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5 Local planning instruments

Councils are responsible for preparing local planning instruments and implementing planning controls at a local level. Where flooding is an issue, councils should craft their local planning instruments so that a balance is achieved between using available land for development and restricting development to ensure the safety of people and property from flooding. This chapter considers some of the challenges councils face in ensuring their local planning instruments strike this balance. Planning schemes, planning scheme policies and temporary local planning instruments are considered, together with councils' exposure to claims for compensation or damages.

5.1 Planning schemes

Each council in Queensland maintains a planning scheme or planning schemes for its area of responsibility. The planning scheme is the principal planning instrument against which development applications are assessed; it should include a mechanism for considering how flood might affect a development. Councils are, generally, in the best position to decide whether a development should go ahead;¹ they have local knowledge about past flooding events and the ability to decide whether certain uses are appropriate in a flood-affected area.²

The Queensland Government, primarily through State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide*, places the onus on councils to ensure flooding considerations are taken into account when planning schemes are drafted and development assessment is carried out.³ Planning schemes should reflect State Planning Policy 1/03; if they do not, all development applications to which the policy applies must be assessed against both the policy and the applicable planning scheme.⁴

There are, presently, limits on the extent of prescription for how flooding considerations are to be taken into account in making planning schemes and assessing development:

- planning schemes are not expressly required to address flooding (this is discussed in more detail in section 3.2.1 *Planning schemes*)
- State Planning Policy 1/03 does not take effect for development assessment until a council adopts a flood event and identifies the affected area in the planning scheme⁵ (this is discussed in more detail in section 4.1.2 *Application of State Planning Policy 1/03*)
- State Planning Policy 1/03 and the associated guideline contain only generic assessment criteria⁶ which are not adapted to local circumstances
- there is no requirement that the assessment criteria in State Planning Policy 1/03 be incorporated into planning schemes⁷
- flood related assessment criteria can be dispersed throughout a planning scheme⁸ and may vary between planning schemes

- there is no formulation for general use of the type of information about flooding that should be included in development applications.⁹

These limitations should be addressed by developing model flood planning controls to be included in a state planning instrument and mandating that they be incorporated into new planning schemes. Those controls would act as minimum standards to promote consistency of approach to flooding across Queensland, aiding councils in the drafting exercise they would have to undertake, while allowing councils discretion to tailor their planning schemes to accommodate local conditions.

5.1.1 Model flood planning controls

Model flood planning controls could be incorporated into planning schemes through one of two mechanisms: a state planning policy dealing with flood or the Queensland Planning Provisions. (See chapter 4 *State planning instruments* for an explanation of these instruments.) The merits of these alternatives are discussed under separate headings below. The decision as to which of the two options is used should be made by the Queensland Government, in consultation with councils.

State planning policy dealing with flood

The *Sustainable Planning Act 2009* provides that a state planning policy gives expression to the Queensland Government's policy position about a matter of state interest.¹⁰ Given this purpose, a state planning policy would seem an appropriate planning instrument to deliver model flood planning controls which accord with the Queensland Government's policy position, and to promote incorporation of those controls into new planning schemes.

An advantage of including the model flood planning controls in a state planning policy stems from the requirement that, if a planning scheme fails to reflect a state planning policy, development applications to which the policy applies must be assessed against the policy as well as the planning scheme.¹¹ Accordingly, any model flood planning controls contained in a state planning policy would, in the absence of their incorporation into planning schemes, still be considered in the assessment of development applications. This would ensure that the substance of the model flood planning controls had effect throughout Queensland.

However, placing the model controls in a state planning policy has a significant disadvantage: the *Sustainable Planning Act 2009* does not require councils to include the contents of state planning policies in their planning schemes. In contrast, such a requirement exists in respect of the Queensland Planning Provisions and regional plans: the *Sustainable Planning Act* provides that a council 'must ensure each of its local planning instruments is consistent with' the Queensland Planning Provisions¹² and a council 'must amend its planning scheme ... to reflect the ... region's regional plan'¹³ (emphasis added).

For the reasons already given, model flood planning controls would still have effect even if they were not included in planning schemes. However, the result is likely to be a more complicated development assessment process; it would also mean that councils had not tailored the model controls to local conditions.

Consequently, if the decision is taken to incorporate model flood planning controls in a state planning policy dealing with flood, the *Sustainable Planning Act* should be amended to require, expressly, that new planning schemes are to reflect or be consistent with any state planning policy dealing with flood. It may be appropriate for some provisions contained within such a policy to be mandatory and for others to be optional; the model flood planning controls should be mandatory.

In addition, if the model flood planning controls are included in a state planning policy dealing with flood, the problem identified in section 4.1.2 *Application of State Planning Policy 1/03* needs to be addressed: that is, the policy should apply to all development applications, not just those in respect to land mapped in a council's planning scheme as affected by flood.

Queensland Planning Provisions

Alternatively, the Queensland Planning Provisions are a mechanism through which model flood planning controls could be incorporated into new planning schemes. Some components of the Queensland Planning Provisions are mandatory, while others are not.¹⁴ If included in the Queensland Planning Provisions, the model flood planning controls should be mandatory.

As section 4.3 *Queensland Planning Provisions* explains, the Queensland Planning Provisions are designed to provide a consistent structure for planning schemes and to set out standard provisions that can be adapted according to local requirements and incorporated into planning schemes.¹⁵

One view is that any flood assessment criteria which would form part of the model flood planning controls should not be placed in the Queensland Planning Provisions, because the provisions are not designed to articulate the government's policy position about matters of state interest, but are simply meant to provide the format and structure for new planning schemes. Against that view, the *Sustainable Planning Act* expressly permits the Queensland Planning Provisions to provide 'standard provisions'. It appears to the Commission that there is no legal impediment or significant conceptual objection to the model flood planning controls' being included in the Queensland Planning Provisions.

The *Sustainable Planning Act* unequivocally requires new planning schemes to be consistent with the Queensland Planning Provisions.¹⁶ Consequently, if the Queensland Government elected to include model flood planning controls in the Queensland Planning Provisions, all new planning schemes would have to be consistent with those model controls.

A disadvantage of including model flood planning controls in the Queensland Planning Provisions is that the provisions have no application to the development assessment process until they are adopted by a council into a planning scheme.¹⁷ This means the controls would not take effect until a council adopted a planning scheme which was compliant with the Queensland Planning Provisions.

5.1.2 Features of the model flood planning controls

The Queensland Government should address in the model flood planning controls the matters set out below. This is not necessarily an exhaustive list; the Queensland Government, in consultation with councils, the public and other interested parties, should consider if there are other matters that should also be included.

The model flood planning controls should comply with the format and structure of the Queensland Planning Provisions and be drafted so as to allow councils to adapt them to local circumstances.

Flood overlay map

A flood overlay map is a map in a planning scheme that identifies areas where flood related planning controls are imposed.

The flood overlay map should identify the areas of the council region:

- that are known not to be affected by flood
- that are affected by flood and on which the council has imposed planning controls (there may be subsets in each area to which different planning controls attach)
- for which there is no flood information available to council.

The Queensland Government should, as an aspect of model flood planning controls, require councils to include such a flood overlay map in their planning schemes.¹⁸

The Queensland Planning Provisions include some sample maps and instructions to assist councils to prepare their planning scheme maps.¹⁹ Similar guidance should be included in the model flood planning controls.

At present, a number of councils in Queensland have flood maps that are not formally incorporated into their planning schemes.²⁰ Where a council has carried out the necessary flood studies, it should incorporate a flood map into its planning scheme. Instructions about how to prepare the map may assist councils to do so.

The Commission deals with the topic of what areas should be shown on a flood overlay map in section 2.7 *Flood mapping for land planning controls*.

Model flood overlay code

A flood overlay code contains planning controls used to regulate development potentially affected by flood. The application of a flood overlay code in the development assessment process is triggered by a flood overlay map. The code may affect development assessment in two ways: it may change the level of assessment and it may impose additional criteria against which the development will need to be assessed.

The model flood overlay code should comprise a consolidated set of flood related assessment criteria. That would assist in eliminating the scattering of such criteria throughout planning schemes which commonly occurs now and would provide clarity for planning scheme users. The Queensland Government Planner agrees that consolidating assessment criteria relating to flood in a single code is a useful and definitive way of imposing constraints on development within flood prone areas.²¹

Some planning schemes already consolidate all flood related assessment criteria into a single code: examples are the Bundaberg planning scheme²² and the Ipswich planning scheme.²³ The Toowoomba draft planning scheme²⁴ has included a flood hazard overlay code and accompanying flood hazard overlay map. Flood related planning controls are currently dispersed throughout Brisbane's planning scheme,²⁵ but Brisbane City Council is presently preparing a flood code which will consolidate the various assessment criteria that relate to flooding.²⁶

The model flood overlay code should include model assessment criteria that apply to the assessment of developments where there is the potential for flooding.²⁷ This will promote consistency between planning schemes. The Queensland Government Planner considers a code with model assessment criteria would alleviate the drafting burden for councils, provided local conditions are able to be taken into account.²⁸

The assessment criteria of the model flood overlay code should be devised by the Queensland Government in consultation with councils, the public and other interested parties. They should be drafted so that they have application in the development assessment process regardless of whether a council has a flood map that identifies the areas susceptible to flooding.²⁹

The Commission has made findings and recommendations about assessment criteria relating to:

- community infrastructure
- commercial development
- industrial uses and hazardous materials
- filling in a floodplain
- access routes
- electrical infrastructure.

These findings and recommendations are contained in chapter 7 *Development and flood considerations* and section 10.3 *Electrical infrastructure*.

The guideline *Planning for stronger, more resilient floodplains: Part 1 – Interim measures to support floodplain management in existing planning schemes*, prepared by the Queensland Reconstruction Authority contains a 'Model Code' which includes assessment criteria relating to matters such as evacuation routes, design and construction of development, hazardous materials and community infrastructure.³⁰ The authority's code is also compliant with the format and structure of the Queensland Planning Provisions.³¹

In addition, it would appear that the Queensland Government accepts that it should develop model flood planning controls. Since receiving the Commission's draft findings it has, on 16 January 2012, released for public consultation a draft guideline, *Planning for stronger, more resilient floodplains: Part 2 – Measures to support floodplain management in future planning schemes*. That draft guideline includes, as schedule 2, example planning scheme provisions dealing with flood. They are more extensive than those in Part 1 of the guideline. For example, they contain sample 'overall outcomes', 'performance outcomes' and 'acceptable outcomes' for the 'Limited development (constrained land) zone code'. They, like the Model Code, the example planning scheme provisions in Part 2, are also compliant with the format and structure of the Queensland Planning Provisions. (See section 4.3.2 *Structure of the Queensland Planning Provisions* for a more detailed explanation of these types of controls.)

Model planning scheme policy

A planning scheme policy should provide guidance to applicants about the type of flooding information required to support a development application and the form in which that information should be provided.

Where the proposed development is located in an area where the likelihood of flooding is unknown, a planning scheme policy could be used to provide guidance about what further information the applicant should supply to support its application.³²

The Queensland Government should include a model planning scheme policy in the model flood planning controls.

A more detailed discussion of the type of guidance councils should provide to applicants when a development is at risk of flooding is provided in section 5.3 *Planning scheme policies* and section 8.1.2 *Site-specific information provided by an applicant*.

Recommendations

- 5.1 The Queensland Government should draft model flood planning controls, using a similar format and structure to that in the Queensland Planning Provisions, that councils can adapt for local conditions. The Queensland Government should require these controls to be reflected in new planning schemes. This may be achieved by including the controls in either:
- a state planning policy dealing with flood, with an accompanying amendment to the *Sustainable Planning Act 2009*, or
 - the Queensland Planning Provisions.
- The Queensland Government should consult councils to determine which of the two state planning instruments is the more appropriate to include the model flood planning controls.
- 5.2 The Queensland Government should include in the model flood planning controls a requirement that councils have a flood overlay map in their planning schemes. The map should identify the areas of the council region:
- that are known not to be affected by flood
 - that are affected by flood and on which councils impose planning controls (there may be subsets in each area to which different planning controls attach)
 - for which there is no flood information available to council.
- 5.3 If the Queensland Government does not include a requirement for such an overlay map in the model flood planning controls, councils should include a flood overlay map in their planning schemes. The map should identify the areas of a council region:
- that are known not to be affected by flood
 - that are affected by flood and on which councils impose planning controls (there may be subsets in each area to which different planning controls attach)
 - for which there is no flood information available to council.
- 5.4 The Queensland Government should include in the model flood planning controls a model flood overlay code that consolidates assessment criteria relating to flood.
- 5.5 If the Queensland Government does not include such a code in the model flood planning controls, councils should include in their planning schemes a flood overlay code that consolidates assessment criteria relating to flood.
- 5.6 The Queensland Government should include in the model flood planning controls a model planning scheme policy that:
- for development proposed on land susceptible to flooding, outlines what additional information an applicant should provide to the assessment manager as part of the development application, or
 - for development proposed on land where the potential for flooding is unknown, requires an applicant to provide:
 - as part of the development application, information to enable an assessment of whether the subject land is susceptible to flooding, and
 - upon a determination the subject land is susceptible to flooding, more detailed information, to allow an assessment of the flood risk.

- 5.7 If the Queensland Government does not include such a policy in the model flood planning controls, councils should include in their planning schemes a planning scheme policy that:
- for development proposed on land susceptible to flooding, outlines what additional information an applicant should provide to the assessment manager as a part of the development application, or
 - for development proposed on land where potential for flooding is unknown requires an applicant to provide:
 - as part of the development application, information to enable an assessment of whether the subject land is susceptible to flooding, and
 - upon a determination the subject land is susceptible to flooding, more detailed information to allow an assessment of the flood risk.

5.2 Temporary local planning instruments

A temporary local planning instrument is a temporary planning mechanism that a council may use to protect a planning scheme area from adverse impacts.³³

A temporary local planning instrument can be made for all or part of a planning scheme area and can suspend or affect the operation of all or part of a planning scheme for up to one year.³⁴ It does not change or amend the planning scheme; rather it overrides the relevant provisions and replaces them temporarily. After the year has expired, the planning scheme will operate as it did before the temporary local planning instrument was created, unless the planning scheme has been amended within the year using the process outlined in section 5.4 *Amending planning schemes*.

The process for making a temporary local planning instrument is set out in the *Sustainable Planning Act 2009*³⁵ and Statutory Guideline 01/12: *Making and amending local planning instruments*.

In brief, a council resolves to make a temporary local planning instrument and drafts the instrument. The council then applies to the Minister for Local Government³⁶ to consider the proposed instrument against criteria set out in section 105 of the Act and to decide whether the council can adopt the proposed instrument. The Minister may approve a temporary local planning instrument only if the Minister is satisfied that:

- there is a significant risk of serious environmental harm, or serious adverse cultural, economic or social conditions happening in the planning scheme area
- the delay involved in amending the council's existing planning scheme would increase the risk
- state interests would not be adversely affected by the proposed temporary local planning instrument
- the proposed temporary local planning instrument appropriately reflects the standard planning scheme provisions.³⁷

Unlike a major amendment to a planning scheme, the process for making a temporary local planning instrument does not involve mandatory referral to Queensland Government agencies for public consultation. This is considered justified because temporary local planning instruments are a planning solution for urgent circumstances and have only a limited period of application.

The Queensland Government Planner notes that temporary local planning instruments are adopted sparingly; they create additional layers to a planning scheme, making the scheme more difficult for the general public to use and understand.³⁸

5.2.1 Interim flood regulation through temporary local planning instruments

In response to the 2010/2011 floods, some councils have adopted, or resolved to prepare, temporary local planning instruments that replace provisions in their existing planning schemes.

The Somerset Regional Council initially resolved, in June 2011, to prepare a temporary local planning instrument but it has since advised the Commission that it will instead adopt the Queensland Reconstruction Authority's Interim Floodplain Assessment Overlay and Model Code (discussed in detail in section 4.2 *Temporary state planning policy*).³⁹

The Central Highlands Regional Council also resolved in June 2011 to prepare a temporary local planning instrument to establish an interim residential flood level for known flood affected areas in Emerald.⁴⁰ It proposes

that the instrument will include data obtained from the 2008 and 2010/2011 floods⁴¹ and regulate development in Emerald until more detailed flood studies are completed.⁴²

The Lockyer Valley Regional Council has prepared and adopted two temporary local planning instruments intended, respectively, to help flood-affected Grantham businesses to recover and to establish temporary premises⁴³ and to enable the start of works on land designed for new development in Grantham.⁴⁴ The council has also resolved to prepare a further temporary local planning instrument to respond, more generally, to an interim flood study which it has commissioned.⁴⁵

Brisbane City Council and Ipswich City Council have each prepared and adopted a temporary local planning instrument following the 2010/2011 floods to provide interim planning standards for both new and existing development in areas that were affected by flood.⁴⁶

Each council's temporary local planning instrument includes requirements imposed on building work within the area designated by the interim flood regulation lines. These building work requirements are unique in Queensland planning instruments. There is debate as to whether the regulation of building work should be dealt with in planning schemes at all, including in temporary local planning instruments, or whether it should be confined to the building codes created under the *Building Act 1975*.⁴⁷ This debate is discussed elsewhere in this report, see chapter 9 *Building controls*.

Each of the Brisbane and Ipswich city councils' temporary local planning instruments adopts an interim flood regulation line and associated development provisions which permit corresponding increases in building heights. The Brisbane interim residential flood level is the outer limit of the January 2011 flood event and the council's 'defined flood level' (that is, a flood of 3.7 metres AHD at the Brisbane City Gauge).⁴⁸ The Ipswich interim flood regulation line is based on the outer limit of the council's existing '1 in 100 flood line', the January 2011 flood event and known information about the 1974 flood.⁴⁹ The Commission endorses the adoption of these flood regulation levels as an interim form of floodplain management.

In addition, Ipswich City Council's temporary local planning instrument 01/2011 discourages the intensification of residential uses on land situated below its interim flood regulation line and identifies 'special opportunities areas' within which it reduces the assessment levels for low impact, non-residential uses to encourage a transition away from residential uses.⁵⁰

The chief executive officer of Brisbane City Council has advised the Commission that an extension to the council's temporary local planning instrument is likely to be required, and would be highly desirable, to allow the council to properly consider its final response to the 2010/2011 floods and the Commission's recommendations.⁵¹ The council has, however, begun drafting a full amendment to its planning scheme to reflect the changes effected by the temporary local planning instrument.⁵²

Ipswich City Council's City Planner also gave evidence that the 12 month time limit on the life of its temporary local planning instrument presents difficulty for the council,⁵³ which is unable to complete a suitable flood study before the temporary local planning instrument expires.⁵⁴ The City Planner indicated that he would like the period of the temporary local planning instrument's application to be extended; but another option, he suggested, would be to fast-track an interim amendment to the council's planning scheme.⁵⁵

Some urgency attaches to resolving the problems identified by Brisbane City Council and Ipswich City Council. Brisbane City Council's Temporary Local Planning Instrument 01/11 will cease to have effect on 15 May 2012; Ipswich City Council's Temporary Local Planning Instrument 01/11 on 19 June 2012.

Given those councils' concerns and the Commission's recommendations in section 2.3.2 *A comprehensive study of the Brisbane River catchment*, the question arises whether councils should be afforded an express statutory means by which to extend or remake a temporary local planning instrument dealing with interim flood regulation.

No provision of the *Sustainable Planning Act 2009* expressly allows a temporary local planning instrument to be extended beyond the 12 months time limit or 'remade' at the end of its period of application (although the Queensland Government considers that nothing prevents a council from remaking a temporary local planning instrument). Neither does Statutory Guideline 01/12: *Making and amending local planning instruments* provide a procedure for extending or remaking a temporary local planning instrument.

In the Commission's view, it would be preferable for the *Sustainable Planning Act* expressly to confer a power to extend or remake a temporary local planning instrument with the relevant process prescribed in a new iteration of Statutory Guideline 01/12. The alternative – basing the remaking of a temporary local planning instrument on an absence of prohibition in the legislation – may create uncertainty and be susceptible to changing ministerial views or to court challenge.

The Commission takes no position as to whether the power ought to be to extend or to remake a temporary local planning instrument, provided there is an attendant process of review, which can result in substantive change. Such a process is necessary to ensure the instrument's provisions:

- remain relevant
- do not duplicate or conflict with other requirements that may have been introduced during the time the original temporary local planning instrument was in effect
- take into account any information that may have become available during the time the original temporary local planning instrument was in effect.

It would seem sensible, in the Commission's view, for the process of remaking or extending a temporary local planning instrument to be permitted only where the Minister is satisfied that the circumstances listed in section 105 of the *Sustainable Planning Act 2009* still exist and that there are good grounds for the failure to make a permanent scheme amendment during the original period of operation of the temporary local planning instrument. Because the proposed process requires neither referral to Queensland Government agencies nor public consultation, the remade or extended instrument should not be given effect for more than a limited period.

Recommendation

- 5.8 The Queensland Government should consider amending the *Sustainable Planning Act 2009* to expressly provide either a power to remake or a power to extend a temporary local planning instrument containing interim flood regulation for a further limited period. The power to remake or extend should:
- a. permit the modification of the temporary local planning instrument to the extent required to ensure its provisions remain relevant, having regard to any requirement that may have been introduced or any information that may have become available while the original temporary local planning instrument was in force
 - b. be contingent on the Minister's being satisfied that the circumstances listed in section 105 of the *Sustainable Planning Act* continue to exist and that there are proper grounds for the failure to make a permanent scheme amendment while the original temporary local planning instrument was in force.

5.3 Planning scheme policies

Planning scheme policies are local planning instruments that are intended to support a planning scheme and assist councils to make decisions about development applications.⁵⁶ Planning scheme policies may be used (among other things) to set out the information a council may request for a development application or to include guidelines or advice for applicants about satisfying assessment criteria.⁵⁷ (Planning scheme policies are also discussed in chapter 3 *Planning framework* and section 4.3 *Queensland Planning Provisions*.)

State Planning Policy 1/03 identifies planning scheme policies as an appropriate instrument for providing guidance about the type of information that should accompany a development application in order to address flooding considerations.⁵⁸ The Commission considers such guidance is best contained in a planning scheme policy as opposed to a guideline. A guideline has no binding effect, and, unlike a planning scheme policy,⁵⁹ may not be subject to public scrutiny before adoption.

The Commission is aware of several councils that already use planning scheme policies in this way. For example, Ipswich City Council has a planning scheme policy entitled 'Information Local Government May Request', which applies if an application involves land subject to flooding or major stormwater flows. It informs applicants that

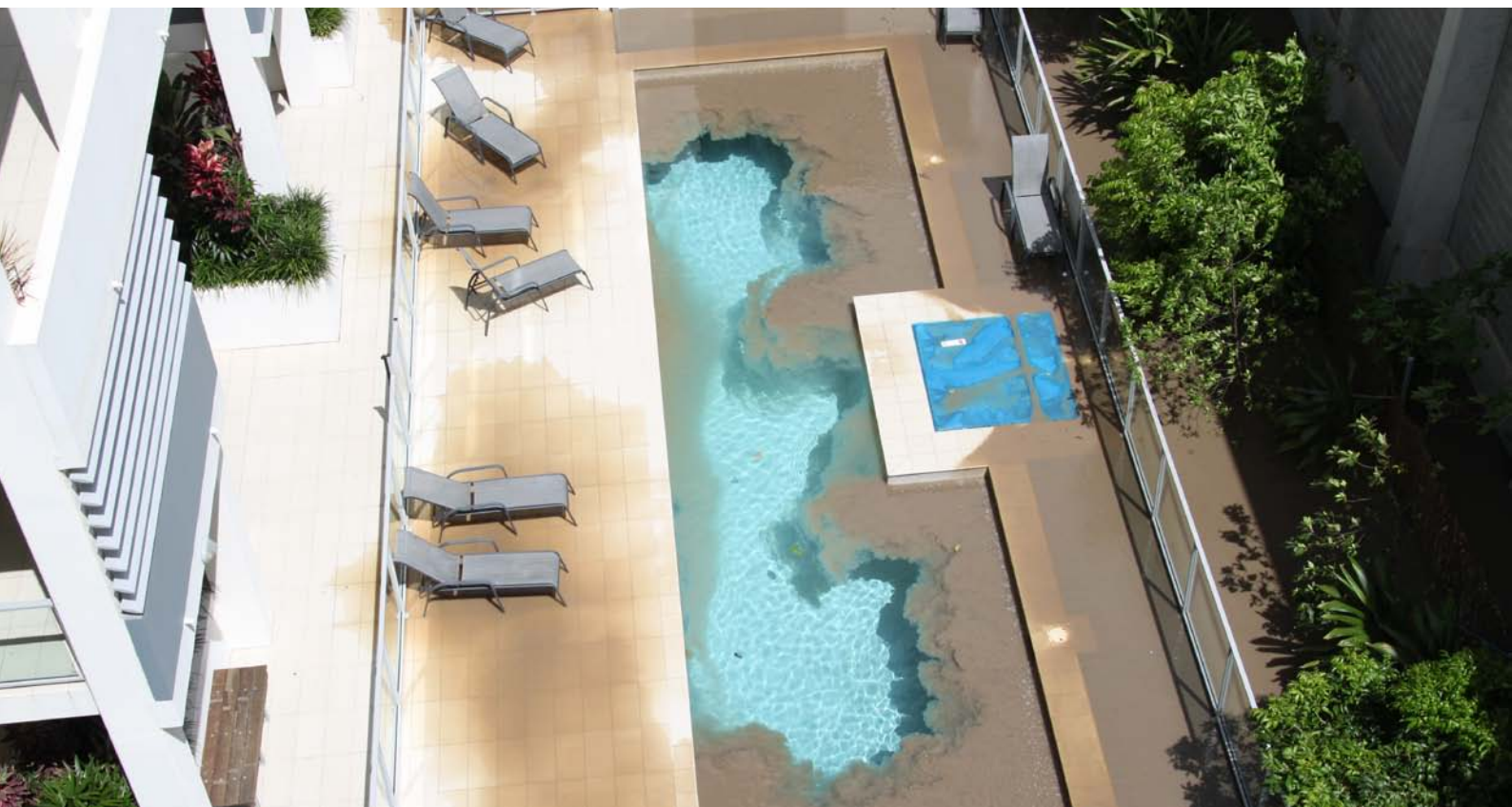
council may request further information about matters such as depth, volume and velocity of flows across the site, the likely impact of the proposed development and areas of the site preferred for various activities.⁶⁰

In addition to its planning scheme policy, Ipswich City Council has a guideline entitled Implementation Guideline No. 24 'Stormwater Management'. The guideline provides detailed information about what 'flood impact assessment' is required when the land on which a development is proposed is constrained by flooding or urban stormwater flow paths.⁶¹ The guideline also provides advice about matters such as the appropriate hydrologic and hydraulic models to use, the hydraulic parameters requiring analysis and assessment, the data sources to be used and the requirements for survey and historical flood data. The guideline is further described in chapter 8 *Development assessment in practice*. For the reasons given, it would be preferable if this information were contained in a planning scheme policy rather than a guideline.

Toowoomba Regional Council's draft planning scheme⁶² includes a planning scheme policy entitled 'Development Application Requirements'.⁶³ Pursuant to that policy, once the flood hazard overlay code is triggered, a site-specific 'flood hazard assessment' must be carried out by a suitably qualified person and provided in support of the development application.⁶⁴

A report provided to the Commission by consulting hydrologists, Sinclair Knight Merz,⁶⁵ provides a summary of minimum⁶⁶ and additional⁶⁷ information requirements that should be included as part of all 'flood-prone development' applications. The report suggests that a development application should, at a minimum, show:

- existing flood levels (that is, under pre-development conditions) at the site
- impacts of the development on adjacent and upstream flood levels
- velocities at the site, with and without the development
- flood depths and velocities along evacuation route(s) from the proposed development to high ground
- the amount of floodplain storage, if any, that would be lost as a result of the development.⁶⁸



Swimming pool flooding at West End apartment block (photo courtesy Diane Robertson)

The report proposes that a development application would provide this information with a plan (showing the site, the proposed development, ground and floor levels, and all waterways from which the site could be flooded), describe the methods and assumptions, and identify the sources of survey information, used to determine flood levels.⁶⁹

Plainly, any development application should make clear the development's potential for constituting a threat to human life, property and the environment.

When drafting a planning scheme policy for inclusion in the model flood planning controls the Queensland Government should consider including the type of information requirements identified in Ipswich's planning scheme policy and implementation guideline, and in the Sinclair Knight Merz report. The model planning scheme policy should also contain a requirement that the flood risk assessment be carried out by a suitably qualified person.

Some councils administer planning scheme policies that contain substantive planning provisions, such as assessment criteria. For example, Brisbane's planning scheme is supported by the Subdivision and Development Guidelines⁷⁰ which stipulate that residential and non-residential subdivisions be designed so that new lots are not located on land susceptible to flooding.⁷¹ Similarly, Somerset Regional Council's Planning Scheme Policy 12 'Flood Mitigation in the Lowood and Fernvale Locality' provides guidance about 'the standards Council will rely on when determining the level of flood immunity' for development in Lowood and Fernvale.⁷²

Having regard to the role of planning scheme policies identified above, the Commission considers planning schemes policies are not the appropriate instrument to provide substantive planning content; such content should be confined to the planning scheme itself.⁷³

5.4 Amending planning schemes

Planning schemes have a long life: they can remain unchanged for up to ten years.⁷⁴ Invariably, the behaviour of flooding will change over this period as a result of changes to the natural watercourse and the surrounding built environment, and environmental conditions such as rainfall and runoff. A planning scheme cannot reflect such changes unless its flood map is updated, but to do so requires the planning scheme's amendment.

Amendments to planning schemes are categorised as 'major', 'minor' or 'administrative'.⁷⁵ The time entailed in each type of amendment varies, with quite a different process for administrative amendments compared with that for major amendments.

Changes to flood maps in planning schemes are defined as major amendments. They are, as a consequence, required to undergo a period of public consultation and at least one state interest review prior to the Minister's considering whether the council may adopt the amendment.⁷⁶ The entire process can take around 18 months.⁷⁷ (See section 4.1.4 *State interest review of planning schemes* for a detailed description of the state interest review process.)

In response to a council's submission,⁷⁸ the Commission considered the appropriateness of requiring updates to planning scheme flood maps to be subject to this lengthy, and sometimes complex, process.

5.4.1 A shorter process?

It is important for development decisions to be based on the most up to date information. Ideally, planning scheme overlay maps should reflect updated flood data as that data becomes available.⁷⁹ But this is an unrealistic goal: it would require councils to undertake regular major amendments.

There are, however, important benefits deriving from the major amendment process. The state interest review allows Queensland Government agencies, particularly the Department of Environment and Resource Management (DERM), to review the proposed mapping and to advise councils of the existence of any additional flood studies or flood data that should be incorporated.⁸⁰ The public consultation process also has value. Individuals, particularly those in rural or regional areas, may have information about local flooding conditions that contradicts what is displayed on a flood map derived from a flood model (which is an artificial estimation of the potential extent of flooding). And public consultation allows anyone likely to be affected by the proposed mapping (particularly any individual whose property now falls within the mapped area) to make submissions to the council. These features of the major amendment process – public and state consultation – make the amendment process most appropriate for the introduction of new flood mapping into a planning scheme (of unmapped catchments or sub-catchments, for instance).

Nonetheless, a shortened amendment process could apply to updating *existing* flood mapping information.⁸¹ The Commission considered the appropriateness of using the minor amendment process for this purpose.

A minor amendment is defined in Statutory Guideline 01/12: *Making and amending local planning instruments*. It is an amendment that the Minister is satisfied:

- reflects a current development approval, a master plan or an approval under other legislation
- includes a planning scheme policy
- reflects a change made in response to a regional plan that is applicable to the relevant council region
- reflects all or part of a state planning policy
- reflects changes to a planning scheme in response to a ministerial direction, where those changes have been subject to adequate public consultation, or
- has involved adequate consultation with the public and the state
- if in south-east Queensland, reflects changes to the planning scheme relating to water and wastewater infrastructure and services.⁸²

Accordingly, to make a minor amendment a council must prepare the amendment and then submit it to the Minister, who determines whether he or she is satisfied that the amendment is indeed a minor one.⁸³ The minor amendment process still requires Queensland Government consultation.⁸⁴

The Queensland Reconstruction Authority interim floodplain maps can be incorporated into a planning scheme by way of the minor amendment process.⁸⁵ The streamlined procedure is justified on the basis that the authority considers itself to have undertaken the state interest review process and the public consultation on behalf of the council.⁸⁶

The Commission considers it acceptable for flood mapping information to be updated by way of a minor amendment process, provided that adequate public consultation has occurred, allowing individuals potentially affected by any proposed changes to the existing planning scheme flood map an opportunity to comment.

Recommendation

- 5.9 The Queensland Government should consider allowing councils to amend a planning scheme to update existing flood mapping information by way of the minor amendment process, provided that adequate public consultation has occurred.

5.5 Compensation

The Commission received a number of submissions from local government concerning councils' exposure to claims for flood-related compensation or damages.⁸⁷ The submissions raised two distinct issues:

- the protection of councils against liability for losses arising from the provision of flood advice or from acts done, or omitted to be done, in respect of land subject to flooding
- councils' exposure to compensation claims under the *Sustainable Planning Act 2009* for a reduction in land value because of a change to the flood controls contained in a planning scheme or planning scheme policy.

5.5.1 Statutory immunity

Currently, councils in Queensland have no specific statutory protections in relation to the provision of flood information or decisions concerning development of flood-affected land.

The Local Government Association of Queensland has submitted that councils are concerned about the prospect of liability; for example, for losses caused by flood where rebuilding has been approved after previous flooding, even if the owner knew of the risk.⁸⁸

Gold Coast City Council has raised similar concerns about liability should it publish information about possible effects of climate change, and has pointed out that the lack of legislative prescription for flood modelling may leave local government flood modelling open to challenge on a case by case basis.⁸⁹

Mr Steve Reynolds, an expert planning witness engaged by the Commission, expressed the view that councils' exposure to liability presented a challenge for achieving effective flood management under the Queensland planning system.⁹⁰

It is of some interest that the Natural Disaster Insurance Review has recommended that, to encourage provision of flood risk information to the public, Commonwealth, state and territory governments grant indemnities to those making it available, if it is obtained and provided in good faith and in the absence of any gross negligence.⁹¹

Both the Local Government Association of Queensland and the Gold Coast City Council contended that uncertainty about local governments' exposure to liability could be relieved by the introduction of a legislative exemption from liability for reasonably based local government decision-making.⁹² They proposed a statutory immunity modelled on section 733 of the *Local Government Act 1993* (NSW). (The Brisbane City Council also supports the introduction of such an immunity.⁹³)

Section 733 provides that a council does not incur any liability in respect of advice given or acts done or omitted to be done in good faith in respect of the likelihood of any land being flooded or the nature or extent of any such flooding.

The immunity has general application to anything done or omitted to be done in the exercise of a council's functions under legislation and has explicit application to particular circumstances including:

- the preparation or making of an environmental planning instrument
- the granting or refusal of consent to a development application, including any conditions imposed
- the preparation or making of a coastal zone management plan
- the furnishing of advice in planning certificates which may specify, for instance, whether or not development on land is subject to flood related development controls⁹⁴
- the carrying out of flood mitigation works
- the carrying out of coastal management works
- the failure to upgrade flood mitigation works or coastal management works in response to projected or actual impacts of climate change
- the provision of information relating to climate change or sea level rise.

Under the provision, unless the contrary is proved, a council is taken to have acted in good faith if it has acted substantially in accordance with principles contained in manuals published by the Minister for Planning.

The circumstances surrounding and the intentions behind the enactment of section 733 can be discerned from the second reading speech of the responsible minister.⁹⁵ It was informed by reasoning that, as flooding is a natural and recurring but unpredictable phenomenon, local governments should be protected against claims for damages arising from development and building approvals and the provision of flood information or advice. Local government made strong representations that the existing law was inadequate to protect councils from claims for damages arising from planning and development decisions and the issue of advice relating to flood liable land, even though they had acted in accordance with the relevant government policy and in good faith. This uncertainty was alleged to have caused a number of councils to adopt an excessively conservative approach to decision-making, for instance unnecessarily refusing development applications or imposing superfluous and costly development and building conditions. The immunity was said to strike the appropriate balance between protecting the rights of individuals, on the one hand, and the problems encountered by local government, on the other, by only protecting actions taken in good faith.

In late 2010, the New South Wales parliament extended the exemption to climate change related decision-making. It now applies to things done in relation to coastal management and the provision of information relating to climate change or sea level rise.

The evidence before the Commission as to whether councils' concerns about liability adversely affect their willingness or ability to minimise infrastructure or other property damage from floods is limited and mixed.

The Queensland Government Planner has given evidence that the Queensland Government is trying to help local governments to respond to climate change by developing a ‘co-ordinative framework’ to enable a consistent approach.⁹⁶ However, Gold Coast City Council has expressed its concern that the current legislative framework may not provide adequate support for local governments that wish to publish the latest credible information, for example flood maps or data which take into account sea level rise or the storm surge impacts of climate change, but fear that doing so may open them to claims for compensation.⁹⁷

The director of development and environment at the North Burnett Regional Council gave evidence that the council had reservations about adopting a defined flood event recommended by a commissioned flood study which adopted a climate change factor of 20 per cent.⁹⁸ It had, however, undertaken a joint project with the Queensland Government to assist it in incorporating climate change into its flood risk management framework.⁹⁹ It has yet to fix on a defined flood event which takes climate change into account. Council officers are presently working to simplify the way in which climate change is incorporated into the council’s planning scheme to ensure that the information is comprehensible by the general public.¹⁰⁰

Resolutions made by the Central Highlands Regional Council since the 2010/2011 floods seem to demonstrate conservative decision-making based on uncertainty about the likelihood of flooding. On 21 February 2011, the council resolved that it would not provide any flooding information (historic or current) to any person or entity except in response to an application under the *Right to Information Act 2009* or some other lawful process.¹⁰¹ The chief executive officer of the council gave evidence that this was ‘a slowdown tactic’ while the council was doing further work to ascertain flood levels; it was concerned about giving the wrong information to the public.¹⁰²

The council also resolved to defer a number of development applications until it obtained information on flood levels from the 2010/2011 floods.¹⁰³ This case by case response to development applications has been supplemented by a council resolution to defer (with some exceptions¹⁰⁴) the consideration of all development applications located within the Emerald town zone on land subject to inundation during the 2010/2011 flood event until such time as flood studies commissioned by the council were finalised.¹⁰⁵ But it is not apparent whether the council, in adopting these resolutions, was motivated by concern about liability or whether it simply considered its actions best served the public interest.

The Local Government Association of Queensland’s position that local government is concerned about the issue of liability where a development approval is given to rebuild in an area affected by recent flood events is given some credence by measures adopted, but shortly after rescinded, by the Lockyer Valley Regional Council in response to the January 2011 flooding.¹⁰⁶

A council resolution of 28 June 2011 stated that the council would require owners rebuilding a dwelling on land where a dwelling existed prior to the January flood to provide an immunity statement to council confirming that they were aware of the risks associated with rebuilding below an interim minimum habitable floor level adopted by the council.¹⁰⁷ The relevant part of that resolution was rescinded on 7 September 2011.¹⁰⁸ Despite inquiries, the council has not given any clear account of its concerns or intentions in making and revoking the resolution.

There are, in the examples cited, some hints that council decision-making may have been influenced by apprehension about exposure to liability arising from the provision of flood advice or actions in respect of land subject to flooding. However, the evidence before the Commission is insufficient for it to form a view about the utility of introducing a statutory immunity.

The Queensland Government has advised the Commission that it will investigate the viability of introducing legislation similar to section 733 of the *Local Government Act 1993* (NSW).¹⁰⁹ The Commission endorses the proposal; any such investigation should occur in consultation with councils.

5.5.2 Reduction in land value

The statutory regime for the payment of compensation for a reduction in land value because of a change to a planning scheme or planning scheme policy¹¹⁰ in Queensland is contained in the *Sustainable Planning Act 2009*.

Under sections 704 and 705 of the Act, the owner of an interest in land is entitled to be paid reasonable compensation by a council for such reduction in land value ‘in specified circumstances’ if he or she is adversely affected by changes to a planning scheme.

Section 706 of the Act limits the circumstances in which compensation must be paid; it is not, for example, payable:

- if a change to a planning scheme has the same effect as a state planning instrument (such as State Planning Policy 1/03) in relation to which compensation is not payable: section 706(1)(a), or
- if a change to a planning scheme affects development which, under the superseded planning scheme, would have led to significant risk to persons or property from flood and the risk could not have been significantly reduced by conditions attached to a development approval: section 706(1)(i)(i).

Some matters have been identified to the Commission as restricting or making doubtful the availability of the section 706(1)(a) exclusion in relation to the imposition of flood controls in a planning scheme, particularly where reliance on State Planning Policy 1/03's effect is proposed.

The Queensland Government Planner's evidence was that the breadth of the definition of 'development commitment' in the policy (which allows development incompatible with a natural hazard where it is a development commitment) would make it difficult for a council to rely upon the exclusion.¹¹¹ For more detail about the definition of development commitment in State Planning Policy 1/03, see section 4.1.2 *Application of State Planning Policy 1/03*.

Brisbane City Council pointed out that the requirement that changes to a planning scheme have the 'same effect' as a state planning instrument produced uncertainty, because current state planning instruments do not provide a sufficient degree of detail for confidence on the point.¹¹² It may be open to challenge, for example, whether changes which expand upon the operation of State Planning Policy 1/03's development outcomes have the 'same effect' as those outcomes.

In respect of the section 706(1)(i)(i) exemption, Brisbane and Ipswich city councils contended that the scope of the phrases 'significant risk' and 'the risk could not have been significantly reduced by conditions attached to a development approval' was open to argument.¹¹³

Ipswich City Council observed that the section 706(1)(i)(i) exclusion was further limited, in this way: it does not apply if conditions on development could have significantly reduced the risk; and the range of conditions that may be imposed is in turn restricted by section 347(1) of the *Sustainable Planning Act*, which provides that:

a condition must not be inconsistent with a condition of an earlier development approval or compliance permit still in effect for the development.¹¹⁴

Ipswich City Council has expressed the view that exposure to compensation claims for a reduction in land value because of a change to a planning scheme or planning scheme policy acts as a deterrent to the inclusion of flood controls in a planning scheme.¹¹⁵ The evidence of the council's City Planner was that it had concerns that it would be liable for compensation if it were to 'down-zone' land below its 1 in 20 development line, previously designated for residential uses under a superseded planning scheme. In his view, further limiting the entitlement to compensation where a planning scheme is amended following a natural disaster would allow councils more scope to make zoning decisions.¹¹⁶ Mr Reynolds, the planning expert engaged by the Commission, similarly regarded the prospect of liability to compensation under the *Sustainable Planning Act* as an impediment to local governments wanting to 'down-zone'.¹¹⁷

Councils proposed the following changes to the *Sustainable Planning Act* to ensure that its compensation provisions did not deter local governments from including appropriate provisions in their planning schemes:

- Ipswich City Council supported amendment to exempt all planning scheme controls for flooding (and other natural processes) from giving rise to compensation for a reduction in land value because of a change to a planning scheme or planning scheme policy¹¹⁸
- Brisbane City Council supported amendment of section 706(1)(i)(i) to clarify the intent of the subsection, provide certainty to council as to the scope of the exemption and remove the words 'significant risk' and 'the risk could not have been significantly reduced by conditions attached to a development approval'¹¹⁹
- Gold Coast City Council suggested that the entitlement to compensation be limited where a planning scheme is changed to meet the impacts of climate change.¹²⁰

The Queensland Government Planner accepted that some local governments were reluctant to change their planning schemes to preclude development on flood constrained land where doing so might trigger an entitlement to compensation.¹²¹ He agreed, in principle, that the *Sustainable Planning Act* should be amended to make clear that no compensation was payable should a local planning instrument be amended for the purposes of mitigating flood, while pointing out that larger policy implications would have to be considered.

Although the Queensland Government does not currently propose to investigate the viability of change to the compensation provisions of the *Sustainable Planning Act*, the concerns expressed by councils suggest that such change should at least be considered, to ensure that councils are not inhibited by the prospect of statutory liability to compensation from adopting appropriate land planning regulation and making appropriate land planning decisions where flooding is a consideration. Whether this is necessary may hinge upon any action taken by the Queensland Government to narrow the definition of development commitment so that more development applications are assessed against flood criteria. For the Commission's recommendation as to these matters, see section 4.1.2 *Application of State Planning Policy 1/03*.

(Endnotes)

- 1 Transcript, Gary White, 19 September 2011, Brisbane [p2746: line 1; p2769: line 15].
- 2 Exhibit 666, Statement of Glen Brumby, 15 September 2011 [p14: para 56].
- 3 State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* [p8: para 7.1].
- 4 Chapter 6, Part 5, Division 2, *Sustainable Planning Act 2009*; Exhibit 532, Statement of Gary White, 2 September 2011 [p30: para 158].
- 5 Clause 6.6, State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* [p6].
- 6 Assessment criteria are referred to in State Planning Policy 1/03 and the associated guideline as 'development outcomes', 'specific outcomes' and 'solutions'.
- 7 Exhibit 532, Statement of Gary White, 2 September 2011 [p30: para 156]. The Queensland Government Planner stated the reason the *Sustainable Planning Act 2009* does not require councils to include the contents of a state planning policy as not all parts of a state planning policy will be relevant to all councils (Transcript, Gary White, 7 November 2011, Brisbane [p4615: line 54]). However, as it is the Minister for Local Government who approves planning schemes that are developed or amended by councils, it is within the Minister's prerogative to not approve a planning scheme or an amendment to a planning scheme until a matter the Minister considers must be addressed is done so to the Minister's satisfaction. Further, the Minister may direct a council at any time to amend an existing planning scheme under Chapter 3, Part 6 of the *Sustainable Planning Act 2009* to address a state interest, such as flood management (Exhibit 532, Statement of Gary White, 2 September 2011 [p31: para 159]). This power has not been exercised to the Queensland Government Planner's knowledge (Transcript, Gary White, 19 September 2011, Brisbane [p2748: line 8]).
- 8 State Planning Policy 1/03 Guideline: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide*, notes that development assessment codes dealing with floods in planning schemes may take the form of 'special hazard management codes' or be incorporated into broader codes, as appropriate (State Planning Policy 1/03 Guideline: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* [p23: para 7.15]).
- 9 Limited guidance is currently provided by the Queensland Government as to the type of flooding information that should be submitted with development applications (see State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide* and the associated guideline).
- 10 Section 40(b), *Sustainable Planning Act 2009*.
- 11 Chapter 6, Part 5, Division 2, *Sustainable Planning Act 2009*.
- 12 Section 55(1), *Sustainable Planning Act 2009*. Existing planning schemes are not required to be consistent with the Queensland Planning Provisions (see section 777, *Sustainable Planning Act 2009*).
- 13 Section 29(2), *Sustainable Planning Act 2009*.
- 14 For a more detailed discussion of the structure of the Queensland Planning Provisions, see section 4.3 *Queensland Planning Provisions*.
- 15 Section 50(b), *Sustainable Planning Act 2009*.

- 16 Section 55(1), *Sustainable Planning Act 2009*. Existing planning schemes are not required to be consistent with the Queensland Planning Provisions (see 777, *Sustainable Planning Act 2009*).
- 17 For what is to be taken into account in the assessment of development applications, see Chapter 6, Part 5, Division 2, *Sustainable Planning Act 2009*.
- 18 This is in line with the 'flood hazard overlay' as proposed by the new draft Queensland Planning Provisions, version 3.0, October 2011, section 4.3 *Queensland Planning Provisions*.
- 19 See Schedule 2, Queensland Planning Provisions (version 2.0).
- 20 For example, Brisbane City Council, Moreton Bay Regional Council and Somerset Regional Council.
- 21 Transcript, Gary White, Brisbane, 7 November 2011, Brisbane [p4618: line 17]. Town planner Steve Reynolds's view is that where mapping data exists, all flooding matters should be dealt with in a flood overlay and flood overlay code a planning scheme (Exhibit 962, Steve Reynolds, *Flood Mapping in Queensland Planning Schemes*, 9 November 2011 [p29: para 105]).
- 22 The Flood Management Code is triggered by a Flood Management Overlay in the Bundaberg planning scheme.
- 23 The Flooding and Urban Stormwater Flow Path Areas Development Constraint Code is triggered by the Flooding and Urban Stormwater Flow Path Areas Overlay in the Ipswich Planning Scheme. The operation of this code is currently suspended due to the introduction of the Temporary Local Planning Instrument 01/2011 – Flooding Regulation.
- 24 The draft Toowoomba Regional Council planning scheme is consistent with the Queensland Planning Provisions.
- 25 The mechanisms used in the Brisbane planning scheme to deal with flooding are the House Code, Compensatory Earthworks Planning Scheme Policy, Filling and Excavation Code, Stormwater Management Code, Subdivision Code, Structure Planning Code, Waterway Code, Park Planning and Development Code and the Child Care Facility Code. The council's Subdivision and Development Guidelines also deal with flooding (see Exhibit 953, Statement of Colin Jensen, 31 August 2011 [p8, 9: para 3.17]).
- 26 Exhibit 953, Statement of Colin Jensen, 31 August 2011 [p9: para 3.18, 3.20].
- 27 For example, a purpose statement, overall outcomes, and performance outcomes and acceptable outcomes (Queensland Planning Provisions (version 2.0) [p55 -57]).
- 28 Transcript, Gary White, 7 November 2011, Brisbane [p4619: line 14].
- 29 This is to overcome the difficulty identified with the application of State Planning Policy 1/03 in that a natural hazard management area for flood must be identified for the policy to apply. See section 6.6 of State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide*, 2003; Exhibit 532, Statement of Gary White, 2 September 2011 [p29: para 148; 152] and Transcript, Gary White, 19 September 2011, Brisbane [p2747: line 10]. The limitations of State Planning Policy 1/03 are explained in further detail in section 4.1 *State Planning Policy 1/03*.
- 30 The Queensland Reconstruction Authority *Guideline Planning for Stronger, More Resilient Floodplains: Part 1 - Interim measures to support floodplain management in existing planning schemes* [p18, 19].
- 31 The Queensland Reconstruction Authority *Guideline Planning for Stronger, More Resilient Floodplains: Part 1 - Interim measures to support floodplain management in existing planning schemes* [p18].
- 32 Town planner, Steve Reynolds, has the view that where there is no flood data available there should be two tiers of information requirements in a planning scheme policy: the first tier to determine whether the site has characteristics which warrant further study and the second tier to set out the usual flood study requirements of a council (Exhibit 962, Steve Reynolds, *Flood Mapping in Queensland Planning Schemes*, [p27: para 91.d]).
- 33 Section 101, *Sustainable Planning Act 2009*.
- 34 Sections 103, 104, *Sustainable Planning Act 2009*.
- 35 Chapter 3 Part 5, Division 2.
- 36 Section 105 of the *Sustainable Planning Act 2009* states that a local government may make a temporary local planning instrument for all or part of its planning scheme area only if 'the

- Minister' is satisfied of certain matters. Since 22 June 2011, and as at 19 January 2012, the Minister responsible for administering the *Sustainable Planning Act 2009* is the Minister for Local Government, see: *Administrative Arrangements Order (No. 2) 2011*.
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- 37 Section 105, *Sustainable Planning Act 2009*.
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- 38 Exhibit 532, Statement of Gary White, 2 September 2011 [p59: para 317].
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- 39 Exhibit 1002, Statement of Robert Bain, 21 October 2011 [p6: para 30-31].
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- 40 Exhibit 670, Statement of Luke Lankowski, 1 September 2011 [p3: para 2.3, 2.4].
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- 41 Exhibit 670, Statement of Luke Lankowski, 1 September 2011 [p3: para 2.5].
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- 42 Exhibit 683, Statement of Bryan Ottone, 6 September 2011 [p3].
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- 43 Lockyer Valley Regional Council, Adoption of Temporary Local Planning Instrument 02/11, available at www.lockyervalley.qld.gov.au/news-events/public-notice-1310-public-notice-adoption-of-temporary-local-planning-instrument-0211 as at 1 December 2011.
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- 44 Queensland Government Gazette, 27 May 2011, Notice under the *Sustainable Planning Act 2009* that on 27 May 2011 the Lockyer Valley Regional Council adopted Temporary Local Planning Instrument 03/11 Operational Work for the Grantham Reconstruction Area.
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- 45 Lockyer Valley Regional Council, Extraordinary Meeting of Council: Minutes, 7 October 2009 [p6-8], available at www.lockyervalley.qld.gov.au/images/PDF/about_council/meetings/minutes/OC_07102009_MIN_AT_EXTRA.pdf as at 7 October 2009; Exhibit 984, Statement of Ian Flint, 26 October 2011, Attachment ICF-2 [part 2].
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- 46 Exhibit 911, Statement of John Adams, 2 September 2011, JA-10; Exhibit 953, Statement of Colin Jensen, 31 August 2011, CDJ-35.
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- 47 Transcript, Gary White, 7 November 2011, Brisbane [p4638-4639]; Exhibit 532, Statement of Gary White, 2 September 2011 [p59: para 321]; Statement of Glen Brumby, 16 November 2011 [p12-13: para 24-25]; Sustainable Planning and Other Legislation Amendment Bill 2011, introduced 11 October 2011.
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- 48 Exhibit 953, Statement of Colin Jensen, 31 August 2011, CDJ-35 [p2: para 1.2]; Table A.
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- 49 Exhibit 911, Statement of John Adams, 2 September 2011 [p18: para 34].
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- 50 Exhibit 911, Statement of John Adams, 2 September 2011, JA-10, Attachments 2, 3 and 4.
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- 51 Exhibit 953, Statement of Colin Jensen, 31 August 2011 [p5: para 3.8].
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- 52 Exhibit 953, Statement of Colin Jensen, 31 August 2011 [p5: para 3.9].
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- 53 Transcript, John Adams, 28 October 2011, Brisbane [p4588: line 49].
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- 54 Transcript, John Adams, 28 October 2011, Brisbane [p4588: lines 36-54].
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- 55 Transcript, John Adams, 28 October 2011, Brisbane [p4588: line 56 – p4589: line 9].
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- 56 Section 108(c), *Sustainable Planning Act 2009*.
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- 57 Section 114, *Sustainable Planning Act 2009*.
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- 58 Where the information is not provided at the application stage, the information should be the subject of an information request under the Integrated Development Assessment System (State Planning Policy 1/03: *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide*, 2003 [p9: para 7.7]). The Integrated Development Assessment System is described in more detail in chapter 3 *Planning framework*.
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- 59 Statutory Guideline 01/12: *Making and amending local planning instruments* [p27-28].
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- 60 Ipswich City Planning Scheme Policy 2 'Information Local Government May Request' [p6: section 8].
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- 61 The Flooding and Stormwater Flow Path Areas overlay map and related provisions have been suspended and replaced by Temporary Local Planning Instrument 1/11 – Flooding Regulation, which may remain in effect up until 19 June 2012: Ipswich City Council's Implementation Guideline No. 24 Stormwater Management [p10: para 7.1].
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- 62 The Toowoomba Regional Council draft scheme has been drafted in compliance with the Queensland Planning Provisions.
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- 63 Draft Toowoomba Regional Planning Scheme, Schedule 4, Planning Scheme Policy No. 1 'Development Application Requirements' [SC4.1.6].
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- 64 Draft Toowoomba Regional Planning Scheme, Schedule 4, Planning Scheme Policy No. 1 'Development Application Requirements' [SC4.1.6].
- 65 Sinclair Knight Merz, Brisbane 2011 Flood Event – Investigation into Causes of Property Inundation: Hydrology Requirements for Development Applications, Final A, 15 November 2011.
- 66 Sinclair Knight Merz, Brisbane 2011 Flood Event – Investigation into Causes of Property Inundation: Hydrology Requirements for Development Applications, Final A, 15 November 2011 [section 2.3.2].
- 67 Sinclair Knight Merz, Brisbane 2011 Flood Event – Investigation into Causes of Property Inundation: Hydrology Requirements for Development Applications, Final A, 15 November 2011 [section 2.3.3].
- 68 Sinclair Knight Merz, Brisbane 2011 Flood Event – Investigation into Causes of Property Inundation: Hydrology Requirements for Development Applications, Final A, 15 November 2011 [section 2.3.2].
- 69 Sinclair Knight Merz, Brisbane 2011 Flood Event – Investigation into Causes of Property Inundation: Hydrology Requirements for Development Applications, Final A, 15 November 2011 [section 2.3.2].
- 70 The title of the Subdivision and Development Guidelines does not identify it as a planning scheme policy, as is the usual practice.
- 71 Brisbane City Council Subdivision and Development Guidelines, Part A Hazard Management, Chapter 1 Flood Affected Land [p1: section 2.1].
- 72 The Former Esk Shire Planning Scheme Policy No. 12 (Flood Mitigation in the Lowood and Fernvale Locality) is not triggered by the planning scheme (see Exhibit 1002, Statement of Robert Bain, 21 October 2011 [p1: para 4]).
- 73 Clause 108, Explanatory Notes for the Sustainable Planning Bill 2009. This approach is also similar to the Practice Notes accompanying the Victorian Planning Provisions which provide an explanation of the flood zone and flood overlays, the types of development suitable in floodways and the extra material that should be included in the development application.
- 74 Section 91(1), *Sustainable Planning Act 2009*.
- 75 Sections 5, *Sustainable Planning Regulation 2009*; Section 117, *Sustainable Planning Act 2009*.
- 76 Statutory Guideline 01/12: *Making and amending local planning instruments* [p6-24].
- 77 Statement of Andrew Fulton, 11 November 2011 [p4: para 1.2].
- 78 Exhibit 764, Submission of Bundaberg Regional Council [p13: para 12]; Statement of Andrew Fulton, 11 November 2011 [p6: para 2.2].
- 79 Transcript, Gary White, 19 September 2011, Brisbane [p2765: line 30]; Statement of Andrew Fulton, 11 November 2011 [p4: para 1.1-1.2].
- 80 Exhibit 728, Statement of Russell Cuerel, 14 September 2011 [p4-5: para 8]; Transcript, Russell Cuerel, 5 October 2011, Brisbane [p3709: line 3].
- 81 Statement of Andrew Fulton, 11 November 2011 [p6: para 2.2].
- 82 Statutory Guideline 01/12: *Making and amending local planning instruments* [p4-5].
- 83 Statutory Guideline 01/12: *Making and amending local planning instruments* [p7: para 2.1; p10: para 4.18; p12: para 5.1].
- 84 Statutory Guideline 01/12: *Making and amending local planning instruments* [p7: para 2.2].
- 85 The Queensland Reconstruction Authority Guideline *Planning for stronger, more resilient floodplains: Part 1 - Interim measures to support floodplain management in existing planning schemes* [p12].
- 86 Statement of Brendan Nelson, 30 November 2011 [p3: para 395].
- 87 Submission of Local Government Association of Queensland, September 2011; Submission of Local Government Association of Queensland, 7 April 2011; Second Submission of Gold Coast City Council, undated; Submission of Ipswich City Council, 28 April 2011; Brisbane City Council submission, 'Land Planning B – Indemnity', undated.
- 88 Submission of Local Government Association of Queensland, 7 April 2011 [p4: para 2.16].
- 89 Second Submission of Gold Coast City Council, undated [p2].
- 90 Exhibit 962, Steve Reynolds, *Flood Mapping in Queensland Planning Schemes*, 9 November 2011 [p7: para 10(g)].

- 91 Natural Disaster Insurance Review, Inquiry into flood insurance and related matters, September 2011 Recommendation 24 [p70].
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- 92 Submission of Local Government Association of Queensland, September 2011 [p3: para 2.9]; Submission of Local Government Association of Queensland, 7 April 2011 [p4-5: para 2.17]; Second Submission of Gold Coast City Council, undated [p3].
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- 93 Brisbane City Council submission, 'Land Planning B – Indemnity', undated.
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- 94 See also section 149, *Environmental Planning and Assessment Act 1979* (NSW) and clause 279 and schedule 4, *Environmental Planning and Assessment Regulation 2000* (NSW).
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- 95 Bob Carr, Minister for Planning and Environment, New South Wales Legislative Assembly, *Parliamentary Debates*, 16 April 1985 [6025].
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- 96 Transcript, Gary White, 19 September 2011, Brisbane [p2755: line 27].
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- 97 Second Submission of Gold Coast City Council, undated [p2].
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- 98 Transcript, Robert Savage, 11 October 2011, Bundaberg [p3932: line 52].
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- 99 Exhibit 772, Increasing Queensland's resilience to inland flooding in a changing climate: Final report on the Inland Flooding Study, 2010; Exhibit 773, Increasing Queensland's resilience to inland flooding in a changing climate: Policy options for incorporating climate change into the flood risk management framework in Gayndah (North Burnett Regional Council), November 2010.
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- 100 Transcript, Robert Savage, 11 October 2011, Bundaberg [p3934: line 22 – p3935: line 21].
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- 101 Exhibit 683, Statement of Bryan Ottone, 6 September 2011, copies of council resolutions [p3].
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- 102 Transcript, Bryan Ottone, 29 September 2011, Emerald [p3432: lines 10-25].
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- 103 Exhibit 683, Statement of Bryan Ottone, 6 September 2011, copies of council resolutions [p1]
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- 104 The following exceptions apply to this blanket resolution: where the applicant provides a flood study prepared by a hydrologist or other suitably qualified professional, where the development is considered 'low risk' or where the application is for a negotiated decision or permissible change in relation to an existing approval that does not impact upon minimum approved floor height or any other flood condition: Exhibit 683, Statement of Bryan Ottone, 6 September 2011, copies of council resolutions [p9].
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- 105 Exhibit 683, Statement of Bryan Ottone, 6 September 2011, copies of council resolutions [p9]
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- 106 Exhibit 983, Statement of Ian Flint, 3 November 2011, Annexures ICF1 and ICF3.
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- 107 Exhibit 983, Statement of Ian Flint, 3 November 2011, Annexure ICF1.
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- 108 Exhibit 983, Statement of Ian Flint, 3 November 2011, Annexure ICF3.
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- 109 Exhibit 917, Submission of State of Queensland, 4 November 2011 [p9].
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- 110 Previously called 'injurious affection' in earlier legislation.
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- 111 Transcript, Gary White, 7 November 2011, Brisbane [p4632: line 1].
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- 112 Brisbane City Council submission, 'Land Planning B – Indemnity', undated.
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- 113 Correspondence from Clayton Utz (Ipswich City Council), 6 January 2012, Statutory Indemnity; Brisbane City Council submission, 'Land Planning B – Indemnity', undated.
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- 114 Correspondence from Clayton Utz (Ipswich City Council), 6 January 2012, Statutory Indemnity.
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- 115 Submission of Ipswich City Council, 28 April 2011 [p3-4: para 1.4; p30: para 11.2; p51: para 18.5].
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- 116 Transcript, John Adams, 28 October 2011, Brisbane [p4585: lines 3-15].
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- 117 Exhibit 962, Steve Reynolds, *Flood Mapping in Queensland Planning Schemes*, 9 November 2011 [p7: para 10(g)]; Exhibit 964, *Building Controls for Flood Hazard Areas*, Steve Reynolds, 7 November 2011 [p7: para 10].
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- 118 Correspondence from Clayton Utz (Ipswich City Council), 6 January 2012, Statutory Indemnity; Exhibit 912, Statement of John Adams, 25 October 2011 [p14: para 41].
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- 119 Brisbane City Council submission 'Land Planning B - Indemnity', undated.
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- 120 Second Submission of Gold Coast City Council, undated [p3].
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- 121 Transcript, Gary White, 7 November 2011, Brisbane [p4631: line 9].
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