

# 4

## 4 State planning instruments

Because a development generally has its greatest effect on its immediate neighbourhood and the surrounding community, decisions about development and planning are appropriately made at a local level, primarily by councils.<sup>1</sup> The Queensland Government's role is at a higher level, and is played through state planning instruments. These are the means by which the Queensland Government formally articulates matters which local level planning instruments should address, and which it considers should be taken into account in the development assessment process.<sup>2</sup> The Commission has examined the state planning instruments which influence how the issue of flooding is addressed by councils: the State Planning Policy 1/03, the Queensland Planning Provisions and Regional Plans.

### 4.1 State Planning Policy 1/03

#### 4.1.1 The purpose and objectives of State Planning Policy 1/03

State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* took effect on 1 September 2003.<sup>3</sup> It records the Queensland Government's policy position that 'development should minimise the potential adverse impacts of flood, bushfire and landslide on people, property, economic activity and the environment'.<sup>4</sup>

The Queensland Government's objective in implementing State Planning Policy 1/03 was to reduce the increasing costs incurred by the community, government and the insurance industry in recovering from natural disasters.<sup>5</sup> State Planning Policy 1/03 seeks to achieve this objective, as it relates to flood, by ensuring that the natural hazard of flood is adequately considered when decisions are made about development;<sup>6</sup> that is, 'when development applications are assessed, when planning schemes are made or amended and when land is designated for community infrastructure'.<sup>7</sup>

To this end, State Planning Policy 1/03 contains 'development outcomes' relevant to the assessment of development applications,<sup>8</sup> as well as outcomes relevant to making and amending planning schemes.<sup>9</sup>

In addition to adopting State Planning Policy 1/03, the Queensland Government published the State Planning Policy 1/03 Guideline: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide*. Its purpose is to 'provide advice and information on interpreting and implementing the State Planning Policy 1/03'.<sup>10</sup>

## 4.1.2 Application of State Planning Policy 1/03

### Natural hazard management areas

State Planning Policy 1/03 applies to areas identified as ‘natural hazard management areas’.

A natural hazard management area for flood is determined by measuring the extent of land which is inundated during what State Planning Policy 1/03 refers to as a ‘defined flood event’<sup>11</sup> – the flood event selected by a council to regulate development in the council’s region.<sup>12</sup> The policy expresses the Queensland Government’s position that a planning scheme’s defined flood event should, generally, be a flood with a one per cent annual exceedance probability.<sup>13</sup> However, the policy also acknowledges that a council may, subject to consultation with the Queensland Government, elect to use a flood event with a higher chance of occurring – a flood with an annual exceedance probability of two per cent, for example – to determine its natural hazard management area for flood.<sup>14</sup>

Clause 6.6 of State Planning Policy 1/03 states that until a council has determined its defined flood event and identified the area affected by that flood event in its planning scheme, State Planning Policy 1/03 ‘does not take effect for development assessment in relation to flood hazard in that locality’.<sup>15</sup> Queensland’s Government Planner accepted that this excludes State Planning Policy 1/03 from applying to development assessed in council regions that do not have a flood map.<sup>16</sup> The Department of Community Safety’s Assistant Director-General, Strategic Policy Division, explained that clause 6.6 was not intended to limit the application of State Planning Policy 1/03 by operating as an ‘opt out clause’.<sup>17</sup> However, the terms of clause 6.6 are clear: State Planning Policy 1/03 cannot apply to assessment unless a natural hazard management area for flood has been identified in a planning scheme.<sup>18</sup> And development proposals can only sensibly be assessed against the development outcomes in State Planning Policy 1/03 when land at risk from flooding has been identified.

Plainly, the application of State Planning Policy 1/03 hinges on councils’ identifying a natural hazard management area for flood. The State Planning Policy 1/03 Guideline provides information about how this is to be achieved. Best practice, according to the guideline, is for councils to prepare detailed flood studies and flood modelling for the whole of the floodplain. However, the guideline recognises that this can be expensive. Accordingly, it outlines other less costly methods – including using historical data, existing flood studies or topographical features – to determine the natural hazard management area for flood. More detailed findings and recommendations about flood studies and flood mapping are made in chapter 2 *Floodplain management*.

### The development outcomes

To achieve its objectives, State Planning Policy 1/03 contains ‘development outcomes’ relevant to the assessment of development applications,<sup>19</sup> as well as outcomes relevant to making and amending planning schemes.<sup>20</sup>

Outcomes 1 to 3 in State Planning Policy 1/03 are relevant to the regulation of development in areas at risk of flood.

The first criterion, Outcome 1, focuses on limiting development in natural hazard areas which is not ‘compatible with’ the hazard:<sup>21</sup> for present purposes, flood.

Outcome 2 in State Planning Policy 1/03 acknowledges the possibility of development occurring despite its incompatibility with flood, and focuses instead on minimising, as far as possible, the unacceptable risk to people or property.<sup>22</sup>

Outcome 3 encourages the location and design of community infrastructure so that it can function effectively during and immediately after flood events<sup>23</sup> (see 7.2 *Community infrastructure*).

The outcomes are expressed generally; more specific advice is contained in the guideline about how development can achieve the policy’s outcomes.<sup>24</sup> The guideline also contains examples of solutions that, once adapted by a council to reflect local knowledge and conditions, can be used as assessment criteria in a planning scheme,<sup>25</sup> and more detailed (although in some cases obvious) direction about how to decide appropriate land use in a floodplain. For example, open space is identified as an appropriate land use in areas with a high risk of flood, and residential uses and hospitals are appropriate in areas with a low risk of flood.

## The exception for development commitments

Where flood is the relevant natural hazard, a development will comply with Outcome 1 of State Planning Policy 1/03 when it:<sup>26</sup>

- maintains the safety of people on the development site from all floods up to and including the defined flood event
- does not result in adverse impacts on people's safety or the capacity to use land within the floodplain
- minimises the potential damage from flooding to property on the development site
- does not adversely affect public safety and the environment through the detrimental impacts of floodwater on hazardous materials manufactured or stored in bulk
- maintains the functioning of essential services infrastructure (for example, on-site electricity, gas, water supply, sewerage and telecommunications) during a defined flood event.

However there are exceptions to the application of Outcome 1 where:

- the development proposal is a 'development commitment', or
- there is an overriding need for the development in the public interest and no other site is suitable and reasonably available for the proposal.

'Development commitment' is defined in State Planning Policy 1/03 as including any of the following:

- development with a valid preliminary approval
- a material change of use that is code assessable or otherwise consistent with the requirements of the relevant planning scheme
- a reconfiguration of a lot and/or work that is consistent with the requirements (including any applicable codes) of the relevant planning scheme, or
- development consistent with a designation for community infrastructure.<sup>27</sup>

The second limb of that definition – that 'development commitment' includes a material change of use that is code assessable or otherwise consistent with the planning scheme – is of concern. It has a broad application:<sup>28</sup> effectively, any development which is 'consistent' with the requirements of an existing planning scheme may proceed, even if the development is not 'compatible with' the flood hazard.<sup>29</sup> The definition also extends to development which is simply 'code assessable', but which is not consistent with the applicable planning scheme.<sup>30</sup>

The Queensland Government Planner agreed that 'a major proportion' of development could fall within this exception to State Planning Policy 1/03.<sup>31</sup> Consequently, the definition of development commitment does little to encourage the consideration of flooding as part of the development assessment process. However, according to the Queensland Government Planner, the way that Outcome 1 is framed – with its broad exception – is acceptable,<sup>32</sup> it is designed to protect the position of those with existing approvals for development or a clear expectation that they can develop land in a certain way.<sup>33</sup> He suggested that planning schemes were a more appropriate instrument for particularising constraints on development (such as those concerning flood risk) and thus qualifying people's expectations about what land can be used for development, and how.<sup>34</sup>

The Commission agrees generally with that position. Councils should, ideally, include flooding considerations in their planning schemes, and, where such considerations do not already exist, should change their schemes accordingly. However, under the *Sustainable Planning Act 2009*, changes to a planning scheme can, in some circumstances, give rise to a liability for payment of compensation.<sup>35</sup> Accordingly, councils may be averse to amending their schemes to include planning controls that deal with flooding because of the risk of incurring liability to pay compensation.<sup>36</sup> Section 5.5 *Compensation* sets out a more detailed discussion of the specific concerns raised by councils about their exposure to liability. As described in that section, the Commission considers that the Queensland Government, in response to these concerns, should investigate whether the compensation provisions of the *Sustainable Planning Act* are a deterrent to the inclusion of flood controls in a planning scheme and whether they ought be amended.

The ultimate aim, however it is achieved, is for Queensland's planning framework to encourage the consideration of flooding in the assessment of development applications.

## Recommendation

4.1 The Queensland Government should:

- a) narrow the definition of ‘development commitment’ in State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* to ensure more development applications are assessed for compatibility with flood, and
- b) investigate whether the compensation provisions of the *Sustainable Planning Act 2009* act as a deterrent to the inclusion of flood controls in a planning scheme and consider whether they ought be amended.

### 4.1.3 Review of State Planning Policy 1/03

It has been nearly nine years since State Planning Policy 1/03 came into effect. Like all state planning policies, it will cease to have effect after ten years. Accordingly, State Planning Policy 1/03 is being reviewed to inform the development of a new state planning policy that deals with natural hazards. The review, which is due to be completed by September 2013,<sup>37</sup> will consider matters such as:<sup>38</sup>

- the extent to which planning schemes comply with State Planning Policy 1/03<sup>39</sup>
- how flood studies should be conducted<sup>40</sup>
- whether natural hazard management areas for flood should be based on a ‘zones of risk’ approach – low, medium, and high for instance – or continue to be determined by reference to a defined flood event<sup>41</sup>
- how to take into account the Queensland Reconstruction Authority’s work, and in particular part 2 of the guideline to Temporary State Planning Policy 2/11 *Planning for stronger more resilient floodplains*<sup>42</sup>
- the recommendations made in the report *Increasing Queensland’s resilience to inland flooding in a changing climate: Final report on the Inland Flooding Study*, which include the following:
  - the review (of State Planning Policy 1/03) should consider whether there should be a standard method for undertaking a flood study and determining a defined flood event<sup>43</sup>
  - the review should consider developing criteria that make clear the circumstances in which it is appropriate to use a defined flood event greater than, or less than, a 1% AEP flood, as a planning control for residential development<sup>44</sup>
  - the review should consider how to improve the integration of land use planning and disaster management<sup>45</sup>
- whether there should be a department or departments responsible for monitoring whether planning schemes appropriately reflect the (next) state planning policy that deals with flood<sup>46</sup> and include a flood map derived from an adequate flood study<sup>47</sup>
- the recommendations of the Queensland Floods Commission of Inquiry.<sup>48</sup>

The Commission endorses consideration being given to the issues identified in the review of State Planning Policy 1/03. In the nine years that have passed since its advent, there have been significant developments in land planning and, in particular, in the technology available to conduct flood studies to determine what land is susceptible to flooding.<sup>49</sup> The review of State Planning Policy 1/03 is a valuable opportunity to consider these developments so as to determine the best approach to measuring flood risk and crafting the most appropriate land planning controls.<sup>50</sup> Chapter 2 *Floodplain management* contains a detailed discussion about of the matters surrounding the completion of flood studies, flood maps and floodplain management plans.

### 4.1.4 State interest review of planning schemes

The state interest review process is the mechanism by which the Queensland Government determines whether planning schemes incorporate the outcomes set out in state planning policies. It represents the Queensland Government’s principal opportunity to ensure that State Planning Policy 1/03 is appropriately reflected in planning

schemes.<sup>51</sup> Given the objective of State Planning Policy 1/03 is to ensure that flooding is adequately considered in decisions about development, achieving that outcome is important.

The process is set out in Statutory Guideline 01/12: *Making and amending local planning instruments*.<sup>52</sup> This guideline took effect on 16 January 2012 and replaces Statutory Guideline 02/09: *Making and amending local planning instruments*.

## Steps in the process

The state interest review process includes the steps described below.

### *Planning scheme preparation*

The council prepares a proposed planning scheme or amendment.<sup>53</sup> Under the new guideline, a council is required to consult with relevant Queensland Government agencies while preparing a proposed planning scheme.

### *First state interest review*

Once a proposed planning scheme has been prepared, it is submitted to the Department of Local Government and Planning for the 'first state interest review'.<sup>54</sup> At this stage, the council is required to provide a report about the extent and outcomes of any consultation undertaken with Queensland Government agencies, and about how the planning scheme reflects all relevant state planning instruments. The Department of Local Government and Planning provides the proposed planning scheme to Queensland Government agencies and seeks comments on whether state interests are affected.<sup>55</sup>

As part of the first state interest review, the Department of Community Safety is expected to assess whether a planning scheme appropriately reflects State Planning Policy 1/03.<sup>56</sup> As the department responsible for disaster management – including natural hazards – it is the Queensland Government agency whose interests are articulated in State Planning Policy 1/03. It provides its comments to the Department of Local Government and Planning, which collates the remarks of all Queensland Government agencies to forward to the council for response.<sup>57</sup> The Department of Local Government and Planning then attempts to resolve any matters about which the council and the Queensland Government agencies do not agree.<sup>58</sup>

The Department of Local Government and Planning then prepares a briefing note to the Minister detailing key matters of state interest raised in the review process and any outstanding issues to be considered by the Minister.<sup>59</sup> Having considered whether any state interests are adversely affected, the Minister advises the council either that it:

- can commence public notification of the proposed planning scheme or amendment (with or without conditions imposed by the Minister), or
- cannot proceed further.<sup>60</sup>

### *Public notification*

The period for public notification is 30 business days.<sup>61</sup> After considering all properly made submissions, the council may choose to incorporate changes arising out of submissions received during the public notification period. Alternatively, it may proceed with no changes, or not proceed at all.<sup>62</sup>

### *Second state interest review*

The Minister receives the council's proposed planning scheme (which may or may not be amended as a result of public notification) and considers whether a second state interest review is required. If so, this review is limited to matters such as those which have already been identified during the first review, or matters that have arisen out of changes made to the proposed scheme subsequent to the first review.<sup>63</sup> The second state interest review is more targeted; comments are only sought from agencies affected by any unresolved matters, or any new ones.<sup>64</sup>

As with the first state interest review, the Department of Local Government and Planning collates the remarks of Queensland Government agencies, provides them to the council for response, and attempts to resolve any issues still outstanding.<sup>65</sup>

Finally, the Minister is briefed with information about the key state interests that have been raised by Queensland Government agencies, and those that remain outstanding.<sup>66</sup> The Minister then makes a decision about whether the council may adopt the proposed planning scheme or amendment (with or without conditions), and advises the council accordingly.<sup>67</sup> If the Minister advises that the proposed planning scheme or amendments may be adopted, the Minister must also advise which state planning instruments, including state planning policies (or parts of state planning policies), are reflected in the proposed planning scheme or amendment.<sup>68</sup>

#### 4.1.5 The role of the Department of Local Government and Planning

Under the State Planning Policy 1/03 Guideline, the role of the Department of Local Government and Planning is to review proposed planning schemes, or proposed amendments, to ensure that the outcomes sought by State Planning Policy 1/03 are achieved.<sup>69</sup>

The Minister for Local Government is also the responsible Minister for the purposes of the state interest review process. Ultimately, it is the Minister for Local Government who decides whether a planning scheme can be declared to appropriately reflect State Planning Policy 1/03. Accordingly, it is also the Minister (and by extension the Department of Local Government and Planning) who must determine what weight to afford the comments made by Queensland Government agencies as part of the state interest review process.

Determining which Queensland Government agency comments should result in the imposition of a condition requiring a council's amendment of its proposed planning scheme demands the exercise of a considerable degree of judgment.<sup>70</sup> However, the basis upon which the Department of Local Government and Planning decides whether or not to act on comments, including those of the Department of Community Safety concerning the reflection of State Planning Policy 1/03, is far from clear.

The process by which Brisbane's planning scheme, City Plan, was amended is instructive. In 2004, the state interest review process was commenced in respect of amendments to the planning scheme.<sup>71</sup> One of the proposed amendments, called amendment 'C6', sought the insertion into City Plan of a statement declaring that Brisbane's planning scheme appropriately reflected State Planning Policy 1/03.<sup>72</sup> As part of the state interest review, the Department of Community Safety requested that the reference to State Planning Policy 1/03 be deleted from the amendments; according to the department, there was insufficient 'hazard mapping' to support such a statement.<sup>73</sup> Brisbane City Council agreed to delete the reference.<sup>74</sup> Despite that agreement, the amendments to City Plan that took effect on 1 January 2006 listed State Planning Policy 1/03 as one with which the planning scheme complied.<sup>75</sup> The reinsertion of this reference appears to have been unintentional.

The Queensland Government Planner gave evidence that, in his view, Brisbane's planning scheme did in fact comply.<sup>76</sup> However, the Department of Community Safety's position remains unchanged: since the City Plan 2004 amendments were proposed, the Department of Community Safety has advised the Department of Local Government and Planning, on 16 separate occasions, that Brisbane City Council's planning scheme does not comply with State Planning Policy 1/03.<sup>77</sup> Twelve out of those 16 occasions were after the 2010/2011 floods, and in each case the advice was provided as part of the state interest review process. Despite these reiterations (many are quite recent), there is no record of the Department of Local Government and Planning giving consideration to the Department of Community Safety's advice that Brisbane's City Plan does not appropriately reflect State Planning Policy 1/03. Nor is there any record of whether the two departments have attempted to reconcile the different positions.

In 2004, the Department of Community Safety made similar comments with respect to the Emerald planning scheme; it stated that the proposed scheme did not adequately address State Planning Policy 1/03, due to the absence of flood mapping.<sup>78</sup> At the time of writing its advice, the Department understood that the (then) Emerald Council had access to at least one flood study, the Nogo River Flood Plain Study. The department suggested that the results of this study be incorporated into the Emerald planning scheme by way of an overlay map.<sup>79</sup> The second state interest review occurred two years later, and the mapping had still not been incorporated. As it had two years prior, the Department of Community Safety advised that the results of any flood studies available to the council should inform the development of a flood hazard overlay.<sup>80</sup>

Subsequent to the state interest review process, the council adopted the Emerald planning scheme. The scheme does not appropriately reflect State Planning Policy 1/03: it does not include any flood mapping, nor does it nominate a defined flood event.<sup>81</sup> There is no evidence before the Commission to explain why the Department of Local Government and Planning, or Emerald Council, did not heed the advice of the Department of Community Safety about incorporating the results of the Nogoia River Flood Plain Study.

It is evident that the Department of Local Government and Planning does not insist, through the imposition of conditions, that every comment made by every department be incorporated into a council's planning scheme – and nor should it. However, where comments are of a substantive nature, and relate to compliance with an important state planning policy, as in the cases of Brisbane's and Emerald's planning schemes, it seems reasonable that the Department of Local Government and Planning articulate its reasons for not reflecting the Department of Community Safety's comments in conditions attached to adoption of the planning scheme, and advise the latter accordingly.<sup>82</sup>

#### 4.1.6 The role of the Department of Community Safety

The Department of Community Safety is responsible for reviewing draft planning schemes to determine whether State Planning Policy 1/03 has been appropriately reflected and to provide advice about the implementation of the policy.<sup>83</sup> As part of this responsibility, the Department of Community Safety is expected to consult with the Department of Environment and Resource Management (DERM) to provide guidance about determining natural hazard management areas for use in planning schemes.<sup>84</sup>

The evidence suggests that the Department of Community Safety takes a reactive approach to its role.

In preparation for the Commission's public hearings, the Department of Community Safety compiled a schedule of each instance in which it had provided advice to the Department of Local Government and Planning about the appropriate reflection of State Planning Policy 1/03 in Brisbane's planning scheme.<sup>85</sup> Preparing this schedule revealed to the department that its advice was not always being taken into account.<sup>86</sup> It is of some concern that the department did not fully appreciate this fact until the Commission's public hearings.

The assistant director of the strategic policy division in the Department of Community Safety gave evidence that the department is currently reviewing its administrative processes so that it can better ascertain whether its comments are being incorporated into planning schemes.<sup>87</sup> This is encouraged. Any process that is developed should ensure that the department can readily determine what advice it has given in respect of each planning scheme, and when its advice about State Planning Policy 1/03 needs to be followed up.

#### 4.1.7 The role of DERM

DERM also plays a role in the state interest review process. As part of this role, DERM provides advice to the Department of Community Safety about whether:<sup>88</sup>

- the proposed planning scheme has an adequate flood map. This includes an assessment of whether the map shows areas and properties which are affected. DERM does not check the accuracy of the modelling used to produce the flood map.
- the information about flooding provided in support of the proposed planning scheme accords with the information held by DERM for the area. If there is additional information, DERM will advise the council so that it can be incorporated into any flood study or map.
- the council has identified an appropriate defined flood event in its planning scheme. In particular, where the council has adopted a defined flood event lower than the 1% AEP flood, DERM will provide comments to the Department of Community Safety about the appropriateness of the nominated flood event.
- the council has taken adequate steps to appropriately reflect State Planning Policy 1/03 in its planning scheme.

According to the Department of Community Safety, DERM's contribution in respect of those matters is sought routinely as part of the state interest review process.<sup>89</sup> However, there is no record of the Department of Community Safety's requesting advice from DERM about Brisbane or Ipswich city councils' planning schemes.<sup>90</sup> This is particularly noteworthy in the case of the Brisbane planning scheme; the Department of Community Safety's central issue with that scheme is its failure to identify a defined flood event.

In providing advice about the appropriateness of a council's defined flood event, or its flood mapping, DERM relies on the professional expertise of the engineers whose flood modelling is the subject of DERM's review.<sup>91</sup> On occasion, the Department of Community Safety has asked DERM to assess the adequacy of the flood modelling done to support the selection of a defined flood event in a proposed planning scheme.<sup>92</sup> The Department of Community Safety would like DERM to provide such advice on a more regular basis. DERM resists this idea.<sup>93</sup> At present, DERM is not always able to provide the advice sought in the timeframes proposed.<sup>94</sup> Unless more resources are made available to DERM, there is little reason to think this situation will change.

The Department of Community Safety and DERM would both benefit from greater clarity about DERM's role in reviewing planning schemes' appropriate reflection of State Planning Policy 1/03. The Commission considers that DERM's expertise would be better used earlier in the process of preparing or amending a planning scheme: for example, if it were requested to help councils determine the best methodology for a proposed flood study prior to its being undertaken.

In addition, access to detailed guidelines about the conduct of flood studies and the production of flood maps would help councils prepare these components, and might reduce the need for DERM's input at a later stage.<sup>95</sup> The preparation of guidelines and the technical aspects of preparing a flood study and flood map are discussed further in chapter 2 *Floodplain management*.

#### 4.1.8 Gaps identified

The Commission has identified some gaps in the process, as already described; in particular:

- When the Minister for Local Government chooses not to impose conditions reflecting comments made by the Department of Community Safety about a proposed planning scheme's compliance with State Planning Policy 1/03 before the relevant council may proceed with the planning scheme, the basis of the decision is not made clear. When this occurs, it would assist if it were articulated and the Department of Community Safety advised why the decision has been made.
- The Department of Community Safety has not been, until very recently, in a position to ascertain easily whether its comments about planning schemes reflecting State Planning Policy 1/03 are being taken into account as part of the state interest review process.
- The role of DERM in the state interest review process is unclear.

Some of the difficulties identified may be a product of the way State Planning Policy 1/03 defines each department's role: as only to 'review' or 'provide advice'.<sup>96</sup> The policy does not contemplate a monitoring role, or that any department be responsible for taking steps to encourage compliance with State Planning Policy 1/03.

Whether there should be a single department, or a number of departments, with responsibility for monitoring councils' compliance with State Planning Policy 1/03, or the adequacy of councils' flood studies and flood mapping, is a policy decision to be made by the Queensland Government.<sup>97</sup> There is value in having different departments involved, each providing advice on matters within its area of expertise.<sup>98</sup> On the other hand, a single department might be charged with the task of ensuring planning schemes reflect State Planning Policy 1/03.<sup>99</sup> As noted in section 4.1.3, this is a topic being considered as part of the review of State Planning Policy 1/03 which is currently on foot.<sup>100</sup> The Commission endorses consideration being given to the issue by the Queensland Government. In the meantime, the gaps which the Commission has identified should be addressed.

## Recommendations

- 4.2 If, as part of a state interest review process, the Department of Local Government and Planning decides that no condition should be imposed requiring a council's proposed planning scheme to incorporate the effect of the Department of Community Safety's comments about State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide*, it should advise the Department of Community Safety of the reasons for its decision.
- 4.3 The Department of Community Safety should put in place administrative arrangements which ensure it can readily ascertain whether its comments are being reflected in council planning schemes. If the Department of Community Safety becomes aware that its comments are not being adequately addressed, it should take steps to follow this up with the Department of Local Government and Planning.
- 4.4 The Queensland Government should ensure that the circumstances in which the Department of Community Safety is to consult the Department of Environment and Resource Management about a planning scheme's flood modelling and flood mapping are clear.

## 4.2 Temporary state planning policy

A temporary state planning policy can suspend or affect the operation of an existing state planning policy, but does not amend it.<sup>101</sup> It operates for a maximum of 12 months, at which point the existing state planning policy will resume operation if, in the meantime, it has not been amended or replaced.

Following the 2010/2011 floods, the Queensland Government through the Queensland Reconstruction Authority released a draft Temporary State Planning Policy 2/11: *Planning for stronger, more resilient floodplains*.<sup>102</sup> This temporary state planning policy, which commenced on 14 November 2011,<sup>103</sup> affects the operation of State Planning Policy 1/03 by suspending the operation of paragraphs A3.1 and A3.2.<sup>104</sup> In consequence, until 14 November 2012, a council can identify the natural hazard management area for flood by reference to the 1% AEP flood or by using the 'Interim Floodplain Assessment Overlay mapping' and 'Model Code' provided by the Queensland Reconstruction Authority (with amendments where a council considers them appropriate). In this way, the temporary state planning policy aims to assist councils to identify the natural hazard management area for flood and to develop planning controls to regulate assessable development within the natural hazard management area.

### 4.2.1 Mapping referred to in the temporary state planning policy

The interim floodplain assessment overlay mapping is a series of maps released by the Queensland Reconstruction Authority that a council may choose to incorporate in a planning scheme together with an associated code to regulate development.<sup>105</sup>

The Queensland Government Planner described the interim floodplain assessment overlay mapping as representing 'work in progress'; it was, he said, useful as an interim measure.<sup>106</sup> However, he recognised this difficulty: Temporary State Planning Policy 2/11 encourages councils to adopt the interim map by way of a permanent amendment to their existing planning schemes or as part of a new planning scheme. As planning schemes are only required to be reviewed every 10 years, there is a risk that the temporary state planning policy may encourage councils to use the interim maps produced by the Queensland Reconstruction Authority as their final position on flood. The Queensland Government Planner acknowledged this risk: a result which was unintended.<sup>107</sup> A more detailed assessment of the adequacy of the interim maps is at chapter 2 *Floodplain management*.

### 4.2.2 The Model Code provided by the Queensland Reconstruction Authority

Temporary State Planning Policy 2/11 does not permit the use of the mapping alone, instead requiring councils to use the interim floodplain assessment overlay mapping together with the Model Code.<sup>108</sup> This approach is curious, given the temporary state planning policy is not intended to be used for development assessment processes; it has not suspended the development assessment provisions of State Planning Policy 1/03.<sup>109</sup>

The Model Code forms Schedule 1 to the Queensland Reconstruction Authority's *Planning for stronger, more resilient floodplains: Part 1 – Interim measures to support floodplain management in existing planning schemes*. As that document identifies, it includes *interim* planning scheme measures supporting the mapping.<sup>110</sup>

The Model Code was based on the principles of State Planning Policy 1/03, particularly the specific outcomes in Annex 4, as well as flood mitigation provisions in existing local planning instruments such as Brisbane City Council's Temporary Local Planning Instrument 1/11 and the Rockhampton Regional Council's planning scheme. The Department of Local Government and Planning, including Building Codes Queensland, and the Department of Community Safety also contributed to the development of the Model Code.<sup>111</sup>

At its outset, the Model Code explains that it applies to assessable development involving land wholly or partly within the areas identified on floodplain maps. The code goes on to state that it is a 'Queensland Planning Provisions-compliant code'. A more detailed explanation of the Queensland Planning Provisions is at section 4.3 *Queensland Planning Provisions*.

Should a council elect to amend its planning scheme to incorporate the interim floodplain assessment overlay mapping together with the Model Code (in their original form or amended for local conditions), it will apply in place of the development assessment provisions of State Planning Policy 1/03. As already identified in respect of the mapping, this, too, may have the result of entrenching provisions that are clearly intended to reflect the Queensland Government's interim position.

The interim nature of the provisions is apparent from the authority's guideline: it explains that '[a]n interim solution, Part 1 does not offer a comprehensive solution for managing new or existing development in floodplain areas'.<sup>112</sup> It intends to include in Part 2 guidance on incorporating floodplain management principles and processes into future planning schemes.<sup>113</sup> A draft of Part 2 was released for public consultation on 23 January 2012. The Commission commends the consistent approach to floodplain management proposed by the authority.

### 4.2.3 Reflecting the Temporary State Planning Policy in planning schemes

Any council that chooses to amend its planning scheme to make it consistent with the temporary state planning policy would risk the amendments' being inconsistent with, or not 'appropriately reflect[ing]' the Queensland Government's longer term policy position. The Commission is concerned at the prospect of diverting limited council resources into the making of permanent planning scheme amendments which may, after 12 months, no longer represent the Queensland Government's preferred approach to planning for floodplains.

The Commission considers, given the 'interim' nature of the Model Code, together with the Queensland Government's intention to finalise Part 2 of the authority's guideline, that the Temporary State Planning Policy 2/11 should be changed to remove the option for councils to use the interim floodplain assessment overlay mapping and the Model Code as part of a permanent amendment to their existing planning schemes or as part of new planning schemes.

Part 1 of the Queensland Reconstruction Authority's guideline notes a council may use a temporary local planning instrument to give effect to the temporary state planning policy, but indicates that this is not the preferred approach.<sup>114</sup>

In contrast, the Queensland Government Planner gave evidence that it would be appropriate for the temporary state planning policy to be given effect as part of a temporary local planning instrument, rather than as a permanent amendment to a planning scheme.<sup>115</sup> The Commission agrees with the Queensland Government Planner. It is not appropriate for councils to incorporate interim planning measures in permanent planning schemes, particularly where the interim measures give effect to state policy which is subject to revision after 12 months.

## Recommendation

- 4.5 The Queensland Government should change Temporary State Planning Policy 2/11: *Planning for stronger more resilient floodplains* to remove the possibility of councils' using the interim floodplain assessment overlay mapping and Model Code as part of a permanent amendment to their existing planning scheme or as part of a new planning scheme.

## 4.3 Queensland Planning Provisions

Under the *Integrated Planning Act 1997*, now repealed, there were no requirements about the structure planning schemes should take, and little guidance about content. The *Sustainable Planning Act 2009* changes this by permitting the Minister for Local Government to make standard planning scheme provisions,<sup>116</sup> known as the 'Queensland Planning Provisions', that provide:

- a consistent structure for all new planning schemes
- both mandatory and optional provisions, including some provisions that can be adapted by councils to reflect local conditions within their region.<sup>117</sup>

If the Queensland Planning Provisions are amended, a planning scheme made under the *Sustainable Planning Act* must be amended to reflect the change.<sup>118</sup> Questions of compensation do not arise where a planning scheme is amended to reflect a mandatory component of the Queensland Planning Provisions.<sup>119</sup>

### 4.3.1 History of the Queensland Planning Provisions

Version 1.0 of the Queensland Planning Provisions became available on the commencement of the *Sustainable Planning Act* on 18 December 2009. On 4 October 2010, following further consultation with the public and interested parties, version 2.0 of the Queensland Planning Provisions was released. The consultation period on the latest draft (version 3.0) was carried out between 28 October 2011 and 25 November 2011.<sup>120</sup> This version is proposed to be released in early 2012.<sup>121</sup>

While existing planning schemes were not required to be changed on the advent of the *Sustainable Planning Act*,<sup>122</sup> councils are required to ensure new planning schemes are consistent with the Queensland Planning Provisions.<sup>123</sup>

The Commission is only aware of one council, the Toowoomba Regional Council, which has ready for adoption a planning scheme using the Queensland Planning Provisions template.<sup>124</sup> However, many other councils are preparing draft planning schemes following the template and are in the consultation stage with Queensland Government departments.<sup>125</sup>

### 4.3.2 Structure of the Queensland Planning Provisions

The Queensland Planning Provisions contain a number of elements that can be used to promote the consideration of flooding in planning schemes. These are explained below.

The Queensland Planning Provisions are made up of two parts, or modules: Module A (Planning Scheme Structure) and Module B (Drafting Instructions).

Module A sets the structure each council in Queensland must replicate when adopting a new planning scheme. It contains both mandatory and optional provisions.<sup>126</sup>

Module B contains instructions for drafting planning schemes and provides 'standard suites' from which optional components may be drawn for insertion into the Module A structure.<sup>127</sup> For example, councils have an option whether or not to include a layer in their schemes known as a 'development constraint category overlay'. This involves using a map to identify land which should be subjected to additional planning controls in response to certain factors, such as flooding. However, if a council elects to include this layer of detail in its planning scheme, it may only use overlays which are provided within Module B. This allows councils to choose the level of detail most appropriate for their planning schemes, while still ensuring a level of consistency throughout Queensland.<sup>128</sup>

There are a number of mechanisms within the Queensland Planning Provisions that allow for flooding considerations to be addressed in planning schemes. They are explained below.

### Assessment criteria

‘Assessment criteria’ are the provisions in a planning scheme that establish the outcomes sought for self-assessable development, assessable development and development requiring compliance assessment.<sup>129</sup> Assessment criteria include ‘overall outcomes’, ‘performance outcomes’ and ‘acceptable outcomes’.<sup>130</sup>

Overall outcomes are outcomes that achieve the purpose of the code.

Performance outcomes must meet the overall outcomes and purpose of the code and are the detailed requirements with which a development must comply.

Acceptable outcomes are suggested ways a development may comply with the performance outcome. When a development complies with an acceptable outcome, it is deemed to comply with the performance outcome. Accordingly, care must be taken when drafting assessment criteria to ensure compliance with an acceptable outcome in fact achieves the related performance outcome.

### Zones

The first layer of information in a planning scheme is ‘zones’.

All land within a planning scheme area<sup>131</sup> is mapped into zones, which are used by councils to give a general indication of the type of land use that is preferred in a particular location. The preference is indicated, in part, through the use of ‘tables of assessment’ for each zone, which prescribe for each land use the level of assessment that must be undertaken if a development application is made for that use.

Module B of the Queensland Planning Provisions provides a list of zones from which councils may choose. There are five categories: residential,<sup>132</sup> centre,<sup>133</sup> recreation,<sup>134</sup> industry<sup>135</sup> and other.<sup>136</sup>

According to the Queensland Planning Provisions, each zone chosen by a council is to have a corresponding zone code within the planning scheme. Each zone code must include a mandatory purpose statement, an additional purpose statement and overall outcomes that achieve the purpose of the code.<sup>137</sup>

The mandatory purpose statement for each zone code is already contained within the Queensland Planning Provisions. The additional purpose statement is to be drafted by a council to refine the general mandatory statement to reflect the local context.<sup>138</sup> The Queensland Planning Provisions provide a list of suggested overall outcomes for inclusion in a council’s zone code.<sup>139</sup> However, a council may formulate its own.

For most zones, a suggested overall outcome addressing flooding considerations is included. The Commission identified a number of inconsistencies in the overall outcomes that address flooding,<sup>140</sup> but they have been rectified in the new draft of the Queensland Planning Provisions (version 3.0). These improvements should be retained in the latest version of the Queensland Planning Provisions.

Although nothing prevents a council from drafting its own overall outcomes addressing flooding, the Commission’s view is that the model provisions promote consistency, ease the drafting burden on councils and ensure that flooding is not overlooked during development assessment. This view is discussed further in section 5.1.1 *Model flood planning controls*.

The zone code may also include ‘performance outcomes’ and ‘acceptable outcomes’ (described above).<sup>141</sup> The Queensland Planning Provisions do not stipulate any model performance or acceptable outcomes within the zone codes. It is up to the council to draft these.

Within the ‘other’ zones category, the Queensland Planning Provisions provide for a ‘limited development (constrained land)’ zone. The purpose of this zone is to identify land known to be significantly affected by one or more factors, such as flooding, so as to impose ‘severe restrictions on the ability of the land to be developed for urban purposes’.<sup>142</sup>

Councils may find it useful to adopt this zone for parts of council regions that are susceptible to severe and frequent floods.<sup>143</sup> That would encourage proper consideration of the types of development appropriate for such areas.

## Recommendation

- 4.6 Councils should consider using the limited development (constrained land) zone in their planning schemes for areas that have a very high flood risk.

## Overlays

A further layer of information in a planning scheme is an ‘overlay’.

An overlay in a planning scheme is used to identify areas that are affected by a particular constraint or areas that present opportunities for development.<sup>144</sup> This layer of information is generally presented on an overlay map and accompanied by an overlay code. Overlays prevail over most other elements of the planning scheme.<sup>145</sup>

An overlay may change the level of assessment<sup>146</sup> to be undertaken for a particular type of development application.<sup>147</sup> For example, the use of land in the ‘general residential’ zone for a house might ordinarily be code assessable, unless it is designated on an overlay map as subject to flooding, in which case it may be required to undergo impact assessment.

The Queensland Planning Provisions recommend that overlays rarely be used as a mechanism for changing the level of assessment,<sup>148</sup> to ensure planning schemes remain user-friendly.<sup>149</sup> However, the Commission considers it may be appropriate to do so where the land has a high risk of flood,<sup>150</sup> particularly for sensitive developments such as child care centres and aged care facilities.

The Queensland Planning Provisions provide a list of standard overlays from which councils may choose.<sup>151</sup> Councils are not required to use all overlays and may propose additional overlays to address or reflect a particular local circumstance, provided the overlays do not duplicate or conflict with the overlays in the list.<sup>152</sup>

The overlays listed in the ‘development constraints category’ include a ‘flood hazard’ overlay. This overlay deals with areas of land identified by councils as subject to State Planning Policy 1/03.<sup>153</sup> The flood hazard overlay currently provides for the mapping of both ‘flooding and inundation’ and ‘overland flow paths’.<sup>154</sup>

As councils are afforded the flexibility to choose which overlays are included in their planning scheme, the adoption of an overlay depicting flood hazard is optional, even where a council has the relevant flood mapping information available.

The Queensland Planning Provisions allow assessment criteria for overlays to be contained within an overlay map, overlay code, zone code or local plan code.<sup>155</sup> The most recent draft of the Queensland Planning Provisions (version 3.0) provides that the assessment criteria for an overlay may only be contained within an overlay map or overlay code, omitting the reference to a zone code or local plan code.<sup>156</sup> The Commission agrees with this approach: all overlay assessment criteria should be contained in an overlay code, as opposed to any other type of code.<sup>157</sup> The Commission’s view on this point is further explored in *5.1.2 Features of the model flood planning controls*.

Where assessment criteria for an overlay are included in an overlay code, the code must include a statement articulating the purpose of the code and overall outcomes identifying how the purpose of the code can be achieved. The codes may also include specific criteria in the form of performance outcomes and acceptable outcomes.<sup>158</sup>

The Queensland Planning Provisions provide limited assistance with the content of assessment criteria for overlays, including the ‘flood hazard overlay’. Councils must draft all purpose statements and overall, performance and acceptable outcomes.

By way of an improvement, the new draft Queensland Planning Provisions (version 3.0) provides that a flood hazard overlay should apply where the development:

- increases the number of people living and working in the natural hazard management area, except where the premises are occupied on a short term or intermittent basis
- involves institutional uses where evacuating people may be difficult
- involves the manufacture or storage of hazardous materials in bulk.<sup>159</sup>

The level of guidance the Queensland Planning Provisions should provide on the content of assessment criteria is discussed further in 5.1.2 *Features of the model flood planning controls*.

## Planning scheme policies

The Queensland Planning Provisions require councils to include planning scheme policies (if they have any) in schedule 4 of their planning schemes. Planning scheme policies are documents that can provide guidance to applicants and assessing authorities about how to comply with the planning scheme. A planning scheme policy must not regulate or prohibit development or the use of premises, or take the place of a policy which should be contained within the main body of the planning scheme.<sup>160</sup>

The role of a planning scheme policy is further explained in chapter 3 *Planning framework*. The Commission's recommendations as to how planning scheme policies can be used to improve the consideration of flooding in development assessment can be found in 5.3 *Planning scheme policies* and 8.1.2 *Site-specific flood information provided by an applicant*.

## 4.4 Regional plans

A regional plan is a state planning instrument which sets out the desired land use and development outcomes for a particular region and the ways in which those outcomes can be achieved.

The requirements of a regional plan will prevail over any state planning policy, in the event of an inconsistency.<sup>161</sup> Councils within a regional plan's geographical area must amend their planning schemes to reflect the provisions of the applicable regional plan.<sup>162</sup> Consequently, a regional plan's stipulation that land be used in a particular way – as an urban area, for example – can determine planning for the region.

The *Sustainable Planning Act 2009* sets out the elements which each regional plan must address.<sup>163</sup> The matters listed are described in general terms, such as a requirement that regional plans identify key regional environmental, economic and cultural resources to be preserved, maintained and developed.<sup>164</sup> There is, however, no reference to natural hazards, such as flooding. Regional plans are not required to reflect the contents of state planning policies, such as State Planning Policy 1/03. This means that there is currently no requirement that regional plans be prepared having regard to the flood risk of parts (or all) of a particular region. (A description of regional plans is in chapter 3 *Planning Framework*.)

There is, on the other hand, nothing to preclude the issue of flooding being addressed, and all existing regional plans do contain land use policies which articulate the need to protect development from the potential effects of natural hazards.<sup>165</sup> Nonetheless, the Commission considers it advisable that a matter of such importance in the planning process be directly addressed by statute, by way of a requirement that consideration be given to flooding when preparing or revising a regional plan.

### 4.4.1 Land use designations under the South East Queensland Regional Plan

#### Goodna as a major regional activity centre

The Commission considered Goodna's designation as a 'major regional activity centre' under the South East Queensland Regional Plan 2009-2031. About 34 per cent of the area comprising the Goodna major regional activity centre lies below the 1% AEP flood level; 42.7 per cent of that area was affected by the January 2011 floods.<sup>166</sup> Clearly, Goodna is susceptible to flooding but, as a major regional activity centre, it is nonetheless expected to accommodate significant growth in the form of commercial and residential development, public transport hubs and regional cultural and entertainment precincts.<sup>167</sup>

Ipswich City Council's City Planner indicated that there is a need in the Ipswich area for Goodna to serve as a major regional activity centre.<sup>168</sup> He said that, at present, Goodna contains enough land at low risk of flooding for it to retain its current designation and for growth to continue within the suburb.<sup>169</sup> (This, however, may not always be the case.)

The Commission does not have sufficient evidence to make any finding about the appropriateness of Goodna's designation as a major regional activity centre under the South East Queensland Regional Plan 2009-2031.

However, given the influence that a regional plan can have on development in a region, the example highlights the importance of having regard to flood risk and impact when regional plans are prepared.

## Male Road Caboolture

The South East Queensland Regional Plan has also influenced how development has occurred in the Caboolture area. Like some parts of Goodna, Male Road in the Moreton Bay Regional Council area is highly susceptible to flooding.<sup>170</sup> In 2008, as a result of concerns raised by residents about Male Road's propensity to flood, the Moreton Bay Regional Council sought to amend the Caboolture planning scheme to change the zoning of the area from residential A to rural residential.<sup>171</sup> Correspondence from the (then) Minister for Infrastructure and Planning indicates that the amendment could not proceed because the land proposed to be zoned as rural residential fell within the South East Queensland Regional Plan's 'Urban Footprint'.<sup>172</sup> The Minister advised that flooding constraints were more appropriately dealt with as part of the development assessment process.<sup>173</sup> This position conforms with the provisions of the *Sustainable Planning Act 2009* which stipulate that planning schemes must be amended to reflect regional plans.<sup>174</sup>

While the Queensland Government's advice that Male Road must remain zoned for residential use reflects the current hierarchy of planning instruments, it demonstrates the impact that regional plans can have on council level decisions about development. Again, the example reinforces the argument for the risk of flooding to be taken into account when land uses in regional plans are designated.

## Recommendation

- 4.7 The Queensland Government should consider amending the *Sustainable Planning Act 2009* to require that consideration be given to the risk of flooding in the preparation or revision of a regional plan.

## (Endnotes)

- 1 Exhibit 532, Statement of Gary White, 2 September 2011 [p5: para 24]; Transcript, Gary White 19 September 2011, Brisbane [p2746: line 1].
- 2 Exhibit 532, Statement of Gary White, 2 September 2011 [p5: para 24]; Transcript, Gary White 19 September 2011, Brisbane [p2746: line 1].
- 3 State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* [p2].
- 4 State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* [p3].
- 5 Exhibit 534, Statement of Gary Mahon, 13 October 2011 [p3: para 12]; Transcript, Gary Mahon, 19 September 2011, Brisbane [p2778: line 25].
- 6 State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* [p3: para 1.1].
- 7 State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* [p5: para 4.7].
- 8 State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide*, 2003 [p5: para 6.1].
- 9 State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide*, 2003 [p8-9: Outcomes 4, 5 and 6].
- 10 State Planning Policy 1/03 Guideline: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide*, 2003 [p1: para 1.1].
- 11 State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide*, Annex 3 [p16: para A3.2].
- 12 State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* [p10: para 9.1].
- 13 State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide*, Annex 3 [p16: para A3.2].
- 14 State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide*, Annex 3 [p16: para A3.2].
- 15 State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* [p6: para 6.6].

- 16 Transcript, Gary White, 19 September 2011, Brisbane [p2747: line 10]; Transcript, Gary White, 19 September 2011 [p2767: line 40]; Exhibit 532, Statement of Gary White, 2 September 2011 [p29: para 152].
- 17 Transcript, Gary Mahon, 19 September 2011, Brisbane [p2782: para 25]; Exhibit 534, Statement of Gary Mahon, 2 September 2011 [p18: para 91].
- 18 State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* [p6: para 6.6].
- 19 State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* [p5: para 6.1].
- 20 State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* [p8-9: Outcomes 4, 5 and 6].
- 21 State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* [p6: Outcome 1].
- 22 State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* [p7: Outcome 2].
- 23 State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* [p8: Outcome 3].
- 24 State Planning Policy 1/03 Guideline: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* [p10-20].
- 25 State Planning Policy 1/03 Guideline: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* [p23: para 7.16; p53-59].
- 26 State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* [p6: para 6.8; p18].
- 27 State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* [p10: para 9.1].
- 28 Transcript, Gary White, 7 November 2011, Brisbane [p4629: line 18].
- 29 Transcript, Gary White, 7 November 2011, Brisbane [p4629: line 25]; Transcript, John Adams, 28 October 2011, Brisbane [p4584, lines 11-55].
- 30 Transcript, John Adams, 28 October 2011, Brisbane [p 4584, line 11].
- 31 Transcript, Gary White, 7 November 2011, Brisbane [p4629: line 30].
- 32 Transcript, Gary White, 7 November 2011, Brisbane [p4630: line 5].
- 33 Transcript, Gary White, 7 November 2011, Brisbane [p4629: line 39; p4629: line 51 – p4630: line 1].
- 34 Transcript, Gary White, 7 November 2011, Brisbane [p4630: line 5].
- 35 Chapter 9, part 3 of the *Sustainable Planning Act 2009* outlines the circumstances in which a change to a planning scheme may trigger compensation.
- 36 Transcript, John Adams, 28 October 2011, Brisbane [p4585: line 3]; Transcript, Gary White, 7 November 2011, Brisbane [p4631: line 9 – p4632: line 18].
- 37 Section 45, *Sustainable Planning Act 2009*; Exhibit 534, Statement of Gary Mahon, 2 September 2011 [p19: para 98].
- 38 Exhibit 534, Statement of Gary Mahon, 8 September 2011 [p20: para 99].
- 39 Exhibit 534, Statement of Gary Mahon, 8 September 2011 [p20: para 99(a)].
- 40 Exhibit 534, Statement of Gary Mahon, 8 September 2011 [p20: para 99(c)].
- 41 Exhibit 534, Statement of Gary Mahon, 8 September 2011 [p20: para 99(d)].
- 42 Exhibit 534, Statement of Gary Mahon, 8 September 2011 [p21: para 105-106].
- 43 Exhibit 534, Statement of Gary Mahon, 8 September 2011, GLM-39 [p8].
- 44 Exhibit 534, Statement of Gary Mahon, 8 September 2011, GLM-39 [p8].
- 45 Exhibit 534, Statement of Gary Mahon, 8 September 2011, GLM-39 [p9].
- 46 Transcript, Gary Mahon, 19 September 2011, Brisbane [p2778: line 21].
- 47 Transcript, Gary Mahon, 19 September 2011, Brisbane [p2777: line 25].
- 48 Exhibit 534, Statement of Gary Mahon, 8 September 2011 [p21: para 104].
- 49 This was discussed by the Brisbane River Expert Panel in relation to the availability of Monte Carlo analysis: Transcript, 26 October 2011 [p4388: line 14, p4397: line 22 – p4401: line 26]. For more general observations see: Transcript, Neil Collins, 26 October 2011, Brisbane [p4398: line 38 – p4400: line 6].

- 50 Transcript, Gary White, 19 September 2011, Brisbane [p2765: line 31]; Transcript, Greg Vann, 11 November 2011 [p4990: lines 9-18].
- 51 It is not the only opportunity. The Minister can, whenever he or she pleases, direct a council to give effect to a state interest. See section 126(1) *Sustainable Planning Act 2009*. However, the Minister has rarely used this power.
- 52 The Minister is entitled to make guidelines that assist the administration of the *Sustainable Planning Act 2009* (section 759(1), *Sustainable Planning Act 2009*).
- 53 Statutory Guideline 01/12: *Making and amending a local planning instrument*, 16 January 2012 [p7: para 2.1].
- 54 Statutory Guideline 01/12: *Making and amending a local planning instrument*, 16 January 2012 [p9: para 4.1A].
- 55 Exhibit 532, Statement of Gary White, 2 September 2011 [p12].
- 56 Exhibit 532, Statement of Gary White, 2 September 2011 [p12].
- 57 Exhibit 532, Statement of Gary White, 2 September 2011 [p12].
- 58 Exhibit 532, Statement of Gary White, 2 September 2011 [p12].
- 59 Statutory Guideline 01/12: *Making and amending a local planning instrument*, 16 January 2012 [p12-13: para 6.2-6.3].
- 60 Statutory Guideline 01/12: *Making and amending a local planning instrument*, 16 January 2012 [p13: para 6.3].
- 61 Statutory Guideline 01/12: *Making and amending a local planning instrument*, 16 January 2012 [p15: para 7.2].
- 62 Statutory Guideline 01/12: *Making and amending a local planning instrument*, 16 January 2012 [p16-17: para 8.5].
- 63 Statutory Guideline 01/12: *Making and amending a local planning instrument*, 16 January 2012 [p21-22: para 10.2].
- 64 Exhibit 532, Statement of Gary White, 2 September 2011 [p13].
- 65 Exhibit 532, Statement of Gary White, 2 September 2011 [p13].
- 66 Exhibit 532, Statement of Gary White, 2 September 2011 [p13].
- 67 Statutory Guideline 01/12: *Making and amending a local planning instrument*, 16 January 2012 [p22: para 10.3].
- 68 Statutory Guideline 01/12: *Making and amending a local planning instrument*, 16 January 2012 [p22: para 10.4].
- 69 State Planning Policy 1/03 Guideline: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide*, 2003 [p24: para 8.9].
- 70 Transcript, Gary White, 7 November 2011, Brisbane [p4626: line 15].
- 71 Exhibit 913, Statement of Gary White, 7 October 2011 [para 11].
- 72 Exhibit 913, Statement of Gary White, 7 October 2011, Attachment 1 [para 11].
- 73 Exhibit 913, Statement of Gary White, 7 October 2011, Attachment 4 [para 14].
- 74 Exhibit 913, Statement of Gary White, 7 October 2011, Attachment 6 [para 16].
- 75 Exhibit 913, Statement of Gary White, 7 October 2011, Attachment 21 [para 32].
- 76 Transcript, Gary White, 19 September, Brisbane [p2757: line 39].
- 77 Exhibit 918, Statement of Gary Mahon, 13 October 2011, Attachment GLM-2.
- 78 Exhibit 534, Statement of Gary Mahon, 8 September 2011, Attachment GLM-33.
- 79 Exhibit 534, Statement of Gary Mahon, 8 September 2011, GLM-33 [p2]. See also Exhibit 728, Statement of Russell Cuerel, 14 September 2011, Attachment RKC-07 [p6].
- 80 Exhibit 534, Statement of Gary Mahon, 8 September 2011, Attachment GLM-34 [p4].
- 81 Exhibit 670, Statutory declaration of Luke Lankowski, 1 September 2011 [p2: para 1.9; p3: para 2.1-2.2].
- 82 Transcript, Gary Mahon, 7 November 2011, Brisbane [p4646: line 56; p4647: line 16].
- 83 State Planning Policy 1/03 *Guideline: Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* [p24: para 8.5-8.6].
- 84 State Planning Policy 1/03 *Guideline: Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* [p24: para 8.7].
- 85 Transcript, Gary Mahon, 7 November 2011, Brisbane [p4644: line 30]; Exhibit 918, Statement

- of Gary Mahon, 13 October 2011, Attachment GLM-2.
- 
- 86 Transcript, Gary Mahon, 7 November 2011, Brisbane [p4646: line 1; p4647: line 44].
- 
- 87 Transcript, Gary Mahon, 7 November 2011, Brisbane [p4647: line 41].
- 
- 88 Exhibit 728, Statement of Russell Cuerel, 14 September 2011 [p4-5: para 8]; Transcript, Russell Cuerel, 5 October 2011, Brisbane [p3703: line 40].
- 
- 89 Transcript, Gary Mahon, 7 November 2011, Brisbane [p4650: line 25].
- 
- 90 Transcript, Russell Cuerel, 5 October 2011, Brisbane [p3707: line 26; p3709: line 3].
- 
- 91 Transcript, Russell Cuerel, 5 October 2011, Brisbane [p3703: line 51-p3704: line 18].
- 
- 92 Transcript, Gary Mahon, 7 November 2011, Brisbane [p4652: line 31].
- 
- 93 Transcript, Russell Cuerel, 5 October 2011, Brisbane [p3704: line 34 – p3705: line 2].
- 
- 94 Transcript, Gary Mahon, 7 November 2011, Brisbane [p4652: line 40].
- 
- 95 Transcript, Russell Cuerel, 5 October 2011, Brisbane [p3704: line 23].
- 
- 96 State Planning Policy 1/03 *Guideline: Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* [p24: para 8.5 – p25: para 8.10].
- 
- 97 Transcript, Gary Mahon, 7 November 2011, Brisbane [p4649: line 30].
- 
- 98 Transcript, Gary Mahon, 7 November 2011, Brisbane [p4648: line 54].
- 
- 99 Transcript, Gary Mahon, 7 November 2011, Brisbane [p4649: line 30].
- 
- 100 Transcript, Gary Mahon, 19 September 2011, Brisbane [p2777: line 25; line 47; p2778: line 21].
- 
- 101 Section 48, *Sustainable Planning Act 2009*.
- 
- 102 Exhibit 538, Statement of Brendan John Nelson, 15 September 2011, Attachment BJN-10.
- 
- 103 Third Supplementary Statement of Brendan John Nelson, 30 November 2011 [p16: para 443].
- 
- 104 Paragraphs A3.1 and A3.2 in State Planning Policy 1/03 (Annex 3, Natural hazard management areas, Flood) are:
- A3.1 A natural hazard management area (flood) is land inundated by a Defined Flood Event (DFE) and identified in a planning scheme.
- A3.2 The Queensland Government's position is that, generally, the appropriate flood event for determining a natural hazard management area (flood) is the 1% Annual Exceedance Probability (AEP) flood. However, it may be appropriate to adopt a different DFE depending on the circumstances of individual localities. This is a matter that should be reviewed when preparing or undertaking relevant amendments to a planning scheme. Local governments proposing to adopt a lower DFE in their planning scheme to determine a natural hazard management area (flood) for a particular locality will be expected to demonstrate to the satisfaction of the Department of Emergency Services (DES) and the Department of Natural Resources and Mines (NR&M) that the proposed DFE is appropriate to the circumstances of the locality.
- 
- 105 Exhibit 538, Statement of Brendan John Nelson, Attachment BJN-10 [p4].
- 
- 106 Transcript, Gary White, 7 November 2011, Brisbane [p4613: line 32].
- 
- 107 Mr White acknowledged that this would be an appropriate matter for amendment in the Temporary State Planning Policy: Transcript, Gary White, 7 November 2011, Brisbane [p4615: line 17].
- 
- 108 Exhibit 531, Temporary State Planning Policy 2/11 'Planning for stronger, more resilient floodplains' [p7].
- 
- 109 Supplementary Statement of Brendan Nelson, 30 November 2011 [p15: para 434].
- 
- 110 Queensland Reconstruction Authority, *Planning for stronger, more resilient floodplains: Part 1 - Interim measures to support floodplain management in existing planning schemes* [p4].
- 
- 111 Supplementary Statement of Brendan Nelson, 30 November 2011 [p23: para 468].
- 
- 112 Queensland Reconstruction Authority, *Planning for stronger, more resilient floodplains: Part 1 - Interim measures to support floodplain management in existing planning schemes* [p4].
- 
- 113 Queensland Reconstruction Authority, *Planning for stronger, more resilient floodplains: Part 1 - Interim measures to support floodplain management in existing planning schemes* [p4].
-

- 114 Queensland Reconstruction Authority, *Planning for stronger, more resilient floodplains: Part 1 - Interim measures to support floodplain management in existing planning schemes* [p12].
- 115 Transcript, Gary White, 7 November 2011, Brisbane [p4615: line 17].
- 116 Section 54, *Sustainable Planning Act 2009*.
- 117 Section 50, *Sustainable Planning Act 2009*; Queensland Planning Provisions (version 2.0), 4 October 2010, Background and usage [p4].
- 118 Sections 55(2),117(1), *Sustainable Planning Act 2009*. If a council fails to change their planning scheme in response to an amendment to the Queensland Planning Provisions within 90 business days, the Minister for Local Government has the power to make the changes to the planning scheme on council's behalf - section 55(3)-(6), *Sustainable Planning Act 2009*.
- 119 Section 706, *Sustainable Planning Act 2009*.
- 120 The Queensland Government Planner has confirmed that, subject to the consultation process, the draft Queensland Planning Provisions (version 3.0) are the Government's current way of thinking (Transcript, Gary White, 7 November 2011, Brisbane [p4618]).
- 121 Department of Local Government and Planning, Queensland Planning Provisions, [www.dlgp.qld.gov.au/statewide-planning/queensland-planning-provisions.html](http://www.dlgp.qld.gov.au/statewide-planning/queensland-planning-provisions.html) accessed on 22 February 2012.
- 122 Section 777, *Sustainable Planning Act 2009*.
- 123 Section 55(1), *Sustainable Planning Act 2009*.
- 124 It is anticipated the Toowoomba Regional Planning Scheme will commence operation in 2012 (Toowoomba Regional Council 'Final version of council's planning scheme now awaits Minister approval' [www.toowoombarc.qld.gov.au/our-region/major-projects/toowoomba-regional-planning-scheme.html](http://www.toowoombarc.qld.gov.au/our-region/major-projects/toowoomba-regional-planning-scheme.html) accessed on 23 February 2012).
- 125 For example, Brisbane City Council, Moreton Bay Regional Council, Fraser Coast Regional Council and Somerset Regional Council. The Grantham Development Scheme, while not a planning scheme prepared under the *Sustainable Planning Act 2009*, reflects the Queensland Planning Provisions (version 2.0). It is discussed in more detail in section 11.2 *Rebuilding Grantham*.
- 126 Queensland Planning Provisions (version 2.0), Background and usage [p4].
- 127 Queensland Planning Provisions (version 2.0), Background and usage [p4].
- 128 Queensland Planning Provisions (version 2.0), Background and usage [p4].
- 129 Self assessable development, assessable development and development requiring compliance assessment are explained further in chapter 3 *Planning framework* and in the glossary.
- 130 Draft Queensland Planning Provisions (version 3.0), Module B [p113]. Queensland Planning Provisions (version 2.0) does not include a definition of 'assessment criteria'.
- 131 'Planning scheme area' is defined in section 82 of the *Sustainable Planning Act 2009*.
- 132 The 'residential' zones category includes 'level 1' zones: general residential; and 'level 2' zones: residential living, residential choice, apartment residential, character residential and tourist accommodation - Queensland Planning Provisions (version 2.0), Module B [p22].
- 133 The 'centre' zones category includes 'level 1' zones: centre; and 'level 2' zones: principal centre, major centre, district centre, local centre, neighbourhood centre, and specialised centre - Queensland Planning Provisions (version 2.0), Module B [p22].
- 134 The 'recreation' zones category includes 'level 1' zones: recreation and open space; and 'level 2' zones: sport and recreation, and open space - Queensland Planning Provisions (version 2.0), Module B [p23].
- 135 The 'industry' zones category includes 'level 1' zones: industry; and 'level 2' zones: low impact industry, medium impact industry, high impact industry, noxious and hazardous industry, waterfront marine industry, high technology industry, and industry investigation - Queensland Planning Provisions (version 2.0), Module B [p23].
- 136 The 'other' zones category includes 'level 1' zones: community purposes, emerging communities, environmental management and conservation, extractive industry, innovation, limited development (constrained land), mixed use, road, rural, rural residential, and township - Queensland Planning Provisions (version 2.0), Module A [p23].

- 137 Queensland Planning Provisions (version 2.0), Module B [p24 and 50].
- 138 Queensland Planning Provisions (version 2.0), Module B [p24].
- 139 Queensland Planning Provisions (version 2.0), Module B [p50].
- 140 For example, the zones ‘residential choice’, ‘apartment residential’ and ‘character residential’ include the suggested overall outcome ‘development responds to land constraints, including but not limited to topography, bushfire and flooding constraints’. Curiously, however, no corresponding overall outcome is suggested for any other zone. These inconsistencies were acknowledged by the Queensland Government Planner - Transcript, Gary White, 19 September 2011, Brisbane [p2749 – 2752].
- 141 Queensland Planning Provisions (version 2.0), Module B [p50].
- 142 Queensland Planning Provisions (version 2.0), Module B [p46 , 47].
- 143 This zone is used in the Grantham Development Scheme discussed in more detail in section 11.2 *Rebuilding Grantham*.
- 144 The Queensland Planning Provisions state the purpose of an overlay is to address both state and local government interests by identifying areas that include one or all of the following: are sensitive to the effects of development, constrain land or development, are subject to valuable resources or present opportunities for development - Queensland Planning Provisions (version 2.0), Module B [p52]; See also exhibit 532, Statement of Gary White, 2 September 2011 [p22: para 120].
- 145 The current version of the Queensland Planning Provisions (version 2.0) state that overlays prevail over all elements of a planning scheme , other than the strategic framework, to the extent of the inconsistency (Queensland Planning Provisions (version 2.0), Module A, Section 1.5(5)(b)); the draft Queensland Planning Provisions (version 3.0) state that overlays prevail over all elements of a planning scheme, other than the strategic framework and statewide codes, to the extent of any inconsistency, (Queensland Planning Provisions, (version 3.0) Module A, Section 1.6(3)(c)).
- 146 Levels of development assessment are explained in chapter 3 *Planning framework*.
- 147 Queensland Planning Provisions (version 2.0), Module A, Section 5.3.
- 148 Queensland Planning Provisions (version 2.0), Module B [p52].
- 149 Town planner, Steve Reynolds, says that the avoidance of using overlays to change levels of assessment promotes efficiency in the planning system. See Exhibit 962, Report of Steve Reynolds, *Flood Mapping in Queensland Planning Schemes*, 9 November 2011 [p32: para 114].
- 150 This view is supported by town planner, Steve Reynolds, exhibit 962, Report of Steve Reynolds, *Flood Mapping in Queensland Planning Schemes*, 9 November 2011 [p32: para 114], and the Queensland Government Planner, transcript, Gary White, 7 November 2011, Brisbane [p4619].
- 151 A standardised approach to the mapping of overlays is also provided (Queensland Planning Provisions (version 2.0), Module B, schedule 2.
- 152 Queensland Planning Provisions (version 2.0), Module B [p52]; Exhibit 532, Statement of Gary White, 2 September 2011 [p22: para 120].
- 153 Queensland Planning Provisions (version 2.0), Module B [p53].
- 154 Queensland Planning Provisions (version 2.0), Module B [p53]; Exhibit 532, Statement of Gary White, 2 September 2011 [p22: para 121].
- 155 Queensland Planning Provisions (version 2.0), Module B [p55].
- 156 The draft Queensland Planning Provisions (version 3.0) also clarifies that where development is proposed on a lot or premises partly affected by an overlay, the assessment criteria for the overlay only relate to the part of the lot or premises affected by the overlay (draft Queensland Planning Provisions Version 3.0), Module A, Section 1.6(2)).
- 157 Zone codes should be aimed at achieving the purpose of the zone type. Local plan codes, which provide finer grained planning at a neighbourhood or suburb level, are more appropriately used to identify heritage or amenity characteristics (see Queensland Planning Provisions (version 2.0), Module B [p51]).
- 158 Queensland Planning Provisions (version 2.0), Module B [p56].
- 159 Draft Queensland Planning Provisions (version 3.0), Module B [p72].

- 160 Queensland Planning Provisions (version 2.0), Module B [p91].
- 
- 161 Section 26(3), *Sustainable Planning Act 2009*.
- 
- 162 Section 29(2), *Sustainable Planning Act 2009*.
- 
- 163 Section 28, *Sustainable Planning Act 2009*.
- 
- 164 Section 28(b)(iii), *Sustainable Planning Act 2009*
- 
- 165 Central West Regional Plan, September 2009 [p39: para 4.4.1]; Far North Queensland Regional Plan 2009-2031, February 2009 [p90: para 4.7.1]; South West Regional Plan, August 2009 [p31: para 4.3.4]; North West Regional Plan, August 2010 [p46: para 4.4.1]; Maranoa-Balonne Regional Plan, September 2009 [p35: para 4.4.1]; Wide Bay Burnett Regional Plan, September 2011 [p51: para 1.4.5]; South East Queensland Regional Plan 2009-2031, July 2009 [p44: para 1.4].
- 
- 166 Exhibit 912, Supplementary statement of John Adams, 25 October 2011 [p9: para 26]; Transcript, John Adams, 28 October 2011, Brisbane [p4595: line 38].
- 
- 167 South East Queensland Regional Plan 2009-2031, July 2009 [p97].
- 
- 168 Transcript, John Adams, 28 October 2011, Brisbane [p4595: line 52].
- 
- 169 Transcript, John Adams, 28 October 2011, Brisbane [p4595: line 52; p4596: line 1].
- 
- 170 Transcript, Lola Worthington, 26 September 2011, Brisbane [p3116: lines 43-50; p3117: line 13-17]; Exhibit 614, Statement of Anthony Martini, 9 September 2011, Attachment 1680907-2 [p19].
- 
- 171 Exhibit 620, Ordinary Council Meeting, Report of consideration of submissions to the draft amendments, 12 February 2008 [p389]; Transcript, Christopher Warren, 26 September 2011, Brisbane [p3158: lines 1-21].
- 
- 172 Exhibit 621, Letter from Paul Lucas MP, Minister for Infrastructure and Planning to John Rauber, 16 October 2008 [p1].
- 
- 173 Exhibit 621, Letter from Paul Lucas MP, Minister for Infrastructure and Planning to John Rauber, 16 October 2008 [p1].
- 
- 174 Section 29(2), *Sustainable Planning Act 2009*.
-

