a risk, criteria requiring that development take place in a way that ensures people and property are safe from potential flooding hazards<sup>40</sup>
- require development applications to identify whether the site is flood affected and to demonstrate that the proposed development does not adversely affect flooding conditions on other land. To this end, the Urban Land Development Authority has prepared Draft ULDA Guideline No. 15: Protection from Flood and Storm Tide Inundation which refers to State Planning Policy 1/03 and sets out the authority's requirements to ensure development is adequately protected from flood.<sup>41</sup>

By way of comparison, South Bank Corporation:

- in its development plan, only deals with the potential impact of flooding on infrastructure and property in relation to the Melbourne Street Precinct<sup>42</sup>
- consults the Brisbane City Council when developing, or making amendments to, the approved plan of development and in many (but not all) instances adopts the council's suggestions<sup>43</sup>
- as a matter of practice, often (but not always) adopts the Brisbane City Council's suggested development conditions, although it is not required to do so<sup>44</sup>
- as a matter of practice, for developments in close proximity to the Brisbane River, imposes conditions requiring minimum floor levels for habitable rooms<sup>45</sup>
- does not otherwise consider the 'mitigation of adverse flood impacts' in determining land use, as it is not required to do so when assessing development applications under the *South Bank Corporation Act*.<sup>46</sup>

The Coordinator-General's process for preparing a development scheme for a state development area may identify flood impacts:

- during the planning assessment undertaken to determine the general location of a state development area<sup>47</sup>
- during land use studies undertaken for the purpose of identifying land use precincts within a state development area<sup>48</sup>
- if they are raised in submissions received from the public and from government in response to the publication of the draft development scheme for a state development area.<sup>49</sup>

Even though it is apparent that the planning agencies under the satellite legislation do consider the issue of flood, the Commission considers that the planning and development process should be open and explicit.

## Recommendation

6.1 The Queensland Government should consider amending the *Urban Land Development Authority Act 2007*, the *South Bank Corporation Act 1989*, the *State Development and Public Works Organisation Act 1971* insofar as it governs state development areas, and other legislation which establishes alternative planning systems that operate independently of the *Sustainable Planning Act 2009*,<sup>50</sup> to require that:

- any planning scheme, interim or otherwise, appropriately reflects any state planning policy with respect to flood
- flood risk be considered in the assessment of any development application.

### 6.4.2 Significant projects under the *State Development and Public Works Organisation Act 1971*

The Coordinator-General's process for declaring a significant project and assessing a significant project is set out in Part 4 of the *State Development and Public Works Organisation Act*. Generally speaking as part of that process the following occurs:

- An applicant makes an application to the Coordinator-General for the declaration of a project as a significant project. The application includes an initial advice statement which should be prepared in accordance with guidelines set by the Coordinator-General.<sup>51</sup>
- The Coordinator-General considers the application and, if it is approved, declares the project to be a significant project.<sup>52</sup>
- At the time of declaring a significant project, the Coordinator-General decides whether an environmental impact statement is required for the project.<sup>53</sup>
- If an environmental impact statement is required, the Coordinator-General prepares terms of reference, using a generic draft document, which set out the requirements which the applicant must address in preparing the environmental impact statement.<sup>54</sup>
- Once an environmental impact statement has been prepared to the satisfaction of the Coordinator-General, it is released for public and government agency comment.<sup>55</sup>

The Coordinator-General then evaluates the environment impact statement and takes into account all relevant materials, including submissions received during the consultation process, and uses this information to complete its report for the significant project.<sup>56</sup> Although the assessment manager who ultimately decides whether a development approval is granted for a significant project is able to refuse the application or impose additional conditions on the development approval, the Coordinator-General's report to some extent determines development rights and obligations. For instance, the Coordinator-General's report may:

- impose conditions for undertaking the project under the *State Development and Public Works Organisation Act*

- state conditions that must attach to development approvals under other legislation, including the *Sustainable Planning Act*
- make recommendations for approvals under other legislation, including the *Sustainable Planning Act*
- state that a development approval under the *Sustainable Planning Act* must be for part of the development only
- state that a development approval under the *Sustainable Planning Act* must be for a preliminary approval only.<sup>57</sup>

The Coordinator-General may have regard to flood risk at various stages during the process outlined above. The Coordinator-General has agreed that his office could improve its assessment of flooding issues for significant projects at the time of seeking an initial advice statement from the applicant.<sup>58</sup>

The Coordinator-General's guideline for the preparation of an initial advice statement does not explicitly require an applicant to address flood risk.<sup>59</sup> As a result, an applicant's initial advice statement may, conceivably, omit reference to relevant flooding considerations.<sup>60</sup> The Coordinator-General has accepted that amending the pro forma guideline to make direct reference to flooding is a sensible suggestion.<sup>61</sup>

The Coordinator-General's office also provides applicants with draft terms of reference for an environmental impact statement. That document, in its generic form, requires an environmental impact statement to:

- describe the vulnerability of the project area to natural hazards (which includes flood)<sup>62</sup>
- assess the possible impacts of the project on 'water resource environmental values', such as impacts on downstream environments<sup>63</sup> and propose mitigation strategies.<sup>64</sup>

The document directs an applicant to complete, where applicable 'due to the [project's] location', a comprehensive flood study.<sup>65</sup>

The Coordinator-General gave evidence that although his office has some internal expertise available to determine whether a project location might be subject to flooding, he relies on advice from agencies (such as the Department of Environment and Resource Management (DERM) and councils in the area concerned) and from affected landholders.<sup>66</sup>

The Commission considers that requiring an applicant to provide information about a project's flood risk at the time of submitting an initial advice statement would place the Coordinator-General in a better position to determine, at the time of preparing the terms of reference, whether a project should be supported by a comprehensive flood study.

## Recommendation

- 6.2 The Coordinator-General should amend the guideline for preparing an 'initial advice statement' for a significant project under the *State Development and Public Works Organisation Act 1971* so that it specifically requires an applicant to consider and provide information about the project's flood risk.

## (Endnotes)

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| <p>1 Urban Land Development Authority Bill 2007, Second Reading Speech, 22 August 2007.</p> <hr/> <p>2 Urban Land Development Authority Bill 2007, Second Reading Speech, 22 August 2007.</p> <hr/> <p>3 Section 40, <i>Urban Land Development Authority Act 2007</i>.</p> <hr/> <p>4 See section 5.4 <i>Amending planning schemes</i>.</p> <hr/> | <p>5 The Urban Land Development Authority must consult with the relevant council before preparing a scheme. It must also make reasonable attempts to consult with other authorities which might likely be affected. After preparing a draft scheme, the Urban Land Development Authority must publish the scheme on its website, in a gazette notice and in a local newspaper inviting anyone to make submissions, which the authority must then consider.</p> <hr/> |
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- 6 Section 23(5), *Urban Land Development Authority Act 2007*.
- 7 Section 57, *Urban Land Development Authority Act 2007*.
- 8 Transcript, Malcolm Snow, 26 September 2011, Brisbane [p3161: line 48].
- 9 Sections 32-35, *South Bank Corporation Act 1989*.
- 10 Section 36 and Part 7, *South Bank Corporation Act 1989*.
- 11 Sections 32-35, *South Bank Corporation Act 1989*.
- 12 Section 36, *South Bank Corporation Act 1989*.
- 13 Section 60, *South Bank Corporation Act 1989*.
- 14 State Development and Public Works Organisation Amendments Bill 1999, Explanatory Notes [p1].
- 15 *Administrative Arrangements Order (No 2) 2011*; Section 3, *State Development and Public Works Organisation Act 1971*.
- 16 Section 77, *State Development and Public Works Organisation Act 1971*.
- 17 Sections 77(3) and 82(1), *State Development and Public Works Organisation Act 1971*.
- 18 Department of Employment, Economic Development and Innovation, State Development Areas, [www.deedi.qld.gov.au/cg/state-development-areas.html](http://www.deedi.qld.gov.au/cg/state-development-areas.html).
- 19 Exhibit 921, Statement of Keith Davies, 2 September 2011, Annexure 1A [p3: para 7-8]; The Coordinator-General, Development Scheme for the Queensland Children's Hospital State Development Area, June 2008 [p6].
- 20 Section 84, *State Development and Public Works Organisation Act 1971*.
- 21 See, for example, The Coordinator-General, Development Scheme for the Abbot Point State Development Area, June 2008 [p12-21: section 9]; The Coordinator-General, Development Scheme for the Queensland Children's Hospital State Development Area, June 2008 [p9-16: section 9].
- 22 Exhibit 921, Statement of Keith Davies, 2 September 2011, Annexure 1A [p2: para 3-4].
- 23 Exhibit 921, Statement of Keith Davies, 2 September 2011, Annexure 1B-1 [p1].
- 24 Section 31, *State Development and Public Works Organisation Act 1971*.
- 25 Under the *State Development and Public Works Organisation Act 1971* and the relevant, corresponding provisions of the *Sustainable Planning Act 2009*, the person who proposes a significant project is called 'the proponent'. For simplicity's sake, the word 'applicant' is used in this part.
- 26 Section 33, *State Development and Public Works Organisation Act 1971*.
- 27 Section 37(1), *State Development and Public Works Organisation Act 1971*.
- 28 Section 37(1)(c), the *State Development and Public Works Organisation Act 1971*.
- 29 Section 76E, *State Development and Public Works Organisation Act 1971*.
- 30 Exhibit 921, Statement of Keith Davies, 2 September 2011, Annexure 3 [p1: para 3; p2: para 7, 8].
- 31 Sections 76I and 76J, *State Development and Public Works Organisation Act 1971*.
- 32 Sections 76K and 76L, *State Development and Public Works Organisation Act 1971*.
- 33 Section 76N, *State Development and Public Works Organisation Act 1971*.
- 34 Section 23(5), *Urban Land Development Authority Act 2007*. It is noted, however, that the Assistant Director-General of the Strategic Policy Division of the Department of Community Safety (the lead agency for ensuring the application of State Planning Policy 1/03) gave evidence that the Urban Land Development Authority had not sought the department's advice in relation to the policy. See: Transcript, Gary Mahon, 19 September 2011, Brisbane [p2783: line 28].
- 35 Although the Urban Land Development Authority will obviously consider State Planning Policy 1/03 in the assessment of a development application, to the extent to which the policy is reflected in the planning scheme against which the application is assessed, by reason of section 57, *Urban Land Development Authority Act 2007*.
- 36 This was accepted by the Queensland Government Planner. See Transcript, Gary White, 7 November 2011, Brisbane [p4634: line 5].
- 37 Transcript, Paul Eagles, 21 September 2011, Brisbane [p2936: lines 1-14, 30-40; p2937: lines 3-32].

- 38 Exhibit 579, Statement of Paul Eagles, 9 September 2011 [p2: para 7]; Transcript, Paul Eagles, 21 September 2011, Brisbane [p2936: line 1-14].
- 39 Exhibit 579, Statement of Paul Eagles, 9 September 2011 [p4: para 11]; Transcript, Paul Eagles, 21 September 2011, Brisbane [p2937: line 3-32].
- 40 Exhibit 579, Statement of Paul Eagles, 9 September 2011 [p9: para 28].
- 41 Exhibit 579, Statement of Paul Eagles, 9 September 2011 [p5: para 15 – p6: para 17] and Attachment PE2; Transcript, Paul Eagles, 21 September 2011, Brisbane [p2939: line 10-15].
- 42 Exhibit 623, Statement of Malcolm Snow, 16 September 2011 [p2: para 13]; Transcript, Malcolm Snow, 26 September 2011, Brisbane [p3164: line 42-53].
- 43 Transcript, Malcolm Snow, 26 September 2011, Brisbane [p3167: line 1-3] and Brisbane City Council, Bundle of correspondence between the council and South Bank Corporation regarding ‘Proposed Amendments to Approved Development Plan – Site 3F’ between 11 November 2008 and 27 January 2009 and regarding ‘Approved Development Plan Site 3A’ between 21 April 2009 and 9 November 2009.
- 44 Exhibit 623, Statement of Malcolm Snow, 16 September 2011 [p3: para 23, 24]; Transcript, Malcolm Snow, 26 September 2011, Brisbane [p3164: lines 32-40; p3165: lines 28-35]; Brisbane City Council, Letter from South Bank Corporation to SW1 Joint Venture dated 26 August 2008 and letter from South Bank Corporation to the council dated 19 April 2010.
- 45 Transcript, Malcolm Snow, 26 September 2011, Brisbane [p3166: lines 18-30].
- 46 Exhibit 623, Statement of Malcolm Snow, 16 September 2011 [p5: para 31].
- 47 Exhibit 921, Statement of Keith Davies, 2 September 2011, Annexure 1A [p1: para 2(b), (c)].
- 48 Exhibit 921, Statement of Keith Davies, 2 September 2011, Annexure 1A [p2: para 2(d); p3: para 6].
- 49 Exhibit 921, Statement of Keith Davies, 2 September 2011, Annexure 1A [p2: para 3].
- 50 For example, *Integrated Resort Development Act 1987, Sanctuary Cove Resort Act 1985, Townsville City Council (Douglas Land Development) Act 1993 and Transport Infrastructure Act 1994*.
- 51 Exhibit 921, Statement of Keith Davies, 2 September 2011, Annexure 1B [p1: para 3(a)].
- 52 Exhibit 921, Statement of Keith Davies, 2 September 2011, Annexure 1B [p2: para 3(b)].
- 53 Exhibit 921, Statement of Keith Davies, 2 September 2011, Annexure 1B [p2: para 3 (b)].
- 54 Exhibit 921, Statement of Keith Davies, 2 September 2011, Annexure 1B [p2: para 3(c)].
- 55 Exhibit 921, Statement of Keith Davies, 2 September 2011, Annexure 1B [p3: para 3(d)].
- 56 Exhibit 921, Statement of Keith Davies, 2 September 2011, Annexure 1B [p3: para 3(e)].
- 57 Sections 35 and 39, *State Development and Public Works Organisation Act 1971*.
- 58 Transcript, Keith Davies, 7 November 2011, Brisbane [p4674: line 36].
- 59 Transcript, Keith Davies, 7 November 2011, Brisbane [p4672: line 40].
- 60 Transcript, Keith Davies, 7 November 2011, Brisbane [p4672: lines 40-57].
- 61 Transcript, Keith Davies, 7 November 2011, Brisbane [p4673: line 24].
- 62 Exhibit 921, Statement of Keith Davies, 2 September 2011, Annexure 1B-2 (section 5.1) [p19-20].
- 63 Exhibit 921, Statement of Keith Davies, 2 September 2011, Annexure 1B-2 (section 5.4.2) [p39].
- 64 Exhibit 921, Statement of Keith Davies, 2 September 2011, Annexure 1B-2 (section 5.4.2) [p38-39].
- 65 Exhibit 921, Statement of Keith Davies, 2 September 2011, Annexure 1B-2 (section 5.1.1) [p19].
- 66 Transcript, Keith Davies, 7 November 2011, Brisbane [p4673: lines 28-34, 46-58].