Environmental Guide on recent changes to environmental planning laws for Queensland NRM Groups

This guide is part of the Regional Natural Resource Planning for Climate Change Fund (Stream 1) projects, supported through funding from the Australian Government

2014

Prepared by the Environmental Defendors Office Qld

Foreword

The Queensland Murray-Darling Committee (**QMDC**) is a community-based Natural Resource Management (**NRM**) organisation that works with government and communities for the protection and sustainable use of our region's natural resources. Natural Resource Management is often about people's capacity to understand and manage the natural resources around them, including their understanding of the governance and legal system within which they operate. QMDC advocates reform in policy and environmental legislation where it is needed to provide a high level of protection for the natural resource assets identified within the regional NRM Plans.

The change of government in 2012 has brought major changes to Queensland's environmental law framework. Many of these changes (such as planning and vegetation protection) are directly relevant to the work of regional NRM groups, and have significant impacts for our objectives. Several regional NRM plans are currently under review, and in light of the recent changes, I saw the need for a publication that would address changes in areas of law relevant to our objectives, and thereby assist with the preparation and updating of NRM plans. This Guide will be useful to community members, planners, QMDC and other regional NRM staff as we work together to produce high-quality and effective NRM plans.

Hopefully in the future, we will be able to cooperate to keep this invaluable resource up to date.

Geoff Penton
Chief Executive Officer
Queensland Murray-Darling Committee

Introduction

This Guide seeks to bridge a gap in making recent changes to environmental laws accessible for NRM groups.

Although many major environmental laws are addressed, this Guide is not an exhaustive explanation of all environmental laws in Queensland – it has a specific focus on changes that affect NRM groups and their objectives. Note in particular, the changes to vegetation protection set out in section 1 and planning laws in sections 17, 18 and 19 that have wide ranging implications for NRM groups across the State. It does not explain every aspect of each law, and only describes non-environmental laws and Commonwealth laws where they are significantly relevant to Queensland's environmental law framework. In this area, please note the proposed delegation of most Commonwealth approval powers to Queensland for many decisions under the *Environment Protection and Biodiversity Conservation Act (1999)* (Cth) which is discussed in section 13.

How to use this Guide

The Guide is organised into four broad categories of legislation – Biodiversity Protection and Natural Resources; Planning and Development; Mining, Gas and Environment Protection and Access to Information – under which individual Acts are addressed. As this Guide's principal purpose is to

highlight **key changes to environmental laws** rather than simply explain each Act, each section begins by explaining recent and proposed changes. Underneath this, the 'key features' section explains the purpose of the Act and the way it operates. Throughout the Guide, implications for NRM groups are highlighted and hypothetical examples are used to provide a practical perspective of the operation of the Acts, and challenges and opportunities for NRM groups arising out of the changes.

This Guide does not need to be read from beginning to end – it is a reference document, which can be consulted to find information about individual laws, as required. Where multiple laws interact, cross-references refer to other relevant sections of the Guide that may aid understanding. Frequently asked questions (**FAQs**) and a list of acronyms can be found at the back of the Guide.

This Guide is for information purposes only, and should not be used as legal advice.

About the Environmental Defenders Office Qld

EDO Qld is a non-profit, non-government community legal centre which helps people understand and access their legal rights to protect the environment in the public interest. Our lawyers provide access to environmental justice for those who cannot afford legal assistance by offering legal advice and education and using our experience to help improve the operation of government laws and policies. EDO Qld is staffed by professional lawyers and we rely heavily on donations and volunteers to support our work. EDO Qld's key publications include the *Community Litigants Handbook* (4th Edition, 2013) and *Mining and Coal Seam Gas in Queensland: A guide for the community* (1st Edition, 2013).

Date of accuracy

This Guide is accurate to the **23 May 2014**. Readers should be aware that laws change frequently, and there may have been changes to the laws in this Guide since it was produced. Any amendments to laws or policies occurring after the 23 May 2014 may not have been addressed in this Guide. The only exception to this is the section about environmental offsets, which is accurate to the 28 May 2014.

Authors and Acknowledgements

This Guide was prepared by the Environmental Defenders Office (Qld) Inc., Principal Solicitor Jo-Anne Bragg, Solicitor Rana Koroglu, Solicitor Revel Pointon, and legal researchers Eva Coggins, Alice Husband and Flynn Rush.

Thank you to all the NRM staff and others who contributed valuable comments and information.

Special thanks also go to Geoff Penton, Kathie Fletcher, Andrew Drysdale, Paul McDonald, Bob Speirs, Rachel Eberhard, Emily O'Connor, Shani Tager, Nicholas Finlay, Michael Berkman, Daniel Challis and Juanita Williams for their helpful feedback and suggestions.

Table of Contents

Biodiversity Protection and Natural Resources Legislation

1. Vegetation Management Act 1999 (Qld)

1.1. Recent changes to the Vegetation Management Act 1999

Recent changes in 2013[1] to the regulation of native vegetation clearing have centred around six major themes:

- Removal of protections for some types of regrowth vegetation;
- The introduction of new types of assessable clearing;
- The introduction of self-assessable clearing codes;
- New clearing exemptions;
- Changes to development assessment via new State Development Assessment Provisions; and
- Changes to prosecutions for vegetation clearing offences (not addressed in this Guide).

As the protection of native vegetation is a major focus of NRM, the changes have broad implications for the various stakeholders who have an interest in native vegetation.

1.1.1. *Removal of protections for some types of regrowth vegetation*

High value regrowth vegetation is native vegetation in any regional ecosystem (**RE**) that has not been cleared since 31 December 1989.[2] It is known as 'Category C' vegetation.[3] The amendments to the law have changed the definition of this type of vegetation. Previously, native vegetation was considered high value regrowth if it fitted this description, regardless of where the vegetation was located.[4] Under the amendments, vegetation is only considered high value regrowth if it is located on an agricultural or grazing lease.[5] This means that regrowth vegetation located on freehold or Indigenous land is not protected in the same way as high value regrowth on an agricultural or grazing lease.

Recent changes to the *Land Act 1994* encourage the conversion of leasehold to freehold land. Any regrowth vegetation existing on land converted to freehold would therefore become subject to the lower level of protection given to vegetation on freehold land. Depending on the uptake of this

[1] Current as at 31 March 2014 (interacting with *Sustainable Planning Act 2009* (Qld) current as at 31 March 2014 & SP Reg current as at 28 April 2014).The relevant changes occurred in 2013: the *Vegetation Management Act 1999* was amended by the *Vegetation Management Framework Amendment Act 2013* (Act no. 24 of 2013), and the *Sustainable Planning Regulation 2009* was amended by the *Sustainable Planning Amendment Regulation (No. 7) 2013* (SL no. 258 of 2013) and the *Sustainable Planning Amendment Regulation (No. 3) 2013* (SL no. 114 of 2013).
[2] *Vegetation Management Act 1999* (Qld) dictionary.
[3] *Vegetation Management Act 1999* (Qld) s 20AN.
[4] *Vegetation Management Act 1999* (Qld) superseded (2013 Act no. 24; current 23 May 13), definition of category C – s 20AN, and definitions section 'regrowth vegetation'. Previously, clearing of regrowth vegetation on freehold, Indigenous, or agricultural/grazing lease land was regulated under the Regrowth Vegetation Code.
[5] That is, an agricultural or grazing lease granted under the *Land Act 1994* (Qld).

conversion to freehold, large areas of regrowth vegetation are potentially vulnerable to clearing. For more information on the conversion of leasehold to freehold land, see section 2.1.1 of this Guide.

Clearing high value regrowth located on an agricultural or grazing lease is not assessable development,[6] i.e. it does not require a development permit, but is regulated by the self-assessable vegetation clearing code 'Managing Category C regrowth vegetation'.[7] Regrowth vegetation located on freehold or Indigenous land is now a part of 'Category X' vegetation,[8] which is not assessable,[9] and is not regulated by any self-assessable codes. Landholders are therefore able to clear this type of vegetation.

The addition of a new 'Category R' vegetation retains protection for some regrowth vegetation – specifically that which is located within 50m of a watercourse located in the Burdekin, Mackay Whitsunday or Wet Tropics catchments.[10] Vegetation clearing in a Category R area is regulated under the self-assessable vegetation clearing code 'Managing Category R Regrowth Vegetation'.

Implications for NRM groups

The changes to the protection of high value regrowth on freehold and Indigenous land provide greater flexibility for landholders in property-scale management on those land uses, which could enable property-scale vegetation management to be better tailored to the circumstances of individual pieces of land.[11] From a conservation perspective, however, the change leaves a large amount of native vegetation vulnerable to clearing.[12] The removal of restrictions on this type of clearing increases the likelihood that such clearing will occur. This threatens NRM targets for maintaining and increasing native vegetation cover, addressing land degradation from changes to woody vegetation cover, and maintaining or enhancing biodiversity.[13] In addition, the responsibility for protection and management of this vegetation has been placed solely on individual landholders. This responsibility is also apparent with respect to self-assessable codes; although clearing is still regulated and compliance is mandatory,[14] the onus remains principally with landholders to ensure their own compliance.

The changes to vegetation categories, particularly the definitions of various types of regrowth vegetation, will affect the terminology used in NRM planning. There is now a difference between 'regrowth vegetation', and 'regulated regrowth vegetation'. 'Regrowth vegetation' is broad, encompassing any native vegetation that is not remnant vegetation. 'Regulated regrowth vegetation' is a subset of regrowth vegetation – specifically Category C high value regrowth[15] and

[6] *Sustainable Planning Act 2009* (Qld) Sch 24 Part 2 s 4(1)(d).
[7] Department of Natural Resources and Mine, Managing Category C regrowth vegetation
A - self-assessable vegetation clearing code (Accessed 8/5/14) available at:
http://www.dnrm.qld.gov.au/__data/assets/pdf_file/0019/111583/category-c-regrowth-clearing-code.pdf
[8] *Vegetation Management Act 1999* (Qld) s 111.
[9] *Sustainable Planning Regulation 2009* Part 2 ss 2(d); 3(d).
[10] *Vegetation Management Act 1999* (Qld) s 20ANA; Schedule definition of ***regrowth watercourse area***.
[11] QMDC Regional NRM Plan chapter 5.4, p 109.
[12] See, for instance, the analysis of vegetation management framework changes by Taylor, M.F.J. 2013. *Bushland at risk of renewed clearing in Queensland*. WWF-Australia, Sydney, pp 18-21 (accessed 30 April 2014),
http://awsassets.wwf.org.au/downloads/fl012_bushland_at_risk_of_renewed_clearing_in_queensland_9may13.pdf.
[13] QMDC Regional NRM Plan chapter 5.4, p 109.
[14] *Sustainable Planning Act 2009* (Qld) s 574.
[15] *Vegetation Management Act 1999* (Qld) s 20AN; Schedule definition of ***high value regrowth***.

Category R regrowth watercourse areas.[16] These types of regrowth are the only types of regrowth vegetation that are regulated.

Regrowth vegetation

- Any native vegetation that is not remnant vegetation
- Includes 'regulated regrowth vegetation' - Category C and Category R areas
- Also includes unregulated regrowth such as regrowth vegetation on freehold or Indigenous land

Regulated regrowth vegetation

Category C 'high value regrowth'

- endangered, of concern and least concern REs
- located on an agricultural or grazing lease under the *Land Act 1994*
- has not been cleared since 31 Dec 1989
- found on the regulated vegetation management map
- clearing is regulated by a self-assessable code – no application or permit is required

Category R 'regrowth watercourse area'

- within 50m of a watercourse
- located in the Burdekin, Mackay Whitsunday or Wet Tropics catchments
- found on the vegetation management watercourse map
- clearing is regulated by a self-assessable code – no application or permit is required

Example

Terri holds a pastoral lease under the *Land Act 1994* (Qld). She wants to clear some native vegetation to facilitate grazing activities on the land. The native vegetation is in an 'of concern' regional ecosystem that has not been cleared since before 31 December 1989, and is therefore 'high value regrowth'. [17]

Under the vegetation management framework,[18] Terri's proposed vegetation clearing would need to comply with the self-assessable vegetation clearing code for 'Managing Category C regrowth vegetation'.[19]

However, recent amendments to the *Land Act 1994* (Qld) (see section 2 of this Guide) allow for the conversion of leasehold to freehold tenure.[20] If Terri was to convert her lease to freehold, different

[16] *Vegetation Management Act 1999* (Qld) s 20ANA; Schedule definition of ***regrowth watercourse area***.
[17] *Vegetation Management Act 1999* (Qld) s 20AN; Schedule definition of ***high value regrowth***.
[18] Specifically see *Sustainable Planning Regulation 2009* (Qld) Schedule 24 Part 2 s 4(d).
[19] Department of Natural Resources and Mine, Managing Category C regrowth vegetation
A - self-assessable vegetation clearing code (Accessed 8/5/14) available at: http://www.dnrm.qld.gov.au/land/vegetation-management/self-assessable-vegetation-clearing-codes/managing-category-c-regrowth

rules under the vegetation management framework would apply to her proposed clearing – as the regrowth on freehold land is not classed as 'high value regrowth', it therefore falls under Category X vegetation,[21] which is exempt clearing that is not regulated.[22] If Terri did convert to freehold, she would therefore be free to clear this native vegetation.

Challenges and opportunities for NRM groups

The fact that clearing on freehold land is not regulated in the same way as on leasehold land means that the Land Act's conversion to freehold provisions render vegetation that was previously protected or regulated vulnerable to clearing. Depending on the uptake of the conversion to freehold scheme, this could jeopardise a significant amount of vegetation on current leasehold land, thus making achievement of NRM vegetation and biodiversity targets more difficult. However, NRM groups could increase their engagement in on-the-ground work with individual landholders or landholder groups, to encourage effective management and improvement of native vegetation in line with NRM goals, even where land clearing may no longer be regulated after a conversion to freehold tenure.

1.1.2. *New types of assessable clearing*

The amendments have introduced three new 'relevant purposes' for which a development permit for clearing native vegetation can be granted. These relevant purposes are: clearing for high value agriculture, clearing for irrigated high value agriculture, and necessary environmental clearing.

Clearing for high value agriculture or high value irrigated agriculture encompasses a broad range of activities, namely clearing for the purpose of establishing, cultivating and harvesting:

- Either irrigated or non-irrigated crops; and
- Irrigated pasture.[23]

This does not include clearing for non-irrigated grazing pasture or plantation forestry.[24]

Necessary environmental clearing is clearing that is necessary to:

- Restore the ecological and environmental condition of land;
- Divert existing natural channels in a way that replicates the existing form of the natural channels; or
- Prepare for the likelihood of a natural disaster; or
- Remove contaminants from land.[25]

[20] For more information on the conversion to freehold, see section 2.1.1 of this Guide.
[21] *Vegetation Management Act 1999* (Qld) s 111.
[22] *Sustainable Planning Regulation 2009* (Qld) Part 2 ss 2(d); 3(d).
[23] *Vegetation Management Act 1999* (Qld) s 22A(2)(k),(l); Schedule (Dictionary) definition of ***high value agriculture*** and ***irrigated high value agriculture.***
[24] *Vegetation Management Act 1999* (Qld) s 22A(2)(k),(l); Schedule (Dictionary) definition of ***high value agriculture*** and ***irrigated high value agriculture.***
[25] *Vegetation Management Act 1999* (Qld) s 22A(2)(j); Schedule (Dictionary) definition of ***necessary environmental clearing***.

Examples given for necessary environmental clearing include clearing that is necessary for stabilising the banks of watercourses, rehabilitating eroded areas or preventing erosion, for ecological fire management, and removing silt to mitigate flooding.[26] The Department of Natural Resources and Mines (**DNRM**) has produced a guideline to help landholders understand the requirements for necessary environmental clearing.[27] The factors relevant to whether clearing is considered 'necessary' for the above purposes vary depending on which purpose for clearing is proposed, but the meaning of 'necessary' is not defined in the Act or the guideline.

Prior to the amendments, each of these new types of clearing would have been prohibited. Now, a development permit can be obtained to clear for these purposes. To obtain a permit to clear [irrigated]/high value agriculture, the applicant will need to satisfy the chief executive of a number of factors, including:

- The land is suitable for agriculture;
- There is no suitable alternative site on the land;
- The clearing is likely to be economically viable.[28]

Implications for NRM groups

As with the deregulation of regrowth clearing, the introduction of high value agriculture clearing leaves a wide range of native vegetation vulnerable to clearing.[29] Many threatened species' habitats are in areas that potentially meet the criteria for high value agriculture clearing.[30]

The introduction of necessary environmental clearing provides landholders with greater flexibility in environmental management on their land. Landholders can now obtain a permit to conduct clearing for land restoration, as long as impacts on environmental values are minimised. The ability to clear land in preparation for a natural disaster (such as flooding) also increases autonomy for landholders in managing their land. However, the lack of clarity around what clearing is considered 'necessary' for these purposes increases the risk that environmental values may not be adequately balanced against the perceived 'necessity' of the clearing.

1.1.3. *Self-assessable clearing codes*

The amendments introduced a system of self-assessable vegetation clearing codes, which apply to particular types of vegetation clearing. If a type of native vegetation clearing is covered by one of the codes, then regardless of any contrary indication that appears in the law, that clearing will not require a development permit.[31] The clearing will instead have to be done in compliance with the

[26] *Vegetation Management Act 1999* (Qld) s 22A(2)(j).
[27] Department of Natural Resources and Mines, Guideline to Environmental Clearing (Accessed 8/5/14) Available at: http://www.dnrm.qld.gov.au/__data/assets/pdf_file/0020/111296/guideline-environmental-clearing.pdf
[28] *Vegetation Management Act 1999* (Qld) ss 22DAA-DAC. The Department of Natural Resources and Mines has produced a guideline to help landholders understand the requirements for irrigated/high value agriculture clearing applications (Accessed 8/5/14) Available at: http://www.dnrm.qld.gov.au/__data/assets/pdf_file/0019/111295/Guidelines-for-high-value-agriculture.pdf
[29] Taylor, M.F.J. 2013. *Bushland at risk of renewed clearing in Queensland*. WWF-Australia, Sydney, p 9 (Accessed 30/4/14) Available at:
[30] Taylor, M.F.J. 2013. *Bushland at risk of renewed clearing in Queensland*. WWF-Australia, Sydney, p 11 (Accessed 30/4/14) Available at: http://awsassets.wwf.org.au/downloads/fl012_bushland_at_risk_of_renewed_clearing_in_queensland_9may13.pdf
[31] *Sustainable Planning Act 2009* (Qld) s 236; *Vegetation Management Act 1999* (Qld) ss 19O-R; SP Reg Sch 24.

self-assessable code that applies.[32] Despite not requiring a permit, DNRM must still be notified of the intention to clear under a code, using the 'clearing notification form'.[33] Previously, the various situations to which the codes apply would have been code assessable development assessment, requiring a development permit.

Existing self-assessable codes cover the following types of clearing:

- Specific types of fodder harvesting;
- Managing encroachment;
- Native timber harvesting for forestry;
- Managing Category R (regrowth watercourse) vegetation;
- Managing clearing to improve the operational efficiency of existing agriculture;
- Managing weeds;
- Managing thickened vegetation in the Mulga Lands;
- Managing Category C vegetation (regrowth on grazing/agricultural leases); and
- Managing clearing for necessary property infrastructure.[34]

Each code sets out the specific situations in which that code applies. Under the *Vegetation Management Act* (**VMA**), the Minister may make other self-assessable codes, on any other topics relating to vegetation clearing that the Minister considers necessary or desirable for achieving the purpose of the Act.[35] Codes can provide for various situations, including clearing in a particular area, and clearing a particular type of vegetation.[36] Further codes, such as codes for vegetation thinning, may be produced.

Implications of new self-assessable clearing codes for NRM plans and targets

The effect of clearing being covered by a self-assessable code is that it is considered 'self-assessable development' for the purposes of the *Sustainable Planning Act 2009* (Qld) (**SPA**), rather than being code assessable and requiring a permit as other vegetation clearing is. Other than notification of the clearing to DNRM, development under a self-assessable code will not be assessed. While repercussions for contravening a code exist,[37] the clearing would not receive the same level of scrutiny that code-assessed development does. While the changes do provide a lower regulatory burden obligation on farmers and landholders wishing to clear vegetation under certain circumstances, they consequently reduce protections for the vegetation, thereby potentially jeopardising NRM goals relating to maintenance and enhancement of vegetation cover.

[32] *Sustainable Planning Act 2009* (Qld) s 236(2), 574.
[33] Department of Natural Resources and Mines, Self-Assessable Clearing Codes (Accessed 8/5/14) Available at: http://www.dnrm.qld.gov.au/land/vegetation-management/self-assessable-vegetation-clearing-codes/notification-form
[34] Department of Natural Resources and Mines, Self-assessable codes (Accessed 8/5/14) http://www.dnrm.qld.gov.au/land/vegetation-management/self-assessable-vegetation-clearing-codes
[35] *Vegetation Management Act 1999* (Qld) s 19O(2), (3).
[36] *Vegetation Management Act 1999* (Qld) s 19O(3).
[37] *Sustainable Planning Act 2009* (Qld) s 578; *Vegetation Management Act 1999* (Qld) s 19Q(2).

1.1.4. *Exempt clearing*

There is an existing exemption for clearing vegetation (other than endangered remnant vegetation) for urban purposes in urban areas on freehold, Indigenous and some leasehold land.[38] Accordingly, any changes to zoning boundaries in local planning schemes that has the effect of changing the designation of areas from other purposes to urban purposes[39] will also affect clearing. Areas that were not previously urban areas would become exempt for most types of clearing.

Amendments to the *Sustainable Planning Regulations 2009* (**SPR**) have made other relevant changes. For example, clearing vegetation for the purpose of community infrastructure is no longer assessable development, meaning that it is exempt and does not require a permit.[40] Community infrastructure is defined to include roads, public transport, hospitals, oil and gas pipelines and waste management facilities.[41] Other exemptions have also been added, such as for areas subject to a disaster situation declaration and where it is necessary to remediate contaminated land. [42]

Changes have also been made to assessment triggers for a material change of use or reconfiguration of a lot, meaning that a permit for clearing native vegetation is only required for lots that are 5 hectares, instead of 2 hectares.[43] This means that clearing native vegetation in lots under 5 hectares is exempt from development assessment. This change is particularly pertinent for NRM management in more populated, urban regions. For example, in South East Queensland, where the average lot size is 2 hectares, more than a third of all lots between 1 and 5 hectares have some form of remnant vegetation within them.[44] The new trigger potentially endangers up to 42,800 hectares of remnant vegetation.[45]

Implications for NRM groups

These changes will make it easier for landholders and developers to clear native vegetation in small lots. Consequently NRM groups in more populated regions may face a more difficult task in achieving their targets in protecting native vegetation.

1.1.5. *New State Development Assessment Provisions*

Changes to the Vegetation Management Act have been accompanied by the introduction of new SDAPs which contain the State's development assessment criteria for native vegetation clearing.[46] These SDAPs are used by the Department of State Development, Infrastructure and Planning (**DSDIP**) when assessing a development application for vegetation clearing involving a matter of state interest. For more information about SDAPs, see section 16.2.3 of this Guide.

---

[38] *Sustainable Planning Regulation 2009* (Qld) Schedule 24 Part 2 ss 2(e), 3(e), 4(2)(e); Schedule 26 Dictionary definitions of ***urban area*** and ***urban purposes***.
[39] This can include residential, industrial, sporting, recreation and commercial purposes: *Sustainable Planning Regulation 2009* (Qld) Schedule 26 Dictionary definition of ***urban purposes***.
[40] *Sustainable Planning Amendment Regulation (No. 4) 2013* (came into effect 2 August 2013).
[41] *Sustainable Planning Regulation 2009* (Qld) Schedule 2.
[42] See *Sustainable Planning Regulation 2009* (Qld) Schedule 24 Part 1, 1(17) and (19).
[43] *Sustainable Planning Amendment Regulation (No. 7) 2013* (Qld) (came into effect 2 December 2013).
[44] SEQ Catchments, Submission on the Vegetation Management Framework page 4-5 (Accessed 8/5/14) http://www.seqcatchments.com.au/_literature_146313/Policy_Submission_Vegetation_Management_Framework
[45] SEQ Catchments, Submission on the Vegetation Management Framework page 4-5 (Accessed 8/5/14) http://www.seqcatchments.com.au/_literature_146313/Policy_Submission_Vegetation_Management_Framework
[46] See Department of State Development, Infrastructure and Planning, State Development Assessment Provisions (Accessed 15/6/14) http://www.dsdip.qld.gov.au/resources/policy/sdap/state-development-assessment-provisionsv1-3.pdf

The new SDAPs create a single code, the 'Queensland vegetation management State code', against which development applications are assessed. This code replaces the previous four codes, each of which related to a specific bioregion.[47] The code retains the same format of the previous codes and includes the same performance outcomes. However, the acceptable outcomes have become less restrictive and allow for more clearing in wetlands,[48] waterways,[49] endangered regional ecosystems, of concern regional ecosystems and essential habitat.[50] The code also allows for the use of offsets where the acceptable outcomes cannot be met. For example, offsets were previously only allowed for significant community projects, but are now permitted for all purposes where clearing cannot be avoided and rehabilitation after necessary environmental clearing is not possible.[51]

Implications for NRM plans and targets

The new code means that DSDIP is likely to approve clearing permits in an increased number of scenarios. This may be of concern to NRM groups with native vegetation and biodiversity targets, as well as those with targets relating to wetland protection. NRM groups may, however, be able to take advantage of increased opportunities for offsets. For more information about environmental offsets, see section 7 of this Guide.

Example: Will the VMA changes make limiting weeds harder for organic farmers Jenny and John?

Clearing native vegetation for the control of weeds that are either non-native plants or declared pests under the *Land Protection (Pest and Stock Route Management Act) 2002* is regulated by self-assessable clearing codes. This applies whether Jenny and John have freehold tenure over the land, or an agricultural or grazing lease under the *Land Act*.[52] The way that weed control is regulated will depend on the category of vegetation on which the weeds are sought to be cleared. Weed control on remnant (Category B) vegetation is regulated by the Weeds Clearing Code, while weed control on regrowth vegetation is regulated by either the Category C or Category R clearing codes, depending on which category the vegetation falls under. Prior to the VMA changes, this weed control would have been code assessable, requiring assessment and a development permit,[53] whereas under a self-assessable code, Jenny and John do not require a permit, as long as they notify DNRM of their intention to clear under that code, and then comply with the code. Therefore, the VMA changes will not make limiting weeds harder for Jenny and John – they will make it easier.

[47] The previous four codes were the South East Queensland bioregion state code, the Brigalow Belt and New England tablelands bioregion state code, the Western bioregions state code and the Coastal bioregions state code. The former Department of State Development, Infrastructure and Planning, State Development Assessment Provisions are available at: http://www.dsdip.qld.gov.au/resources/policy/sdap/state-development-assessment-provisions.pdf

[48] Instead of the previous 100-200m buffer, vegetation can be cleared within 50-100 metres of a wetland for public safety, relevant infrastructure, coordinated projects, extractive industry and high value agriculture. See new State Development Assessment Provisions in Tables 8.1.4, 8.1.5, 8.1.6 and 8.1.7; and the previous State Development Assessment Provisions in Tables 8.1.6 and 8.1.7.

[49] Clearing is allowed to within 10 metres of Stream Order 1 and 2 watercourses at specific widths, see new State Development Assessment Provisions in Tables 8.1.4, 8.1.5, 8.1.6 and 8.1.7, and the previous State Development Assessment Provisions in Tables 8.1.6 and 8.1.7.

[50] Clearing of endangered regional ecosystems, of concern regional ecosystems and essential habitat is permitted in certain circumstances provided it does not exceed specified widths and areas. See new State Development Assessment Provisions in Tables 8.1.4, 8.1.5, 8.1.6 and 8.1.7; and the previous State Development Assessment Provisions in Tables 8.1.6 and 8.1.7.

[51] See new State Development Assessment Provisions in Tables 8.1.4, 8.1.5, 8.1.6 and 8.1.7, and previous State Development Assessment Provisions AO2.2, AO3.2 and AO4.3 in Table 8.1.6.

[52] *Sustainable Planning Regulation 2009* (Qld) Schedule 24 Part 2 ss 2(h); 4(1)(d).

[53] *Vegetation Management Act 1999* (Qld) s 22A(b).

Challenges and opportunities for NRM groups

The existence of self-assessable clearing codes provides greater autonomy for landholders in managing vegetation. However, while compliance with self-assessable codes is mandated and non-compliance with the codes is an offence,[54] the fact that they are 'self-assessable' means that other than notification required at the beginning of clearing, there is little scope for ensuring compliance with the codes. This places NRM goals relating to biodiversity and vegetation cover at risk. However, the principal opportunity for NRM groups within this framework is to work with individual landholders and landholder groups to encourage effective management of vegetation clearing. Given the autonomy that landholders are given, there is scope for vegetation management to go beyond the level of compliance with legislative requirements.

1.2. Key features of the Vegetation Management Act 1999

The *Vegetation Management Act 1994* (Qld) (**the VMA**) regulates the clearing of native vegetation in Queensland. It uses the SPA's development assessment framework to determine how different types of native vegetation clearing are regulated. Broadly, clearing of native vegetation will be either –

- Assessable;
- Prohibited; or
- Exempt.

'Assessable' means that a development permit will be required under the SPA in order to lawfully clear native vegetation.[55] 'Prohibited' means that a development permit cannot be obtained for these types of clearing – they are simply not allowed.[56] 'Exempt' means that this type of clearing is allowed, and no permit is required in order to do it.[57]

There are many different circumstances in which the clearing of native vegetation will be assessable. Whether or not clearing is assessable will depend on the location of the proposed clearing (eg. freehold land, agricultural lease land), the purpose of the proposed clearing (eg. weed management, fodder harvesting), and the type of native vegetation that will be cleared (eg. remnant vegetation, regrowth vegetation).

For native vegetation clearing to be assessable, it must be: [58]

- In a location listed under Schedule 3 Part 1 Table 4 Item 1 of the *Sustainable Planning Regulation 2009* (Qld); and
- For a purpose listed in s 22A of the VMA.

[54] *Sustainable Planning Act 2009* (Qld) s 574.
[55] The permit would be for 'operational work', which is a type of development that includes clearing vegetation – see *Sustainable Planning Act 2009* (Qld) s 10(1) definition of ***operational work***. Section 578 prohibits carrying out assessable development without a permit.
[56] *Sustainable Planning Act 2009* (Qld) ss 239, 581.
[57] *Sustainable Planning Act 2009* (Qld) s 235.
[58] Note: if it is in one of these locations but not for a purpose listed in s 22A, then the clearing is prohibited: *Sustainable Planning Act 2009* (Qld) Schedule 1 Item 3.

Of the vegetation clearing that fulfils these requirements, there are some exemptions.[59] That list of exemptions also provides that some types of vegetation clearing are regulated by a self-assessable vegetation clearing code.

1.2.1. *Monitoring and access to data*

DNRM has a mapping system which includes data about the vegetation cover of land in Queensland. This includes the category of vegetation cover, as well as information about regional ecosystems, wetlands, watercourses and essential habitat.[60] Data is collected through various methods, including GIS.[61] These maps are free to the public, and can be requested [in hard copy form] via the DNRM website. Alternatively, this data can be accessed in map layers on Queensland Globe, a downloadable map application that overlays data layers onto a Google Earth image.[62] The *Vegetation Management Act* does not expressly require monitoring or data collection, however usage of maps is intertwined with the vegetation categories and the vegetation management framework in such a way that maps will necessarily be produced, in order for the framework to be used.[63]

For more information on how to access public information, see FAQ 28.1 at the end of this Guide.

The Queensland Government also administers the Statewide Landcover and Trees Study (**SLATS**), which monitors vegetation cover and clearing activities, and provides maps, data and reports.[64]

1.2.2. *Public participation opportunities*

Vegetation clearing

For vegetation clearing that requires development assessment, any public participation rights will be the same as for any development assessed under the SPA framework. All assessable vegetation clearing that is not self-assessable or covered by an exemption is code assessable development,[65] and it does not require public notification.[66]

For vegetation clearing under a self-assessable clearing code, the only notification required is to DNRM, prior to commencement of the clearing.[67] Exempt vegetation clearing is not regulated by the vegetation management framework, and therefore does not require public notification.

[59] The list of exemptions is in the *Sustainable Planning Regulation 2009* (Qld) Schedule 24.
[60] See: Department of Natural Resources and Mines, Vegetation Maps (Accessed 20/6/14) available at: http://www.dnrm.qld.gov.au/land/vegetation-management/vegetation-maps
[61] *Vegetation Management Act 1999* (Qld) s 70AA(4); see also Department of Natural Resources and Mines, Auditing and Monitoring (Accessed 16/6/14) available at: http://www.dnrm.qld.gov.au/land/vegetation-management/auditing-monitoring
[62] For more information, see Department of Natural Resources and Mines, Queensland Globe (Accessed 16/6/14) http://www.dnrm.qld.gov.au/mapping-data/queensland-globe
[63] See for example *Vegetation Management Act 1999* (Qld) Part 2 Division 5AA Vegetation management maps.
[64] This data is available from the SLATS website: Queensland Government, *SLATS explained* (accessed 27/6/14) https://www.qld.gov.au/environment/land/vegetation/mapping/slats-explained/
[65] *Sustainable Planning Regulation 2009* (Qld) Schedule 3 Part 1 Table 4 Item 1.
[66] *Sustainable Planning Act 2009* (Qld) s 295.
[67] See Department of Natural Resources and Mines, Notification Form (Accessed 7/6/14) http://www.dnrm.qld.gov.au/land/vegetation-management/self-assessable-vegetation-clearing-codes/notification-form

It follows that the only public involvement opportunities for vegetation clearing are at the compliance stage, if illegal vegetation clearing is occurring. DNRM administers the vegetation management framework, and officers have enforcement powers, including stop work notices and restoration notices.[68] Members of the public are free to contact DNRM, to bring any suspected illegal clearing to their attention.[69]

Drafting of self-assessable codes

The VMA does not require any public notification of the development of self-assessable clearing codes.[70] However, NRM groups can request to be consulted and have their say on the implications of proposed or draft self-assessable clearing codes, by contacting DNRM.

Public information

DNRM has previously held public information sessions about the changes to the vegetation management framework.[71] NRM groups may wish to invite officers from DNRM to hold workshops or information sessions in their local areas, to assist in understanding compliance and enforcement under the vegetation management framework.

1.2.3. *Vegetation clearing regulated under other laws*

While the VMA is the main instrument that regulates the clearing of vegetation in Queensland, it is also important to examine local planning instruments and local laws made under the *Local Government Act 2009* (Qld), which may place additional restrictions on the clearing of vegetation. For more information about local governments and planning, see section 18.2.2 of this Guide.

1.3. How the Vegetation Management Act applies to NRM plans and targets

As the maintenance and improvement of native vegetation cover is a major feature of NRM, the vegetation management framework has broad application to NRM objectives. This framework forms the principal regulation of native vegetation clearing in Queensland (other than, for example, regulation of clearing in protected areas or for plantation forestry). As such, these rules operate as constraints on NRM objectives regarding management of native vegetation – they impact on the amount, type and location of native vegetation that is cleared or protected. NRM objectives relating to maintenance and improvement of vegetation cover will be more easily achieved the greater the protection that the vegetation management framework provides.

For farmers and landholders, the vegetation management rules apply as a constraint on the way they are able to manage their land, and the way they engage in NRM relating to native vegetation. Farmers and landholders need to be aware that they may require a permit to clear native vegetation in certain circumstances, or they may be required to comply with a self-assessable clearing code.

[68] *Vegetation Management Act 1999* (Qld) s 25.
[69] For contact details see Department of Natural Resources and Mines, Vegetation Contacts (Accessed 20/6/14) available at: http://www.dnrm.qld.gov.au/land/vegetation-management/vegetation-contacts.
[70] *Vegetation Management Act 1999* (Qld) s 19O.
[71] Department of Natural Resources and Mines, *Public information sessions* (accessed 29 June 2014), http://www.dnrm.qld.gov.au/land/vegetation-management/public-information-sessions.

There are various rules about clearing native vegetation for cropping, weed management and flood mitigation, among others.

Indigenous Traditional Owners are also affected by the vegetation management framework, as vegetation clearing is regulated on Indigenous land. In addition, clearing for 'special Indigenous purposes' is regulated under a code that interacts with the *Cape York Peninsula Heritage Act 2007*.

All people who are interacting with native vegetation need to be aware that there are criminal penalties attached to illegal clearing of native vegetation. These penalties also further NRM objectives in deterring illegal clearing.

2. Land Act 1994 (Qld)

2.1. Recent changes to the Land Act 1994

The *Land and Other Legislation Amendment Act 2014* (Qld) (**LOLA**) came into effect on 28 May 2014 and made reforms to the land tenure system under the *Land Act 1994* (Qld). Relevant changes are set out below.

2.1.1. *Conversion of leases to freehold*

The changes introduced by LOLA seek to encourage conversion of leasehold land to freehold land, by simplifying the legislative requirements.[72] LOLA also moves provisions about determination of the purchase price to the *Land Regulation 2009* (Qld).[73] Encouraging conversion to freehold land reflects the State government's view that 'freehold land tenure provides the greatest investment certainty for landholders.'

Implications for NRM groups

Freehold is less restrictive than leasehold and while this may lessen the obligations of landholders it may have consequences for NRM issues, particularly vegetation management. Conversion to freehold may also impact on native title rights, which may have a particular impact on NRM groups in Cape York and North Queensland.[74]

2.1.2. *Rolling leases*

LOLA introduced 'rolling leases' for agricultural, grazing and pastoral leases, and tourism leases on declared offshore islands. Instead of applying for a new lease, leaseholders can now use the rolling term lease provisions to extend their leases for the same length of time as the original term. There is no requirement for rural leaseholders to enter into land management agreements when extending

[72] A pastoral term lease no longer needs to be converted to a perpetual lease before being eligible for conversion to freehold, see *Land and Other Legislation Amendment Act 2014* (Qld) s47 and Explanatory notes at page 7.
[73] *Land and Other Legislation Amendment Act 2014* (Qld) s 51.
[74] See submissions to the State Development, Infrastructure and Industry Committee by the Cape York Land Council Aboriginal Corporation and the North Queensland Land Council, available at http://www.parliament.qld.gov.au/documents/committees/SDIIC/2014/16-LandOLAB/submissions/012.pdf and http://www.parliament.qld.gov.au/documents/committees/SDIIC/2014/16-LandOLAB/submissions/014.pdf

rolling term leases.[75] Additionally, the State government is no longer obliged to take into account such considerations as whether there is a more appropriate use for the land, whether the lease conditions or conservation plans have been complied with, whether part of the lease is needed for environmental or conservation purposes or whether the public interest could be adversely affected.[76]

Implications for NRM groups

These changes increase security of tenure for leaseholders and simplify the process of renewing leases. However, they also remove an opportunity for NRM groups to work with leaseholders to address issues such as soil conservation, salinity, pest management, biodiversity, water and vegetation management.[77] The changes also significantly reduce the State's role in overseeing land management. Instead of encouraging a preventative approach to land management, the changes give the State reactive powers to require land management agreements if the land suffers from, or is at risk from, land degradation.[78]

Example: Barcaldine Grazing Lease

Kate runs a large property grazing cattle just outside of Barcaldine. The property is home to unique natural springs and Indigenous sites. Previously, to renew her pastoral lease, Kate would enter into a conservation agreement with the government (otherwise known as a Delbessie Agreement). However, Kate failed to meet many aspects of the agreement surrounding weed control, and soil conservation.

Under the new changes to the Land Act, leaseholders who breach the environmental conditions of their leases are eligible for automatic lease renewals, and land management plans are only required at the Minister's discretion when there has been, or is a risk of, land degradation. Additionally, rolling leases must be renewed regardless of whether a more appropriate use for the land has emerged.

Possible challenges and opportunities for NRM groups:

The 'rolling lease' amendments to the Land Act mean that some of the interventions and protections that were adopted for GKI under the former tenure system may not be as readily available now. NRM groups may need to work more closely with leaseholders to ensure they abide by their lease conditions and employ good land management practices.

[75] *Land and Other Legislation Amendment Act 2014* (Qld) s 49.
[76] See *Land Act 1994* (Qld) s159 .
[77] See Department of Natural Resources and Mines, Guide to Land Management Agreement (Accessed 20/6/14) Available at: http://www.dnrm.qld.gov.au/__data/assets/pdf_file/0020/110477/guide-land-management-agreeement.pdf
[78] *Land Act 1994* (Qld) s176UA.

2.1.3. *Removal of corporate ownership and amalgamation restrictions*

LOLA also removes restrictions on corporations holding certain pastoral leases, allows individuals and corporations to aggregate pastoral holdings and permits lessees to consolidate multiple adjoining leases.[79]

Implications for NRM groups

The removal of restrictions will encourage business growth, but in combination with other changes, may also encourage the privatisation of rural land and force small farmers to compete with larger businesses.[80] This may see NRM groups increasingly working with corporate leaseholders in relation to larger land sizes.

2.2. Key features of the Land Act 1994

The Land Act regulates the creation and management of different land tenures in Queensland, including leasehold and freehold land. It sets out what parts of land are reserved by the State, including mineral rights and land adjacent to watercourses. It also manages Indigenous cultural interests on land.

3. Water Act 2000 (Qld)

3.1. Proposed changes to the Water Act 2000 (Qld)

3.1.1. *Review of the entire Water Act 2000 (Qld)*

The review of the *Water Act* aims to achieve the following reforms:

- Deliver a relevant and progressive purpose for the *Water Act* that is consistent with National Water Reform commitments;
- Increase security, certainty and flexibility for water users;
- Review and streamline the water resource planning process to remove duplication and rationalise timeframes associated with the current 2 plan process;
- Accelerate the release of unallocated water reserves and enable responsible development of the State's water resources;
- Identify ways to further establish open water markets across Queensland;
- Manage the impact of the resources sector on groundwater;
- Reduce regulatory burdens; and
- Simplify requirements for water entities and trusts.

The review is currently being undertaken and consultation through a regulatory impact statement is expected to open soon. The review is part of an initiative to open up unallocated water in regional

[79] So long as the leases are held by the same lessee, have been issued for the same purpose and native title has been appropriately addressed as stated in the *Land and Other Legislation Amendment Act 2014* (Qld) Explanatory notes at page 7.

[80] See the *Land and Other Legislation Amendment Bill 2014* (Qld) Submission from AgForce, which did not support the removal of corporate ownership restrictions: AgForce Queensland Industrial Union of Employers, Submission to Land and Other Legislation Amendment Bill 2014 (Accessed 14/5/14) available at: http://www.parliament.qld.gov.au/documents/committees/SDIIC/2014/16-LandOLAB/submissions/010.pdf

Queensland to large-scale agricultural uses. The changes may impact upon water management in Queensland and the ability of NRM groups to work to conserve water and environmental values in conjunction with appropriate land uses.

Implications for NRM Groups

The Water Act is very important for targets relating to water quality and waterways health. The review of the Act provides an opportunity for groups to comment about how they would like to see water governed in Queensland.

New levee management regulations are important for landholders to be aware of. The regulations were introduced to give Queensland a uniform, standard procedure for damn construction, in order to manage the effects they can have during flooding. NRM groups may benefit from greater regulation of levees that will affect the amount of water on a floodplain. Floodplain management is important to protect communities, as well as to conserve natural processes. NRM groups may be able to take a role in assisting the construction of new levees which help protect communities and the environment.

Example: Unlawful Water Use

Jane believes *Farms International Limited* is taking more water than their water licence allows. Jane is concerned as she lives in a neighbouring property. She reported her concerns to DNRM but it has not taken any action. Jane may bring a proceeding in the District Court seeking one or more of the following orders:

1. An order to remedy or restrain *Farms International Limited's* offence (an enforcement order);
2. An order that *Farms International Limited* pay damages to compensate Jane for any loss or damage to her property because of *Farms International Limited's* offence; or
3. An interim enforcement order whilst the proceeding is decided.[81]

The Court may, among other orders, order the demolition, removal or modification of works *Farms International Limited* has for taking or interfering with water.[82] If the Court is satisfied that *Farms International Limited* has committed an offence, it may also make an order for exemplary damages to be paid into the consolidated fund.[83]

If an interim enforcement order is made Jane will need to be aware that the Court may impose a condition that Jane is liable for any costs resulting from damage suffered by *Farms International Limited* as a result of the interim order.[84] Jane will have to bear her own costs for bringing the proceeding to Court.[85]

[81] *Water Act 2000* (Qld) s 784.
[82] *Water Act 2000* (Qld) s 789(2).
[83] *Water Act 2000* (Qld) s 788(2).
[84] *Water Act 2000* (Qld) s 786(2).
[85] *Water Act 2000* (Qld) s 792(1).

Challenges and Opportunities

Efficient water use is important to NRM groups, as it directly relates to targets, but can also affect broader issues such as soil salinity, waterways health and biodiversity. The enforcement of water issues is therefore important. Consequently, NRM groups, as non-government organisations, should know what rights to enforcement and reporting they have under the Act.

3.2. Recent changes to the Water Act 2000 (Qld)

3.2.1. *Retrospective Validation of Water Licences and Unlawful Quarrying*

All water licenses previously issued by the government that have not already been legally challenged have been retrospectively validated.[86] There was concern from the government that many licenses issued over the past decade were legally defective. Quarrying activities have also been retrospectively legalised where the mine area became a waterway on 7 May 2010.[87] An allocation notice is usually required to extract quarry material from within a watercourse or lake, in addition to approval under the *Mineral Resources Act 1989* (Qld) (**MRA**).

3.2.2. *Extension of expiry for Water Licences*

The duration of all water licences was extended to 30th June 2111. [88] As discussed under the *Petroleum and Gas (Production and Safety) Act 2004* (Qld) (**the P&G Act**) part of this Guide (see paragraph 27.1.1 of this Guide), a water licence is no longer needed for landholders to use associated water obtained from CSG activities, or to supply that water to a landholder whose land is not within the resource tenure.[89] Associated water is produced water for the purposes of the P&G Act. The need for a permit to destroy vegetation in a watercourse under the Water Act was also removed.[90] The VMA (see section 1 of this Guide) & SPA (see section 16 of this Guide) now govern clearing of all vegetation.

3.2.3. *Permit Required for Levees*

The *Water Regulation 2002* now requires a permit to be issued for the construction of a new levee or the alteration of an existing levee. The changes were introduced upon the recommendation of the Floods Commission of Inquiry, to introduce uniform laws covering the construction of levees. There are three categories of levees under the regulation:[91]

- A category 1 levee is a levee that has no off-property impact.
- A category 2 levee has an off-property impact, for which the affected population is less than 3.

[86] *Land, Water and Other Legislation Amendment Act 2013* (Qld) s 132.
[87] *Land, Water and Other Legislation Amendment Act 2013* (Qld) s 132A.
[88] *Water Act 2000* (Qld) s 213A inserted by the *Land, Water and Other Legislation Amendment Act 2013* (Qld) s 292C.
[89] *Petroleum and Gas (Production and Safety) Act 2004* (Qld) s 185.
[90] *Land, Water and Other Legislation Amendment Act 2013* (Qld) s 293-295.
[91] *Water Regulation 2002* (Qld) reg 62C.

- A category 3 levee has an off-property impact, for which the affected population is more than 3.

A category 1 levee requires no approval.[92] Category 2 and 3 levees[93] require a development application.[94] Levees must be stable, safe, and not have unacceptable impacts on people, the environment, or property.[95]

3.3. Key features of the Water Act 2000 (Qld)

The Act facilitates the sustainable use of water by vesting all rights to the 'use, control and flow' of water in the State.[96] It protects the use of groundwater through the requirement of a water licence. Groundwater use is quantified in the Minister for Natural Resources and Mines annual report. It is important to read the Water Act alongside resource legislation, for example the *Mineral Resources Act 1989* (Qld). It is important to note that even though general authorisations exist to take water under the Act, these can be displaced by the operation of other legislative instruments. For example, the Water Resource (Great Artesian Basin) Plan 2006 prohibits the taking of sub-artesian water for stock purposes in most of Queensland.[97]

3.3.1. *Do I need a licence to use water?*

Riparian landowners are allowed to take water in a watercourse, lake or spring or overland flow water without a licence or permit for stock or domestic purposes.[98] Any person can take water without a permit for: [99]

- Camping;
- Watering travelling stock;
- In an emergency situation for a public purpose or firefighting; and;
- From overland flow or sub artesian water for any purpose except where a moratorium notice, water resource plan, regulation or wild river declaration prohibits it.

Landowners can also take water for domestic and stock purposes, subject to regulations.[100] Water can also be taken if it is already authorised by an EA.[101]

[92] For Levee Guidelines see Department of Natural Resources and Mines, Guidelines for the construction or modification of category 1 levees (Accessed 1/7/14) available at: http://www.dnrm.qld.gov.au/__data/assets/pdf_file/0020/163424/guidelines-category-1-levees.pdf
[93] For Levee Guidelines see Department of Natural Resources and Mines, Guidelines for the construction or modification of category 2 and 3 levees (Accessed 1/7/14) available at: http://www.dnrm.qld.gov.au/__data/assets/pdf_file/0019/163423/Guidelines-for-the-construction-or-modification-of-category-2-and-3-levees.pdf
[94] *Water Regulation 2002* (Qld) reg 62D.
[95] *Water Regulation 2002* (Qld) reg 15B.

[96] *Water Act 2000* (Qld) s 19.
[97] *Water Resource (Great Artesian Basin) Plan 2006* s 11(1).
[98] *Water Act 2000* (Qld) s 20.
[99] *Water Act 2000* (Qld) s 20.
[100] *Water Act 2000* (Qld) s 20A.
[101] *Water Act 2000* (Qld) s 20(4).

Applicants will need to apply for a licence to take or interfere with water for purposes other than those listed above. The application for a water permit is separate from the *Sustainable Planning Act*'s development assessment system.

3.3.2. *Grant of a Water Permit*

Often a mining company will require a water permit. They can apply for one provided they have an interest in the land or an application for mining lease over the land.[102] Applications must be publicly notified. [103] Submissions can be made on the application, and will secure the right to make an objection.[104] Objections are first heard internally,[105] by the administering authority, and will not be heard by the same person who approved the licence.[106] A decision made on internal review can be challenged by way of an appeal to the Land Court.[107]

3.3.3. *Riverine Protection Permits*

A riverine protection permit is required to authorise excavating or placing fill in a water course, lake or spring.[108]

3.3.4. *Who enforces breaches of the Act?*

Enforcement of the Water Act is mostly the responsibility of the DNRM. however the Department of Environment and Heritage Protection (**DEHP**) has responsibility for managing underground water impacts of CSG activities (but not mining) in Chapter 3 of the Act. If you become aware of unlawful water use, a complaint can be made to DNRM. Any person can apply to the Land Court for a court enforcement order.[109]

The National Framework for Compliance and Enforcement Systems for Water Resource Management constitutes a nationally consistent approach to compliance with water laws in Australia. The approach is one of cost-effective regulation, favouring assistance and informal approaches to compliance, over court sanction and fines.[110]

3.3.5. *Water Resource Plans*

A water resource plan provides a framework for sharing water between human consumption needs and environmental values for a particular catchment.[111] They are made according to catchment

[102] *Water Act 2000* (Qld) ss 203 and 206(4).
[103] *Water Act 2000* (Qld) s208(4).
[104] *Water Act 2000* (Qld) s211(3) requires an information notice to be given to a submitter, which, as per s 862(1) *Water Act 2000* (Qld), makes that person an 'interested person' and able to submit an application for review.
[105] *Water Act 2000* (Qld) s 861.
[106] *Water Act 2000* (Qld) s863(6).
[107] *Water Act 2000* (Qld) s877(1)(b).
[108] *Water Act 2000* (Qld) s 266.
[109] *Water Act 2000* (Qld) Chapter 5.
[110] For more information see Commonwealth Department of Environment, National Framework for Compliance and Enforcement Systems for Water Resource Management (Accessed 2/7/14) available at: http://www.environment.gov.au/resource/national-framework-compliance-and-enforcement-systems-water-resource-management
[111] *Water Act 2000* (Qld) s 38.

areas and are available on the website of the DNRM.[112] The overview report of the draft plan will outline how submissions can be made regarding the draft plan.

Depending on the scope of the particular water resource plan, its implementation through a resource operation plan may lead to water licences being converted to tradeable water allocations, with trading rules detailed in the resource operation plan. The draft resource operation plan will outline how submissions can be made regarding the draft plan and the plan itself will be available on the DNRM website.

3.3.6. *Data on Water Licences*

A water allocations register is established under the Act.[113] The register includes details of all 'water allocations and interests and dealings with water allocations'. The location of offices for the register is decided by the Chief Executive of the *Water Act 2000* (Qld),[114] and fees are payable to access and search the registry.[115] The Chief Executive has declared Land Information and Titles Offices[116] as an office for the water allocation registry. As such, all licence searches and applications can be made there. Not having a free and publicly available online register is a gap in the law that prevents people from easily accessing information.

For more information on how to access public information, see FAQ 28.1 at the end of this Guide.

3.3.7. *Interactions with other Legislation*

The Act places no limits upon the amount of water that can be taken during the course of minerals extraction. The P&G Act explicitly allows CSG operators to take as much water as needed 'if taking or interference happens during the course of, or results from, the carrying out of another authorised activity for the tenure'.[117] The amount of this water is required to be recorded through a petroleum production report,[118] with the report submitted every six months to the DNRM. [119] Annual reports are compiled by DNRM from the aggregated data of petroleum production reports.

Impacts on water quality as a result of agricultural runoff and the release of water from resource activities are regulated under the *Environmental Protection Act 1994* (Qld). Emergency release of water from resource activities is regulated via Temporary Emissions Licences (**TELs**), while other releases of water are regulated under the conditions of the EA. For more information about the

[112] To access local plans go to Department of Natural Resources and Mines, Catchments Planning (Accessed 25/6/14) available at: http://www.dnrm.qld.gov.au/water/catchments-planning
[113] *Water Act 2000* (Qld) s 148.
[114] *Water Regulation 2002* (Qld) reg 4.
[115] *Water Regulation 2002* (Qld) Schedule 16; Department of Natural Resources and Mines, Water allocation/licence search (Accessed 30/06/2014) available at: http://www.nrm.qld.gov.au/services_resources/item_list.php?category_id=161
[116] Department of Natural Resources and Mines, Titles Registry Contacts (Accessed 30/06/2014) available at: http://www.dnrm.qld.gov.au/our-department/contact-us/titles-registry-contacts
[117] *Petroleum and Gas (Production and Safety) Act 2004* (Qld) s 185(1)(a).
[118] *Petroleum and Gas (Production and Safety) Act 2004* (Qld) s 801(2)(f).
[119] *Petroleum and Gas (Production and Safety) Regulation 2004* (Qld) s 43(1).

regulation of water from mining and CSG activities, see sections 25.2.3 and 0 of this Guide. For more information about the regulation of agricultural runoff, see section 25.3.3 of this Guide.

Example: Interaction between the SPA and the Water Act 2000 (Qld)

Farmer John wants to construct a levee on his property. The levee will be 11m high and have a storage capacity of 1600ML. Levees are defined in the *Water Act 2000* (Qld) as 'an artificial embankment or structure which prevents or reduces the flow of overland flow water onto or from land'. Under the SPA, this constitutes 'development' as it is an operation which allows the taking or interfering with water under the *Water Act 2000* (Qld).[120]

John will need to apply for a permit, because the Sustainable Planning Regulations state that constructing a levee is 'assessable development' if it is failure impact assessable under s343 Water Supply Act.[121] The levee is failure impact assessable as it is more than 10m in height and has a storage capacity of more than 1500ML.[122] It will also require approval under the *Water Act Regulation 2002* if the dam will impact upon surrounding properties.[123]

Under the *Water Act 2000* (Qld), John will be able to collect water in his levee that is overland flow water.[124] He will not need a water licence to use the water, as long as it is used for watering stock, or domestic purposes.[125] Domestic purposes include irrigating a garden not exceeding .25ha.[126] If John wishes to use the water for other purposes, such as irrigation and agriculture, he will require a water permit.[127]

Challenges and Opportunities

The interaction of legislation for one particular project is often the most confusing aspect of regulations. NRM groups should try and be aware of where different Acts intersect to give operators greater obligations. The complexity of legislation can be a challenge for NRM groups and landholders alike, but also offers an opportunity for NRM groups to help educate landholders.

[120] Development is defined in s7 and operational work is defined in s10(1*) Sustainable Planning Act 2009* (Qld).
[121] *Sustainable Planning Regulation 2009* (Qld) Schedule 3, Part 1, Table 4, item 4.
[122] *Water Supply (Safety and Reliability) Act 2008* (Qld) s 343.
[123] *Water Regulation 2002* (Qld) ss 62C-62D.
[124] *Water Act 2000* (Qld) s 20(1)(g).
[125] *Water Act 2000* (Qld) s 20A(4).
[126] *Water Act 2000* (Qld) Sch 4 – Dictionary.
[127] Anything outside of *Water Act 2000* (Qld) ss 20-20C generally requires a water permit.

4. Water Act 2007 (Cth)

4.1. Proposed changes to the Water Act 2007 (Cth)

4.1.1. *Omnibus Repeal Day (Autumn 2014) Bill 2014 (Cth)*

This Bill proposes to repeal s 255AA of the *Water Act 2007* (Cth). The section requires mining operations affecting the Murray-Darling groundwater systems to commission a study into groundwater impacts. The study is required to be an independent study on the impacts of the proposed operations on 'the connectivity of groundwater systems, surface water and groundwater flows and water quality'.

The existing requirement helped to protect the Murray-Darling Basin from mining impacts. The Murray-Darling is a well-connected basin where impacts from mining operations are unlikely to be localised. Removing this section would reduce the availability of independent studies on the impacts of proposed operations on the Basin, which are often used by stakeholders in responding to Environmental Impact Studies (EIS).

4.1.2. *Review of the Water Act 2007 (Cth)*

A review of the *Water Act 2007* (Cth) was announced in May 2014. The review is to focus on 'whether the Act is delivering on its objectives effectively, with the minimum necessary regulatory burden placed upon the water industry, water managers and irrigators.'[128] The review will also address the mandatory terms of reference set out in the *Water Act 2007* (Cth),[129] which focus on the extent to which the objectives and outcomes of the Basin Plan and related reforms are being met.

4.2. Recent Changes to the Water Act 2007 (Cth)

4.2.1. *Water Amendment (Water for the Environment Special Account) Act 2013 (Cth)*

This Act created the Water for the Environment Special Account. The account was established to channel funds into projects which will improve water use efficiency of infrastructure using water from the Murray-Darling basin. It appropriated $1,775 million to the Water for the Environment Special Account over a 10 year period from 2014-15 to 2023-24.

Water is to be purchased or saved through increased efficiency, in order to help achieve long-term water targets. Investments are in farm irrigation efficiency, as well as other projects. The fund will also purchase water access entitlements and other similar mechanisms, with a requirement that social and economic outcomes can be achieved or maintained. The aim is to increase water in the environment without affecting productivity of the basin. An annual report is produced every year for the fund.

[128] Department of the Environment, Review of the Water Act 2007 (accessed 30 June 2014) available at: http://www.environment.gov.au/water/legislation/water-act-review

[129] *Water Act 2007* (Cth) s 253.

This Act is a step forward in achieving improved water usage, as well as supporting land uses such as farming. Improving efficiency of water use is helpful to NRM groups in working with land users for improved outcomes. Convincing agricultural producers to take steps to reduce their impact on the Murray-Darling Basin would be difficult without financial assistance from the government. Since this Act potentially provides that assistance, it affords a good opportunity for NRM groups in the Basin area to work with landholders.

4.2.2. *Water Amendment (Long-term Average Sustainable Diversion Limit Adjustment) Act 2012 (Cth)*

This Act allowed the Sustainable Diversion Limit to be adjusted by the Murray-Darling Basin Authority, in accordance with the Basin Plan. The Authority must consult the Basin Official Committee before a change, and there is a limit to a change of +/- 5%. This allowed the limit to be changed without requiring the Minister to engage in a formal amendment process of the Basin Plan. The Sustainable Diversion Limit must reflect an environmentally sustainable level of take.[130]

4.2.3. *Enforcement*

This is a federal Act administered by the Commonwealth Government through the Murray-Darling Basin Authority. The Authority can give enforcement notices,[131] infringement notices,[132] and enter into enforceable undertakings with parties. [133]

Implications for NRM Groups

Recent changes have created the Water for the Environment Special Account, from which money will be given to industry in order to help improve water usage efficiency. NRM groups in the Murray-Darling Basin will probably be aware of the great resource this is in helping fund a change of practice on the ground, to ensure targets are met. The review of the Act also offers groups the chance to comment on how the Act should be changed to enable the achievement of water targets within the basin.

4.3. Key features of the Water Act 2007 (Cth)

The *Water Act 2007* (Cth) establishes joint Commonwealth and State control of the Murray-Darling River Basin.[134] It is intended to operate concurrently with State water laws, including the *Water Act 2000* (Qld).[135] The Act establishes frameworks for water charges,[136] water trading[137] and a water market[138] within the Basin.

[130] *Water Act 2007* (Cth) s 23.
[131] *Regional Planning Interests Act 2014* (Qld) Div 7.
[132] *Regional Planning Interests Act 2014* (Qld) Div 5.
[133] *Regional Planning Interests Act 2014* (Qld) Div 6.
[134] *Water Act 2007* (Cth) s 3(a).
[135] *Water Act 2007* (Cth) s 250B.
[136] *Water Act 2007* (Cth) Part 4 division 1.
[137] *Water Act 2007* (Cth) s 10.
[138] *Water Act 2007* (Cth) Part 4 division 2.

The Act also establishes the Murray-Darling Basin Authority (MDBA)[139] which possesses the various functions[140] and powers[141] needed to ensure that Basin water resources are managed in an integrated and sustainable way. The MDBA is required to prepare the Basin Plan, a strategic plan for the integrated and sustainable management of water resources in the Murray-Darling Basin.[142]

The *Water Act 2007* (Cth) also establishes the Commonwealth Environmental Water Holder (CEWH)[143] to manage the Commonwealth's environmental water with the objective of protecting and restoring the environmental assets of the Basin.[144] The Act gives the Bureau of Meteorology additional water information functions and also increases the role of the Australian Competition and Consumer Commission in relation to water charge[145] and water market rules.[146]

5. Nature Conservation Act 1992 (Qld)

5.1. Proposed changes to the Nature Conservation Act 1992

In June 2013, the National Parks Minister announced a scientific review of the protected area estate,[147] and reviews all areas gazetted for protection since 2002. No public information is available on this review or what the scope of outcomes may be.

5.2. Recent changes to the Nature Conservation Act 1992

5.2.1. *Change to underlying objects and principles*

Previously, the only object of the *Nature Conservation Act 1992* (Qld) (**the NCA**) was to provide for the 'conservation of nature'.[148] The *Nature Conservation and Other Legislation Amendment Act 2013 (No 2)* (**the NCOLA Act (No 2)**) amended the objects of the NCA to provide for the 'use and enjoyment' of protected areas by the community, and the 'social, cultural and commercial use' of protected areas in a way consistent with the natural, cultural and other values of the areas.[149] The amended objects do not require the 'use and enjoyment' by the community to be ecologically sustainable. The possibility of new uses in protected areas is a departure from the original purpose of protected areas as areas for the conservation of nature.

Amendments have also inserted two additional management principles of national parks which provide that a national park should be managed to 'provide opportunities for educational and recreational activities [and ecotourism] in a way consistent with the area's natural and cultural

[139] *Water Act 2007* (Cth) s 171.
[140] *Water Act 2007* (Cth) s 172.
[141] *Water Act 2007* (Cth) s 173.
[142] *Water Act 2007* (Cth) Division 1.
[143] *Water Act 2007* (Cth) s 104.
[144] *Water Act 2007* (Cth) s 105.
[145] *Water Act 2007* (Cth) s 94.
[146] *Water Act 2007* (Cth) s 99.
[147] Queensland Government, Media Statements - National park estate review to strengthen quality land protections (Accessed 15/6/14) available at: http://statements.qld.gov.au/Statement/2013/6/2/national-park-estate-review-to-strengthen-quality-land-protections
[148] *Nature Conservation Act 1992* (Qld) s 4 superseded (current as at 30 June 2013).
[149] *Nature Conservation Act 1992* (Qld) s 4(c), as amended by NCOLA Act (No. 2) (Act No. 55 of 2013).

resources and values.'[150] These new principles could weaken the cardinal principle of national park management, which is 'to provide, to the greatest possible extent, for the permanent preservation of the area's natural condition and the protection of the area's cultural resources and values.'[151] Allowing non-conservation activities could reduce the possibility of permanent preservation. Additionally, the insertion of an ecotourism management principle is of reduced effect as the chief executive has the power to override the management principles in granting ecotourism and service authorities.[152]

Notably, though, the amended objects also allow for the involvement of Indigenous people in the management of protected areas in which they have a customary interest.[153]

5.2.2. *Allowing ecotourism in national parks*

In line with the changes to the objects and management principles, the NCA was also amended to explicitly allow the granting of authorities for the establishment of ecotourism facilities in national parks.[154] An 'ecotourism facility' is defined broadly as a facility designed and managed to facilitate the 'primary purpose', which is the presentation, appreciation and conservation of the land's natural condition and cultural resources and values.[155] The law provides little clarification on what kinds of ecotourism facility will be acceptable, other than that they cannot be inconsistent with the primary purpose, and they cannot involve a significant change to the land's natural condition or adversely affect conservation of the land's natural and cultural resources. While the facility must be ecologically sustainable and in the public interest to be permitted,[156] it is not required to follow the 'cardinal principle' for the management of national parks.[157]

Implications for NRM groups

The construction of any ecotourism facility would undoubtedly have some environmental impacts in areas that are set as aside as protected. This may impact on those NRM targets that rely on consistently high biodiversity measures in protected areas.

5.2.3. *Grazing in certain protected areas*

National Reserve System (**NRS**) properties are essentially 'national parks in waiting' as they have been purchased as national park, but are yet to be formally gazetted.[158] In 2013, the NCA was

[150] *Nature Conservation Act 1992* (Qld) s17(1)(d) and (e), as amended by s116 NCOLA Act (No.2).
[151] *Nature Conservation Act 1992* (Qld) s17(1)(a).
[152] *Nature Conservation Act 1992* (Qld) s35(2).
[153] *Nature Conservation Act 1992* (Qld) s 4(a).
[154] *Nature Conservation Act 1992* (Qld) s 35, as amended by NCOLA Act (Act No. 18 of 2013)) gives the chief executive the power to grant an authority for an ecotourism facility. Previously, an authority was only available for a 'service facility' which includes infrastructure for communications, electricity, water or sewerage, and can also include pipelines for oil or gas – see *Nature Conservation Act 1992* (Qld) Schedule (Definitions) *service facility*.
[155] *Nature Conservation Act 1992* (Qld) Schedule (Definitions) *ecotourism facility*.
[156] *Nature Conservation Act 1992* (Qld) s 35(c).
[157] The *cardinal principle* is defined in the *Nature Conservation Act 1992* (Qld) s 17(1)(a), to 'provide, to the greatest possible extent, for the permanent preservation of the area's natural condition and the protection of the area's cultural resources and values'. An ecotourism has to provide for the above, but only for the preservation, rather than the permanent preservation.
[158] National Parks Association of Queensland, Grazing to continue in 8 National Park reserves (Accessed 18/6/14) Available at: http://www.npaq.org.au/latest-news/grazing-to-continue-in-8-national-park-reserves

amended to allow grazing of stock in certain national parks and NRS properties[159] for emergency drought relief purposes.[160] This provision lasted until 31 December 2013, and has now ceased.[161] While grazing is not currently permitted in national parks, the Department of National Parks, Recreation, Sport and Racing (**DNPRSR**) has extended permits for grazing in approximately 400,000 hectares of NRS land.[162] The NRS is an arrangement between the Federal Government and various state, territory and local governments concerned with co-management of protected areas. Grazing on NRS properties is authorised through the terms of a State/Federal agreement on NRS properties, rather than through the NCA.

Implications for NRM groups

Grazing in national parks and NRS properties could increases the risk of spreading weeds, and poses risks to protected plant communities and natural habitats for birds and mammals. This may impact NRM targets in relation to biodiversity.

5.2.4. *Protected plants only require surveying if identified in trigger map*

The *Nature Conservation (Wildlife Management) Regulation 2006* regulates the clearing, growing, harvesting and trade of protected plants in Queensland. This regulation was amended by the *Nature Conservation and Other Legislation Amendment and Repeal Regulation (No. 1) 2014* (Qld),[163] which introduced a new 'low/high risk' framework for managing protected plants. High risk areas are mapped on the Protected Plants Flora Survey Trigger Map, which shows where endangered, vulnerable and near threatened (**EVNT**) plants are present or highly likely to be present.[164] Flora surveys are not necessary for proposed clearing in low risk areas, and clearing is exempt from requiring a clearing permit, unless a person is aware or becomes aware that EVNT plants are present.[165] For proposed clearing in high risk areas, a simple desktop flora survey is required. If the survey shows that EVNT plant species are not present within the clearing impact area, the proposed clearing is exempt and a permit is not required. If the desktop survey does identify EVNT plant species, an application for a protected plant clearing permit is required and a field survey must be undertaken.[166]

Whereas clearing permits under the previous framework focused on the individual plant species, the new permit focuses on the clearing impact area. This means that the permit is still valid even if

[159] These areas include national parks: Blackbraes National Park; Forest Den National Park; Mazeppa National Park; Moorrinya National Park; Nairana National Park; Nairana National Park (Recovery); and National Reserve System (NRS) properties: Gilbert River (North of Forsayth); Rungulla (South of Forsayth); Eight Mile (South of Forsayth); Littleton (near Croydon); The Canyon (near Georgetown); Wairuna (West of Ingham); Belmah (South of Emerald); Bedourie (North of Taroom); Redcliffevale (West of Mackay).
[160] *Nature Conservation Act 1992* (Qld) s 173S, amended by *Vegetation Management Framework Amendment Act 2013* (Qld).
[161] *Nature Conservation Act 1992* (Qld) s 173S(3).
[162] Australian Broadcasting Service, National Parks Grazing (Accessed 6/6/14) available at: http://www.abc.net.au/news/2013-10-29/national-parks-grazing/5053544
[163] The *Nature Conservation and Other Legislation Amendment and Repeal Regulation (No. 1) 2014* (Qld) Commenced on 31 March 2014.
[164] High risk areas cover approximately 3.5% of the Queensland. Maps can be requested from Department of Environment and Heritage Protection, Protected Plants Flora Survey Trigger Map (Accessed 20/6/14) available at: https://www.ehp.qld.gov.au/licences-permits/plants-animals/protected-plants/map-request.php
[165] *Nature Conservation and Other Legislation Amendment and Repeal Regulation (No. 1) 2014* (Qld) Reg 259, introduced by *Nature Conservation and Other Legislation Amendment and Repeal Regulation (No. 1) 2014* (Qld) s33.
[166] Department of Environment and Heritage Protection, Flora survey guidelines page 2-3 (Accessed 1/6/14) available at https://www.ehp.qld.gov.au/licences-permits/plants-animals/documents/flora-survey-guidelines.pdf

additional species are found while clearing is underway.[167] Permits are valid for a period of up to two years, and re-clearing or routine maintenance can be carried out within ten years of the original authorised clearing (this includes exempt clearing in low risk areas).[168]

Implications for NRM groups

The government has described benefits for business and industry, estimating that the new framework will reduce the number of clearing permits required and save an estimated $50 million per year in survey costs. The lower regulatory obligations may be of assistance to some NRM stakeholders, but ultimately they provide significantly reduced protection for protected species in Queensland.

High and low risk areas are determined according to known records of EVNT plant species, but this is problematic when there is incomplete knowledge about protected plant communities in Queensland. Some species may only be listed as of 'least concern' because there is insufficient information as to whether they are common or abundant in the wild.[169] Additionally, there are many species of plants which are not recorded, with the Queensland Herbarium estimating that more than 50 species of plants, algae, lichens and fungi are discovered in Queensland each year.[170]

This framework creates a substantial risk that protected species will be cleared due to there being insufficient data and surveying. This is likely to affect NRM plans and targets in relation to the protection of biodiversity and native vegetation, especially when considered in light of the cumulative effects of other recent reforms.[171] NRM groups may consider focusing their attention on researching and documenting important plant communities in Queensland. This information may be provided to DEHP for inclusion in the trigger map[172] or to neighbouring landowners, leaseholders or business operators.[173]

5.2.5. *IUCN categories of protected areas no longer used*

The NCOLA Act (No 2) reduced the number of protected area tenure classes by abolishing and amalgamating tenure classes. For example, the 'national park (scientific)' and 'national park (recovery)' classes have been incorporated into the 'national park' class, and the 'conservation park'

[167] Department of Environment and Heritage Protection, Clearing Protected Plants (Accessed 2/6/14) available at: https://www.ehp.qld.gov.au/licences-permits/plants-animals/protected-plants/clearing.html
[168] Department of Environment and Heritage Protection, Clearing Protected Plants (Accessed 2/6/14) available at: https://www.ehp.qld.gov.au/licences-permits/plants-animals/protected-plants/clearing.html
[169] Queensland Government, Endangered or Threatened Wildlife (Accessed 4/6/14) http://www.qld.gov.au/environment/plants-animals/endangered/
[170] Queensland Government, Discovering New Plants (Accessed 4/6/14) available at: http://www.qld.gov.au/environment/plants-animals/plants/new-plants/index.html
[171] See Vegetation Management at section 1; the Single State Planning Policy at section **Error! Reference source not found.** .
[172] *Nature Conservation (Wildlife Management) Regulation 2006* (Qld) reg 251 provides that the Minister must review the trigger map every 12 months, but has the discretion to review and amend it at any time.
[173] *Nature Conservation (Wildlife Management) Regulation 2006* (Qld) reg 259 provides that a permit is required for clearing in a low risk area if, before a person starts clearing, the person is aware that there are EVNT plants in the area.

class and resource reserve tenures have been combined into one tenure class called 'regional park'.[174]

These simplified tenure classes are contrary to international good practice represented by the International Union for Conservation of Nature (**IUCN**) Guidelines. These guidelines contain internationally accepted definitions and categories of protected areas, and were previously embodied in the NCA. For example, the class 'national parks (scientific) satisfied the IUCN category IA – 'Strict Nature Reserve'.[175] Now, there is no IUCN category IA in Queensland, which will make monitoring from a national/international level difficult as researchers will have to compare across different categories.[176]

5.2.6. *Removal of public participation rights*

The changes introduced by NCOLA (No 2) removed key opportunities for interested members of the public to be involved in the administration and management of protected areas by replacing the requirement for management plans with management statements. Previously, a management plan was required for every protected area. Now, each protected area only requires the preparation of a management statement.[177] A management statement is a simple, administrative document detailing the broad management goals for the protected area. A management plan involves a more detailed investigation process, and contains management outcomes for the protection, presentation and use of the area and the policies, guidelines and actions to achieve those outcomes.[178] The Minister for Environment and Heritage Protection may prepare a management plan in certain circumstances where he/she considers it appropriate.

Importantly, the preparation of a management plan requires public consultation – a notice of the draft plan must be published, including an invitation for written submissions from the public.[179] All submissions made must be considered by the Minister in preparing the final version of the plan.[180] Preparation of a management statement does not require public consultation of any form.[181]

Implications for NRM groups

The removal of the requirement for management plans removes a significant amount of public involvement in the management of protected areas. The public is not invited to partake in considering what developments in protected areas might be in the 'public interest' in terms of service facilities (CSG pipelines, communication towers etc.) or the newly introduced 'eco-tourism facilities'. The only community participation rights left in the NCA is for concerned members of the

[174] See *Nature Conservation Act 1992* (Qld) s14 as amended by s 114 NCOLA Act (No 2).
[175] The purpose of this category is '*To conserve regionally, nationally or globally outstanding ecosystems, species (occurrences or aggregations) and/ or geodiversity features: these attributes will have been formed mostly or entirely by non-human forces and will be degraded or destroyed when subjected to all but very light human impact.'* IUCN Guidelines for Applying Protected Area Management Categories: https://portals.iucn.org/library/efiles/documents/paps-016.pdf at page 13.
[176] WWF Australia submission on the *Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013,* page 11.
[177] *Nature Conservation Act 1992* (Qld) s 111.
[178] *Nature Conservation Act 1992* (Qld) s 117(1)(b).
[179] *Nature Conservation Act 1992* (Qld) s 115A(3).
[180] *Nature Conservation Act 1992* (Qld) s 116.
[181] *Nature Conservation Act 1992* (Qld) s 111; Div 3.

public to apply to the Planning and Environment Court as a last resort if the Department fails to take action for a limited number of nominated offences.[182]

As a result of these changes, NRM groups have lost a key opportunity to influence the management of protected areas under the NCA. However, the National Parks Minister still has discretion to require management plans and will take the following considerations into account:

- The importance of the area's natural or cultural resources and values;
- Any significant or particular threats to the area's natural or cultural resources and values;
- Any significant public interest concerns for the area's natural or cultural resources and values;
- The nature of any proposed commercial or recreational uses of, and opportunities for, the area and the proposed management of those uses.[183]

These considerations may provide an inroad to influencing the management of national parks, including proposed ecotourism facilities.

5.3. Key features of the Nature Conservation Act 1992

The NCA is the principal law that provides for the protection and management of protected areas and protected species in Queensland. It sets out a system for the creation of protected areas, and categorises those protected areas depending on their particular use or purpose. It also makes it an offence to deal with protected species in certain ways, and provides for situations where protected species can be taken.

All protected areas are protected by the Act from unlawful interference with their natural or cultural values. Native species are protected by this Act from unlawful 'taking' (which includes killing, injury or harm, but not by habitat loss), 'keeping' or 'using'.

There are also a number of regulations to the NCA with varying functions. Regulations are used to dedicate protected areas, such as national parks, forest reserves, nature refuges and conservation areas[184] as well as to prescribe native wildlife into classes of protection classes (such as extinct, endangered, vulnerable, near threatened and least concern).[185] There are accompanying regulations which outline the management of protected areas and wildlife, and create permits for activities and offences for unlawful activities.[186] There is a general administrative regulation which deals with the

[182] *Nature Conservation Act 1992* (Qld) section 173B and Section 173D. Note that even this participation may be difficult when considered in light of the changes to the cost rules in the Planning and Environment Court (See section 16.2.1).
[183] *Nature Conservation Act 1992* (Qld) s 112(2).
[184] See *Nature Conservation (Protected Areas) Regulation 1994* (Qld) and *Nature Conservation (Forest Reserves) Regulation 2000* (Qld).
[185] *Nature Conservation (Wildlife) Regulation 2006* (Qld).
[186] *Nature Conservation (Protected Areas Management) Regulation 2006 and Nature Conservation (Wildlife Management) Regulation 2006*(Qld).

technical aspects of permits and licences.[187] Regulations may also be used to make conservation plans for native wildlife.[188]

6. Biodiversity strategy

The Queensland government prepared a Draft Biodiversity Strategy for Queensland which was subject to public consultation in early 2011. It proposed to expand protected areas, protect priority threatened species, enhance the protection of biodiversity on leasehold land and encourage community participation. The draft Biodiversity Strategy for Queensland has not been adopted.

Currently, Queensland has no formal biodiversity strategy, although biodiversity is a 'state interest' in the State Planning Policy. For more information about the State Planning Policy, see section 17 of this Guide.

7. Environmental Offsets Act 2014 (Qld)

7.1. Recent changes to the environmental offsets framework

The offset framework is actually a compensation framework, as no framework has been able to legislate for true offsetting of impacts caused by development.

The *Environmental Offsets Act 2014* (Qld) (**Offsets Act**) entirely replaced the previous offsetting framework, which included multiple single-issue offsets policies, as well as an overarching policy.[189] The previous offsets framework was enabled by the various approval laws that allowed the option of offsetting as a condition of approval.[190] These laws allowing offsetting still apply, however the new environmental offsets framework includes the following:

- Offsets Act;
- *Environmental Offsets Regulation 2014* (Qld);
- *Queensland Environmental Offsets Policy* (**Offsets Policy**);[191]
- Non-statutory guidelines (e.g. Offsets Framework guidelines, Significant Residual Impact Guidelines, Habitat Quality Guidelines).[192]

[187] *Nature Conservation (Administration) Regulation 2006*(Qld).
[188] *Nature Conservation (Estuarine Crocodile) Conservation Plan 2007* (Qld), *Nature Conservation (Koala) Conservation Plan 2006* (Qld), *Nature Conservation (Macropod) Conservation Plan 2005* (Qld), *Nature Conservation (Macropod Harvest Period 2014) Notice 2013* (Qld).
[189] *Queensland Government Environmental Offsets Policy 2008*; *Policy for Vegetation Management Offsets 2011*; *Offsets for Net Gain of Koala Habitat in South East Queensland Policy 2010, Queensland Biodiversity Offset Policy 2011*. These old policies are still available via the Queensland Government's online library catalogue: Queensland Government, *Library Catalogue* (accessed 25 May 2014), http://www.qld.gov.au/environment/library/. The *Marine Fish Habitat Offsets Policy FHMOP005.2* can be found at: Department of Agriculture, Fisheries and Forestry, *Fish Habitat Policies* (accessed 25 May 2014), http://www.daff.qld.gov.au/__data/assets/pdf_file/0003/68601/Marine-Fish-Habitat-Offset-Policy-12.pdf. The interim *Queensland Biodiversity Offset Policy 2014*, now obsolete, can be found at: Department of Environment and Heritage Protection, *Biodiversity Offsets* (accessed 25 May 2014), https://www.ehp.qld.gov.au/management/environmental-offsets/documents/queensland-biodiversity-offsets-policy.pdf
[190] These laws include the *Sustainable Planning Act 2009* (Qld), *Environmental Protection Act 1994* (Qld), *Nature Conservation Act 1992* (Qld) and *Marine Parks Act 2004* (Qld).
[191] The Regulations and the Offsets Policy are still in draft form, and the draft is available online from the Department of Environment and Heritage Protection, *Environmental Offsets Policy* (accessed 25 June 2014), available at: http://www.qld.gov.au/environment/pollution/management/offsets/

It is important to be aware that the substance of the offsets framework is contained in the Offsets Regulations and draft policy, not the Offsets Act itself. This means that the policy is subject to change without detailed consideration by the Parliament.[193]

7.2. Key features of the new environmental offsets framework

The Offsets Act provides that offsetting of environmental impacts is available in order to achieve a 'conservation outcome', where a 'prescribed activity' will have a 'significant residual impact' on a 'prescribed environmental matter'.

7.2.1. *Prescribed activity*

A prescribed activity is an activity that requires an authority under another Act, where that Act provides that an offset can be imposed under that authority.[194] Prescribed activities are listed in Schedule 1 of the *Environmental Offsets Regulation 2014* (Qld) (**the Offsets Regulation**) and include:

- A resource activity or prescribed ERA under the *Environmental Protection Act 1994*;
- Clearing of protected plants outside a protected area; and
- Certain developments included in the State Development Assessment Provisions, including aquaculture, fisheries resources and wetland protection.

Notably, agricultural development is not a prescribed activity.

7.2.2. *New prescribed environmental matters*

Prescribed environmental matters are the environmental matters that will be impacted by the prescribed activity, and are required to be offset. These include:

- Prescribed matters of national environmental significance (**MNES**), being those that are covered by a Commonwealth-Queensland approval bilateral agreement;
- Prescribed matters of state environmental significance (**MSES**), that are listed in Schedule 2 of the Offset Regulations;[195] and
- Prescribed matters of local environmental significance (**MLES**), being activities for which an offset is required under a local planning instrument.[196]

Some environmental matters that previously required offsetting and no longer will, include:

- Impacts on near threatened wildlife;
- Impacts on watercourses that are not in high ecological value waters; and
- Impacts on wetlands that are not:

[192] These Guidelines are currently being developed by DEHP. The non-statutory nature of these policy documents provides an opportunity for NRM groups to provide feedback about the effectiveness of the framework, and potentially to suggest improvements in the way the offsets framework is administered.
[193] *Environmental Offsets Act 2014* (Qld) s 12. Public consultation is not guaranteed as the Offsets Act does not require it. Changes to the policy must be prescribed under a regulation, which means the change must be tabled in the Parliament, but it will not require detailed consideration as legislative changes would.
[194] *Environmental Offsets Act 2014* (Qld) s 9.
[195] MSES include, among other things, certain category B regional ecosystems and certain connectivity areas containing category B regional ecosystems, certain wetlands and watercourses, wildlife habitat, including some habitats for koalas in South-East Queensland, specified marine and fisheries related areas.
[196] *Environmental Offsets Act 2014* (Qld) s 10.

- In protection areas;
- Of high ecological significance;
- In high ecological value waters.[197]

Further, under the new State Development Assessment Provisions (**SDAPs**),[198] offsetting is now an 'acceptable outcome' for certain developments, where previously the development would not have been allowed if it could not satisfy policy requirements.[199]

Implications for NRM groups

Where offsets were previously required and no longer are, this could represent a reduction in protections for these natural values. Similarly, for offsets that are now allowed where development would previously have been prevented, the natural values that would otherwise have been protected from impacts are now vulnerable to impacts. Although they will be offset, they will be subject to the inherent challenges of offsetting, in achieving ecological equivalence or a net gain in ecological values. This increases the importance of NRM groups' role in identifying and managing potential offset areas, to ensure that they function effectively.

7.2.3. *Significant residual impact – new definition*

A significant residual impact is an impact as a result of one of the above prescribed activities that remains or is likely to remain despite on-site mitigation measures and is 'significant'.[200] The draft Offsets Policy provides that there will be a *Significant Residual Impact Guideline*, which lists criteria for what kind of impact will be considered 'significant' for each MSES. The requirement for a residual impact to be 'significant' before it requires offsetting is a departure from the previous offsets framework, which required offsetting for any remaining impact.[201]

Implications for NRM groups

The requirement for only significant impacts to be offset poses a risk that the cumulative effect of smaller impacts (that in isolation are not considered significant) will accumulate without being addressed. The role of NRM groups in facilitating or encouraging monitoring of those environmental impacts not offset will therefore increase.

7.2.4. *Definition of 'conservation outcome'*

The goal of an offset under the new framework would be to achieve a 'conservation outcome', which is satisfied if the offset is 'selected, designed and managed to maintain the viability of the matter'.[202] This is a departure from the previous framework's requirement for an equivalent or better environmental outcome.[203] Further, offsets for prescribed environmental matters in protected areas can now constitute any activity that provides 'a social, cultural, economic or environmental benefit to any protected area'.[204]

[197] *Queensland Biodiversity Offset Policy 2011* s 6; *Environmental Offsets Regulation 2014* (Qld) Schedule 2.
[198] For more information about the changes to development assessment and the new SDAPs, see section 16.2 of this Guide.
[199] See for example the old *Policy for Vegetation Management Offsets V3 30 September 2011*, p 8 and p 11 s 8.1(l).
[200] *Environmental Offsets Act 2014* (Qld) s 8.
[201] See for example *Queensland Government Environmental Offsets Policy 2008*, s 3.2.
[202] *Environmental Offsets Act 2014* (Qld) s 11.
[203] See for example *Queensland Government Environmental Offsets Policy 2008*, s 2.2.1.
[204] *Environmental Offsets Act 2014* (Qld) s 7(3).

Implications for NRM groups

The requirement for a 'conservation outcome' rather than an equivalent or better environmental outcome means that there is no longer a requirement of a positive result for the environment; only that it is managed in a certain way. Proponents who do this will have fulfilled their legal obligations, notwithstanding that the offset may not actually achieve an adequate compensation for the environmental values lost. The previous framework prevented significant amounts of clearing through restricting development, while the new framework facilitates development rather than biodiversity outcomes, operating as a compensation mechanism. With creative use, it may give net gains for the environment in a number of circumstances. Here, NRM expertise can play an important role in assisting DEHP and offset providers to ensure that selected offsets are appropriate and effective.

An environmental impact being offset by a social or economic benefit to a protected area may jeopardise natural values that NRM groups are seeking to protect, if the actual ecological impact is not directly offset. However, it may also provide an opportunity for NRM groups to undertake a more creative, broader range of activities to improve natural resource management in protected areas.

7.2.5. *Delivery of offsets in three options*

Under the new offsets framework, a proponent may choose to offset their impacts via:

- A financial settlement offset; or
- A proponent-driven offset; or
- A combination of both.[205]

The required cost or size respectively of the offset is calculated using DEHP's online offset area calculator,[206] and DEHP has also produced guidelines to assist proponents to identify an appropriate offset.[207]

7.2.6. *Financial settlement offsets*

A financial settlement offset involves a payment,[208] which is based on a calculation of the size of the required offset,[209] and the cost of delivering an offset of that size. Calculation of the offset area required for financial settlement offsets is capped at a ratio of 4:1,[210] rather than the previous framework, which required that the full cost of locating, securing and managing the offset must be covered.[211] The authority administering the offset requirements (for example, DEHP or a local

[205] *Environmental Offsets Act 2014* (Qld) s 18. Note that a proponent can also choose to utilise a combination of proponent-driven and financial settlement offsetting to fulfil their offsetting obligations.
[206] Queensland Government, Financial Settlement Offset Calculator (Accessed 10/7/14) https://environment.ehp.qld.gov.au/offsets-calculator/
[207] See *Queensland environmental offsets framework guideline* and the *draft Guide to determining terrestrial habitat quality* (not yet published).
[208] This payment is made either to DEHP or to a local government, depending on who is administering the offset requirements – *Environmental Offsets Act 2014* (Qld) s 23.
[209] The required size is calculated using DEHP's online offset area calculator: Queensland Government, Financial Settlement Offset Calculator (Accessed 10/7/14) https://environment.ehp.qld.gov.au/offsets-calculator/
[210] Draft *Environmental Offsets Policy* s 2.3.2.
[211] *Queensland Government Environmental Offsets Policy 2008*, Appendix B.

government)[212] will then use this payment to deliver an offset for the prescribed environmental matter that is being offset. Where a trust fund exists, such as the 'Reef Trust' for the Great Barrier Reef, the funds will be directed into the relevant fund, for example to manage marine offsets in the Great Barrier Reef.

Implications for NRM groups

NRM groups may be familiar with involvement in the management of trust funds which have been set up to manage offset funds and investment in resource areas. It may be useful for each NRM group to consider the broader area which may relate to their catchment, to determine whether they may be able to combine efforts to assist in the management of their areas. For example, those NRM groups which are situated within Great Barrier Reef catchment areas may be able to assist and benefit in the coordination of the funding for the Reef Trust for the Great Barrier Reef.

7.2.7. *Strategic Offset Investment Corridors*

Strategic Offset Investment Corridors (**SOIC**) will be used to provide a format for pre-identifying particular areas of land which are likely to provide useful offsets. [213] Where land is identified in a SOIC, landholders within the area are not automatically bound by any offsets plans and must voluntarily agree to have the offset affect their land.[214]

One example of a SOIC is the Galilee Basin Offsets Strategy,[215] which incorporates the Galilee Basin SOIC. This SOIC is designed to 'replace environmental values which may be lost in the Galilee Basin as a result of development', such as mining and related infrastructure, through providing for alternative habitats in 'offset investment hubs' designed to cover multiple offsets within an area. An Offsets Corridors map has been established. Landholders in the hubs are able to enter into compensation agreements if they are willing to participate in the offsets plan, involving assisting in undertaking the agreed management actions to deliver the offset outcomes. Land management for the offset outcomes may include the management of pests, weeds and fire, as well as enhancing habitat values for specified native species.

Implications for NRM groups

NRM groups have the opportunity to identify areas within their region which may be suitable to provide offsets over prescribed environmental matters, which may further assist in NRM groups meeting their conservation targets.

7.2.8. *Proponent-driven offsets*

A proponent-driven offset is one where the proponent elects to be responsible, directly or indirectly through a broker, for delivering the offset. As distinct from the previous two options, the proponent maintains liability for delivering the offset. Before commencing the activity that requires offsetting,

[212] Under the Offsets Act, Local Governments are able to each have an environmental offsets policy; however it must be prescribed under the Offsets Regulation. Local Governments must not impose offset conditions over matter or impacts which are already subject to an existing State condition - *Environmental Offsets Act 2014* (Qld) s 12.
[213] *Draft Queensland Environmental Offsets Policy* s 2.5 Shelf-ready products.
[214] *Draft Queensland Environmental Offsets Policy* s 2.5.2.
[215] Available here: http://www.ehp.qld.gov.au/management/environmental-offsets/galilee-basin-offset-strategy.html

the proponent must, under an agreed delivery arrangement, prepare a proposed offset delivery plan, detailing how the offset will be undertaken, how the offset area will be legally secured,[216] and the way in which the offset will achieve a conservation outcome.[217]

Proponent-driven offsets can be delivered on land owned by the proponent, via a contract between the authority holder and an offset provider and other relevant third party, or through a Direct Benefit Management Plan (**DBMP**). A DBMP is a government approved 'packaged investment' which may involve a range of measures which are to be undertaken to ensure an offset conservation outcome is met. DBMPs may include actions to improve awareness, understanding and management of prescribed environmental matters.[218] DBMPs may be species specific, or cover a range of species, or environmental matters. The Offsets Policy provides that no more than 10 per cent of an offset within a DBMP can involve compensatory measures such as research and education unless otherwise agreed with the relevant government department.[219]

Implications for NRM groups

The changes to the offsetting requirements represent a reduction in the rigour of offsetting. This can mean that it is more difficult for NRM groups to engage as brokers identifying, guiding and facilitating establishment of offset arrangements to protect natural assets in a planned way within the landscape of their NRM region.

DBMPs provide a valuable opportunity for NRM groups to ensure offset arrangements in their region assist in meeting natural resource management targets relevant to their region. Through their expertise and region-specific knowledge, NRM groups are ideally placed to draft DBMPs for matters capable of being offset. This is likely to be the most effective method NRM groups can be involved in offsets mechanisms that will impact on their region. Templates are being formulated in conjunction with some NRM groups and the DEHP to assist NRM groups to develop their own DBMPs.

7.2.9. *Monitoring and access to data*

Authorities (DEHP or local government where relevant) are to ensure that certain details on offsets are entered on to the offset register, which is to be made publicly available.[220] The previous offsetting framework did not include a public register. The Offsets Policy also requires that the offset must be 'able to be readily measured, monitored, audited and enforced',[221] although notably, this does not require the proponent to conduct monitoring themselves. There is the possibility that regulatory mechanisms will be tightened as a result of the recent report of the Queensland Audit Office which criticised the current regulation and monitoring of projects being undertaken by the Queensland Government.[222]

[216] *Environmental Offsets Act 2014* (Qld) s 18(3).
[217] A 'conservation outcome' is defined in s 11 of the Act as an offset that is 'selected, designed and managed to maintain the viability' of the prescribed environmental matter that is being affected.
[218] Note that koala habitat in South East Queensland cannot be the subject of a DBMP - *Draft Queensland Environmental Offsets Policy* Appendix 3.
[219] *Draft Queensland Environmental Offsets Policy* Appendix 3.
[220] *Environmental Offsets Act 2014* (Qld) s 90.
[221] *Draft Queensland Environmental Offsets Policy*, s 2.3.3.
[222] Queensland Audit Office (2014) *Environmental regulation of the resources and waste industries*, Report 15: 2013-2014.

Implications for NRM groups

The data provided by the cataloguing of offsets may be useful in assisting NRM groups to monitor the conservation measures being taken in their region, as well as to set targets to assist in their overall resource management agendas.

NRM groups are in a good position to play a key role in assisting in this regulation and monitoring of offsets. Particular where staff resources have been diminished in government departments, governments may be dependent on NRM groups to ensure that offsets are effectively undertaken by proponents.

7.2.10. *No requirement for Coordinator-General to be bound*

The new framework exempts the Coordinator-General from a mandatory requirement to consider the standards for offsetting required in the Offsets Act, when setting conditions for coordinated projects. For more information on what the Coordinator General does, see section 20 of this Guide.

7.2.11. *Security of offsets*

As with the previous framework, the new offsets framework provides for limited security to ensure that offsets are protected. Offset areas may be subject to further offsetting under the framework, and declared offset areas may be completed revoked reasonably easily.[223] There will have to be highly effective regulation to ensure that offsets are achieved prior to offset areas being revoked.

Also, under Part 6 Division 3 of the Offsets Act, there is no requirement that a proponent legally secures the offset area prior to destroying the environmental matter, although the Offsets Policy suggests that an offset delivery plan will have to describe how the offset will be legally secured.[224] An offset that is not legally secured prior to commencing development may become unavailable, which would require identification of a new offset. If no appropriate offset is identified prior to the commencement of development, there is a risk that impacts of the development will not be properly offset.

7.2.12. *Interaction with EPBC Offsets Policy*

Currently, the EPBC Offsets Policy[225] differs from the Queensland framework in a number of ways. [226] Until the approval bilateral agreement is finalised between the Commonwealth and Queensland Governments, MNES will still be regulated by the Commonwealth Environment Department. Once the approval bilateral is in place, offsets impacting on MNES in Queensland will be regulated by the Queensland Government. For more information on bilateral agreements, see section 13.3.2 of this Guide.

Example: Quarry near a wetland

[223] *Environmental Offsets Act 2014* (Qld) s 33.
[224] *Draft Queensland Environmental Offsets Policy* s 2.3.3.
[225] Department of Sustainability, Environment, Water, Population and Communities, *Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy* (accessed 27 June 2014), http://www.environment.gov.au/system/files/resources/12630bb4-2c10-4c8e-815f-2d7862bf87e7/files/offsets-policy.pdf
[226] For example, the EPBC Offsets Policy contains a requirement that the offset must 'improve or maintain' the viability of the protected matter and there is no maximum cap on the calculation of required offset areas. There is an express requirement that beneficial impacts of the development do not count when determining whether the impact is 'significant'.

Monolith Pty Ltd is a quarrying company that has a quarry in a wetland area in the north of Brisbane. In order to continue conducting their quarrying, Monolith wants to clear some remnant, of concern native vegetation on their land.[227] This vegetation is part of a grassland regional ecosystem, and the area to be cleared is 6ha. To do this, they will need a development approval under the *Sustainable Planning Act* framework for the vegetation clearing.[228] Monolith makes an application for this development approval.

Will offsets be required?

Ordinarily, clearing native vegetation would not be allowed within 100 metres of a natural wetland.[229] However, Monolith has demonstrated that the clearing they want to do cannot be avoided for their quarrying activity, and they have planned the quarrying in order to minimise the area that is cleared. In this light, an offset for the affected area may be appropriate for any **significant residual impact** that Monolith cannot avoid or minimise.[230] An offset will not be required for any residual impact that is not significant. The Significant Residual Impact Guideline provides guidance on whether the residual impact is considered significant, and requires an offset. The amount of clearing in this regional ecosystem proposed by Monolith is listed as a significant impact under the guidelines.[231] This means that Monolith will have to offset the impact of the clearing.

Options for offset delivery

Monolith does not want to deliver the offset themselves, so they weigh up whether to use a financial settlement offset, or to choose a proponent-driven offset where they will be liable for ensuring that the offset delivers a conservation outcome,[232] and then either choose a shelf-ready product made available under the offsets scheme such as a Strategic Offset Investment Corridor, or a Direct Benefit Management Plan, or to engage a body that will manage the offset for them. Monolith's investigations reveal that having a body manage the offset for them will be cost less than a financial settlement offset, so they choose to deliver a proponent-driven offset. Before commencing activities under the development approval, they will have to prepare an offset delivery plan, which will detail the way in which the offset is going to be delivered and managed.[233]

Challenges and opportunities for NRM groups

The offsets framework allows this kind of development to go ahead, causing loss of the ecological values rather than prohibiting this kind of development. Enabling development through offsetting could jeopardise NRM biodiversity targets. However, the fact that Monolith does not wish to administer the offset themselves provides an opportunity for NRM group involvement. NRM groups with sufficient capacity and resources may be able to offer delivery of such offsets for proponents. NRM involvement in identifying and managing offsets can increase the rigor of such offsets, and help

[227] This is a Matter of State Environmental Significance – see *State Planning Policy* glossary definition of Matters of State Environmental Significance. It is an MSES that is covered by the offsets framework – see *Environmental Offsets Regulation 2014* Schedule 2 Part 2 s 1.
[228] *Sustainable Planning Regulation 2009* (Qld) Schedule 3 Part 1 Table 4 Item 1; *Vegetation Management Act 1999* (Qld) s 22A. For more detail on development assessment, see section 16 of this Guide. For more detail on the clearing of vegetation, see section 1 of this Guide.
[229] *State Development Assessment Provision* Module 8, Table 8.1.5.
[230] *State Development Assessment Provision* Module 8, Table 8.1.5, AO 3.3.
[231] *Significant Residual Impact Guideline* p 4.
[232] *Draft Queensland Environmental Offsets Policy* s 2.3.3.
[233] *Environmental Offsets Act 2014* (Qld) s 18.

to ensure that offsetting is effective according to NRM targets. NRM groups may also have the opportunity to assist with drafting of Direct Benefit Management Plans, or identifying appropriate Strategic Offset Investment Corridors.

8. Soil Conservation Act 1986 (Qld)

NOTE: While the *Soil Conservation Act* exists and is still in force, it is a piece of legislation that is no longer used. There are still property and project plans in force under this law, but no new plans have been approved since the late 1990s. It is therefore unlikely that this law will be used in the future.

8.1. Recent and proposed changes to the Soil Conservation Act 1986

There have not been any recent amendments to the *Soil Conservation Act 1986* (Qld). There do not appear to be any proposed amendments to this Act. Given that the Act is no longer being used, it is possible that it may at some point be repealed, or amended to be made consistent with the current legislative framework.

Implications for NRM groups

As the current soil conservation legislation has fallen out of use, and may at some point be repealed, there is a gap in the regulation of erosion control activities. DNRM has indicated that they may no longer possess the skill set to prepare property plans for landholders, and have suggested that NRM groups are more equipped with the expertise to prepare soil conservation and land management plans. This presents a significant opportunity for NRM groups, which may therefore be in the best position to provide advice and opportunities for landholders to conduct soil conservation activities.

8.2. Key features of the Soil Conservation Act 1986

The *Soil Conservation Act 1986* (Qld) provides opportunities and regulation for soil conservation[234] and related measures on land in Queensland.

A landholder can voluntarily apply for the drafting and approval of a property plan,[235] which is a document that details measures for soil conservation and run-off control on a piece of land. These measures can include land management practices, prohibitions and works.[236]

The chief executive can also prepare and implement a project plan, which has the same functions as a property plan, but over a larger area,[237] for example covering 20 properties. Pursuant to a project plan, the chief executive can order landholders to take certain actions or manage land in certain ways.[238]

[234] *Soil Conservation Act 1986* (Qld) s 6 definition of *soil conservation*.
[235] *Soil Conservation Act 1986* (Qld) s 10.
[236] *Soil Conservation Act 1986* (Qld) s 6 definition of *soil conservation measures*.
[237] *Soil Conservation Act 1986* (Qld) s 14(2).
[238] *Soil Conservation Act 1986* (Qld) s 17.

Project plans are approved and declared by way of a regulation.[239] There is no longer a regulation, but any project plans still in force are listed in the repealed regulation. If a property is subject to a property plan, this will be noted on the title register for the property. This information is also available in the 'notings database', which is administered by DNRM. In particular, DNRM officers in Toowoomba and Nambour may have the best knowledge relating to the administration of existing plans.

9. Fisheries Act 1994 (Qld)

9.1. Proposed changes to the Fisheries Act 1994

The government has announced a review of fisheries management in Queensland – including all legislative provisions of the Fisheries Act with some exceptions[240] – and has appointed a consultant to undertake the review.[241] The two main objectives of the review are:

- To develop a simplified regulatory framework; and
- To develop fisheries systems and processes that provide for future management that:
    - Balances environmental and economic use while providing for social enjoyment;
    - Provide for market forces to determine industry outcomes within established environmental outcomes;
    - Reduce complexity, improve management flexibility, take a risk-based approach; and
    - Allow fisheries to be managed at the appropriate State, regional or local level.[242]

The recommendations are due to be presented to the government for consideration by December 2014. The government has stated that 'stakeholder consultation will be undertaken throughout the process' but further details on the consultation are not provided in the Terms of Reference.[243]

9.2. Recent changes to the Fisheries Act 1994

The *Fisheries Regulation 2008* (Qld) was amended on 6 December 2013[244] to allow broader purposes for which a general fisheries permit can be issued. [245] A general fisheries permit is a permit that

[239] *Soil Conservation Act 1986* (Qld) ss 15(1), 16(1).
[240] The following matters are not within the terms of reference for the review: Marine parks; Boating safety; Native Title; and Marine transport issues. See DAFF, Terms of Reference for the review of Queensland's fisheries, retrieved from: http://www.daff.qld.gov.au/fisheries/consultations-and-legislation/reviews-surveys-and-consultations/fisheries-management-review/terms-of-reference (accessed 21 March 2014)
[241] Ministerial Media Statements, Minister for Agriculture, Fisheries and Forestry the Honourable John McVeigh, *Independent consultancy appointed to undertake fisheries review* (Accessed 28/5/14) available at: http://statements.qld.gov.au/Statement/2014/5/28/independent-consultancy-appointed-to-undertake-fisheries-review
[242] See Department of Agriculture, Fisheries and Forestry, Terms of Reference (Accessed 15/6/14) available at: http://www.daff.qld.gov.au/fisheries/consultations-and-legislation/reviews-surveys-and-consultations/fisheries-management-review/terms-of-reference
[243] See Department of Agriculture, Fisheries and Forestry, Terms of Reference (Accessed 15/6/14) available at: http://www.daff.qld.gov.au/fisheries/consultations-and-legislation/reviews-surveys-and-consultations/fisheries-management-review/terms-of-reference

enables fishing that would otherwise have been prohibited under the fisheries laws. Previously, a general fisheries permit could only be issued for specific activities.[246] Now, general fisheries permits can be issued for any purpose.[247]

Implications for NRM groups

The sustainable management of fisheries and related habitat affects NRM goals relating to fish stocks and biodiversity of fish, as well as the biodiversity and maintenance of fish habitat and plants in marine and riverine ecosystems. For example, the prohibitions on weeding or pesticides in Fish Habitat Areas (declared locations along certain rivers)[248] help to prevent harm to fisheries in these areas. Size, quantity and species restrictions on the taking of fish, and restrictions on taking fish in certain locations, will impact upon the maintenance of fish stocks.

The amendment relating to general fisheries permits provides a significant widening of the purpose for which such a permit can be issued. The chief executive now has broad powers to issue a permit, as the explanatory note to the Bill stated 'not based on strict criteria … but based on the merits of each application'.[249] This broadening of general fisheries permits increases the opportunity for fishing that is regulated and would otherwise not be allowed. It potentially jeopardises NRM goals relating to maintenance of fish stocks and the biodiversity of those stocks.

9.3. Key features of the Fisheries Act 1994

The *Fisheries Act 1994* (Qld) regulates fishing, development in fisheries habitat areas and damage to marine plants. It has its own approvals for some activities, and also uses the SPA's IDAS system to regulate and approve developments affecting fisheries.

9.3.1. *Regulating fishing*

Both commercial and recreational fishing are regulated by the *Fisheries Regulation 2008* (Qld) based on the following situations:

- Fishing in regulated waters;[250]
- Fishing of regulated fish;[251]
- Fishing using regulated fishing apparatus or particular methods;[252]

[244] By the *Fisheries Legislation Amendment Regulation (No.1) 2013* (Qld).
[245] Some minor administrative amendments to the *Fisheries Act* were made in 2012 and 2013 in the *Sustainable Planning and Other Legislation Amendment Act 2012 (No. 2)* (Act No. 34 of 2012); *Treasury and Trade and Other Legislation Amendment Act 2013* (Act No. 39 of 2013) however these do not materially affect the fisheries laws, or any NRM objectives. Likewise, there have been some other amendments to the *Fisheries Regulation Fisheries Amendment Regulation (No. 1) 2012* (SL No. 163 of 2012); *Fisheries Amendment Regulation (No. 1) 2013* (SL No. 27 of 2013); *Agriculture and Fisheries Legislation* that are unlikely to affect NRM groups.
[246] For example, fisheries research; conducting a fisheries management trial; activities relating to disease and biosecurity; collection of fish and fisheries resources for aquaculture. See superseded (current as at 1 July 2013) *Fisheries Regulation 2008* (Qld), s 204(2).
[247] *Fisheries Regulation 2008* (Qld) s 204(2)(b).
[248] *Fisheries Regulation 2008* (Qld) Chapter 12 Part 1 provides regulations; areas declared in Schedule 3.
[249] Explanatory Notes for SL 2013 No. 270, p 2.
[250] *Fisheries Regulation 2008* (Qld) Chapter 2 provides regulations; areas declared in Schedule 1.
[251] *Fisheries Regulation 2008* (Qld) Chapter 3 provides regulations; areas declared in Schedule 2.

- Fishing in particular fisheries.[253]

Fishing in those situations is regulated by the type of fish that can be taken, the manner in which they can be taken (including what kinds of apparatus, methods, and vessels can be used), and quotas for the quantity of fish taken. In addition, the Regulation prescribes activities that are prohibited in declared Fish Habitat Areas.[254] The prohibitions include removing weeds, using a pesticide, carrying out biological control of a pest, and digging for bait.[255]

Permits and licences are necessary for certain types of fishing activities,[256] and are issued under the Regulation.[257]

9.3.2. *Regulating other development that affects fisheries*

Some development that is not fishing but affects fisheries requires a development approval under the SPA. Types of development that will require an approval include disturbance of marine plants, damage to a declared Fish Habitat Area, and aquaculture.[258]

Depending on the circumstances of this development, it will either require code assessment, or be self-assessable.[259] Some types of development will need an additional Resource Allocation Authority alongside their development approval.[260]

9.3.3. *Offences and enforcement*

There are a number of fisheries offences, which include contravention of the regulations, and contravention of the conditions of an authority.[261] Part 8 of the Act deals with enforcement of these provisions.[262] Enforcement is carried out by officers of the Department of Agriculture, Fisheries and Forestry (**DAFF**). If a member of the community is concerned about possible illegal fishing, they should contact DAFF's Fishwatch hotline on 1800 017 116.[263] If they are concerned about possible unlawful development affecting fisheries (for example, disturbance of marine plants), they can contact the Department of State Development, Infrastructure and Planning (**DSDIP**).[264]

---

[252] *Fisheries Regulation 2008* (Qld) Chapter 4.
[253] These fisheries and their particular restrictions are set out in the *Fisheries Regulation 2008*, Chapters 7-11
[254] *Fisheries Regulation 2008* (Qld) Chapter 12 Part 1 provides regulations; areas declared in Schedule 3.
[255] *Fisheries Regulation 2008* (Qld) ss 620, 621.
[256] *Fisheries Regulation 2008* (Qld) Chapter 13 Part 2.
[257] *Fisheries Regulation 2008* (Qld) Chapter 5, particularly Parts 4 and 5.
[258] The *Sustainable Planning Regulations 2009* (Qld) Schedule 3, Parts 1 and 2 set out the circumstances where removing, destroying or damaging marine plants is assessable development requiring a permit.
[259] See *Sustainable Planning Regulation 2009* (Qld) Schedule 3 Parts 1 and 2. Self-assessable codes can be found here: http://www.daff.qld.gov.au/fisheries/habitats/fisheries-development/self-assessable-codes
[260] *Fisheries Regulation 2008* (Qld) Chapter 5 Part 3.
[261] See *Fisheries Act 1994* (Qld) Part 5 Division 4, and *Fisheries Regulation 2008* (Qld) Chapter 13.
[262] *Fisheries Act 1994* (Qld) Part 8.
[263] See also Department of Agriculture, Fisheries and Forestry, Illegal fishing activities (Accessed 1/6/14) http://www.daff.qld.gov.au/fisheries/services/illegal-fishing-activities
[264] See Department of State Development, Infrastructure, and Planning, Contact Us (Accessed 1/6/14) http://www.dsdip.qld.gov.au/contact-us/

Some details on fisheries authorities are publicly available,[265] which could assist members of the community to understand whether certain fishing is being undertaken legally. This information is available on the Public Register of Fishing Authorities.[266]

9.3.4. *Monitoring and access to data*

The Regulation has some specific requirements with respect to monitoring and reporting,[267] and DAFF collects this data. DAFF also undertakes some monitoring. Although there is no statutory requirement for this data to be published, some of this data, including information on sustainability, fish stocks, and recreational catch is available on DAFF's website or by request to the department.[268]

For more information on how to access public information, see FAQ 28.1 at the end of this Guide.

9.3.5. *Public participation opportunities*

Declarations of regulated waters, fish, apparatus and fishing methods are made under a management plan, which is subordinate legislation.[269] Fish Habitat Areas are made via regulation – this is also subordinate legislation. This means that it must be drafted and tabled in the Queensland Parliament.[270] Notification occurs on the Parliament's website,[271] as well as publication of explanatory notes, however there is no statutory requirement for providing an opportunity for public comment.[272]

As development affecting fisheries is either code assessable or self-assessable under the SPA, it will not be publicly notified or available for public comment.[273] As such, the legislation provides little opportunity for public involvement of most development that may impact on fisheries.

10. Forestry Act 1959 (Qld)

10.1. Recent and proposed changes to the Forestry Act 1959

In 2012, the *Nature Conservation and Other Legislation Amendment Act 2012* (Qld) amended the Forestry Act to remove limitations on the 7-year and 10-hectare maximum limits on the grant of 'occupation permits',[274] which allow for infrastructure such as telecommunications, electricity and

[265] *Fisheries Regulation 2008* (Qld) Chapter 5 Part 2 Division 3.
[266] Queensland Government, Public Register of Fishing Authorities (Accessed 10/6/14) https://fishnet.deedi.qld.gov.au/Content/Public/PublicRegister.aspx
[267] *Fisheries Regulation 2008* (Qld) Chapter 14.
[268] See Department of Agriculture, Fisheries and Forestry, Monitoring Our Fisheries (Accessed 9/6/14) http://www.daff.qld.gov.au/fisheries/monitoring-our-fisheries
[269] *Fisheries Regulation 2008* (Qld) ss 32, 37.
[270] *Statutory Instruments Act 1992* (Qld) ss 47, 49.
[271] See Queensland Government, Subordinate Legislation Notification (Accessed 26/6/14) https://www.legislation.qld.gov.au/Leg_Info/weeklynotiflist.htm
[272] See Queensland Government, Subordinate Legislation as Made (Accessed 26/6/14) https://www.legislation.qld.gov.au/SL_AsMade/SL_AsMade.htm
[273] *Sustainable Planning Act 2009* (Qld) ss 236, 255A, 313.
[274] *Forestry Act 1959* (Qld) s 35.

CSG pipelines in state forests.[275] This amendment increases the availability of state forests for non-forestry purposes.

Proposed amendments to the *Forestry Act 1959* (Qld) (**Forestry Act**) by the *Forestry and Another Act Amendment Bill 2014* (Qld) are mostly administrative changes which do not have any significant effect on natural resource management goals.

10.2. Key features of the Forestry Act 1959

The *Forestry Act 1959* (Qld) (**Forestry Act**) regulates activities in areas declared to be state forests and timber reserves. These areas are principally used for forestry activities, and the cardinal principle for the management of these areas is 'the permanent reservation of such areas for the purpose of producing timber and associated products in perpetuity and of protecting a watershed therein'.[276]

The chief executive has exceptionally broad powers to grant permits, licences and similar authorities for the purpose of the Forestry Act – that is, for forestry.[277] The holder of such an authority must comply with the Forestry Act and any conditions placed upon their authority, or risk cancellation or suspension of that authority.[278] In addition to forestry, the chief executive can enable certain uses and activities in state forests, including: occupation of land; camping; grazing stock; removing quarry material; and apiaries.[279]

The Act prohibits interfering with forest products in state forests and timber reserves without a permit.[280] 'Forest products' include all vegetable growth and material of vegetable origin whether living or dead and whether standing or fallen, including timber.[281] To 'interfere with' means to destroy, get, damage, mark, move, use, or in any way interfere with.[282]

Implications for NRM groups

The way forestry activities are managed could impact indirectly on NRM objectives such as biodiversity or weed management. Further, grazing activities and recreational activities such as camping could have impacts upon the natural resources of the area, especially those state forests of high ecological value. The removal of the limits on occupation permits is increases the risk to biodiversity values in state forests.

Public participation rights in forestry activities are limited. Declarations of state forests and timber reserves are placed in the *Forestry Regulation 1998* (Qld),[283] and will therefore be tabled in

[275] Explanatory note to the *Nature Conservation and Other Legislation Amendment Bill 2012* (Qld), p 3.
[276] *Forestry Act 1959* (Qld) s 33.
[277] *Forestry Act 1959* (Qld) s 56; 61QA specifically regarding plantation forestry.
[278] *Forestry Act 1959* (Qld) s 58.
[279] *Forestry Act 1959* (Qld) s 35.
[280] *Forestry Act 1959* (Qld) s 39.
[281] *Forestry Act 1959* (Qld) Schedule 3 Dictionary.
[282] *Forestry Act 1959* (Qld) Schedule 3 Dictionary.
[283] *Forestry Regulation 1998* (Qld) Schedules 1 – 4A.

Parliament and published in the Government Gazette.[284] However, there is no right of public comment or submission on these declarations, nor on the grant of authorities. If an authority involved development requiring an Environmental Impact Statement (**EIS**) under another piece of legislation, public submissions may be required.[285] Given the provision that allows an authority to be cancelled due to the breach of any conditions,[286] any suspected breaches in forestry activities could be brought to the attention of the Department of Agriculture, Fisheries and Forestry (**DAFF**). Note, however, that any cancellation or suspension of an authority is at the discretion of the chief executive,[287] so notification of a breach does not guarantee the matter will be investigated.

11. Marine Parks Act 2004 (Qld)

11.1. Recent and proposed changes to the Marine Parks Act 2004

There have been a number of relatively minor amendments to the *Marine Parks Act 2004* (Qld), most of which do not substantively affect the protections in marine parks. The amendments include:

- Amendments to a management plan can now be made without public notice where 'the amendment is made to ensure the plan is consistent with State Government policy'.[288]
- The requirement for a new management plan to be prepared every ten years has been removed (plans still need to be reviewed every ten years).[289]
- A single management plan can now be prepared for multiple areas by combining a management plan for another marine park; a management plan for an area declared or dedicated under the *Nature Conservation Act 1992* (Qld) and/or a management plan for a recreation area under the *Recreation Areas Management Act 2006* (Qld) (reasons for the amendment must still be published on DNPRSR's website).[290]

There is also a proposal to remove area restrictions for commercial whale watching in Great Sandy and Moreton Bay Marine Parks.[291] If this proposal goes ahead, it could result in impacts on a greater area of the marine parks as a result of whale watching vessels.

11.2. Relevance to Natural Resource Management

As with the Fisheries Act,[292] the Marine Parks Act's application to NRM relates to its protection of marine species and habitats. The Marine Parks framework facilitates the maintenance of marine biodiversity, by placing restrictions on activities that could harm the environment. The scope of

[284] Queensland Government, *Queensland Government publications* (accessed 1 July 2014), https://publications.qld.gov.au/
[285] See *Environmental Protection Act 1994* (Qld) Chapter 3. The purpose of the EIS and the EIS process are set out in the *Environmental Protection Act 1994* (Qld) s 40.
[286] *Forestry Act 1959* (Qld) 58.
[287] *Forestry Act 1959* (Qld) s 58(1).
[288] *Marine Parks Act 2004* (Qld) s 36(5).
[289] *Marine Parks Act 2004* (Qld) s 39.
[290] *Marine Parks Act 2004* (Qld) s 32A.
[291] For details, see Department of National Parks, Recreation, Sport and Racing, Enhanced access for authorised commercial whale watching operators within the Great Sandy and Moreton Bay Marine Parks (Accessed 1/7/14) available at: http://www.nprsr.qld.gov.au/marine-parks/commercial-whale-watching-enhanced-access.html
[292] For information on the Fisheries Act, see section 9 of this Guide.

protections is relatively narrow as the legislation only protects the environment in declared marine parks. Nevertheless, the laws enable the establishment of marine protected areas other than those under Commonwealth laws.

11.3. Key Features of the Marine Parks Act 2004

The *Marine Parks Act 2004* (Qld) (**Marine Parks Act**) provides a system for the declaration of State marine parks. It protects marine species inside the parks, and provides a permit and zoning system for different activities and uses within the parks. Currently, there are three marine parks declared under this legislation, being the Great Barrier Reef Coast Marine Park, Great Sandy Marine Park and Moreton Bay Marine Park.

Marine parks are declared by regulation,[293] and each of the declared marine parks is required to have a zoning plan.[294] Zoning plans provide the bulk of the regulation for marine parks and they detail the area of the marine park, the objects to be achieved for the park, and the regulation of uses and activities in the park.[295] The plans divide the marine park into different zones, with different activities allowed and prohibited in each zone. The Marine Parks Act uses the same terminology for the categories of zones as the Commonwealth marine parks laws. Some activities in zones are only allowed if a 'permission' has been granted.[296] The process for assessment and grant of a permit for entry or use of a marine park is detailed in Part 3 of the *Marine Parks Regulation 2006* (Qld).

The Marine Parks Act also allows for the preparation of management plans, which guide planning and day-to-day decision-making in the parks. These plans do not have to align with the declared marine park areas (i.e. a management plan could exist for part of a marine park, or for several marine parks or other areas).[297] All management plans (including those made under other legislation), are available on DNPRSR's website.[298]

The Marine Parks Act also creates offences for entry or use of marine parks for a prohibited purpose,[299] without an authority,[300] without giving the required notice,[301] as well as failure to comply with an authority,[302] and unlawfully doing serious environmental harm.[303]

11.3.1. *Public participation and enforcement rights*

There are a number of public participation rights under the marine parks framework. For the drafting and amendment of both zoning plans and management plans, public notification and

[293] *Marine Parks Act 2004* (Qld) s 8; see also *Marine Parks (Declaration) Regulation 2006* (Qld).
[294] *Marine Parks (Great Barrier Reef Coast) Zoning Plan 2004* (Qld); *Marine Parks (Great Sandy) Zoning Plan 2006* (Qld); *Marine Parks (Moreton Bay) Zoning Plan 2008* (Qld).
[295] *Marine Parks Act 2004* (Qld) s 24.
[296] *Marine Parks Regulation 2006* (Qld) s 8.
[297] *Marine Parks Act 2004* (Qld) s 32A.
[298] *Marine Parks Act 2004* (Qld) s 40. See Department of National Parks, Recreation, Sport and Racing, Protected Area Management Plans (Accessed 1/7/14) Available at: http://www.nprsr.qld.gov.au/managing/plans-strategies/plans.html
[299] *Marine Parks Act 2004* (Qld) s 43.
[300] *Marine Parks Act 2004* (Qld) s 44.
[301] *Marine Parks Act 2004* (Qld) s 45.
[302] *Marine Parks Act 2004* (Qld) s 49.
[303] *Marine Parks Act 2004* (Qld) s 50.

opportunity to comment is required.[304] When preparing these plans, the Minister is required to consider all submissions made.[305] Applications for a permission to enter or use a marine park may be publicly notified, if the chief executive considers that granting the permission may have a significant impact on the use and non-use values of a marine park, or a part of a marine park or restrict the reasonable use or enjoyment of a part of a marine park.[306] If public notice occurs, the public will be invited to make written submissions. These submissions must be considered when the chief executive is deciding whether to grant the permission.[307]

In addition, any person can commence proceedings in the Planning and Environment Court[308] for the offences of entry or use of a marine park for a prohibited purpose,[309] and unlawful serious environmental harm.[310] Note, however, that DNPRSR has powers to commence these enforcement proceedings,[311] so an individual should only do so as a last resort and only on legal advice.

11.3.2. *Monitoring and access to data*

There is no statutory requirement for monitoring or publication of data under the marine parks legislation. However, DNPRSR is currently undertaking a monitoring program in the Moreton Bay Marine Park. Details of the program, including a report from 2012, are available on the Department's website.[312]

For more information on how to access public information, see FAQ 28.1 at the end of this Guide.

12. Wet Tropics World Heritage Protection and Management Act 1993 (Qld)

12.1. Recent and proposed changes to the Wet Tropics World Heritage Protection and Management Act 1993

No recent relevant amendments have been made to the Act and it does not appear that any amendments are proposed.

12.2. Key features of the Wet Tropics World Heritage Protection and Management Act 1993

The *Wet Tropics World Heritage Protection and Management Act 1993* (Qld) establishes the Wet Tropics Management Authority, and creates a system to regulate and manage impacts on the Wet Tropics of Queensland World Heritage area (**the WHA**), in line with international obligations under

[304] *Marine Parks Act 2004* (Qld) ss 22(2), 26(2), 31(2), 36(2).
[305] *Marine Parks Act 2004* (Qld) ss 23, 27, 32, 37.
[306] *Marine Parks Regulation 2006* (Qld) s 15(1).
[307] *Marine Parks Regulation 2006* (Qld) s 15.
[308] *Marine Parks Act 2004* (Qld) s 111(2).
[309] *Marine Parks Act 2004* (Qld) s 43.
[310] *Marine Parks Act 2004* (Qld) s 50.
[311] *Marine Parks Act 2004* (Qld) s 111(1).
[312] See Department of National Parks, Recreation, Sport and Racing, Current Monitoring Program (Accessed 1/7/14) Available at: http://www.nprsr.qld.gov.au/parks/moreton-bay/zoning/monitoring_program.html

the World Heritage Convention.[313] This system includes the *Wet Tropics Management Plan 1998* (Qld) (**the Plan**), which provides the substantive regulation of the WHA, and is administered by the Wet Tropics Management Authority.

The Plan establishes four zones within the WHA, which have different management purposes.[314] The location of the zones is outlined on zoning maps administered by the Authority, and available for inspection on their website.[315]

The Plan also establishes a permit system, where activities are prohibited altogether,[316] or allowed with a permit, or exempted from requiring a permit (i.e. activities are allowed without any permit).[317] Exemptions are provided for carrying out these activities with a 'minor or inconsequential impact';[318] examples of these kinds of activities are provided in the Plan. Activities that are allowed with a permit are listed in the Plan. A permit for some activities can be obtained regardless of the zone, whereas permits for other activities can only be issued for certain zones.[319]

The Plan also enables cooperative management agreements to be entered into. These agreements are negotiated with the Authority, and can allow a person to do an activity that would otherwise be prohibited under the Plan.[320]

Division 2 of the Plan sets out the considerations that must be taken into account in issuing a permit. Significantly, these considerations include the impact upon the area's integrity,[321] and the precautionary principle.[322]

12.2.1. *Public participation opportunities*

Management plans must be reviewed every ten years,[323] and amendments are made to a plan by drafting a new plan.[324] The drafting of a plan requires public notice[325] and consideration of all

[313] Information can be found at United Nations Education, Scientific, and Cultural Organisation, Wet Tropics of Queensland (Accessed 1/7/14) Available at: http://whc.unesco.org/en/list/486
[314] See *Wet Tropics Management Plan 1998* (Qld) Part 2.
[315] *Wet Tropics Management Plan 1998* (Qld) s 7; Zoning maps from Wet Tropics Management Authority, Zoning System (Accessed 1/7/14) available at: http://www.wettropics.gov.au/zoning-system
[316] Activities that are prohibited include destroying native plants: *Wet Tropics Management Plan 1998* (Qld) s 25; *Wet Tropics World Heritage Protection and Management Act 1993* (Qld) s 56; Schedule 3 definition of *forest products*; planting, cultivating, propagating, killing or disposing of an undesirable plant: *Wet Tropics World Heritage Protection and Management Act 1993* (Qld) Schedule 3 definition of *undesirable plant*; keeping an undesirable animal, bringing in an undesirable animal, or allowing an undesirable animal to stray or escape onto, or remain at, any place in the area: *Wet Tropics Management Plan 1998* (Qld) s 22; mining, fossicking, eductor dredging or destructive mineral exploration, excavating, grading, quarrying or otherwise interfering with earth, interfering with a watercourse by extracting or diverting water, damming the watercourse or carrying out another activity interfering with its natural flow, building or maintaining a structure, building or maintaining a road, disposing of waste, other than in an appropriate receptacle, operating a general waste disposal facility or a regulated waste disposal facility, operating a motor vehicle, operating a motorised boat, flying a motorised aircraft, for commercial purposes, less than 1000ft above the area, landing an aircraft at a place other than in a natural clearing or on water: *Wet Tropics Management Plan 1998* (Qld) s 26.
[317] *Wet Tropics Management Plan 1998* (Qld) s 22.
[318] *Wet Tropics Management Plan 1998* (Qld) s 28.
[319] *Wet Tropics Management Plan 1998* (Qld) Division 4.
[320] *Wet Tropics Management Plan 1998* (Qld) 41.
[321] *Wet Tropics Management Plan 1998* (Qld) s 56.
[322] *Wet Tropics Management Plan 1998* (Qld) s 57.
[323] *Wet Tropics World Heritage Protection and Management Act 1993* (Qld) s 53.
[324] *Wet Tropics World Heritage Protection and Management Act 1993* (Qld) s 52.
[325] *Wet Tropics World Heritage Protection and Management Act 1993* (Qld) s 44.

properly made submissions.[326] Submissions must also be invited and considered on the *proposal* to draft a plan.[327] Public involvement at this early stage presents an opportunity for NRM groups to encourage the inclusion of NRM goals in management plans. The amendment of zoning maps must also be publicly notified, and submissions must be considered.[328]

For more information on how to access public information, see FAQ 28.1 at the end of this Guide.

13. Environment Protection and Biodiversity Conservation Act 1999 (Cth)

13.1. Proposed changes to the EPBC Act

13.1.1. *Proposed powers for Queensland to approve impacts on MNES*

In May 2014, the Queensland and Commonwealth Governments released a draft statutory approval bilateral agreement,[329] which would transfer the Commonwealth's powers to approve actions under the *Environment Protection and Biodiversity Conservation Act 1999* (Qld) (**the EPBC Act**) to Queensland. The current draft approval bilateral agreement proposes that Queensland will use the assessment and approval processes set out in the *State Development and Public Works Organisation Act 1971* (Qld) and the *Environmental Protection Act 1994* (Qld) to approve developments that have significant impacts on Matters of National Environmental Significance (**MNES**).[330] The draft approval bilateral agreement also proposes to delegate Commonwealth powers to Queensland to approve impacts on water sources from coal mining or CSG, as well as permit Queensland to approve nuclear actions.

Queensland has had a ban on uranium mining for almost 20 years. In 2013, the Queensland Government announced it would be reversing its policy of no uranium mining and the Government's aim is to have a policy framework in place to assess uranium mining by July 2014.[331] If the proposed Queensland approval bilateral agreement comes into force in September 2014 as planned, Queensland will start approving uranium mining and other nuclear actions (such as transportation of uranium and nuclear waste).

13.1.2. *EPBC Amendment (Bilateral Agreement Implementation) Bill 2014*

Changes are currently before the Commonwealth Senate[332] which if passed, would allow the delegation to the states to approve the 'water trigger', i.e. significant impacts on water resources as a result of CSG or large coal mining development,[333] however advice from the Independent Expert Scientific Committee would still be required.[334] The Bill would also remove the need for the referral

[326] *Wet Tropics World Heritage Protection and Management Act 1993* (Qld) s 45.
[327] *Wet Tropics World Heritage Protection and Management Act 1993* (Qld) s 42, 43.
[328] *Wet Tropics Management Plan 1998* (Qld) s 8.
[329] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) section 46. A section 45(3) EPBC Act 'notice of intent' to develop a draft approval bilateral agreement was signed by the Commonwealth Minister for the Environment on 29 October 2013.
[330] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) section 49(1A).
[331] Queensland Government, 2013, *An action plan to recommence uranium mining in Queensland – Delivering a best practice framework*, available here: http://mines.industry.qld.gov.au/assets/Uranium-mining/uranium-action-plan.pdf at 1 (accessed 24 May 2014).
[332] Current as at June 2014.
[333] *EPBC Amendment (Bilateral Agreement Implementation) Bill 2014* (Cth) Schedule 3 Part 1.
[334] *EPBC Amendment (Bilateral Agreement Implementation) Bill 2014* (Cth) Schedule 3 Part 1, clause 2C.

stage under the EPBC Act (see section 13.3.1 of this Guide), in circumstances where an approval bilateral agreement applies to an action.[335]

13.1.3. *Great Barrier Reef strategic assessment*

A strategic assessment conducted by the Queensland Government for the Great Barrier Reef coastal zone is currently being considered by the Federal Department of the Environment.[336] The assessment considers the impact of coastal development on MNES in the Great Barrier Reef region, and proposes a long-term plan for managing the region over the next 25 years. If the proposed management program is endorsed, coastal development in the Great Barrier Reef region will be assessed and managed in accordance with the program, rather than under the existing development assessment schemes in Queensland. For more information about strategic assessments, see section 13.3.3 of this Guide.

13.2. Recent changes to the EPBC Act

13.2.1. *New 'water trigger' – advice on water impacts from CSG and mining*

In June 2013, amendments to the EPBC Act came into effect to create a new MNES, being water resources in relation to coal seam gas and large coal mining development ('the water trigger'). This followed on from changes to the EPBC Act in 2012 which established an Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development from whom the Commonwealth Minister could obtain advice.[337]

The effect of the addition of a new MNES means that if an action involving coal seam gas development or large coal mining development has (or will have, or is likely to have) a significant impact on a water resource, then the EPBC Act approval requirements are triggered. The assessment of the impacts can be undertaken by the Queensland Government pursuant to the assessment bilateral agreement (see section 13.3.2 of this Guide), however the Commonwealth cannot delegate its powers to Queensland to approve the water trigger unless the EPBC Act is amended.[338] The Commonwealth has proposed such amendments (see section 13.1.2 of this Guide).

13.2.2. *Powers for Queensland to assess actions impacting MNES*

In December 2013, the Queensland Government and Commonwealth Governments renewed their statutory agreement (an assessment bilateral agreement)[339] which has given Queensland powers to assess the impacts of proposed actions on all MNES.[340] For more information on bilateral agreements, see section 13.3.2 of this Guide.

---

[335] *EPBC Amendment (Bilateral Agreement Implementation) Bill 2014* (Cth) Schedule 1.
[336] As at 3 July 2014. See: Department of the Environment, 'Strategic assessment – Great Barrier Reef' (Accessed 3/7/14), http://www.environment.gov.au/protection/assessments/strategic/great-barrier-reef
[337] *Environment Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Act 2012* (Cth).
[338] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) section 29 and 46.
[339] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) section 47.
[340] The Assessment Bilateral Agreement is available here: Department of the Environment, Queensland bilateral agreement information, (accessed 26 May 2014), http://www.environment.gov.au/topics/environment-protection/environment-assessments/bilateral-agreements/qld

Implications for NRM groups

The delegation of Commonwealth powers to the Queensland government means that Queensland's laws, not Commonwealth laws, will be used to assess and approve impacts on matters of national environmental significance. This is relevant for NRM planning if the NRM plan identifies matters of national environmental significance as being at risk to the impacts caused by development, mining and extractive activities such as CSG. The proposed change to remove the referral stage means there would be fewer opportunities for public submissions on whether the action is a controlled action.

As there are no plans to introduce new legislation specifically for the assessment and approval of uranium mining, NRM groups may wish to consider seeking out consultation opportunities with DNRM and DEHP regarding the development of the policies and guidelines for assessment and approval of nuclear actions.

13.3. Key features of the EPBC Act

The EPBC Act is the federal legislation that protects federally listed threatened species, migratory species, World Heritage Areas, the Great Barrier Reef, Ramsar wetlands, and other areas of importance. It does so by firstly providing a mechanism to declare environmental matters are protected, and secondly by establishing a referral and assessment process which requires the Commonwealth Environment Minister to assess any action[341] which is likely to have a significant impact[342] on a MNES.

Current MNES protected by the EPBC Act are listed threatened species and communities, listed migratory species, Ramsar wetlands, Commonwealth marine environment, world heritage properties, national heritage places, the Great Barrier Reef Marine Park, nuclear actions, and impacts on a water resource in relation to CSG development and large coal mining development.[343]

13.3.1. *Approval of impacts on MNES*

Referral of actions to the Commonwealth for assessment and approval

The assessment and approval process is triggered by a referral being made to the Commonwealth Minister for the Environment (**Commonwealth Minister**). The referral can be made by the person proposing the activity, or by a State or Commonwealth Minister that has responsibility relating to the action, or the Commonwealth Minister can request a referral from the person.[344] The Commonwealth Minister must consider all adverse impacts of an action and any public comments, and if he/she decides the action is likely to have a significant impact on any of those matters of

[341] 'Actions' include such things as projects, developments, undertaking and activities, or an alteration to one of these things.
[342] 'Significant impact' is not defined in the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), but the Department has released *Significant impact guidelines* (available from http://www.environment.gov.au/resource/significant-impact-guidelines-11-matters-national-environmental-significance) which list the factors they will consider when determining whether an impact is 'significant', including all on-site and offsite impacts, all direct and indirect impacts, the frequency and duration of the action, and the sensitivity of the receiving environment.
[343] This water trigger was introduced by the *Environment Protection and Biodiversity Conservation Amendment Act 2013*, which commenced on 22 June 2013.
[344] Members of the public cannot refer actions, but can write to the Commonwealth Environment Minister or the State government asking them to refer the action.

national environmental significance, it is called a 'controlled action' and the assessment and approval process of the EPBC Act must be followed.

Assessment of the environmental impacts of a controlled action

The Commonwealth Minister must assess the impacts of the action that relate to MNES. The EPBC Act provides a range of ways for a controlled action to be assessed, including by way of an EIS or merely on the Preliminary Documentation. However, since Queensland first entered into an assessment bilateral agreement with the Commonwealth Government in August 2004,[345] often the bilaterally accredited Queensland assessment processes are followed, rather than the other assessment processes under the EPBC Act. Under these Queensland assessment processes (i.e. the EIS processes set out in the *Environmental Protection Act 1994, Sustainable Planning Act 2009, State Development and Public Works Organisation Act 1971*), currently the legislation provides opportunities for public comment on the draft terms of reference for an EIS as well as on the EIS produced by the proponent of the action.

Decision on whether to approve the action

Within 30 days of receiving the results of the environmental assessment, the Commonwealth Minister must decide whether to approve the action.[346] In making the decision, the Minister must consider a number of factors,[347] including the impacts on each relevant MNES. The EPBC Act does not provide appeal against the merits of a decision to approve (or refuse) development, but the Commonwealth Minister must follow the proper process (including considering all relevant considerations) or risk being subject to judicial review. There are significant penalties for taking a controlled action without approval or breaching approval conditions, which either the Commonwealth Minister or any member of the public can take Court action to enforce.

13.3.2. *Bilateral agreements*

While ordinarily, the Commonwealth Government has the powers to assess and approve actions that have impacts on MNES under the EPBC Act, bilateral agreements can delegate those powers to state governments.[348] The rationale of bilateral agreements is to reduce duplication of assessments, where a proposed action may trigger the EPBC Act process as well as state assessment processes. When powers are delegated under a bilateral agreement, the state uses its own assessment and/or

[345] The Queensland Assessment Bilateral Agreement was first entered into in August 2004, and most recently updated in December 2013. The updated Queensland Assessment Bilateral Agreement allows for Queensland to assess a wide array of controlled actions, including actions in Queensland and state waters that are in the Great Barrier Marine Park, and certain types of nuclear actions. For further information, see the Commonwealth Department of Environment's webpage on the Queensland Assessment Bilateral Agreement, retrieved from here: Department of the Environment, Queensland bilateral agreement information, (accessed 26 May 2014), http://www.environment.gov.au/topics/environment-protection/environment-assessments/bilateral-agreements/qld.

[346] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 130.

[347] The factors for the Commonwealth Minister to consider when deciding whether to approve an action are set out in the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) Part 9 Subdivision B. Some of the factors include the impacts on each relevant matter of national environmental significance, Economic and social matters, the principles of ecologically sustainable development, which include the precautionary principle and the principle of intergenerational equity, the assessment report and the EIS, any comments given to the Minister by another Commonwealth Minister, and the applicant's environmental history.

[348] *Environment Protection and Biodiversity Conservation Act 1999* (Qld) Chapter 3 Part 5 Division 2.

approval processes to assess the actions. The bilateral agreement may include additional factors that the state needs to consider, so as to align with the federal process.

Bilateral agreements can be made for either the assessment of the action only (in which case the Commonwealth remains responsible for the approval or rejection of the action, but bases its decision on the assessment done by the state), or for the approval of the action too (in which case the state government is responsible for the entire process, including the final decision). Queensland is currently in the process of forming an approval bilateral agreement (see section 13.1.1 of this Guide).

13.3.3. *Strategic assessments*

Where a government authority or department proposes a plan, policy or program,[349] they can undertake a strategic assessment, which assesses the impacts of the proposal on MNES. The authority or department making the proposal undertakes the assessment, which is then considered and approved by the Commonwealth Minister, if he/she is satisfied that the assessment adequately addresses the impacts of the proposal on MNES. The purpose of strategic assessments is to 'streamline', in order that individual development applications do not need to be made for every aspect of large, ongoing projects or programs. Under an endorsed policy/plan/program, Commonwealth Minister can approve and set conditions for the taking of an action or a class of actions.[350] No individual approval for an action is needed, but the action must comply with the requirements in the policy/plan/program. A strategic assessment for the Great Barrier Reef is currently being considered by the Federal Department of the Environment. For more information about the Great Barrier Reef strategic assessment, see section 13.1.3 of this Guide.[351]

13.3.4. *Biodiversity protection*

The EPBC Act also includes a number of mechanisms for protecting biodiversity, in line with Australia's international obligations under conventions.[352] It provides for the listing and protection of threatened species and ecological communities, migratory species, whales and other cetaceans, and marine species, as well as a permit system for dealing with these species, and offences for dealing with these species without a permit.[353]

The EPBC Act also provides for:

- The Commonwealth protected area system, including World Heritage, National Heritage, and wetlands of international importance;[354]
- Restrictions on the import and export of particular species;[355]

[349] These can include: local government plans, schemes or policies; district structure plans; strategic land use plans; regional plans and policies; local environmental plans; fire, vegetation or pest management policies, plans or programs; water extraction/use policies; statement of planning policies; building design policy/guidelines, and; infrastructure plans and policies - Department of the Environment, 'Strategic assessment under the EPBC Act' (Accessed 3/7/14), http://www.environment.gov.au/epbc/publications/strategic-assessment.html

[350] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 146B.

[351] As at 3 July 2014. See: Department of the Environment, 'Strategic assessment – Great Barrier Reef' (Accessed 3/7/14), http://www.environment.gov.au/protection/assessments/strategic/great-barrier-reef

[352] See for example the *Convention on International Trade in Endangered Species of Wild Fauna and Flora,* 993 UNTS 243 (entered into force 1 July 1975), and the *Convention on Biological Diversity*, 760 UNTS 79 (entered into force 29 December 1993).

[353] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) Chapter 5 Part 13.

[354] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) Chapter 5 Part 15.

- Conservation agreements to be made between the Commonwealth Government and another person for the voluntary, binding conservation of MNES;[356]
- Recovery plans, threat abatement plans, wildlife conservation plans; and[357]
- Regulation of access to biological resources and control of non-native species.[358]

13.3.5. *Monitoring and enforcement*

The Commonwealth Department of the Environment is responsible for enforcement of the EPBC Act. The Department conducts compliance monitoring, in the form of both targeted and random patrols, audits and other information-gathering measures.[359] Enforcement can occur via a broad range of measures, including conservation orders,[360] injunctions,[361] fines[362] and arrest.[363]

The Department is required to publish a list of all permits granted under the EPBC Act,[364] as well as other information including referrals of actions,[365] and contraventions of the Act.[366] This information is published on the Department's website.[367] The Department also publishes an annual report that assesses how the EPBC Act's operation has accorded with the principles of ecologically sustainable development.[368] The website also includes a search tool for protected matters, which generates reports and maps containing information about EPBC Act protected matters.[369]

For more information on how to access public information, see FAQ 28.1 at the end of this Guide.

14. Biosecurity Act 2014 (Qld)

The *Biosecurity Act 2014* (Qld) (**the Biosecurity Act**) creates a new framework, bringing together the previous several pieces of legislation that regulated biosecurity issues. It repealed the following Acts:

- The Agricultural Standards Act 1994;
- The Apiaries Act 1982;
- The Diseases in Timber Act 1975;
- The Exotic Diseases in Animals Act 1981;
- The Plant Protection Act 1989; and
- The Stock Act 1915.

---

[355] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) Chapter 5 Part 13A.
[356] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) Chapter 5 Part 14. Note that conservation agreements may include a provision that allows actions that would otherwise require approval to be undertaken without approval under the agreement – s 306A.
[357] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) Chapter 5 Part 13 Division 5.
[358] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) Chapter 5 Part 13 Divisions 6-6A.
[359] Department of the Environment, 'Compliance and Enforcement Policy, Environment Protection and Biodiversity Conservation Act 1999' (accessed 3/7/14), http://www.environment.gov.au/system/files/resources/2caa19c8-4393-4ffa-be0c-ed246f93f604/files/epbc-act-compliance-enforcement-policy_1.pdf
[360] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) Chapter 6 Part 17 Division 13.
[361] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) Chapter 6 Part 17 Division 14.
[362] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) Chapter 6 Part 17 Division 15.
[363] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) Chapter 6 Part 17 Division 6.
[364] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 515A.
[365] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 74.
[366] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 498.
[367] Department of the Environment, Public notices and invitation to comment (Accessed 3/7/14) http://www.environment.gov.au/topics/about-us/legislation/environment-protection-and-biodiversity-conservation-act-1999/public
[368] Department of the Environment, Annual reports (Accessed 3/7/14) http://www.environment.gov.au/about-us/accountability-reporting/annual-reports
[369] Department of the Environment, Protected Matters Search Tool (Accessed 3/7/14) http://www.environment.gov.au/epbc/pmst/

It also amended the following Acts:

- The Chemical Usage (Agricultural and Veterinary) Control Act 1988;
- The Fisheries Act 1994; and
- The Land Protection (Pest and Stock Route Management) Act 2002.

The Biosecurity Act regulates 'biosecurity matters'[370] that have significant adverse effects on human health, social amenity, the economy or the environment.[371] It provides a general obligation to take all reasonable and practical measures to prevent or minimise biosecurity risks,[372] and offences for breaching that obligation,[373] especially in a way that causes significant damage.[374] The Act also provides for the following:

- Reporting requirements for matters that may pose a biosecurity threat ('prohibited' and 'restricted' matters);[375]
- Restrictions on dealing with prohibited and restricted matters;[376]
- A system for issuing permits to deal with prohibited and restricted matters;[377]
- The making of biosecurity plans for local government areas;[378] and
- The management of invasive animal barrier fencing.[379]

15. Agricultural and Veterinary Chemicals Code Act 1994 (Cth)

15.1. Recent Changes to the Agricultural and Veterinary Chemicals Code Act 1994

The *Agricultural and Veterinary Chemicals Code Act 1994* (Qld) (**the Code Act**) was amended by the *Agricultural and Veterinary Chemicals Legislation Amendment Act 2013* (Cth). This amendment removed key components of the Act, most notably:

- Removal of re-approval of chemical constituents;
- Removal of re-registration of chemical products;
- Amendments to variation of approval or registration dates based on the decisions of foreign regulators; and
- Amendments to reporting arrangements for import, export and manufacture of technical grade active constituents.

Implications for NRM Groups

The deregulation of parts of the Act may have potential consequences for human and environmental health. Removing the re-approval and re-registration scheme weakens protections against chemicals. This is because there will be no systematic approach to risk assessment across Australia.

[370] A 'biosecurity matter' includes: a living thing, other than a human or part of a human, a disease, a contaminant, or a pathogenic agent that can cause disease in a living thing, other than a human or in a human, by the transmission of the pathogenic agent from an animal to the human – *Biosecurity Act 2014* (Qld) s 15.
[371] *Biosecurity Act 2014* (Qld) s 5(a).
[372] *Biosecurity Act 2014* (Qld) s 23(1).
[373] *Biosecurity Act 2014* (Qld) s 24.
[374] *Biosecurity Act 2014* (Qld) s 26.
[375] *Biosecurity Act 2014* (Qld) ss 36, 42.
[376] *Biosecurity Act 2014* (Qld) s 37, 43-45.
[377] *Biosecurity Act 2014* (Qld) Chapter 8.
[378] *Biosecurity Act 2014* (Qld) Chapter 3 Part 2.
[379] *Biosecurity Act 2014* (Qld) Chapter 4.

As such, the use of certain chemicals, especially new chemicals, may impact upon water quality. The legislation leaves a gap within which NRM groups could work to educate agriculture operators about safety and appropriate use of chemicals.

15.2. Key Features of the Agricultural and Veterinary Chemicals Code Act 1994

This Act works in conjunction with the *Agricultural and Veterinary Chemicals Act 1994* (Cth). The Code Act is responsible for stipulating the code under which agricultural and veterinary chemicals are regulated. The object of the code is to evaluate, approve and register chemicals for use.[380] Under the code, injunctions can be issued, and the powers of search, seizure and entry are given to inspectors appointed under the Act.[381] Submissions to register chemicals for legal use in veterinary and agricultural industry are made under the Act.[382] The factors to consider on approval include:[383]

- It would not be an undue hazard to the safety of people exposed to it during its handling or people using anything containing its residues;
- It would not be likely to have an effect that is harmful to human beings;
- It would not be likely to have an unintended effect that is harmful to animals, plants or things or to the environment;
- It would not unduly prejudice trade or commerce between Australia and places outside Australia;
- The chemical will be appropriately labelled;

Possession of some approved chemicals is still restricted under the code,[384] and requires a permit.[385]

[380] *Agricultural and Veterinary Chemicals Code Act 1994* (Cth) – Schedule - Agricultural and Veterinary Chemicals Code Part 1 s 1.
[381] *Agricultural and Veterinary Chemicals Code Act 1994* (Cth) – Schedule - Agricultural and Veterinary Chemicals Code Part 9.
[382] *Agricultural and Veterinary Chemicals Code Act 1994* (Cth) – Schedule - Agricultural and Veterinary Chemicals Code Part 2.
[383] *Agricultural and Veterinary Chemicals Code Act 1994* (Cth) – Schedule - Agricultural and Veterinary Chemicals Code Part 2 s 14.
[384] *Agricultural and Veterinary Chemicals Code Act 1994* (Cth) – Schedule - Agricultural and Veterinary Chemicals Code Part 4.
[385] *Agricultural and Veterinary Chemicals Code Act 1994* (Cth) – Schedule - Agricultural and Veterinary Chemicals Code Part 7.

Planning and Development Legislation

16. Sustainable Planning Act 2009 (Qld)

16.1. Proposed changes to the Sustainable Planning Act 2009

16.1.1. *Proposed replacement of planning Act*

In 2013, major reforms of the planning legislation were announced, with a *Planning for Queensland's Development Bill*[386] expected to be introduced in Parliament in mid to late-2014. Public comment opportunities on the proposed change have been limited, therefore few details are publicly known other than, for example, the proposal to remove 'principles of ecologically sustainable development' as an object of the planning legislation.

16.1.2. *Contaminated land assessment triggers*

The *Technical Services for Contaminated Land: Consultation Regulatory Impact Statement* proposes two relevant amendments to the *Sustainable Planning Regulation 2009* (Qld).[387] The first amendment proposes to delete the contaminated land assessment trigger for reconfiguration of a lot and simplify the trigger for material change of use.[388] The second amendment proposes to change the level of assessment from code assessment to compliance assessment. The effect of these changes is that there will be fewer situations in which permits will be required for development on contaminated land. When permits are required, it will be compulsory for the proponent to engage an approved auditor to certify the contaminated land reports, but this is only necessary after the development approval and other relevant approvals are obtained.[389]

Implications for NRM groups

The reduction in situations requiring permits decreases the regulation of development on contaminated land, and thus increases the risk that development may not adequately account for the contamination. Impacts from contaminated land that is not assessed or less stringently assessed may accumulate, posing further risk to soil, air and water quality, as well as risks to biodiversity and human health and safety. The removal of these triggers elevates the role of NRM groups in encouraging voluntary remediation and land management practices among landholders and developers. NRM groups' expertise may be helpful in assisting with remediation strategies for contaminated land.

[386] Note: the title of this Bill may change before it is introduced.
[387] The proposed amendments are to Schedule 3 of the *Sustainable Planning Regulation* 2009 as per the Department of Environment and Heritage Protection, Technical Services for Contaminated Land (Accessed 1/7/14) available at http://www.ehp.qld.gov.au/land/pdf/tech-serv-cont-land-consultation-ris.pdf
[388] The proposed amendments are to Schedule 3 of the *Sustainable Planning Regulation* 2009 as per the Department of Environment and Heritage Protection, Technical Services for Contaminated Land page 8 (Accessed 1/7/14) available at http://www.ehp.qld.gov.au/land/pdf/tech-serv-cont-land-consultation-ris.pdf
[389] The proposed amendments are to Schedule 3 of the *Sustainable Planning Regulation* 2009 as per the Department of Environment and Heritage Protection, Technical Services for Contaminated Land page 9 (Accessed 1/7/14) available at http://www.ehp.qld.gov.au/land/pdf/tech-serv-cont-land-consultation-ris.pdf

16.2. Recent changes to the Sustainable Planning Act 2009

16.2.1. *Changes to costs rules in the Planning and Environment Court*

Previously, the general rule was that each party pay its own costs for proceedings in the Planning and Environment Court, regardless of who won. The new rule is that the costs of a proceeding, or part of a proceeding, are now at the general discretion of the Court.[390] If the parties decide early in a proceeding to participate in a dispute resolution process (mediation) and the proceeding is resolved during or soon after the dispute resolution process, the costs rule reverts to the general rule that each party will pay its own costs.[391]

If a community litigant is genuinely concerned about a development and has planning grounds to support their concern, they can commence or join proceedings and attempt to negotiate an early settlement. If, however, the dispute is not resolved during mediation, the litigant must seriously consider the costs risks.[392]

Implications for NRM groups

These changes may make it more difficult for NRM stakeholders to challenge development, even if the development has not been contemplated by the local planning scheme. See Local Plans at section 18.2.2.

16.2.2. *Creation of a single assessment and referral agency (SARA)*

Previously, development applications which involved a matter of state interest might have had different elements of the application referred to different State agencies, depending on the matter in question, e.g. development near a watercourse or the coast could have been decided by DEHP. Under the new Single Assessment and Referral Agency (**SARA**) which came into effect on 1 July 2013, decision making has been centralised to the Department of State Development, Infrastructure and Planning (**DSDIP**) on all development assessment applications where the State has a jurisdiction, ending the 'concurrence' power of the DEHP and other referral agencies. This has removed DEHP's decision-making powers to reject or condition certain development applications under SPA. The former concurrence agencies are now known as advice agencies and SARA has an obligation to consider the advice; however is not bound by it.

Implications for NRM groups

The introduction of SARA may make the development application process quicker and more efficient, which may benefit some NRM stakeholders. However, since the principal priority of DSDIP is economic development, it may also make it easier for the State assessment manager to prioritise economic development over environmental considerations. For example, a proposal for a resort on

[390] The *Sustainable Planning and Other Legislation Amendment Act 2012* (Qld) came into effect on 22 November 2012. The matters that the Court may consider in making a costs order include: the relative success of the parties in the proceeding; the commercial interests of the parties in the proceeding; whether a party commenced proceedings for an improper purpose (for example a commercial competitor, or to cause delay) or without reasonable prospects of success; whether the proceeding involves a matter of public interest; and a range of other matters, listed in s457(1) and (2) *Sustainable Planning Act 2009* (Qld).
[391] *Sustainable Planning Act 2009* (Qld) ss 45(4) and (5).
[392] It is necessary to obtain advice from a solicitor or barrister as to the prospects of success in court.

the coast that could irreversibly damage coastal ecosystems would now be decided by SARA/DSDIP who would consider this proposal from a primary lens of the economic benefit it may propose, rather than DEHP which is bound to consider the proposal's environmental impact in deciding the development's merits. The concurrence powers given to other agencies provided a 'checks and balances' role in development assessment. Reducing the influence other decision making bodies with different focuses to economic development have on developments means that development applications are going through a weaker and unbalanced scrutiny process.

16.2.3. *New State Development and Assessment Provisions*

The new State Development and Assessment Provisions (**SDAPs**) came into effect on 2 December 2013 and are a critical part of SARA. When DSDIP is assessing or deciding a development application which involves a matter of state interest, it will look to the SDAPs which set out all of the State's criteria for assessment. Criteria for development are provided in the form of 'state codes' which contain the matters the chief executive may have regard to when assessing a development application. The SDAPs are a statutory instrument made under the SPR. They contain 19 modules, each relating to a matter of state interest, and 29 codes. [393]

Implications for NRM groups

The SDAPs are relevant to NRM groups in the sense that they provide further guidance about the extent of the State's interest in certain matters, and the limits of what is permissible development and what is not. The introduction of SARA and the new SDAPs coincides with the introduction of the single State Planning Policy, which sets out the State's interests in planning matters. For more information about state planning interests, see section 17 of this Guide.

16.2.4. *Removal of master planning provisions*

The *Sustainable Planning and Other Legislation Amendment Act (No. 2) 2012* (Qld) removed the planning partnership arrangements of master planned areas, which allowed for a collaborative planning process between local and State Governments and proponents. Master planned areas were greenfield sites which were to transition from rural, non-urban land to urban land. No new master planned areas can be declared and no new structure plans can be made after 22 November 2012.[394] Within three years, local governments must make or amend their planning schemes to incorporate the structure plans for existing declared master planned areas.[395]

[393] For more information and links to the SDAPs, see Department of State Development, Infrastructure and Planning, SDAP (Accessed 1/7/14) available at: http://www.dsdip.qld.gov.au/development-applications/sdap.html

[394] *Sustainable Planning and Other Legislation Amendment Act 2012* (Qld) s 39. Also see the Department of State Development, Infrastructure and Planning, Sustainable Planning and Other Legislation Amendment Act Factsheet page 2 (Accessed 25/6/14) available at: http://www.dsdip.qld.gov.au/resources/factsheet/planning/spola-overview-factsheet.pdf . Outcomes sought by master planning partnerships will now be achieved through regional and local planning.

[395] *Sustainable Planning and Other Legislation Amendment Act 2012* (Qld) s 39.

16.2.5. *Discretion to accept applications that are not properly made*

Amendments introduced in 2012 have given assessment managers (e.g. local government decision makers) discretion to accept development applications that are not accompanied by certain mandatory supporting information.[396] Previously, such applications were deemed not properly made and could not be accepted until the information was provided. The amendment was introduced to improve the efficiency of the development assessment process. It is favourable to developers but places a larger burden on local government, agencies and the community to process and comment on incomplete applications.

16.2.6. *Removal of development approvals for certain environmentally relevant activities*

The Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012 (Qld) provided that development approvals are no longer required for certain environmentally relevant activities (**ERAs**).[397] Environmental authorities (**EAs**) obtained under the *Environmental Protection Act 1994* (**EP Act**) will be the sole means for regulating ERAs.

Among the changes introduced, an application for a development permit can now also be accepted as a properly made application for an EA.[398] For more information see section 25.3.4 of this Guide.

16.2.7. *Hierarchy of planning instruments*

The *Local Government and Other Legislation Amendment Act 2013* (Qld) amended the SPA to provide that state planning policies now prevail over regional plans to the extent of any inconsistency.[399] This is to complement the government's creation of a single State Planning Policy which comprehensively addresses all state interests.

Example: development assessment

Absolute Agriculture is looking to expand its operations in Queensland. It locates high quality land adjacent to a wetland and prepares a development application to clear vegetation, which it submits to the local government. The application does not contain all of the mandatory supporting information, but contains a lengthy statement about the potential benefits of increased agriculture for the local economy. The local government is satisfied that, despite the missing information, there is enough information to understand the potential opportunities and impacts of the development, and it accepts the application as properly made. It refers the application to SARA, and DSDIP

[396] *Sustainable Planning and Other Legislation Amendment Act 2012* (Qld) s 39. See new s 261(1)(a)(ii) *Sustainable Planning Act 2009* (Qld). The change commenced on 22 November 2012 and only applies to development applications made after this date.
[397] *Local Government and Other Legislation Amendment Act 2013* (Qld) Explanatory notes page 2. For example, Clause 64 of the Bill amends the definition of 'material change of use' in s10 *Sustainable Planning Act 2009* (Qld) to no longer include a reference to ERAs.
[398] *Local Government and Other Legislation Amendment Act 2013* (Qld) Explanatory notes page 191.
[399] See *Local Government and Other Legislation Amendment Act 2013* (Qld) s27, which amended s 43 *Sustainable Planning Act 2009* (Qld).

assesses it against the new vegetation clearing SDAPs.

The development is then subject to public notification. NRM stakeholders are concerned about the potential impacts of vegetation clearing on the adjacent wetland, particularly in relation to habitat loss and water quality. They prepare a submission, but the incomplete supporting information makes it difficult for them to determine the total impact on the environment.

On the advice of DSDIP, the local government approves the development application with minimal environmental conditions. The NRM stakeholders consider appealing the approval in the Planning and Environment Court but decide that court action is too risky in light of the new costs rules.

Possible challenges and opportunities for NRM groups:

Recent changes to the SPA encourage development and simplify the process for gaining development approvals. The new SDAPs clearly set out the State's criteria for assessing development and this may make it easier for NRM groups to understand the scope of permissible development and respond to individual development applications. However, the recent changes may also make it easier for assessment managers to prioritise economic considerations over environmental matters, and make it more difficult for the public to participate in the approval process.

16.3. Key features of the Sustainable Planning Act 2009

The SPA is Queensland's principal planning legislation that coordinates planning at the local, regional and state levels. The stated purpose of SPA is to seek to achieve ecological sustainability, which is defined as achieving a balance that integrates ecological, economic and social objectives.[400]

16.3.1. *What is development, and how is it regulated?*

The term 'development' encompasses a wide range of different activities from large-scale residential subdivisions to minor building work such as renovating a kitchen. SPA defines development as: carrying out building work; carrying out plumbing or drainage work; carrying out operational work; reconfiguring a lot (i.e. a subdivision); and making a material change of use of premises.[401] Under the SPA, development is regulated through the use of a hierarchy of planning instruments and the assessment of individual developments. Planning instruments created by the SPA include:

- State Planning Regulatory Provisions,[402] which specify categories of development (including prohibited development), specify levels of assessment (such as code assessment or impact assessment); and include a code or other criteria to be used in development assessment;

[400] *Sustainable Planning Act 2009* (Qld) ss 3, 8.
[401] *Sustainable Planning Act 2009* (Qld) s 7.
[402] Department of State Development, Infrastructure, and Planning, State Planning Regulatory Provisions (Accessed 1/7/14) available at: http://www.dsdip.qld.gov.au/statewide-planning/state-planning-regulatory-provisions.html

- State planning policies (see section 17 of this Guide for further information);
- Regional plans (see section 18 of this Guide for further information);

Local planning schemes are prepared by local governments and provide for the most detailed regulation of development. Planning schemes attempt to predict future development patterns and community needs by establishing policy to guide changes to the way land is used and developed (for further information see section 18.2.2 of this Guide).The SPA also establishes the Integrated Development Assessment System (IDAS), a system for assessing individual developments which is followed by all State agencies and local governments. Under the IDAS there are five different types of development assessment: exempt; self-assessable; compliance assessable; assessable (code assessable and impact assessable); and prohibited development. Only code assessable and impact assessable development require a development permit, and generally speaking only impact assessable development requires public notification and submission and appeal rights.

16.3.2. *Relevance of the Sustainable Planning Act 2009 (Qld) to NRM plans and targets*

SPA is most relevant to NRM groups at a broad planning level. SPA creates a suite of planning instruments which set the agenda for development and land use at a State, regional and local level. In particular, local government planning schemes are an important tool for directing future development and protecting environmental assets. They can limit the impacts of urbanisation by containing commercial, industrial and residential developments and creating areas for conservation and biodiversity protection. For more information about State and regional planning, see section 18 of this Guide.

NRM groups may also engage with IDAS at the level of individual developments, by making submissions or appealing development approvals. However, this is likely to be a less effective approach as development applications may only trigger limited provisions relating to NRM issues. Furthermore, anything that is not recognised and protected in the planning scheme is unlikely to be protected by the council or the Planning and Environment Court.

For NRM stakeholders, such as individual landowners, farmers and graziers, IDAS is likely to be relevant as it regulates 'operational work' which includes:

- Extracting gravel, rock, sand or soil from the place where it occurs naturally;
- Clearing vegetation;
- Undertaking operations or constructing things which allow taking or interfering with water;
- Construction of particular categories of levees;[403]
- Undertaking tidal works or works in a coastal management district.[404]

[403] For more information about regulation on levees, see section 3.2.3 **Error! Reference source not found.** of this Guide.
[404] *Sustainable Planning Act 2009* (Qld) s 10.

If the work constitutes 'assessable development' a development permit will be required. The SPR and local government planning schemes outline the type of assessment required for different categories of work.

16.3.3. *Involvement in local planning*

Regional groups have an opportunity to influence the planning process significantly at the local government level. This is by far the most important, though often missed, opportunity for community action to protect the environment. Where development applications do not trigger assessment by the State Government, the importance of adequate local government planning schemes in addressing NRM issues becomes paramount. Many local governments do not have the resources to deal with NRM issues, and most employ statutory planners who have a limited understanding of NRM planning matter. This makes local governments likely to accept help and guidance in this regard.

The best time to seek to influence council is when planning schemes are being prepared or amended. Under SPA the community has the right to participate in the process of making planning schemes, but does not have the right to appeal the council's approval of its planning scheme. A planning scheme must be created or amended using the process in the SPA and the 'Statutory guideline 01/13 Making and amending local planning instruments.'[405]

16.3.4. *Responding to development applications*

Any application for an impact assessable development must be publicly notified. During the period of public notification, a minimum of 30 business days, any person may make a submission to the assessment manager regarding the application. A person who makes a 'properly made' submission becomes a submitter and gains the right to appeal the assessment manager's decision.[406]

For more information on how to access public information, see FAQ 28.1 at the end of this Guide.

Example: using planning law to protect rural land

Scenic Farmers ('SF') is a small association of farmers and graziers who live and work around a small town in South-East Queensland. Recent years have seen significant population growth as more people are attracted to the country lifestyle, land affordability and proximity to urban centres. SF is concerned about the potential for residential developments to encroach on rural land and scenic landscapes, and is looking for ways to influence development and planning in the region.

Local government planning schemes are required to be reviewed every ten years. Additionally, the local council will have to amend its planning scheme to reflect the changes introduced by the single

[405] See *Sustainable Planning Act 2009* (Qld) ss117-118.
[406] See *Sustainable Planning Act 2009* (Qld) Chapter 6, Part 4 and 5. An appeal may be made against the decision to approve the application, including any conditions or lack of conditions, and the length of time the approval is valid. The decision is challenged in the Planning and Environment Court – see *Sustainable Planning Act 2009* (Qld) Chapter 7.

State Planning Policy and the SEQ Regional Plan, which is currently under review. The SPA and Statutory Guidelines 01/13[407] outline the minimum requirements for public consultation and submissions.[408] However, these are only minimum requirements and local governments are free to engage more extensively with the community. For example, SF could decide to arrange a meeting with a Council planner to outline its concerns about protecting good quality rural land and certain scenic areas from urban development. SF could work with the Council to determine new rural and residential zoning, and arrange to be consulted on early draft versions of new planning schemes.

Regional planning also offers opportunities to safeguard agricultural land. In fact, regional plans prevail over local planning schemes in the event of inconsistency and will therefore go some way in guiding their content. There are opportunities for public participation in the creation of new regional plans, including involvement in the Regional Planning Committee, which usually consists of local and State politicians and representatives of business, industry and community groups. SF should also be aware of the new *Regional Planning Interests Act 2014*, which provides for limited protection of declared 'priority agricultural areas' and 'strategic cropping land areas' from intense resource activities and other regulated activities. For more information about the *Regional Planning Interests Act*, see section of 19 of this Guide.

Possible challenges and opportunities for NRM groups:

There are a number of formal and informal opportunities for NRM groups and stakeholders to engage with local and regional planning processes. Importantly, at a local level, local governments will need to amend their planning schemes in response to the new single State Planning Policy and new regional plans. This could provide a good opportunity for NRM planners to participate in the drafting of new planning schemes, and offer their expertise on resource management issues.

17. State Planning Policy

17.1. Proposed changes to the State Planning Policy[409]

17.1.1. *Recent changes to the State Planning Policy*

In December 2013, the government introduced a single State Planning Policy (SPP), which represents all the State's interests in planning matters.[410] This replaced 12 separate SPPs each of which covered a different matter of state interest. For example, the Coastal Planning SPP 3/11 and the Protecting

[407] Department of State Development, Infrastructure and Planning, Statutory guideline 01/13 Making and amending local planning instruments, (Accessed 2 May 2014) http://www.dsdip.qld.gov.au/resources/policy/state-planning/statutory-guideline-01-13.pdf
[408] A local government must undertake public notification by placing a notice on the local government's website and in the local newspaper. Members of the public have 30 business days to make a submission, and the local government must advise each submitter about how it has dealt with their submission.
[409] The amendments are outlined in the document 'Draft Amendments to the State Planning Policy' available at: http://www.dsdip.qld.gov.au/about-planning/state-planning-policy.html The changes are expected to come into effect in July 2014.
[410] Department of State Development, Infrastructure and Planning, Frequently Asked Questions (Accessed 1/7/14) available at:http://www.dsdip.qld.gov.au/about-planning/frequently-asked-questions.html

wetlands SPP 4/11 are no longer in force.[411] For more general information about state planning policies, see section 17.5 of this Guide.

17.1.2. *Removal of principles of ecologically sustainable development*

Ecologically sustainable development (ESD), defined as 'development which aims to meet the needs of Australians today, while conserving our ecosystems for the benefit of future generations,'[412] is a concept which has been well embedded in State and Commonwealth laws in Australia since 1992. [413] The SPA requires that state planning policies advance the purposes of SPA which includes 'ecological sustainability', but ESD is not mentioned once in the entire SPP. [414] Rather, the SPP reflects a focus on the 'four pillar economy' based on resources, agriculture, construction and tourism. The 16 State Interests contained in the SPP conflict with each other, and in many cases the ecological policies (such as Biodiversity) are worded more generally compared to the economic interests (such as 'development and construction' and 'strategic ports').

When a planning scheme or development application is being considered by a decision maker in resolving policy intent, general statements will be given less weight than more specific statements. This means that decision makers have greater discretion and that local planning schemes can be interpreted more flexibly.

17.1.3. *Biodiversity – matters of state environmental significance*

The definition of 'matters of state environmental significance'[415] only provides protection for certain types of wildlife under the *Nature Conservation Act 1992* (**NCA**) and Regulations, namely 'threatened wildlife' and certain types of 'least concern wildlife' (namely 'special least concern animals' which include the koala, echidna and platypus). [416] However there is an intermediate category in the NCA, 'near threatened wildlife', which is not protected by the SPP. This category includes numerous plant and animal species.[417] The Regulation describes near threatened wildlife as 'a vital feature of the ecosystem in which the wildlife lives' and which 'is of inherent value and potential importance for the maintenance of ecosystem processes.'[418] The SPP also fails to protect the remaining species in the category 'least concern wildlife' which are not 'special least concern animals'. Matters of state environmental significance are indicated on the SPP Interactive Mapping System.[419]

[411] A full list of lapsed or repealed State Planning Policies is available from Department of State Development, Infrastructure and Planning, Lapsed or Repealed State Planning Policies (Accessed 1/7/14) available at: http://www.dsdip.qld.gov.au/codes-policies-and-regulatory-provisions/lapsed-or-repealed-state-planning-policies.html

[412] Council of Australian Governments, National Strategy for Ecologically Sustainable Development (1992) (Accessed 1/7/14) http://www.environment.gov.au/resource/national-strategy-ecologically-sustainable-development

[413] National Strategy for Ecologically Sustainable Development, prepared by the Ecologically Sustainable Development Steering Committee and endorsed by the Council of Australian Governments, December, 1992, available here: http://www.environment.gov.au/node/13029#WIESD

[414] *Sustainable Planning Act 2009* (Qld) ss 22(b) and 5.

[415] For more information about 'Matters of State Environmental Significance' see FAQ 5 at the end of this Guide.

[416] 'Special least concern animals' is not actually a category under the *Nature Conservation Act 1992* (Qld), but a phrase used in the Regulations which includes the koala, echidna and platypus.

[417] For a comprehensive list of 'near threatened wildlife', see Schedule 5, *Nature Conservation (Wildlife) Regulation 2006* (Qld).

[418] *Nature Conservation (Wildlife) Regulation 2006* (Qld) s 28.

[419] Department of State Development, Infrastructure and Planning, State Planning Policy Online Mapping System (Accessed 1/7/14) available at: http://www.dsdip.qld.gov.au/about-planning/spp-mapping-online-system.html

For environmental matters that are captured by the definitions of matters of national, state or local environmental significance, the SPP simply requires development to 'avoid, mitigate or offset' any significant adverse environmental impacts due to the development.[420] Development that has significant impacts on matters of national, state and local environmental significance is not prohibited.

17.1.4. *Local governments given power to identify coastal hazards*

The *Draft Amendments to the State Planning Policy* clarify that it is the responsibility of local governments to identify coastal hazards associated with climate change through their own risk assessment processes.[421] Local governments are instructed to utilise a 'risk assessment consistent with AS/NZS ISO 31000:2009 Risk Management.'[422] The State Government's Interactive Mapping System identifies storm tide inundation areas and erosion prone areas.[423]

This means that local governments are expected to take on more responsibility for mapping and planning climate change adaptation and incorporating these measures into local planning schemes, rather than relying solely on State Government data.

17.1.5. *Local governments given power to protect local biodiversity*

The Draft Amendments provide that local governments may consider the protection of MLES, which is defined as a matter 'identified in a local planning scheme, which is not defined as a matter of national or state environmental significance.'[424]

17.1.6. *Only significant residual impacts to qualify for offsets*

The Draft Amendments reflect the new *Environmental Offsets Act 2014* (Qld), in that now only 'significant residual impacts' need to be offset, not just 'residual impacts'.[425] This means that any impacts from development on matters of national,[426] state[427] or local[428] environmental significance will not need to be offset unless they are significant. NRM plans may need to reflect the risk that the cumulative impacts of development on listed environmental matters will not be offset.[429]

Implications for NRM groups

When making or updating NRM plans, targets relating to conserving and enhancing biological diversity may need to consider:

[420] *State Planning Policy* page 27.
[421] *Draft Amendments to the State Planning Policy*, page 12. The definition of a coastal hazard area is expanded to include 'any other area identified by a local government as a coastal hazard area, based on a regional or local coastal hazard assessment, and contained within that local government's planning scheme.'
[422] *Draft Amendments to the State Planning Policy*, page 8. This is consistent with an amendment to the (non-statutory) introductory paragraph which inserts a reference to 'utilising an evidence based, risk management approach' (rather than 'adaptable and flexible responses').
[423] State Planning Policy Interactive Mapping System available here: http://www.dsdip.qld.gov.au/about-planning/spp-mapping-online-system.html
[424] *Draft Amendments to the State Planning Policy*, page 13.
[425] *Draft Amendments to the State Planning Policy*, page 5, available at: http://www.dsdip.qld.gov.au/about-planning/state-planning-policy.html proposes to amend page 27 of the State Planning Policy.
[426] For information on matters of *national environmental significance*, see section 13.3 of this Guide.
[427] For information on matters of *state environmental significance*, see FAQ 5 at the end of this Guide.
[428] For information on matters of *local environmental significance*, see 18.2.2 of this Guide.
[429] For further information on environmental offsets, see section 7 of this Guide.

- Local governments are not required to consider all categories of protected wildlife when developing their planning schemes. It is likely that impacts on matters not caught by the SPP (e.g. near threatened and least concern wildlife) will not be factored into local planning schemes or development applications. Environmental matters not in the SPP categories are even more susceptible to cumulative impacts from development.
- With a stronger emphasis on offsets where impacts on SPP-protected matters cannot be avoided or mitigated, it is likely that there will be more development impacts on SPP-protected matters.
- There is a potential opportunity for local governments to adopt a more central role in protecting biodiversity through the category MLES. The Draft State Planning Policy Guideline provides that a local government may map MLES in their local government area; include policies to protect these values; include local studies that assess the condition and extent of MLES; and protect conservation corridors that maintain or enhance ecological connectivity between MLES and MSES.[430]

Example: protection of biodiversity in local planning schemes

A local government in North Queensland is in the process of drafting a new planning scheme. The population of the local government area has been increasing in recent years and the draft planning scheme proposes to create new residential zones.

Save Our Wildlife ('SOW') is a local conservation group which is concerned that the proposed residential zones encroach on important habitat area for native wildlife. In particular, the areas have been known to be home to the long snouted tree frog and the Rufuous owl. The draft planning scheme does not offer protection to these species as they are not classified as threatened under the NCA.

SOW decides to employ an ecological consultant to undertake a survey of the area and find out more about these species' distribution and abundance, and the role they play in the local ecosystem. SOW also conducts some community education and receives feedback from residents that they value the protection of these species. SOW uses the report and community feedback to persuade the local government to recognise the long snouted tree frog and Rufuous owl as MLES. Accordingly, the zoning and development codes in the draft planning scheme are amended to protect MLES.

Possible challenges and opportunities for NRM groups:

The SPP's protection of MSES excludes a range of 'near threatened' and 'least concern' wildlife. Under the State framework, maintaining or improving the biodiversity condition of these matters is compromised. However, the SPP has given broad discretion to local governments to recognise MLES. The Draft State Planning Policy Guidelines encourage local governments to include local biodiversity

[430] Department of State Development, Infrastructure and Planning, Biodiversity page 17 (Accessed 1/7/14) available at: http://www.dsdip.qld.gov.au/resources/guideline/spp/spp-guideline-biodiversity.pdf

interests in their own mapping and to create associated codes, so long as they do not diminish the protection of MNES or MSES.[431] *This represents a new avenue for NRM groups to work with local governments to achieve biodiversity targets.*

17.2. State Planning Policy - Areas in Focus

17.2.1. *The Great Barrier Reef and the SPP*

The SPP makes passing references to the Great Barrier Reef, noting its relevance to matters of state interest such as water quality and tourism. There are no specific protections for the Outstanding Universal Value (OUV) of the Reef, except to create a self-assessable development code for certain development in Great Barrier Reef catchments.[432]

17.2.2. *Wetlands*

The previous State Planning Policy prohibited development in wetlands of high ecological significance (WHES), and provided that developments adjacent to WHES either enhance existing wetland values or avoid adverse effects.[433] The new code regulates, but does not prohibit, development in wetland protection areas by setting 'performance outcomes' and 'acceptable outcomes' for development. Where acceptable outcomes cannot be achieved, the code permits the use of environmental offsets.[434]

17.2.3. *Strategic ports*

The SPP protects 'strategic ports' as a matter of state interest. This means that the Queensland Government sees ports as a planning priority area for Queensland. The strategic ports under the SPP currently include 15 ports,[435] many (but not all) of these are in the GBR zone. The effect of declaring these ports to be strategic ports under the SPP is ultimately to provide for greater regulation of the development in the Local Government Areas surrounding the declared ports. The government released the Queensland Ports Strategy in May 2014 which provides further detailed guidelines for port developments.[436]

17.2.4. *Dredging and dumping*[437]

The previous SPP prohibited the disposal of contaminated dredged material in coastal waters.[438] It allowed the disposal of non-contaminated dredged materials in coastal waters only for approved

[431] Department of State Development, Infrastructure and Planning, Biodiversity page 13 (Accessed 1/7/14) available at: http://www.dsdip.qld.gov.au/resources/guideline/spp/spp-guideline-biodiversity.pdf
[432] Sites must be of 'outstanding universal value' and meet at least one of ten selection criteria to be included on the World Heritage List.
[433] State Planning Policy 4/11: Protecting of Wetlands of High Ecological Significance in Great Barrier Reef Catchments, provision 4.1 (accessed 1/7/14), available at: http://www.ehp.qld.gov.au/ecosystems/wetlands/wetlands-spp.html
[434] State Planning Policy, Self-Assessable Code, p.54.
[435] Including Abbot Point, Brisbane, Bundaberg, Cairns, Cape, Gladstone, Hay Point, Karumba, Lucinda, Mackay, Mourilyan, Rockhampton, Thursday Island, Townsville and Weipa.
[436] The Queensland Ports Strategy is available at http://www.dsdip.qld.gov.au/infrastructure-and-planning/queensland-ports-strategy.html
[437] Note: this section only relates to Queensland state laws in respect of dredging and dumping. For dredging and dumping in Commonwealth waters or the Great Barrier Reef Marine Park, other statutory requirements apply and these are not addressed in this Guide.

reclamation, coastal protection works, or maintenance of an existing artificial waterway and required the dumping be in accordance with a management plan.[439] The new SPP allows dredging to be undertaken for additional purposes, including:

- Coastal-dependent development, public marine development or community infrastructure, where there is no feasible alternative; or
- Strategic ports, boat harbours or strategic airports and aviation facilities in accordance with a statutory land use plan; or
- Coastal protection work or work necessary to protect coastal resources or coastal processes…'[440]

In respect of dumping, the SDAP Module 10 permits disposal of dredged spoil on land and at sea,[441] and disposal of spoil from artificial waterways into coastal waters for certain purposes.[442] Neither the SPP nor the SDAP provide a clear prohibition on the dumping of contaminated dredged material.

17.3. Coastal development

The SPP effectively replaced two coastal policies: the State Planning Policy 3/11[443] (**the former SPP**) which was suspended after the 2012 State election, and the Temporary State Planning Policy 2/12[444] (**the temporary SPP**) which was an interim measure prior to the release of the final SPP.

17.3.1. *General coastal development*

One of the SPP's general purposes is that 'the coastal environment is protected and enhanced, while supporting opportunities for coastal-dependent development, compatible urban form, and safe public access along the coast.'[445] Performance outcomes are set out in the SDAPs.[446]

The SPP removes references to areas of HES, and only provides protection for MSES. It no longer prohibits certain types of development, but requires development to be set back from MSES, or

[438] State Planning Policy 3/11: Coastal Protection, 6.5.2 available at http://www.ehp.qld.gov.au/coastalplan/pdf/qcp-web-coastal-protection.pdf. This State Planning Policy was effective from effective from 3 Feb 2012 until the introduction of the Draft Coastal Protection State Planning Regulatory Provision, which was valid from 8 October 2012 until the introduction of the Single State Planning Policy on 2 December 2013.
[439] Provision 6.5.1; 6.5.3, State Planning Policy 3/11: Coastal Protection.
[440] *State Planning Policy* page 47, also see State Development and Assessment Provisions Module 10, PO13 (p10-9)
[441] State Development and Assessment Provisions module 10, Table 10.1.2: Operational work, AO3.2; AO3.3; AO3.4
[442] State Development and Assessment Provisions Module 10, Table 10.1.2: Operational work, PO2.
[443] Effective from February 2012 – August 2012
[444] Effective from August 2012-August 2013
[445] The State Planning Policy requires a local government, when making its planning scheme, to: facilitate the protection of coastal processes and coastal resources; maintain or enhance the scenic amenity of important natural coastal landscapes, views and vistas; facilitate consolidation of coastal settlements by concentrating future development in existing urban areas, and conserving the natural state of coastal areas outside existing urban areas; facilitate coastal-dependent development in areas adjoining the foreshore in preference to other types of development, where there is competition for available land on the coast; and maintain or enhance opportunities for public access and use of the foreshore in a way that protects public safety and coastal resources. State Planning Policy at page 28.
[446] The SDAPs are more detailed guidelines and apply in circumstances where DSDIP is the assessment manager or referral agency for assessable development. DSDIP will be the assessment manager for development in a coastal management district or tidal works, and other developments listed in the SDAPs.

avoid or minimise adverse impacts.[447] Environmental offsets are required in more limited circumstances.[448]

Whereas the former SPP required assessment for certain developments in the coastal zone, the new SPP only regulates development in the narrower coastal management district.[449] Within the coastal management district, the new SPP regulates fewer types of development than the former SPP. [450]

17.3.2. *Identifying coastal hazards*

The SPP requires a local government, when making its planning scheme, to identify natural hazard areas for coastal hazards and include provisions that seek to achieve an acceptable or tolerable level of risk based on a fit for purpose natural hazards study and risk assessment.[451]

Coastal hazards are defined as erosion of the foreshore or tidal inundation.[452] See Proposed Changes to the State Planning Policy at section 17.1 of this Guide as there are proposed changes to allow local governments to add on their own identified coastal hazards.

The former SPP provided that coastal hazard areas were to be identified and mapped after taking into account the projected impacts of climate change by 2100, which include a sea-level rise factor of 0.8m and a 10% increase in cyclone intensity.[453] The temporary SPP removed references to a 0.8m sea level rise but retained the projection in its coastal hazard area maps.

The new SPP has removed all explicit references to climate change and sea level rise, and the Queensland coastal hazard area maps no longer include climate change impacts such as sea level rise.[454] Non-binding guidelines prepared by the State for use by local governments (such as the Coastal Hazard Technical Guide, Risk Assessment Guidelines and Guide to Preparing an Adaptation Strategy) explicitly acknowledge the risks posed by climate change to local planning.

Implications for NRM groups

NRM groups should be aware that the changes have created a gap in the legal framework. While the new SPP is designed to confer greater flexibility and decision making discretion to local governments, it results in a greater burden on local governments to identify and determine the risks

[447] Compare Former State Planning Policy B.7, B.9, 1.9, 3.1, 3.2, D.2, E.2, PO18, PO19 and 4.3 with SDAP PO9, AO9.1.
[448] In the former State Planning Policy, environmental offsets were required where avoidance of adverse impacts was not feasible, 3.2. The new State Planning Policy provides for environmental offsets when there are 'unavoidable significant residual impacts', AO9.2.
[449] See former State Planning Policy B.7. There is no reference to the coastal zone in the SDAPs.
10.1
Tidal works, or development in a coastal management district state code
[450] Compare former State Planning Policy B.6, B.7, B.8 with new State Planning Policy AO7.1- AO7.7; tables 10.1.2 and 10.1.3.
[451] *State Planning Policy* at page 35.
[452] See *Coastal Protection and Management Act 1995* (Qld) Schedule – Dictionary.
[453] *State Planning Policy* 3/11, section 2.11, p8 (effective from February 2012 – August 2012)
[454] This was removed after introduction of the State Planning Policy. For further information, see Department of Environment and Heritage Protection, Frequently asked questions - Coastal hazard area maps (Accessed 1/7/14) available at: http://www.ehp.qld.gov.au/coastal/management/faq-hazard-maps.html

posed by the projected impacts of climate change.[455] This also may have implications for local governments' liability.

17.3.3. *Development in coastal hazard areas*

The SPP provides basic guidelines for development in coastal hazard areas and erosion prone areas. In coastal hazard areas, a local government must require development to:

- Avoid natural hazard areas or mitigate the risks of the natural hazard;
- Avoid an increase in the severity of the natural hazard and potential for damage on the site;
- maintain or enhance natural processes and the protective function of landforms and vegetation that can mitigate risks associated with the natural hazard; and
- Facilitate the location of community infrastructure to maintain functionality during a natural hazard.[456]

The SDAPs permit additional categories of development in high hazard areas, including small to medium scale tourist development and development compatible with temporary inundation.[457]

This provides local governments which much more discretion than under the former SPP, and will potentially encourage more development in vulnerable coastal areas. The former SPP established a development assessment code which created categories of 'high hazard areas' and 'medium hazard areas' and regulated the types of development that were acceptable in each (such as 'specified development').[458] Development in urban hazard areas needs to be consistent with the local government adaptation strategy.

In erosion prone areas, the local government must:

- Maintain erosion prone areas as a development free buffer unless developments cannot be feasibly located elsewhere; or it is coastal-dependent development, or temporary, relocatable, or able to be abandoned; and

[455] The Guideline on Coastal Hazards recommended that local governments undertake their own coastal hazard studies and prepare local government area maps using the methodology outlined in the Coastal Hazard Technical Guide. However these Guidelines are non-binding. Other useful non-binding resources for adaption strategies include: ***The Coastal Hazard Technical Guide***: provides guidance to local governments in determining areas at risk from coastal hazards. The guide acknowledges the risks associated with climate change and outlines the current scientific assumptions of a rise in sea level of 0.8m and an increase in cyclone intensity of 10% by 2100. However, it goes on to state that these assumptions 'should be replaced by current Queensland Government policy direction where available.' https://www.ehp.qld.gov.au/coastalplan/pdf/hazards-guideline.pdf; ***Risk assessment guidelines***: This guide was designed to assist Councils in assessing development applications coastal hazard areas. This guide readily acknowledges the risks associated with allowing development in coastal areas vulnerable to projected sea level rise. However it does not mention a projected rise of 0.8m. http://www.ehp.qld.gov.au/coastal/development/pdf/guideline-risk-assessment-approach.pdf; ***Guide to preparing an adaptation strategy***: This guide acknowledges that while not a mandatory requirement, a coastal hazard adaptation strategy is considered a practical means for local government to achieve this state interest http://www.ehp.qld.gov.au/coastalplan/pdf/adaptation-strategy-guideline.pdf

[456] The Draft State Planning Policy Guideline on Coastal Hazards recommends the creation of medium and high risk categories, but this is not mandatory.

[457] *State Development and Assessment Provisions*, Module 10, AO1.1 page 10-1.

[458] Specified development is defined as coastal-dependent, temporary, readily relocatable, essential community service infrastructure, or redevelopment that does not increase risk, State Planning Policy at page 34.

- Ensure that redevelopment (in priority order) avoids coastal erosion risks, or uses a strategy of planned retreat, or mitigates risk.[459]

This weakens the protections of the former SPP, which prohibited development in erosion prone areas which was not coastal-dependent, temporary, readily relocatable, essential community service infrastructure, or redevelopment that does not increase risk.[460]

17.3.4. *Monitoring and mapping*

The Queensland Coastal Hazard Areas maps are available on the DEHP website.[461] Coastal hazard areas are also depicted on the SPP Interactive Mapping System.[462] Storm tide monitoring information from 25 storm tide monitoring sites along Queensland's coastline is available from the Queensland government website.[463] It provides real-time access to sea level data during severe weather events.

For more information on how to access public information, see FAQ 28.1 at the end of this Guide.

Implications for NRM groups

The new SPP has fewer restrictions on development in erosion prone and coastal hazard areas, and delegates more responsibility to local governments to determine coastal hazard areas and acceptable levels of risk. This may pose a risk to NRM targets relating to protecting coastal processes and ecosystems. However, it may provide an opportunity to work with local governments to determine how to plan for development in the context of projected climate change impacts. For further details, see section 23 of this Guide regarding climate change adaptation.

17.3.5. *Liability of local governments*

The new SPP creates a dilemma for local governments. Local governments are required to incorporate State policies into their local planning schemes and approve coastal developments, but will potentially face litigation if properties are subsequently flooded.[464] In the absence of an effective sea-level rise policy which clearly sets out what the risks are and who is liable for losses, property developers and owners will turn to the courts.[465] The most likely defendants will be local and State Governments.

[459] State Planning Policy at page 35.
[460] Former State Planning Policy 3/11 Coastal Protection, Annex 2 – Development assessment code – PO1, p34.
[461] Department of Environment and Heritage Protection, Coastal Plan Maps (Accessed 1/7/14) available at: https://www.ehp.qld.gov.au/coastal/management/coastal_plan_maps.php
[462] Department of State Development, Infrastructure and Planning, State Planning Policy Mapping (Accessed 1/7/14)available at: http://www.dsdip.qld.gov.au/about-planning/spp-mapping-online-system.html
[463] Queensland Government, Storm Tide Monitoring Sites (Accessed 1/7/14) available at: http://www.qld.gov.au/environment/coasts-waterways/beach/storm-sites/
[464] Justine Bell and Mark Baker-Jones (2014) 'Retreat from retreat – the backward evolution of sea-level rise in Australia, and the implications for local government' *Local Government Law Journal* (19): 23
[465] Justine Bell and Mark Baker-Jones (2014) 'Retreat from retreat – the backward evolution of sea-level rise in Australia, and the implications for local government' *Local Government Law Journal* (19): 31.

Local governments may be liable to planning appeals and administrative review, as well as common law suits of negligence or nuisance.[466] Local governments may have a duty to include protective standards in planning schemes to guard against foreseeable loss or damage, particularly if they are located in a flood prone, coastal zone or other high risk area.[467] Local governments will also owe a duty of care in relation to their assessment of development applications as this involves considering the suitability of a proposed development to a particular site.[468] Some Australian local governments have already been sued for negligence and ineffective coastal policies.[469] While there is still uncertainty as to the scope and extent of local government liability, the risk increases as more scientific evidence emerges around the impacts of climate change.[470]Local councils should consider obtaining legal advice to assess their liability and risk of litigation.

17.4. Acid Sulfate Soils

The Single SPP replaces SPP 2/02: Planning and Managing Development Involving Acid Sulfate Soils **the former SPP**). It maintains a similar approach to the management of Acid Sulfate Soils but there are a few differences.

17.4.1. *Key features retained*

At a planning level, the SPP requires the local government to identify areas with a high probability of Acid Sulfate Soils and develop planning strategies to give preference to land uses that will avoid the disturbances of Acid Sulfate Soils.[471]

At the level of individual development assessment, the local government should ensure that development to which the SPP applies is made assessable.[472] The Guidelines to the former and new SPPs contain an example development code. The preference is for avoidance of disturbance of Acid Sulfate Soil, and then management of Acid Sulfate Soil for which an Environmental Management plan is required.[473] Guidelines are also given for the investigation of proposed development sites, and an Acid Sulfate Soil investigation report is required.[474]

[466] Baker & McKenzie (2011) *Local Council Risk of Liability in the Face of Climate Change – Resolving Uncertainties*, 25-26. Available at: http://alga.asn.au/site/misc/alga/downloads/environment/ALGA%20Consolidated%20Report-v7B-1392955-SYDDMS%20-%20Final.pdf

[467] Note that there is some uncertainty as to the extent the duty owed. See, for example, Jan McDonald, who argues that Councils are unlikely to have a duty of care in relation to the preparation of planning schemes, as these are quasi-legislative functions. Jan McDonald, 'Paying the price of adaptation: compensation for climate change impacts' in Tim Bonyhady, Andrew Macintosh, Jan McDonald (eds) (2010) *Adaptation to climate change : law and policy* Federation Press, 246.

[468] Jan McDonald, 'Paying the price of adaptation: compensation for climate change impacts' in Tim Bonyhady, Andrew Macintosh, Jan McDonald (eds) (2010) *Adaptation to climate change : law and policy* Federation Press, 246.

[469] *Byron Shire Council v Vaughan* [2009] NSWLEC 88; *Byron Shire Council v Vaughan* (No 2) [2009] NSWLEC 110; *Taip v E Gippsland Shire Council* [2010] VCAT 1222; *Gippsland Coastal Board v South Gippsland Shire Council (No 2)* [2008] VCAT 1545.

[470] Justine Bell and Mark Baker-Jones (2014) 'Retreat from retreat – the backward evolution of sea-level rise in Australia, and the implications for local government' *Local Government Law Journal* (19): 33; Baker & McKenzie (2011) *Local Council Risk of Liability in the Face of Climate Change – Resolving Uncertainties*, 38.

[471] State Planning Policy 2/02: Planning and Managing Development Involving Acid Sulfate Soils (2002), p6; and State Planning Policy (2013) p31.

[472] State Planning Policy 2/02: Planning and Managing Development Involving Acid Sulfate Soils (2002), p6; and State Planning Policy Guideline: Guideline on acid sulphate soils (2013) p3.

[473] State Planning Policy 2/02: Planning and Managing Development Involving Acid Sulfate Soils (2002), p5; State Planning Policy 2/02 Guidelines (2002), p37; State Planning Policy Guideline: Guideline on acid sulphate soils (2013) p5, 6, 18.

[474] State Planning Policy 2/02 Guidelines (2002), p6; State Planning Policy Guideline: Guideline on acid sulphate soils (2013) p15.

17.4.2. *Key changes to State Planning Policy*

While the new SPP retains the same approach to the management of Acid Sulfate Soils, much of the information and detail that was contained in the former SPP is now contained in the Guidelines.[475] The Guidelines to the new SPP also contain more references to extrinsic material, particularly the Queensland Acid Sulfate Soils Technical Manual: Soil Management Guidelines (which were not yet finalised when the former SPP was created in 2002).

The Guidelines to the new SPP require a less stringent identification and investigation process in relation to proposed development sites.[476] Under the former Guidelines, Step 1 required a desktop analysis and sampling, and Step 2 required a undertake sample selection and laboratory analysis.[477] Step 2 was not required if Step 1 provided strong evidence that Acid Sulfate Soils are absent.[478] The Guidelines to the new SPP state that a sample selection and laboratory analysis is not necessary if there is sufficient information which shows no indication of Acid Sulfate Soils on site, or that no Acid Sulfate Soils or groundwater will be impacted by the proposed development.[479] This is a lower evidentiary threshold and may result in fewer comprehensive investigations being completed prior to new developments.

However, the new SPP has introduced more stringent requirements in relation to the management of surface and drainage waters.[480] It has also created a Water Quality Code which requires development to manage stormwater and waste water in ways that support environmental values, and includes provisions in relation to Acid Sulfate Soils.[481]

17.4.3. *Monitoring and mapping*

The Queensland Government maintains a data series on Acid Sulfate Soils[482] as well as a spatial dataset which identifies the local government areas to which the SPP applies.[483]

Implications for NRM Groups

On the whole, the approach to the management of Acid Sulfate Soils under the SPP is similar to the previous system, but NRM groups should be aware that its effectiveness relies on reliable data being available for desktop analysis.

NRM groups may welcome the introduction of a Water Quality Code, which could assist them to meet water quality and soil conservation targets.

---

[475] For example, development to which the State Planning Policy applies and specific development outcomes.
[476] The process outlined in the Guidelines to the former State Planning Policy spanned eight pages, whereas the Guidelines to the new State Planning Policy seek to 'clarify the minimum type and amount of information necessary' and state that the assessment manager can request additional information where necessary, p15.
[477] *State Planning Policy 2/02 Guidelines* (2002) page 10-18.
[478] *State Planning Policy 2/02 Guidelines* (2002) page 11.
[479] *State Planning Policy 2/02 Guidelines* (2002) page 15.
[480] The Guidelines note that 'as yet, no dedicated water management guideline for ASS has been published in Queensland. Available information is republished here as an interim measure.' p21
[481] *State Planning Policy* (2013) page 68.
[482] Queensland Government, Acid Sulfate Soils Series (Accessed 1/7/14) available at: https://data.qld.gov.au/dataset/acid-sulfate-soils-series
[483] Queensland Government, Acid Sulfate Soils Series Trigger Areas Queensland (Accessed 1/7/14) available at: https://data.qld.gov.au/dataset/state-planning-policy-acid-sulphate-soils-trigger-areas-queensland

17.5. Key features of State Planning Policies

17.5.1. *What are state planning policies?*

A State Planning Policy (**SPP**) is a type of State planning instrument prepared under the SPA which outlines the State's policy on certain matters of State interest.[484] A state interest is defined very broadly to mean:

- an interest that the Minister for State Development, Infrastructure and Planning considers affects an economic or environmental interest of the State, including sustainable development; or

- an interest in ensuring there is an efficient, effective and accountable planning and development assessment system.[485]

The single SPP identifies 16 state interests and arranges those under five broad themes: Liveable communities and housing; Economic growth; Environment and heritage; Hazards and Safety; and Infrastructure.

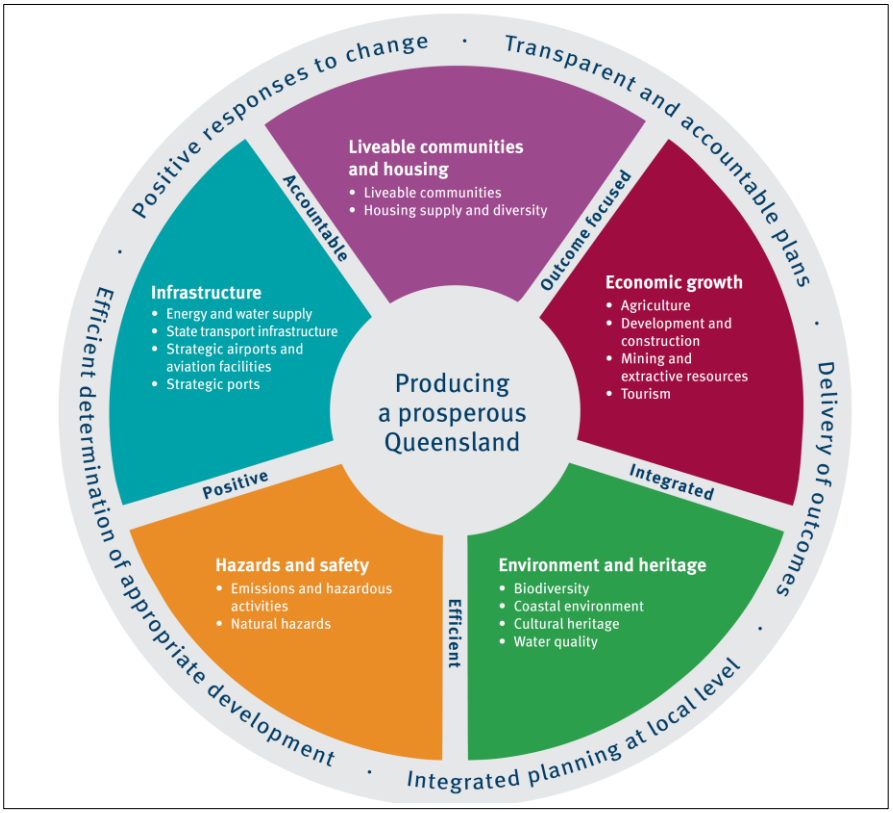

Figure 1: the current State Interests in the State Planning Policy.[486]

[484] *Sustainable Planning Act 2009* (Qld) s 22.
[485] *Sustainable Planning Act 2009* (Qld) Schedule 3.

SPPs guide how matters of State interest are dealt with in other planning instruments. The SPP applies to the:

- making or amending of a planning scheme, and
- designation of land for community infrastructure by a Minister, and
- making or amending of a regional plan, and
- assessment of a development application mentioned in Part E, to the extent the SPP has not been identified in the planning scheme as being appropriately integrated in the planning scheme, and
- carrying out of self-assessable development mentioned in Part F.[487]

For example, when a local council is developing its planning scheme, it must ensure that the planning scheme reflects the elements outlined in the SPP. SPPs prevail over local planning schemes in the event of any inconsistency.[488]

17.5.2. *Managing Competing State Interests*

It is inevitable that conflicts will arise between different state interests. This may be particularly relevant in light of new state interests relating to development and construction, tourism, strategic ports, and mining and extractive resources. The SPP provides that there is no hierarchy of state interests, and specific regional and local circumstances must be considered when resolving conflicts. It envisages that these conflicts will be resolved by local governments when incorporating state interests into their planning schemes.

The Planning Minister will consider the following three objectives when determining whether the SPP has been appropriately integrated in a local planning scheme:[489]

- Applying the 'guiding principles' in Part C of the SPP;[490]
- Considering the state interests in their entirety;
- Addressing the regional and local context.[491]

18. Regional Plans and Local Planning Schemes

18.1. Recent and proposed changes to regional plans

18.1.1. *New Regional Plans*

Two new regional plans came into effect in 2013, being the Central Queensland Regional Plan and the Darling Downs Regional Plan. These plans demonstrate a new approach to regional planning.

[486] State Planning Policy at page 14.
[487] State Planning Policy page 9.
[488] *Sustainable Planning Act 2009* (Qld) s 25.
[489] State Planning Policy page 10.
[490] State Planning Policy, Table 1.1 page 14 - The guiding principles are: outcome-focused, integrated, efficient, positive and accountable. These principles carry equal weight with the state interests expressed in the SPP, and must be considered by local government as part of the integration of state interests.
[491] State Planning Policy page 10.

Rather than protecting a single land resource, the plans set out the 'co-existence' of multiple land uses, especially between the resource and agricultural sector. [492]The plans contain declarations for Priority Agricultural Areas, but also create 'coexistence criteria' to achieve coexistence between these land uses and potential resource industry proposals.[493]

This new approach is part of the reforms that repealed the Strategic Cropping Land Act, and implement a co-existence regime through the use of regional plans and the new *Regional Planning Interests Act 2014*.

18.1.2. *Regional plans under review*

Regional plans currently being prepared or reviewed[494] include the draft Cape York Regional Plan and the draft South East Queensland Plan. The government intends to replace all regional plans with 'new generation' plans.[495] These 'new generation' regional plans will include new 'areas of regional interest' which set out the State's intent for the region. For further information, see section 19 of this Guide. It is generally expected that local governments will have influence in determining the new 'areas of regional interest' in the new regional plans.

Local planning schemes across Queensland are constantly being reviewed and updated.[496]

18.2. Key features of regional plans and local planning schemes

18.2.1. *What is a regional plan?*

A regional plan is a planning instrument made under SPA which identifies and interprets the state interests outlined in the SPP for a particular region.[497] Regional plans are meant to assist in prioritising, qualifying or resolving the state interests in a particular region. It is meant to advance the purpose of SPA, which is ecological sustainability.

A regional plan identifies outcomes for the region and the policies and actions for achieving them.[498] It also identifies future regional land use patterns, and provides for regional infrastructure.[499] Local governments must amend their planning schemes to reflect the regional plan.[500] State planning policy prevails over regional plans, and regional plans prevail over local government planning schemes.

---

[492] Department of Natural Resources and Mines, Review of the Strategic Cropping Land Framework, page 8 (Accessed 1/7/14) Available at: http://www.nrm.qld.gov.au/land/planning/pdf/strategic-cropping/scl-review-report.pdf

[493] *Review of the Strategic Cropping Land Framework,* page 28.

[494] Plans are currently being reviewed or consulted as at May 2014.

[495] For further information or to find out your area's current regional plan, see Department of State Development, Infrastructure, and Planning, Regional Planning Maps (Accessed 1/7/14) available at: http://www.dsdip.qld.gov.au/maps/regional-planning-maps.html

[496] To find your local planning scheme, visit the Department of State Development, Infrastructure, and Planning, Local Government Planning Schemes (Accessed 1/7/14) available at: http://www.dsdip.qld.gov.au/local-area-planning/local-government-planning-schemes.html

[497] *State Planning Policy* page 8: '*The role of a regional plan is to identify and interpret the state's interests in land use planning and development (as described in the SPP) for a particular region. Regional plans determine specific regional outcomes and contain specific regional policies to achieve those outcomes. The purpose of the outcomes and policies is to guide land use planning and development decisions in the region*.'

[498] *Sustainable Planning Act 2009* (Qld) s 38(a).

[499] *Sustainable Planning Act 2009* (Qld) s 38(b).

[500] *Sustainable Planning Act 2009* (Qld) s 39, *Sustainable Planning Regulation 2009* (Qld) Schedule 1.

The SPR establishes 11 regions, however not all have regional plans: South East Queensland; Far North Queensland; North West Queensland; Central West Queensland; South West Queensland; Maranoa-Balonne; Wide Bay Burnett; Mackay, Isaac and Whitsunday; Central Queensland; Darling Downs; and Cape York.

18.2.2. *What is a local planning scheme?*

A local planning scheme is an important instrument to identify what types of development are acceptable in specific zones or areas. It is a document prepared by a local government that identifies the strategic outcomes for the local government area and it must incorporate 'state interests'[501] set out in the SPP (see section 17 of this Guide). Local governments which are prescribed as 'designated regions' must also ensure that their planning schemes reflect regional plans.[502] They can also stipulate what constitutes a 'matter of local environmental significance'.

Local government planning schemes set out land use and development, infrastructure, and valuable features of the local government area.[503] Valuable features include resources or areas that are of ecological significance, areas contributing significantly to amenity, areas or places of cultural heritage significance and resources or areas of economic value.[504]

A local planning scheme also sets out what type of development applications will trigger various levels of assessment, ranging from self-assessable development, compliance assessment, code assessment, impact assessment requiring public notification and consultation, and prohibited development.

This is why the 'state interests' in the State Planning Policy and Regional Plans are important, as they guide what the local government must consider when planning development within their local area.

18.2.3. *Participation in making or updating regional plans or local planning schemes*

A draft regional plan must be released by the State Government for public comment for a period of 60 days.[505] For local planning schemes, the local government must release a draft local planning scheme for public comment for a minimum of 30 business days.[506]

SPA establishes Regional Planning Committees, whose functions are to advise the regional planning Minister about the development and implementation of regional plans. The membership of Regional Planning Committees includes the Planning Minister and local government mayors and councillors, and may include 'a person who has the appropriate qualifications, experience or standing to be a

[501] *Sustainable Planning Act 2009* (Qld) s 88.
[502] *Sustainable Planning Act 2009* (Qld) s 39, *Sustainable Planning Regulation 2009* (Qld) Schedule 1.
[503] *Sustainable Planning Act 2009* (Qld) s 89(1).
[504] *Sustainable Planning Act 2009* (Qld) s 89(2).
[505] *Sustainable Planning Act 2009* (Qld) s 61(3)(a).
[506] *Sustainable Planning Act 2009* (Qld) s 118(1)(b)(i).

member of the committee.'[507] The Minister may add members to a Committee at any time, after consulting with the Committee.[508]

Implications for NRM groups

Membership of Regional Planning Committees may encompass representatives of industry, tourism, community groups, Indigenous groups, schools and universities and NRM groups.[509] The Regional Planning Committee, State Government or the local government will often invite community groups to participate in consultations regarding the making or updating of a regional plan or local planning scheme prior to public consultation. This is an important stage for NRM groups and other community organisations to be involved in, prior to the release of a draft plan or draft planning scheme for public comment, to help identify suitable areas for protection, management and development. Regional groups may extend their influence on the development of regional plans by providing tools which assist the State and local government stakeholders to interpret regional NRM targets.

19. Regional Planning Interests Act 2014 (Qld)

19.1. Recent and proposed changes to the Regional Planning Interests Act 2014

The *Regional Planning Interests Act 2014* (Qld) (**RPIA**), passed in June 2014, has altered the way in which competing land uses are dealt with in specific regions, as detailed in section 19.2 of this Guide. There is one proposed change to the RPIA currently being considered by parliament, as detailed in section 19.1.1 below.

19.1.1. *Proposed Change – the State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014 (Qld)*

This Bill proposes to repeal the *Wild Rivers Act 2005* (Qld) in its entirety. It amends the RPIA to allow regulations to be made under the RPIA which replace wild rivers declarations.[510] Wild rivers areas, if imported under these regulation making powers, will qualify as 'strategic environmental areas' under the RPIA.[511]

19.2. Key Features of the Regional Planning Interests Act 2014

19.2.1. *Repeal of the Strategic Cropping Land Act 2011 (Qld)*

The RPIA repealed the *Strategic Cropping Land Act 2011* and the *Strategic Cropping Land Regulation 2011*.[512] The protection of agricultural land is now intended to be achieved through regional plan making and the creation of regional interest areas under the RPIA.

[507] *Sustainable Planning Act 2009* (Qld) s 43.
[508] *Sustainable Planning Act 2009* (Qld) s 44.
[509] The membership of some Regional Planning Committees is published online. For example, Queensland Government, Media Statements - Central Qld planning process starts (Accessed 1/7/14) available at: http://statements.qld.gov.au/Statement/2012/7/27/central-qld-planning-process-starts, http://statements.qld.gov.au/Statement/2012/7/24/darling-downs-planning-process-starts
[510] *State Development, Infrastructure and Planning (Red Tape Reduction) And Other Legislation Amendment Bill* 2014 (Qld) Clause 124.
[511] *State Development, Infrastructure and Planning (Red Tape Reduction) And Other Legislation Amendment Bill* 2014 (Qld) Clause 121.
[512] *Regional Planning Interests Act 2014* (Qld) s96, effective 13 June 2014.

19.2.2. *Resource activities now regulated in declared regional interest areas*

The RPIA requires a new type of approval where intensive resource activities are carried out in 'areas of regional interest', which are new zones declared in Regional Plans.[513] Four types of regional interest areas exist:[514]

- Priority agricultural areas;[515]
- Priority living areas;[516]
- Strategic cropping land areas;[517] and
- Strategic environmental areas.[518]

If a proponent wishes to carry out a resource activity or regulated activity[519] in one of these areas of regional interest, then the proponent needs to obtain a 'regional interests development approval' (**RIDA**). The purpose of the legislation is to facilitate multiple land uses in these areas and encourage resource proponents to obtain the consent of the landholder.

19.2.3. *Exemptions mean a RIDA is not required in many instances*

A RIDA is not required if:

- The applicant reaches an agreement with the landowner and the activity will not significantly impact a priority agricultural area or an area within the strategic cropping land area;[520]
- Where the resource activity will be undertaken for less than one year;[521] or
- Where the activity was already approved under a relevant authority prior to the declaration of the area of regional interest.[522]

19.2.4. *How is a RIDA obtained?*

A person or entity who can apply for a resource or EA is also eligible to apply for a RIDA if they wish to conduct activities in an area of regional interest.[523] Upon submitting an application in the prescribed manner,[524] a proponent must publish notice in accordance with a regulation[525] and provide notice to landowners.[526] However the applicant can apply for exemption from the

[513] For further information on Regional Plans, see section 18.2.1 of this Guide.
[514] *Regional Planning Interests Act 2014* (Qld) s 7 .
[515] *Regional Planning Interests Act 2014* (Qld) s 8 Definition.
[516] *Regional Planning Interests Act 2014* (Qld) s 9 Definition.
[517] *Regional Planning Interests Act 2014* (Qld) s 10 Definition.
[518] *Regional Planning Interests Act 2014* (Qld) s 11 Definition.
[519] *Regional Planning Interests Act 2014* (Qld) s 17 states that a regulated activity is one likely to have widespread or irreversible impact or one declared in a regulation.
[520] *Regional Planning Interests Act 2014* (Qld) s 22.
[521] *Regional Planning Interests Act 2014* (Qld) s 23.
[522] *Regional Planning Interests Act 2014* (Qld) s 24.
[523] *Regional Planning Interests Act 2014* (Qld) s 28.
[524] As per *Regional Planning Interests Act 2014* (Qld) s 29.
[525] The Draft Regional Planning Interests Regulation s 8 currently stipulates notice is to be given in a local newspaper and only where the development is in a priority living area: http://www.dsdip.qld.gov.au/resources/laws/regional-planning-interests-regulation-2014.pdf
[526] *Regional Planning Interests Act 2014* (Qld) s 35(1).

requirement to provide notice, if they already undertook public notice under different legislation, such as the EP Act.[527]

Anyone – including NRM groups and their stakeholders – can make a submission about the RIDA application, and properly made submissions[528] will be accepted and published online.[529] The Chief Executive gives a copy of the application to the assessing authority,[530] who considers it[531] and will then recommend conditions, recommend refusal, or provide advice about the application to the Chief Executive,[532] who will then either refuse the application, or approve it partly or wholly.[533] The Chief Executive can also add conditions to an approval.[534] Notice of the decision will then be given to the applicant, owner of the land, and assessing agencies.[535]

19.2.5. *Appeals limited to landowners and affected landowners only*

Although anyone can make a submission about a RIDA application, there are only three parties who can appeal a RIDA decision: the applicant; the landowner; or an affected landowner.[536] An 'affected land owner' is defined as an owner of land (affected land) that may be adversely affected by the resource activity or regulated activity because of the proximity of the affected land to the land the subject of the decision and the impact the activity may have on an area of regional interest.[537]

There is no open standing for neighbouring landowners to object, unless they satisfy the narrow definition of 'affected land owner'.

19.2.6. *Enforcement*

Enforcement for strategic cropping areas and priority agricultural areas are done by authorised persons under the *Vegetation Management Act 1999* (Qld).[538] Strategic environmental areas are the responsibility of DEHP.

Example: CSG drilling and extraction in a Regional Interest Area

Gale owns a 30ha property outside of Mackay which is in close proximity to a mapped strategic cropping area. A CSG company, *Mack CSG*, wants to extract CSG from part of her land which is strategic cropping area. *Mack CSG* will require a RIDA, as well as the usual approvals under the P&G Act and the EP Act. Gale has limited options available to her:

[527] *Regional Planning Interests Act 2014* (Qld) s 34(3).
[528] *Regional Planning Interests Act 2014* (Qld) s 37.
[529] *Regional Planning Interests Act 2014* (Qld) s 38(2).
[530] *Regional Planning Interests Act 2014* (Qld) s 41(1).
[531] *Regional Planning Interests Act 2014* (Qld) s per s 41(2).
[532] *Regional Planning Interests Act 2014* (Qld) s 42(2)(a).
[533] *Regional Planning Interests Act 2014* (Qld) s 48(1).
[534] *Regional Planning Interests Act 2014* (Qld) s 48(2).
[535] *Regional Planning Interests Act 2014* (Qld) s 51.
[536] *Regional Planning Interests Act 2014* (Qld) s 72.
[537] *Regional Planning Interests Act 2014* (Qld) s 71.
[538] *Regional Planning Interests Act 2014* (Qld) s 86.

1. She may be able to enter into a compensation arrangement with Mack CSG which will likely include a clause requiring Gale to agree that the activity will not have a significant impact upon the land, and this means that *Mack CSG* will not require a RIDA;

2. She could wait to receive a notification of *Mack CSG*'s RIDA application and then make a submission if she thinks CSG drilling would be an inappropriate land use for the strategic cropping area and could not co-exist with her cropping activities.

Possible Challenges & Opportunities for NRM groups:

NRM groups may wish to provide input to DSDIP about the declaration of regulations under the RPIA which create Regional Interest Areas, however there is no requisite consultation period for the making of a regulation under the RPIA. NRM groups do have opportunities to provide input at the regional plan making stage, to provide information to DSDIP on appropriate locations for Regional Interest Areas.

Implications for NRM Groups

The RPIA gives landowners and affected landowners some recourse to object to resource activities affecting their land, if the resource activity is in a regional interest area. No public interest or community appeals are permitted. One of the more difficult aspects for farmers, graziers and other landowners is whether they are 'affected' by the impacts of the resource activity and therefore qualify to object. The RPIA gives landholders a greater say over their land, and NRM groups are in a position to assist landholders in the management of their land, and potentially the uses that occur upon their land.

20. State Development and Public Works Organisation Act 1971 (Qld)

20.1. Proposed changes to the SDPWO Act

20.1.1. *Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014 (Qld)*

This Bill proposes to insert a new Part 4A to give a new power to the Coordinator-General's (**C-G**) to approve actions that impact on matters of national environmental significance (**MNES**). It is proposing to facilitate the delegation of environmental decision making under the EPBC Act from the Federal to the State Government. The government is seeking to receive accreditation for the *State Development and Public Works Organisation Act 1971* (Qld) (**SDPWO Act**) under the EPBC Act.[539] The Bill will allow both the assessment and the approval of action affecting MNES by the C-G.

Implications for NRM Groups

The devolution of approval powers under the EPBC Act to State Governments is currently being arranged through legislation. This change is part of one of the most significant alterations of Australian environmental law in recent years. There are substantial gaps between the criteria in the

[539] See section 13.1.2 of this Guide relating to Approval Bilateral Agreements under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

EPBC Act and the standards in the SDPWO Act, to allow impacts on MNES. For further information on the implications for NRM groups, see section 13.3.2 of this Guide regarding approval bilateral agreements.

20.1.2. *State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014 (Qld)*

This Bill proposes to amend part 4 of the SDPWO Act and introduce a new EIS process. Projects will be declared either a project for which an EIS or a new process – an Impact Assessment Report (IAR) – is required.[540] IARs are intended to be used for 'well-defined' and 'low-medium risk' coordinated projects.[541] A significant change is that the new IAR process does not require public notification of the draft IAR, however if the project would normally require approval and notification under another Act, it is in the discretion of the C-G to require public notification.[542]An IAR must contain information about the likely environmental effects of the project and details of the project.[543] No judicial review is available and public participation and input is not mandatory.

An EIS will also have the option of being 'staged', instead of being a single report; it will be approached in stages alongside the project.[544]

Implications for NRM Groups

It is anticipated that IARs will start to be used more frequently than EISs for coordinated projects, which may limit public participation and accessibility of information, as there are no mandatory requirements for public notification on the draft TOR or on the draft IAR itself. In respect of staged EIS, the staging could result in the cumulative impacts of each stage being overlooked, as the current amendments do not require consideration of cumulative impacts in granting a staged EIS approach.[545] Additionally, the changes proposed to remove the requirement that projects involving broad-scale vegetation clearing for agricultural purposes are assessed through an EIS. This means that applications involving broad scale clearing are able to be assessed under an IAR instead.

20.2. Recent changes to the SDPWO Act

20.2.1. *Economic Development Act 2012 (Qld)*

The *Economic Development Act 2012* (Qld) amended the SDPWO Act in order to, among other things, clarify the CG's powers and state mandatory considerations for declaring a coordinated project. It also allows private companies the ability to acquire land through the C-G. The C-G is no longer required to produce an annual report. A proponent may now apply to the C-G to be a 'private infrastructure facility', upon which they can acquire land in certain circumstances. In making a

[540] *State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014* (Qld) Cl 29.
[541] *State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014* (Qld) first reading speech (Accessed 1/07/2014), available at: http://www.parliament.qld.gov.au/documents/tableOffice/BillMaterial/140603/StateDev.pdf
[542] *State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014* (Qld) Cl 37.
[543] *State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014* (Qld) Cl 37.
[544] *State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014* (Qld) Cl 27, 34.
[545] *State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014* (Qld) Cl 34.

declaration for a declared project, the C-G does not need to consider environmental effects of the project.[546]

20.3. Key features of the SDPWO Act

The SDPWO Act seeks to facilitate and coordinate major infrastructure planning and development across Queensland.

20.3.1. *Who is the 'Coordinator-General'?*

The SDPWO Act is administered by the C-G, who is a senior public servant appointed under the SDPWO Act. The C-G is granted power under the Act to:

- Oversee large infrastructure projects;
- Designate projects as a 'coordinated project' and review the Environmental Impact Assessment for the project;
- Undertake, and coordinate, various works;
- Legally enter onto land to undertake those works;
- Compulsorily acquire land; and
- Declare and oversee State Development Areas.

20.3.2. *Coordinated Projects and Environmental Impact Assessment*

When a coordinated project is declared, it will require an EIS report under the SDPWO Act unless it will undergo similar assessment under another Act.[547] If a project requires an EIS, draft terms of reference must be published for comment,[548] and have regard to public comments in finalising the terms.[549] After the EIS is prepared, it is published,[550] and open to public comments.[551] The C-G will then prepare a report assessing the EIS, along with any submissions.[552] This report does not constitute an approval of the proposed actions. It is a recommendation to attach certain conditions to an approval under another Act, for example, a proposed mining lease under the MRA.[553] It is then the responsibility of other agencies to implement the report from the C-G.

20.3.3. *State Development Areas*

A State Development Area (**SDA**) is an area of land that the State Government declares[554] and designates for large developments and projects.[555] A regulation made under the SDPWO Act may declare a SDA.[556] Proposed SDAs can usually be found on the DSDIP's website.[557] Current SDAs are set out in the *State Development and Public Works Organisation (State Development Areas)*

[546] *Economic Development Act 2012* (Qld) s 288.
[547] *State Development and Public Works Organisation Act 1974* (Qld) Act s 26.
[548] *State Development and Public Works Organisation Act 1974* (Qld) Act s 29.
[549] *State Development and Public Works Organisation Act 1974* (Qld) s 30(b).
[550] *State Development and Public Works Organisation Act 1974* (Qld) s 33.
[551] *State Development and Public Works Organisation Act 1974* (Qld) s 34.
[552] *State Development and Public Works Organisation Act 1974* (Qld) s 35.
[553] *State Development and Public Works Organisation Act 1974* (Qld) ss 44-47A.
[554] *State Development and Public Works Organisation Act 1974* (Qld) Schedule 2.
[555] *State Development and Public Works Organisation Act 1974* (Qld) Section 79.
[556] *State Development and Public Works Organisation Act 1974* (Qld) Section 77(1) also sets out the pre-requisites for determining a SDA.
[557] Department of State Development, Infrastructure and Planning, Proposed State Development Areas (Accessed 1/7/14) available at: http://www.dsdip.qld.gov.au/coordinator-general/proposed-sdas.html

Regulation 2009. Submissions regarding the declaration of SDAs are usually invited by the C-G, yet are not a requirement by law.

A SDA necessitates the creation of a Development Scheme, which governs development and land use within designated precincts within the SDA. The effect of such a scheme is that it overrides existing planning laws in the SDA to the extent of inconsistency. The State Government is required to make up-to-date information (including maps) of a SDA and any changes to a declared SDA publicly accessible at the Office of the Coordinator-General.[558]

If a SDA is declared within an NRM plan boundary, the NRM Group may need to take account of it.

Example: The Galilee Basin State Development Area

The Galilee Basin SDA was declared in June 2014. Its aim is to facilitate the development of resource extraction and related infrastructure. The SDA runs from the Galilee Basin mines north-east to the Port of Abbot Point. A draft Development Scheme is available. The Development Scheme only governs developments within the precincts designated on the Proposed Galilee Basin SDA map. The SDA proposal area will be amended over time, once proponents agree on the best suited place for infrastructure.

The Development Scheme will not affect 'the regulation of operational aspects of *environmental relevant activities*', however.[559] These activities include mining under the MRA. If someone seeks to mine within a SDA precinct, the activity must be consistent with the land use objectives outlined in the Development Scheme[560] and written approval may be required from the C-G.[561] They will have to seek the regular approvals under the MRA and EP Act for mining activity. Generally, approval will only be required for a material change of use of the land.

Possible Challenges & Opportunities for NRM groups:

This SDA has shown how the effects of large scale developments upon landholders will be affected. For example, the government has stated the area taken up by proposed railways has been reduced by 94%.[562] NRM Groups will have a good opportunity to make submissions on proposed SDAs, and can suggest processes to limit the impact of developments, such as railway, might have on targets.

[558] *State Development and Public Works Organisation Act 1974* (Qld) Section 78 ; also see Department of State Development, Infrastructure and Planning, Current State Development Areas (Accessed 1/7/14) available at: http://www.dsdip.qld.gov.au/coordinator-general/current-state-development-areas.html
[559] *Draft Development Scheme – Proposed Galilee Basin State Development Area* s 8(8)(c).
[560] *State Development and Public Works Organisation Act 1974* (Qld) Section 84(2).
[561] Where a land use is not stipulated for an area, written approval may be granted by the Coordinator General under *State Development and Public Works Organisation Act 1974* (Qld) s 84(4)(b).
[562] Queensland Cabinet and Ministerial Directory, Media Statements - Galilee rail zone reduced by 94 per cent (Accessed 1/7/14) available at: http://statements.qld.gov.au/Statement/2014/6/16/galilee-rail-zone-reduced-by-94-per-cent

20.3.4. *Acquisition of Land*

Land within a SDA may be compulsorily acquired.[563] The C-G must serve a Notice of Intention to Resume (**NIR**) to all parties with an interest in the land being acquired.[564] Objections to compulsory acquisition of land can be made by anyone entitled to receive a NIR,[565] and should be made within 30 days.[566] All parties who hold an interest in the land must be compensated.[567]

20.3.5. *Enforcement*

The C-G has powers to enforce offences under the SDWPO Act, including giving misleading information, and not complying with an approval condition. The C-G is an entity residing within DSDIP. However, offences relating to the environment will still be enforced by DEHP.

Relevance to NRM Groups

The SDPWO Act has many broad powers concerning large projects. Where a SDA or coordinated project is declared, the affected areas may face drastic changes and lose their value to NRM groups and their targets. There could also be changing land use options available to landholders. Declarations also have the potential to reduce the impact of projects upon communities. Submissions relating to projects and SDAs are a great way to be involved in the process for NRM groups.

21. Coastal Protection and Management Act 1995 (Qld)

Major changes to the *Coastal Protection and Management Act 1995* (Qld) were made by the former Labor government in 2011 under the *Environmental Protection and Other Legislation Amendment Bill 2010*. Briefly summarised, the changes introduced by these amendments are as follows:

- Removed Regional Coastal Management Plans;
- Abolished the Coastal Protection Advisory Council and Regional Consultative Groups;
- Provided for coastal zone maps; and
- Provided that a coastal plan could include a State planning instrument under the SPA.

21.1. Recent changes – the new Coastal Management Plan[568]

The form and content of the coastal plan has changed significantly under the recent planning reforms.

The Coastal Plan (2012) (**CP**) was introduced by the Labor government after the 2011 legislative changes came into effect. It was comprised of a State Policy for Coastal Management, which applied to management planning, activities, decisions and works that were not assessable development under the SPA. It also contained a specific State Planning Policy for Coastal Protection, which had

[563] *State Development and Public Works Organisation Act 1974* (Qld) Section 82(1).
[564] *Acquisition of Land Act 1957* (Qld) s 7(2).
[565] *Acquisition of Land Act 1957* (Qld) s 8(1).
[566] *Acquisition of Land Act 1957* (Qld) s 7(3)(d).
[567] Compensation is given in accordance with Part 4 of the *Acquisition of Land Act 1967* (Qld).
[568] Note: For changes to development planning and assessment in coastal zones, see the 'General coastal development' section in the State Planning Policy at section **Error! Reference source not found.** of this Guide.

effect as a State planning instrument under the SPA and dealt with land-use planning, coastal activities and development assessment decisions within the coastal zone under the SPA.

The management policy has been replaced by the new Coastal Management Plan (2014) (**CMP**). The State planning policy has been replaced by the new SPP and the SDAP.[569] Thus, the CMP no longer regulates land use planning and coastal development.

Some key differences between the former CP and current CMP are highlighted below.

21.1.1. *Erosion*

The CP required the preparation of a shoreline erosion management plan if there was a potential threat to structures, beaches or infrastructure.[570] Under the CMP, a shoreline erosion management plan is only *recommended* if there is an *imminent* threat.

21.1.2. *Areas of high ecological significance (HES)*

The CP provided for the protection, enhancement and rehabilitation of areas of HES.[571] Areas of HES were identified and mapped by the DEHP, and additional areas could also be identified in planning instruments.[572] Where impacts on areas of HES could not feasibly be avoided, management actions were to be taken to minimise the impacts and, where possible, undertake rehabilitative actions.[573]

The new CMP removes references to HES and replaces them with a requirement to protect MSES. MSES are areas which the State is legally required to protect under existing Queensland legislation.[574] It also states that where impacts cannot be avoided, instead of being minimised, they should be mitigated through offsets (restoring or rehabilitation natural environmental values of similar or adjacent habitat or other actions that reduce threats to MSES).[575] The CMP thus weakens the protection offered to biodiversity in coastal areas, providing no additional requirements beyond what is legally mandated in the existing legislation.

21.1.3. *Management plans*

The preparation of management plans is optional but encouraged under both plans.[576] The CP identifies issues that must be addressed through management plans, such as shoreline erosion[577]

[569] Foreword to the *Coastal Management Plan* (Qld), iii.
[570] Department of Environment and Heritage Protection, Queensland Coastal Plan s 2.5, p 7 (accessed 2/07/2014), http://www.ehp.qld.gov.au/coastalplan/pdf/qcp-web.pdf. Priority areas for preparation of shoreline erosion management plans are listed in Appendix 1 of the *Coastal Plan 2012* (Qld).
[571] *Coastal Plan 2012* (Qld) p10.
[572] *Coastal Plan 2012* (Qld) p81.
[573] *Coastal Plan 2012* (Qld) p10.
[574] For example, protected areas under the Nature Conservation Act 1992; high conservation value wetlands under the *Environmental Protection Act 1994* (Qld); and certain categories of vegetation under the Vegetation Management Act 1999. For a full list see 'Method for Mapping: Matters of State environmental significance for use in land use planning and development assessment' http://www.ehp.qld.gov.au/land/natural-resource/pdf/epp-ep-mses-land-use-planning.pdf, p1-2.
[575] *Coastal Management Plan* (Qld) p 9.
[576] Both the CP and CMP contain nearly identical templates.

and beach driving[578]. Additionally, the CP requires that management actions on State coastal land, including works and the establishment of structures and infrastructure, be consistent with relevant management plans, ostensibly ensuring that management plans are not toothless documents.[579] There is no equivalent requirement in the CMP.

21.1.4. *Public access and beach driving*

The CP provided that new public access facilities were only to be constructed where there was a demonstrated community demand, or a need to ensure public safety.[580] The CMP does not retain these constrictions, but encourages public beach access that is located, designed, constructed and managed to conserve coastal resources.[581]

The CP was also stricter in relation to beach driving. It listed beaches where vehicle use was to be avoided,[582] and required the preparation of a management plan for driving on other beaches. The management plan was required to restrict access to beaches during periods critical to the life cycle of species, for example to protect nesting and roosting areas for sea turtles.[583]

The CMP removes the requirement for beach driving management plans. The way in which the CMP approaches beach driving is an example of a broader approach in which content is shifted from specific policies to explanatory or supporting information and suggested management actions.[584]

21.1.5. *Monitoring and reporting*

The CP required land managers to assess the effectiveness of their coastal management practices.[585] It required regular reporting on the extent and condition of coastal resources, and reviewing management plans and works programs to address adverse impacts identified during monitoring.

The CMP states that land managers should 'preferably incorporate' a monitoring framework into their management plan, if they have one, and gives them greater discretion to determine the structure and content of such monitoring and reporting.[586]

21.1.6. *Relevance to NRM Groups*

The new CP is less prescriptive than the CMP, and gives more discretion to local governments (as land managers) to determine appropriate coastal management policies. As there are some requirements that are no longer compulsory, this may result in less effective coastal management

[577] *Coastal Plan 2012* (Qld) 2.5.
[578] *Coastal Plan 2012* (Qld) 8.1.
[579] *Coastal Plan 2012* (Qld) 9.4.
[580] *Coastal Plan 2012* (Qld) 6.3.
[581] *Coastal Plan 2012* (Qld) 4.3.
[582] See *Coastal Plan 2012* (Qld) Appendix 1, Item 5.
[583] *Coastal Plan 2012* (Qld) 8.2, page 15.
[584] See *Coastal Management Plan* (Qld) page 10.
[585] *Coastal Plan 2012* (Qld) 10.1.
[586] *Coastal Plan 2012* (Qld) 5.3.

which could affect NRM goals relating to the maintenance and improvement of coastal resources and biodiversity. However, the changes may also result in increased flexibility for local governments to devise the most locally appropriate strategies.

21.2. Key features of the Coastal Protection and Management Act 1995

The *Coastal Protection and Management Act 1995* creates a broad legislative framework which establishes some key planning concepts and instruments. The object of the Act is to protect, conserve, rehabilitate and manage the coastal zone, having regard to the principles of ecologically sustainable development (**ESD**).[587]

21.2.1. *Key concepts*

- The coast means all areas within or neighbouring the foreshore;[588]
- The coastal zone means Queensland waters and land within the area shown as the coastal zone on the coastal zone map;[589]
- A coastal management district is a part of the coastal zone declared under a regulation to be a coastal management district if the Minister considers the area requires protection or management;[590] DSDIP is the assessment manager for development applications in a coastal management district;[591]
- The Minister may declare a coastal building line in a coastal management district, which limits development in areas vulnerable to erosion and assists to maintain a development free buffer where coastal processes occur naturally.[592]
- An erosion prone area is an area within the coastal zone declared by the Minister to be subject to erosion or tidal inundation[593]

21.2.2. *Key instruments*

- The coastal zone map is a map certified by the chief executive showing the coastal zone[594]
- A coastal plan must be prepared by the Minister for the coastal zone.[595] It must describe how the coastal zone is to be managed.[596] In preparing the coastal plan, the Minister must consider public access to the foreshore and the effect of climate change on coastal management.[597] The coastal plan is a statutory instrument.[598]

[587] *Coastal Protection and Management Act 1995* (Qld) s 3.
[588] *Coastal Protection and Management Act 1995* (Qld) s 10.
[589] *Coastal Protection and Management Act 1995* (Qld) s 15.
[590] *Coastal Protection and Management Act 1995* (Qld) s 54(1), also see Dictionary.
[591] Department of Environment and Heritage Protection, Coastal Management Districts (Accessed 1/7/14) available at: https://www.ehp.qld.gov.au/coastal/development/assessment/coastal_management_districts.html
[592] *Coastal Protection and Management Act 1995* (Qld) s 66.
[593] *Coastal Protection and Management Act 1995* (Qld) s 70(1).
[594] *Coastal Protection and Management Act 1995* (Qld) s 18A.
[595] *Coastal Protection and Management Act 1995* (Qld) s 20.
[596] *Coastal Protection and Management Act 1995* (Qld) s 21(1).
[597] *Coastal Protection and Management Act 1995* (Qld) s 21(2).
[598] *Coastal Protection and Management Act 1995* (Qld) s 35.

21.2.3. *Community participation in coastal planning*

Members of the public have a right to make submissions when a new CP is drafted, or if a non-administrative amendment is made to an existing plan. The Minister must prepare and publish a draft of the Plan, following which a consultation period begins which lasts for 40 business days. During this time, members of the public may make written submissions on the draft, and the Minister is required to consider each properly made submission.[599]

The Act states that substantial compliance with this process is valid so long as it does not adversely affect the awareness of the public of the existence and nature of the proposed coastal plan, or restrict the opportunity of the public to make properly made submissions.[600]

21.2.4. *Monitoring and mapping*

The following monitoring data is available through the DEHP website:

- In relation to coastal water quality, monitoring data of South East Queensland is available through 'Healthy Waterways' publications and annual report cards.[601] Data in relation to Central Queensland coastal waters is available upon request, and there is limited data available in relation to North Queensland.[602]
- Wave monitoring data, which may be used in the design and construction of coastal structures and in investigations of natural coastal processes, is also available.[603]
- The Queensland Node of the Australian Coastal Atlas, developed by the Queensland Government in conjunction with Environment Australia, provides information about Queensland's coastal and marine environment.[604] It includes base layers,[605] environmental layers,[606] socio-cultural layers,[607] economic and human use layers[608] and administrative boundaries.[609]

The Act also provides that a State of the Coastal Zone report must be published at least every four years. This is published as the State of the Environment Report. For more information about the State of the Environment Report, see FAQ 9 at the end of this Guide.

For more information on how to access public information, see FAQ 28.1 at the end of this Guide.

[599] See *Coastal Protection and Management Act 1995* (Qld) Chapter 2, Divisions 2 and 3.
[600] *Coastal Protection and Management Act 1995* (Qld) s 23
[601] Healthy Waterways, Taking the Pulse of our Waterways (Accessed 1/7/14) available at: http://www.healthywaterways.org/ehmphome.aspx
[602] Department of Environment and Heritage Protection, Queensland Coastal Water Quality (Accessed 1/7/14) available at: http://ehp.qld.gov.au/water/monitoring/qld-coastal-water-quality.html
[603] Department of Environment and Heritage Protection, Wave Monitoring (accessed 1/7/14) available at: http://ehp.qld.gov.au/coastal/monitoring/waves/index.php
[604] Department of Environment and Heritage Protection, Australian Coastal Atlas (Accessed 1/7/14) available at: http://www.ehp.qld.gov.au/coastal/management/australian_coastal_atlas.html
[605] For example, bathymetry, coastline, rivers, transport
[606] For example, coastal habitats, species distribution, bioregions
[607] For example, world heritage, wilderness areas, Ramsar sites, important wetlands
[608] For example, fishing effort, coastal landscapes, urban areas
[609] For example, fisheries management areas, national parks, marine parks

21.3. Relationship with other legislation

21.3.1. *Sustainable Planning Act 2009 (Qld)*

The *Sustainable Planning Act 2009* (Qld) (**SPA**) regulates coastal development through the creation of planning instruments (such as state planning policies and local government planning schemes) and the Integrated Development Assessment System which assesses applications for individual developments. For more information about SPA, see section 16 of this Guide.

21.3.2. *State Planning Policy*

The State Planning Policy deals with coastal land-use planning and development assessment. For more information about the State Planning Policy, see section 17 of this Guide.

22. Wild Rivers Act 2005 (Qld)

22.1. Proposed changes to the Wild Rivers Act 2005

22.1.1. *Revocation of Wild River declarations*

The Queensland Government previously announced proposals to revoke several Wild Rivers declarations, including:[610]

- *Cooper Creek Basin Wild River Declaration 2011;*
- *Georgina and Diamantina Basins Wild River Declaration 2011;*
- *Wenlock Basin Wild River Declaration 2010;*
- *Archer Wild River Declaration 2009;*
- *Stewart Wild River Declaration 2009; and*
- *Lockhart Wild River Declaration 2009.*

The government could move to protect the Cape York Rivers (Wenlock, Lockhart, Archer and Stewart) through the draft Cape York Regional Plan[611] (see Regional Plans at section 18 of this Guide), or via regulation.

22.1.2. *Proposed repeal of Wild Rivers Act*

The Queensland government, through the State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014 *(Qld)* proposes to repeal the *Wild Rivers Act 2005* (Qld) (**the Wild Rivers Act**) in its entirety. The first reading speech stated that '[a]ll of the

[610] The proposed revocations are listed – Department of Environment and Heritage Protection, Wild Rivers (Accessed 1/7/14) available at: http://www.ehp.qld.gov.au/wildrivers/
[611] Department of State Development, Infrastructure, and Planning, Cape York Regional Plan (Accessed 1/7/14) available at: http://www.dsdip.qld.gov.au/regional-planning/cape-york-regional-plan.html

areas that were formally declared within the Wild Rivers Act will be declared strategic environment areas under the Regional Interests Planning Act.'[612]

Implications for NRM Groups

Repeal of the *Wild Rivers Act* reduces the protections on areas previously declared as Wild Rivers. This may jeopardise NRM objectives relating to riparian vegetation and water quality, which would no longer receive the extra protections that existed under Wild Rivers. NRM groups have an opportunity to work with landholders to conserve vegetation, and maybe even facilitate its protection. This could be done through offsets programs, for example.

22.1.3. *Vegetation Management Framework Amendment Act 2013 (Qld)*

This Act removed the prohibition on clearing wild rivers high preservation areas without a permit. For more information about the vegetation management reforms, see section 1 of this Guide.

22.1.4. *Sustainable Planning and Other Legislation Amendment Act 2012 (Qld)*

From 1 July 2013, development in a wild rivers area started to be assessed by the State Assessment and Referral Agency. It will be assessed against the SDAP,[613] which were developed under the SPR (See section 16 of this Guide for more detail).

Implications for NRM Groups

NRM groups that have wild river declarations in their areas will no longer be able to rely on the absolute protections in the Wild Rivers Act, as the prohibitions in that Act will no longer apply. For example, clearing will no longer be prohibited around former wild rivers, meaning that such clearing will be regulated subject to the vegetation management framework.

In light of the changes, NRM groups may wish to increase their efforts to work with landholders to conserve and improve targets relating to former wild rivers areas. If an area becomes a strategic environmental area under the *Regional Planning Interests Act 2014* (Qld), then NRM groups will have the opportunity to approach the government about the matters concerning landholders, targets, and other issues that could be addressed using a regulation under the *Regional Planning Interests Act 2014* (Qld).

22.2. Key features of the Wild Rivers Act 2005

Wild rivers areas are created through the making of declarations under the Act.[614] Such declarations can be revoked, however.[615] Wild rivers declarations protect pristine riparian zones from inappropriate land uses and developments. The declarations focus on water quality, and vegetation cover. It is therefore important to know what activities are allowable in declared wild rivers areas, and also what revoking a declaration will subsequently permit. The Act allow for certain areas to be

[612] Record of Proceedings First Session of the Fifty-Fourth Parliament , Tuesday, 3 June 2014, Queensland Parliament. Available at: http://www.parliament.qld.gov.au/documents/Hansard/2014/2014_06_03_DAILY.pdf
[613] Department of State Development, Infrastructure and Planning, State Development Assessment Provisions (Accessed 1/7/14) Available at: http://www.dsdip.qld.gov.au/resources/policy/sdap/state-development-assessment-provisions.pdf
[614] *Wild Rivers Act 2005* (Qld) s 7.
[615] *Wild Rivers Act 2005* (Qld) s 32.

declared High Preservation Areas, Preservation Areas, Floodplain Management Areas, Special Floodplain Management Areas, and Subartesian Management Areas.[616] These areas come with varying degrees of protection and associated suitable development.

22.2.1. *Declarations*

A wild river declaration details, amongst other things, those developments and other activities that are subject to assessment against the relevant parts of the Wild Rivers Code. Mining and petroleum activities are not dealt with under the code, and remain the domain of the EP Act (Qld). Declarations can set conditions on these developments, though standard condition mining authorities are not allowed in a High Preservation Area.[617] For example, mining cannot occur within 20m of a nominated waterway under the Cooper Wild River Declaration.[618] It is important to note that a declaration does not affect an activity that is currently being approved or already approved.[619]

22.2.2. *Wild Rivers Code*

The code sets out basic rules which can be incorporated into any Wild Rivers Declaration. The code, for example, states the new agricultural areas are not permitted within a High Preservation Area, but can be created in Preservation Areas upon the application of a permit.[620]

22.2.3. *Remaining Wild Rivers Declarations*

If the proposed revocations go ahead, this would leave the following declared Wild Rivers:[621]

- Gregory Wild River Declaration 2007
- Hinchinbrook Wild River Declaration 2007
- Morning Inlet Wild River Declaration 2007
- Settlement Wild River Declaration 2007
- Staaten Wild River Declaration 2007
- Fraser Wild River Declaration 2007

22.2.4. *Development Assessment within a Wild Rivers Area*

Developments within a wild rivers area are assessed under the State Developed Assessment Provisions (**SDAP**)[622] by the Chief Executive of the DSDIP. The SDAP are provided for by the

[616] *Wild Rivers Act 2005* (Qld) s 3(2).
[617] *Environmental Protection Regulation 2008* (Qld) Sch 3A.
[618] Cooper Creek Basin Wild River Declaration 2011 s 33, available at: http://www.ehp.qld.gov.au/wildrivers/pdf/cooper-wild-river-dec-2011.pdf
[619] *Wild Rivers Act 2005* (Qld) s17.
[620] *Wild Rivers Code*, Part 1.
[621] A list of Declared Wild Rivers can be retrieved from the Department of Environment and Heritage Protection, Declared Areas (Accessed 1/7/14) available at: http://www.ehp.qld.gov.au/wildrivers/declared_areas.html
[622] *Sustainable Planning Act 2009* (Qld) Schedule 3 Part 1 Table 2.

Sustainable Planning Regulation 2009 (Qld). The development will still be assessed against relevant State codes – which include the Wild Rivers Code and the relevant Wild Rivers Declaration.[623]

22.2.5. *Enforcement*

The requirements and prohibitions under the *Wild Rivers Act 2005* (Qld) are enforced by DEHP. The offence provisions are found in Acts other than the *Wild Rivers Act 2005* (Qld),[624] however DEHP still manages them.

23. Climate change adaptation

23.1. Queensland legislation relevant to NRM groups

There is no single Act or policy that explicitly addresses the issue of climate change in Queensland. The *Sustainable Planning Act 2009* (Qld) does still refer to climate change in its objectives; [625] however its instruments have been amended to remove any references to it. The *Draft Amendments to the State Planning Policy* state that it is the responsibility of local governments to identify coastal hazards associated with climate change through their own risk assessment processes.[626]

The new SPP has removed all explicit references to climate change (see section 17.2 of this Guide). The closest framework to climate change in Queensland is the references to mitigations of hazards being in the state interest, in the SPP.[627]. There are non-binding guidelines[628] on coastal hazards which refer to climate change (see section 21.2.1 of this Guide). These were prepared by the State Government for councils to use if they see it necessary. As such, it is clear that local councils can choose the extent climate change policy is incorporated into their local planning schemes (for more information on local planning schemes, see section 18.2.2 of this Guide).

Example: Coastal residential development

Mr Smith wants to construct a residential development in Far North Queensland. The site is located within a coastal zone on the fringe of an existing urban zone. Mr Smith looks at the Queensland Coastal Hazard Areas maps and sees that the site is not in an erosion prone area, but is prone to temporary inundation of 0.9m during storm tides. His architect draws plans for a house that has strong foundations and is raised on stilts.

[623] State Developed Assessment Provisions, Table 11.2-11.3.
[624] For example, *Sustainable Planning Act 2009* (Qld) s 581, read in conjunction with Schedule 2.
[625] *Sustainable Planning Act 2009* (Qld) ss 5, 11.
[626] *Draft Amendments to the State Planning Policy*, page 12. The definition of a coastal hazard area is expanded to include 'any other area identified by a local government as a coastal hazard area, based on a regional or local coastal hazard assessment, and contained within that local government's planning scheme.'
[627] State Planning Policy, page 35.
[628] Department of Environment and Heritage Protection, Coastal Hazard Technical Guide, Risk Assessment Guidelines and Guide to Preparing an Adaptation Strategy (Accessed 2/7/14) available at: http://www.ehp.qld.gov.au/coastalplan/pdf/adaptation-strategy-guideline.pdf

Under the former SPP, the development would have been prohibited:

- The former Coastal Hazard Maps accounted for a projected sea level rise of 0.8m, and therefore it is likely the site would have been located within a high hazard area (one metre or more temporary inundation).
- Development in urban medium or high hazard areas was prohibited unless it was 'specified development.' The former SPP specifically excluded residential developments from the definition of specified development.[629]

Under the new SPP, the local government has the discretion to approve the development:

- The SPP does not make any reference to climate change or sea level rise, and these are not accounted for in the Coastal Hazard Maps. Instead, local governments identify their own natural hazard areas and conduct a risk assessment to achieve 'an acceptable or tolerable' level of risk.
- The new SDAPs permit a wider range of developments in high coastal hazard areas, including those which are 'compatible with inundation' and 'small-to medium-scale tourist development.'[630]

Possible challenges and opportunities for NRM groups:

The new SPP has fewer restrictions on development in coastal areas, and delegates more responsibility to local governments to determine coastal hazard areas and acceptable levels of risk. NRM groups in coastal areas would need to continue their efforts working with local governments to consider the projected impacts of climate change and formulate potential adaptation strategies. NRM groups and local government should, however, be alert to potential tensions between prohibiting coastal development and maintaining consistency with other state interests, particularly 'development and construction' and 'tourism'.

23.2. Commonwealth legislation relevant to NRM groups

23.2.1. *Carbon Credits (Carbon Farming Initiative) Act 2011*

The *Carbon Credits (Carbon Farming Initiative) Amendment Bill 2014* (the Bill) amends various Acts in order to establish the Emissions Reduction Fund (**ERF**). The ERF will allow proponents 'to undertake approved emissions reduction projects and to seek funding from the Government for those projects through a reverse auction or other purchasing process'.[631] Under the changes, the regulator will issue Australian carbon credit units for emissions reductions which can then be purchased through the ERF or used under voluntary carbon offsetting programmes. The primary objective of the ERF is to help Australia meet its international obligations under the United Nations Framework Convention on Climate Change and the Kyoto Protocol.

[629] Former State Planning Policy 3/11 Coastal Protection, Annex 2 – Development assessment code – p34.
[630] SDAP Module 10, AO1.1
[631] *Carbon Credits Amendment Bill (Carbon Farming Initiative) 2014* (Cth) Draft Explanatory Memorandum.

Implications for NRM groups

There is currently a requirement that carbon sequestration projects must be accompanied by a statement from the proponent indicating whether the project is consistent with the relevant regional NRM plan. The project may still be approved even if it is inconsistent with the NRM plan but the plan must be considered and any inconsistency must be recorded on the register. Under the *Carbon Credits Amendment Bill*, NRM plans will no longer be a mandatory consideration. The Bill removes NRM plans as a mandatory consideration.[632] Definitions and notification requirements related to NRM plans are also removed.[633]

The importance of NRM plans in achieving these objectives has been undermined by their removal as a mandatory consideration when approving carbon sequestration projects. Given that the objective of NRM plans is to protect the environment, failure to consider NRM plans will negatively impact on the achievement of NRM targets.

Public participation, which is an important aspect of ecologically sustainable development, in the provision of carbon credits has been removed.[634]

Additionally, the incentive for projects to comply with NRM plans has now been removed. By removing the incentive to comply with NRM plans (which aim to protect the environment), the environment is less likely to be protected.

[632] Removed by *Carbon Credits Amendment Bill (Carbon Farming Initiative) 2014* (Cth) sections 96, 161 ad 246 of schedule 1.
[633] Removed by *Carbon Credits Amendment Bill (Carbon Farming Initiative) 2014* (Cth) sections 64, 65, 161, 246 and 267 of schedule 1.
[634] Carbon Credits (Carbon Farming Initiative) Bill 2011 (Cth) Explanatory Memorandum (Accessed 1/7/14) available at: http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4543_ems_1455bc0c-24d3-4d9b-8072-f85c0d28a7ad/upload_pdf/353709.pdf;fileType=application%2Fpdf

Mining, Gas and Environment Protection Legislation

The three main Acts governing resource activities, and their associated approvals are the *Environmental Protection Act 1994* (Qld), *Mineral Resources Act 1989* (Qld), and *Petroleum and Gas (Production and Safety) Act 2004* (Qld).

24. Changes to the resources legislation framework

24.1. Interaction with the Regional Planning Interests Act 2014

This new legislation represents the first time that planning laws have interacted with resources laws – usually, resources activities are simply exempt development for planning purposes.[635] The interaction is limited in scope, as it applies specifically where resource activities are proposed in 'areas of regional interest'.[636]

Where a proposed resource activity is located in an 'area of regional interest', it will be regulated under the new *Regional Planning Interests Act 2014* (Qld) (**RPIA**). In addition to the authorities required under the resources legislation, the proposed activity will also require a 'regional interests development approval' (**RIDA**). The purpose of this approval is to manage the impacts of multiple land uses coexisting. Accordingly, exceptions to the requirement for a RIDA include situations where there is agreement with the landowner, and there will not be a significant impact on a priority agricultural area or a strategic cropping land area.[637] For more detailed information about RIDAs and changes to the planning framework, see section 19.2 of this Guide.

24.1.1. *Resource activities now regulated in declared regional interest areas*

The RPIA requires a new type of approval where intensive resource activities are carried out in 'areas of regional interest', which are new zones declared in Regional Plans.[638] Four types of regional interest areas exist:[639]

- Priority agricultural areas;[640]
- Priority living areas;[641]
- Strategic cropping land areas;[642] and
- Strategic environmental areas.[643]

If a proponent wishes to carry out a resource activity or regulated activity[644] in one of these areas of regional interest, then the proponent needs to obtain a 'regional interests development approval'

[635] *Sustainable Planning Regulation 2009* (Qld) Schedule 4 Table 5 Items 1-3.
[636] 'Areas of regional interest' are declared in Regional Plans. There are four types: priority agricultural areas, priority living areas, strategic cropping land areas, and strategic environmental areas – *Regional Planning Interests Act 2014* (Qld) ss 8-11.
[637] *Regional Planning Interests Act 2014* (Qld) s 22.
[638] For further information on Regional Plans, see section 18.2.1 of this Guide.
[639] *Regional Planning Interests Act 2014* (Qld) s 7.
[640] *Regional Planning Interests Act 2014* (Qld) s 8 Definition.
[641] *Regional Planning Interests Act 2014* (Qld) s 9 Definition.
[642] *Regional Planning Interests Act 2014* (Qld) s 10 Definition.
[643] *Regional Planning Interests Act 2014* (Qld) s 11 Definition.
[644] *Regional Planning Interests Act 2014* (Qld) s 17 states that a regulated activity is one likely to have widespread or irreversible impact or one declared in a regulation.

(**RIDA**). The purpose of the legislation is to facilitate multiple land uses in these areas and encourage resource proponents to obtain the consent of the landholder.

24.1.2. *Exemptions mean a RIDA is not required in many instances*

A RIDA is not required if:

- The applicant reaches an agreement with the landowner and the activity will not significantly impact a priority agricultural area or an area within the strategic cropping land area;
- Where the resource activity will be undertaken for less than one year;[645] or
- Where the activity was already approved under a relevant authority prior to the declaration of the area of regional interest.[646]

24.1.3. *How is a RIDA obtained?*

A person or entity who can apply for a resource authority or EA is also eligible to apply for a RIDA if they wish to conduct activities in an area of regional interest.[647] Upon submitting an application in the prescribed manner,[648] a proponent must publish notice in accordance with a regulation[649] and provide notice to landowners.[650] However the applicant can apply for exemption from the notification requirements if they already undertook public notification under different legislation, such as the EP Act.[651]

Anyone – including NRM groups and their stakeholders – can make a submission about the RIDA application, and properly made submissions[652] will be accepted and published online.[653] The Chief Executive gives a copy of the application to the assessing authority,[654] who considers it[655] and will then recommend conditions, recommend refusal, or provide advice about the application to the Chief Executive,[656] who will then either refuse the application, or approve it partly or wholly.[657] The Chief Executive can also add conditions to an approval.[658] Notice of the decision will then be given to the applicant, owner of the land, and assessing agencies.[659]

24.1.4. *Appeals limited to landowners and affected landowners only*

Although anyone can make a submission about a RIDA application, there are only three parties who can appeal a RIDA decision: the applicant; the landowner; or an affected landowner.[660] An 'affected

[645] *Regional Planning Interests Act 2014* (Qld) s 23.
[646] *Regional Planning Interests Act 2014* (Qld) s 24.
[647] *Regional Planning Interests Act 2014* (Qld) s 28.
[648] As per *Regional Planning Interests Act 2014* (Qld) s 29.
[649] The Draft Regional Planning Interests Regulation s 8 currently stipulates notice is to be given in a local newspaper and only where the development is in a priority living area: http://www.dsdip.qld.gov.au/resources/laws/regional-planning-interests-regulation-2014.pdf
[650] *Regional Planning Interests Act 2014* (Qld) s 35(1).
[651] *Regional Planning Interests Act 2014* (Qld) s 34(3).
[652] *Regional Planning Interests Act 2014* (Qld) s 37.
[653] *Regional Planning Interests Act 2014* (Qld) s 38(2).
[654] *Regional Planning Interests Act 2014* (Qld) s 41(1).
[655] *Regional Planning Interests Act 2014* (Qld) s per s 41(2).
[656] *Regional Planning Interests Act 2014* (Qld) s 42(2)(a).
[657] *Regional Planning Interests Act 2014* (Qld) s 48(1).
[658] *Regional Planning Interests Act 2014* (Qld) s 48(2).
[659] *Regional Planning Interests Act 2014* (Qld) s 51.
[660] *Regional Planning Interests Act 2014* (Qld) s 72.

land owner' is defined as an owner of land (affected land) that may be adversely affected by the resource activity or regulated activity because of the proximity of the affected land to the land the subject of the decision and the impact the activity may have on an area of regional interest.[661]

There is no open standing for neighbouring landowners to object, unless they satisfy the narrow definition of 'affected land owner'.

24.2. Mineral and Energy Resources (Common Provisions) Bill 2014 (Qld)

The *Mineral and Energy Resources (Common Provisions) Bill 2014* (Qld) is the first step of the Queensland Government's initiative labelled Modernising Queensland's Resources Acts Program. A central part of this program is condensing five resources Acts of Queensland, into one piece of legislation. The five Acts that will be consolidated are the *Mineral Resources Act 1989* (Qld), *Petroleum and Gas (Production and Safety) Act 2004* (Qld), *Petroleum Act 1923* (Qld), *Geothermal Energy Act 2010* (Qld) and the *Greenhouse Gas Storage Act 2009* (Qld).

This first Bill has also amended several resource and development Acts in different ways, which are covered throughout this report.

24.2.1. *Mining Lease Notification and Objection Initiative Discussion Paper*[662]

The *Mineral and Energy Resources (Common Provisions) Bill 2014 (Qld)* formally introduced the recommendations of the *Mining Lease Notification and Objection Initiative Discussion Paper*.

In relation to mining leases under the MRA, the discussion paper proposed: [663]

- Objections to mining activities will be limited to 'high-risk' projects (unless it is occurring on freehold land, in which case the landholder will be able to object to any resource activities)
- No public notification for low-risk mining activities (notification will be given to 'directly affected landholders' and councils)
- Removing the requirement to post a copy of the notice on the datum post
- Provide directly affected landholders and local government with a single copy of the Mining Lease tenure application;
- Refining the range of matters as presented under section 269(4) of the MRA that must currently be considered by the Land Court for a Mining Lease application under the MRA; and
- Allowing compensation to be agreed upon up to 3 months from the date of grant of a Mining Lease.

[661] *Regional Planning Interests Act 2014* (Qld) s 71.
[662] Department of Natural Resources and Mines, Mining lease notification and objection initiative discussion paper including regulatory assessment (Accessed 25/6/14) available at: http://mines.industry.qld.gov.au/assets/legislation-pdf/mining-lease-notification-and-objection-discussion-paper.pdf
[663] Department of Natural Resources and Mines, Mining lease notification and objection initiative discussion paper including regulatory assessment (Accessed 25/6/14) available at: http://mines.industry.qld.gov.au/assets/legislation-pdf/mining-lease-notification-and-objection-discussion-paper.pdf

In relation to the EP Act, the *Mining Lease Notification and Objection Initiative Discussion Paper*[664] released in March 2014 proposed to:

- Limit the right to make a submission on (and appeal against) an EA application to site-specific projects only;[665]
- Restrict public notification to mines that require a site-specific EA assessment;[666]
- Restrict public notification for these mines to either the EP Act or the MRA,[667] and;
- Remove the requirement to re-notify an EA application when an EIS has been conducted under the SDPWO Act.[668]

25. Environmental Protection Act 1994 (Qld)

25.1. Proposed Changes to the Environmental Protection Act 1994

25.1.1. *Mineral and Energy Resources (Common Provisions) Bill 2014 (Qld)*

This Bill seeks to amend the EP Act in regards to who can make an objection to the grant of an EA, when a standard EA will be granted, and the notification of mining lease applications. If the Bill is passed, a party will only be able to object to the granting of an EA for mines that require a site-specific EA assessment.[669] No objections could be made regarding standard application EAs.[670] Also, public notification of applications for mining leases will only be required for mines that require a site-specific EA assessment.[671]

The Minister would be obliged by law to grant a standard EA where the applicant fulfils the relevant criteria – there will no longer be discretion to grant an EA subject to conditions for such a project.[672] Where an objection is made against both an EA and a Mining Lease for the same project, the Land Court must make an order that both objections be heard at the same time.[673] Any native title issue conditions made for a Mining Lease under the MR Act will be invalid if they are inconsistent with an EA condition.[674]

If approved, these amendments would have the effect of preventing public notification and objections to approximately 90% of all mines in Queensland.[675] NRM groups and their stakeholders would be unable to provide DEHP with valuable information regarding proposed mines during an EIS process.

---

[664] Department of Natural Resources and Mines, Mining lease notification and objection initiative discussion paper including regulatory assessment (Accessed 25/6/14) available at: http://mines.industry.qld.gov.au/assets/legislation-pdf/mining-lease-notification-and-objection-discussion-paper.pdf
[665] DNRM *Mining Lease Notification and Objection Initiative Discussion Paper* Pg 20-21.
[666] DNRM *Mining Lease Notification and Objection Initiative Discussion* Pg 14.
[667] DNRM *Mining Lease Notification and Objection Initiative Discussion* Pg 14.
[668] DNRM *Mining Lease Notification and Objection Initiative Discussion* Pg 14.
[669] *Mineral and Energy Resources (Common Provisions) Bill 2014* (Qld) cl 258.
[670] *Mineral and Energy Resources (Common Provisions) Bill 2014* (Qld) cl 257.
[671] *Mineral and Energy Resources (Common Provisions) Bill 2014* (Qld) cl 245.
[672] *Mineral and Energy Resources (Common Provisions) Bill 2014* (Qld) cl 252.
[673] *Mineral and Energy Resources (Common Provisions) Bill 2014* (Qld) cl 260.
[674] *Mineral and Energy Resources (Common Provisions) Bill 2014* (Qld) cl 267.
[675] Department of Natural Resources and Mines, *Mining Lease Notification and Objection Initiative Discussion Paper* Page 7 (Accessed 28/6/14) available at: https://www.ehp.qld.gov.au/management/planning-guidelines/enforcement.html

Implications for NRM Groups

The withdrawal of public notification and objection rights from the Act means that local communities – including NRM groups and stakeholders – may not be made aware of proposed mining activities in their community. The proposed changes would also prevent objections being made on a variety of projects that affect the environment and the community. Often early submissions and objections to a proposal prevent problems later on in the life of the project. Limiting these rights may affect NRM groups' ability to have their say and add their local knowledge and expertise to the decision-making process.

25.1.2. *Environmental Offsets Act 2014 (Qld)*

The introduction of new legislation for offsets has changed the process for using and acquiring environmental offsets. Where an activity will have a 'significant residual impact' upon a 'prescribed environmental matter', an offset can be required. The offsets legislation is discussed in section 7 of this Guide.

25.1.3. *Point Source Water Emissions Market-Based Offset Program*[676]

This scheme allows holders of an EA for point source water emissions to reduce nutrients flowing into a catchment by either paying another entity to reduce their emissions, or establishing a program off-site to reduce emissions. For example, a sewage treatment plant can pay an agricultural operator to reduce its nutrient emissions to counterbalance an increase in the plant's nutrient emissions. Any proposed nutrient increase must not unacceptably impact the receiving waters, however.[677] It is important to note that the scheme pertains solely to nitrogen and phosphorous emissions.

The proponent must aim to offset an amount 1.5 times the increase in emissions they propose.[678] The reductions actions must also occur within the same catchment area, and preferably the same sub-catchment area, as the increase in emissions.[679] Baselines will need to be established for diffuse source nutrient reduction actions before emissions are increased. Whether or not a baseline study will need to be undertaken before or after the issuing of an EA is unclear.

Monitoring and reporting is also required by the proponent, and will be reviewed by the DEHP. It is unclear whether this data would be publicly available. Additionally, there is no clear guidance on the consequences when the required investment in offsetting fails to improve water quality.

[676] Department of Environmental and Heritage Protection, Flexible options for managing point source water emissions: A voluntary market-based mechanism for nutrient management (Accessed 15/6/14) Available at: http://www.ehp.qld.gov.au/water/monitoring/documents/market-based-nutrient-managment-pilot.pdf

[677] DEHP, Flexible options for managing point source water emissions: A voluntary market-based mechanism for nutrient management page 3 (Accessed 15/6/14) Available at: http://www.ehp.qld.gov.au/water/monitoring/documents/market-based-nutrient-managment-pilot.pdf

[678] DEHP, Flexible options for managing point source water emissions: A voluntary market-based mechanism for nutrient management page 4 (Accessed 15/6/14) Available at: http://www.ehp.qld.gov.au/water/monitoring/documents/market-based-nutrient-managment-pilot.pdf

[679] DEHP, Flexible options for managing point source water emissions: A voluntary market-based mechanism for nutrient management page 4 (Accessed 15/6/14) Available at: http://www.ehp.qld.gov.au/water/monitoring/documents/market-based-nutrient-managment-pilot.pdf

Implications for NRM Groups

The 1.5 times improvement does not appear mandatory and it raises the possibility of reducing the requirement upon better monitoring or greater scientific certainty. The potential for strong localised impacts does not appear to be assessed and incorporated under the scheme. This program allows a pay-to-pollute system in which water quality targets in NRM plans could be compromised. This program might present an opportunity for NRM groups to provide the 1.5 offset to reduce the emission of phosphorous and nitrogen into waterways.

25.1.4. *Financial Assurance likely to move to a pooled fund model*

Financial assurance is a condition of EAs and the EP Act, requiring mine operators to provide security to DEHP in the event that they cannot satisfy the liability for eventual mine rehabilitation. Proponents currently allocate 100% of the estimated rehabilitation cost to the government to hold as security,[680] but can qualify for a discount of up to 30%. The financial assurance system has been recently modified to allow proponents of mines to qualify for a discount on their liability for mine rehabilitation on the basis of financial performance only.[681]

The government is now proposing to move to a model of financial assurance whereby operators pay a yearly fee into a pooled fund, out of which money will be drawn to pay for sites which proponents fail to rehabilitate.[682] This is in contrast to the current system whereby mine operators need to provide some sort of security to DEHP for at least 70% of the mining rehabilitation costs (if an operator qualifies for the 30% discount).

25.1.5. *Uranium mining*

Queensland has had a ban on uranium mining for almost 20 years. In 2013, the Queensland Government announced it would be reversing its policy of no uranium mining and the Government's aim is to have a policy framework in place to assess uranium mining by July 2014.[683] If the proposed Queensland approval bilateral agreement comes into force in September 2014 as planned, Queensland will start approving uranium mining and other nuclear actions (such as transportation of uranium and nuclear waste). For more information about bilateral agreements, see section 13.3.2 of this Guide.

[680] *Environmental Protection Act 1994* (Qld) s292; Also see the Department of Environment and Heritage Protection, Guideline on Financial Assurance (Accessed 20/5/14) available at: http://www.ehp.qld.gov.au/management/non-mining/documents/fa-guideline.pdf
[681] Department of Environment and Heritage Protection, Guideline on Financial Assurance (Accessed 20/5/14) available at: http://www.ehp.qld.gov.au/management/non-mining/documents/fa-guideline.pdf
[682] Department of Environmental and Heritage Protection, Reforming the financial assurance system in Queensland (Accessed 25/5/14) available at: http://www.ehp.qld.gov.au/management/non-mining/documents/financial-assurance-reform.pdf
[683] Queensland Government, 2013, *An action plan to recommence uranium mining in Queensland – Delivering a best practice framework*, available here: http://mines.industry.qld.gov.au/assets/Uranium-mining/uranium-action-plan.pdf at 1 (accessed 24 May 2014).

25.2. Recent Changes to the Environmental Protection Act 1994

The EP Act was most recently changed by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* (Qld), the *Mining and Other Legislation Amendment Act 2013*, and the *Economic Development Act 2012* (Qld).

25.2.1. *Standard conditions easier to obtain*

The *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* introduced standard conditions for eligible ERAs in order to simplify the application process for proponents when applying for EAs. Proponents can also apply to have those standard conditions varied.[684] If the ERA is not eligible for standard conditions, proponents must undergo a 'site-specific' assessment. Eligible ERAs are defined by the scale of the activity and resulting production, and include[685] intensive feed-lotting, keeping pig units, poultry farming, chemical production, and mineral extraction and Processing. An agricultural ERA which fits the standard conditions does not require an EA.[686]

Implications for NRM Groups

Standard conditions mean NRM groups will need to approach EA holders to voluntarily reduce impacts, in order to reach goals and targets. If a standard condition authority is continually affecting NRM group work, then it would be best to approach the government to change the standard conditions and/or the eligibility criteria.

25.2.2. *Specific low risk mining activities no longer require EAs*

The *Mining and Other Legislation Amendment Act 2013* (Qld) removed the requirement for low-risk mineral exploration activities and low-risk opal and gemstone mining activities operating on a mining claim to hold an EA.[687]

25.2.3. *Temporary Emissions Licences to allow a range of emissions*

The *Economic Development Act 2012* (Qld) introduced the concept of Temporary Emissions Licences (**TELs**). Previously under the EP Act, directions were given to EA holders for emergency circumstances where there was a threat of 'imminent risk to the environment, property, human health or safety'.[688] TELs have a much broader usage in 'applicable events', which are defined as 'an event, or series of events, either natural or caused by sabotage, that was not foreseen when

[684] *Environmental Protection Act 1994* (Qld) s 123.
[685] *Environmental Protection Act 1994* (Qld) s 9 allows ERAs to be prescribed by regulation.
[686] *Environmental Protection Act 1994* (Qld) s 426(2)(a).
[687] *Environmental Protection Act 1994* (Qld) s 426(2)(b).
[688] *Queensland Floods Commission of Inquiry Report 2012*, Ch 13.6.2.

particular conditions were imposed on an environmental authority'.[689] In granting a TEL, the Department must have regard to:[690]

- Economic impacts of granting or not granting the TEL;
- The likelihood of the emergent event and under what circumstances the TEL can be used;
- The characteristics of the receiving environment;
- The likelihood of environmental harm;
- The potential impacts on personal health and safety;
- Cumulative impacts; and
- Public interest.

TEL applications must be decided in 24 hours[691] and there is no requirement under the Act for public notice of TEL applications. This means that contaminants can be released into the environment in response to an event without informing the public of the imminent release of contaminants. The commonly used example of a use for a TEL is the release of water from a dam on a mining site during heavy rain periods, to reduce the likelihood of the dam failing.

Implications for NRM Groups

TELs can authorise abnormally high releases of contaminants from waste facilities, mining activities or sewerage treatment plants. Such events may need to be factored into NRM plans. For example, NRM groups may wish to consider whether their assets and targets are resilient to such events. There is also the possibility of working with operators, as discussed above, to save them money and reduce the number of releases under TELs.

Example: TELs

Ben is a Traditional Owner who enjoys fishing from the waterways near his home. He is aware of a mining operation upstream from his favourite fishing spot, run by *E-Mit Pty Ltd*. There is a series of extreme weather events that put the mine's dam at risk from overflowing. *E-Mit* is successful in their application for a TEL and release contaminated water as a preventative measure.

The next day Ben goes fishing and consumes his catch with his family. He later finds out, in the local newspaper, that the water may have had contaminants in it due to the releases. Ben is concerned that the fish he caught for his family may have also been contaminated.

What can Ben do?

Ben should pursue an informal request of information from the DEHP. Under the EP Act, DEHP must keep a public register of information, including TELs.[692] Ben can make a request to DEHP to be

[689] *Environmental Protection Act 1994* (Qld) s 357A.
[690] *Environmental Protection Act 1994* (Qld) s 357D.
[691] *Environmental Protection Act 1994* (Qld) s 357C.
[692] *Environmental Protection Act 1994* (Qld) s 540(ea).

allowed to inspect *E-Mit*'s TEL. The inspection may involve visiting DEHP's offices. For more information on how to access public information, see FAQ 28.1 at the end of this Guide.

Possible Challenges & Opportunities for NRM groups:

NRM groups have the opportunity here to help operators in their region formulate strategies to avoid the use of a TEL, or perhaps limit their use. This would help companies save money, as the registration fee is currently $2,200, and could help keep regional values and targets on track.

25.3. Key Features of the Environmental Protection Act 1994

The EP Act seeks to protect the environment and facilitate Environmentally Sustainable Development (**ESD**).

25.3.1. *Environmental Authorities and Environmentally Relevant Activities*

The EP Act gives the power to designate certain activities as environmentally relevant activities (**ERAs**). Generally, these are activities that release a contaminant that may or will cause environmental harm.[693] Common examples of an ERA would be farming or mining. With some exceptions,[694] anyone who wants to undertake an ERA must apply for an environmental authority (**EA**) before they can start their activities. The EP Act also sets out a process for environmental impact assessment (**EIS**),[695] which often informs the contents of an EA.

Certain EA applications that accompany resource authorities must go through a public notification process. These are either applications for a standard, or varied EA.[696] Standard EAs are those that fit the standard criteria of an eligible ERA.[697] Varied EAs are those that seek to vary standard conditions of an eligible EA.[698] Site-specific EAs are for activities that are not governed by an eligible ERA.[699] Applications for an EA are now made to the State Assessment and Referral Agency (**SARA**), but are still assessed by the DEHP (For more information about SARA, see section 16.2.2 of this Guide). Currently, any person can make a submission in relation to these applications.[700]

25.3.2. *Water quality impacts from mining or gas operations*

Where mining or CSG operations require the release of water, this release is regulated by the EP Act. Non-emergency release of water is regulated under the conditions of individual EAs. For example, conditions on EAs for releasing CSG water may include limits on the location of discharge and quality of water including pH, the presence of oil and grease, and dissolved solids. The release of CSG water is generally allowed as long as it complies with conditions under the EA.

[693] *Environmental Protection Act 1994* (Qld) s 19.
[694] See *Environmental Protection Act 1994* (Qld) s 426. Agricultural ERAs, Small Scale mining activities and certain geothermal activities are exempt. Note, many activities require other approvals as well. Mining requires a 'tenure' under the *Mineral Resources Act 1989* (Qld), similarly CSG activities require a tenure under the *Petroleum and Gas (Production and Safety) Act 2004 (*Qld) in addition to an EA. There may be other permits required as well.
[695] See *Environmental Protection Act 1994* (Qld) Chapter 3. The purpose of the EIS and the EIS process are set out in the *Environmental Protection Act 1994* (Qld) s 40.
[696] *Environmental Protection Act 1994* (Qld) s 149.
[697] *Environmental Protection Act 1994* (Qld) s 122.
[698] *Environmental Protection Act 1994* (Qld) s 123.
[699] *Environmental Protection Act 1994* (Qld) s 124.
[700] *Environmental Protection Act 1994* (Qld) s 160.

Temporary Emissions Licences (**TELs**) can be granted for the release of water in unforeseen circumstances, for example in emergency flooding situations. For more information about TELs, see section 25.2.3 of this Guide.

The taking of water, including the quantity of water that can be taken, is regulated by the *Water Act 2000* (Qld). For more information about taking water, see section 3 of this Guide.

25.3.3. *Water quality in Great Barrier Reef catchments*

Chapter 4A of the EP Act seeks to facilitate the reduction of nutrient emissions into the GBR from agricultural runoff.[701] This chapter applies to cane-growers and cattle grazing over 2000ha in the Wet Tropics, Mackay-Whitsunday and Burdekin catchments.[702] Operators falling within that category must not apply more than the 'optimum amount' of fertilisers. The optimum amount is established using soil testing and by reference the *Environmental Protection Regulation 2008* (Qld).[703]

Whilst the scheme has managed to reduce nutrient emissions,[704] there is currently little enforcement due to lack of political will to regulate.[705] Also, data is also not being collected and the scheme is not on track to succeed. Improved enforcement is necessary, as well as the re-examination of the 'optimum amount' of fertiliser application, if the program is to succeed in its current form.

25.3.4. *Devolution to Local Government*

Under the *Environmental Protection Regulation 2008,* Local Governments have power over certain ERAs. The prescribed ERAs that councils can regulate are listed in the *Environmental Protection Regulation 2008*, and include, amongst other things, metal forming, and waste incineration.[706] The local council has the responsibility of receiving, processing, assessing and deciding applications. There are exceptions to this where the application is also for an ERA not on the list, if the applicant is a council or government department, or if the activity will be conducted across more than one council area. Some local governments are excluded from administering the ERAs, however.[707] Technical advice on the application will also come from the DEHP. The devolution of powers also covers the enforcement of certain offences such as environmental nuisance[708] and noise standards.[709]

25.3.5. *Relationship with Planning Legislation*

Environmental authorities are needed for activities deemed to be ERAs. The activity may also need a development approval under the SPA if it is a 'concurrent activity' as per the *Environmental Protection Regulation 2008* (Qld).[710] It is important to note that a development approval attaches to

[701] *Environmental Protection Act 1994* (Qld) s 74.
[702] *Environmental Protection Act 1994* (Qld) s 75.
[703] See *Environmental Protection Regulation 2008* (Qld) s22C
[704] See the Great Barrier Reef Report Card: http://www.reefplan.qld.gov.au/measuring-success/report-cards.asp
[705] See for example, the Queensland Environment Minister's media statement 19 November 2012, available here: http://statements.qld.gov.au/Statement/2012/11/19/newman-government-working-with-canegrowers-to-protect-the-great-barrier-reef
[706] *Environmental Protection Regulation 2008* (Qld) s 101 and Schedule 2.
[707] *Environmental Protection Regulation 2008* (Qld) s 101(2)and Schedule 8A.
[708] *Environmental Protection Regulation 2008* (Qld) s 98.
[709] *Environmental Protection Regulation 2008* (Qld) s 99.
[710] A concurrent activity is denoted in the *Environmental Protection Regulation 2008* (Qld) Schedule 2 by a 'C' in the right-hand column.

the land it is issued in regards to, whereas the environmental authority gives an operator permission to conduct certain activities. Examples include keeping more than 3500 pigs,[711] and receiving or storing regulated waste.[712] When an application under the SPA is made for certain concurrent activities, it will be deemed to be an application for an environmental authority under the EP Act.[713] This means that only one application will be made for both the development approval and environmental authority.[714]

Where an environmental authority is amended under the EP Act, an amendment to the development approval will only be required if the change is for:

- The start of a new use of the premises; or
- The re-establishment on the premises of a use that has been abandoned; or
- A material increase in the intensity or scale of the use of the premises.

The Minister has powers under SPA[715] to resolve conflicting conditions between the two.

25.4. Enforcement and Monitoring by the Department of Environment and Heritage Protection

25.4.1. *Enforcement and Monitoring*

DEHP indicates that it undertakes proactive compliance checks, as well as reactive checks in response to public information.[716] Enforcement is reported annually in an end of year report.[717] Enforcement throughout the year is shaped by an annual compliance plan. The number of infringements, inspections, and the consequent revenue are all publicly reported and available online in the reports.[718]

DEHP has a wide discretion in how they respond to a breach of a law. Often the response is in the form of a fine (called a 'Penalty Infringement Notice') or an order to clean up and comply, rather than a court action seeking a criminal prosecution. The enforcement guidelines stipulate that action will be proportionate to the breach. Injunctions can be brought under the Act by affected persons, to restrain an environmental offence under the Act.[719] A person will have to show their interests are above those of the public to be an 'affected person'. There are also circumstances in which a person acting in the public interest can seek the court's permission to bring the injunction.[720]

[711] *Environmental Protection Regulation 2008* (Qld) Sch 2 Pt 1 s 4
[712] *Environmental Protection Regulation 2008* (Qld) Sch 2 Pt 12 s 5(3)
[713] *Environmental Protection Act 1994* (Qld) s 115.
[714] *Environmental Protection Act 1994* (Qld) s 120(1) stipulates an application for an environmental authority cannot be made if an application for a development permit or approval under the *Sustainable planning Act 2008* (Qld) has already been made.
[715] Sustainable Planning Act 2009 (Qld) s 420.
[716] Department of Environment and Heritage Protection, Enforcement (Accessed 28/6/14) available at: https://www.ehp.qld.gov.au/management/planning-guidelines/enforcement.html
[717] Reports available from Department of Environment and Heritage Protection, Enforcement (Accessed 28/6/14) available at: https://www.ehp.qld.gov.au/management/planning-guidelines/enforcement.html
[718] Department of Environment and Heritage Protection, Enforcement (Accessed 28/6/14) available at: https://www.ehp.qld.gov.au/management/planning-guidelines/enforcement.html
[719] *Environmental Protection Act 1994* (Qld) s 505.
[720] *Environmental Protection Act 1994* (Qld) s 505.

25.4.2. *Monitoring Requirements*

Proponents of projects will often have monitoring requirements imposed on them, in order to monitor the impacts of their activities. For example, if a condition states a pollutant must not exceed 500ppm, then there will usually be another condition stipulating how that pollutant is to be measured in the surrounding environment.[721]

25.4.3. *Data*

Under the EP Act, the DEHP Protection must keep a public register, which includes environmental authorities, submitted plans of operation, and EISs. Some environmental authorities can be found online and are searchable by permit number, local government area and permit type. [722] Inquiries to the DEHP are required to access other authorities. Data from the proponents in respect of monitoring are not available publicly. Some areas of data from the DEHP are available online, however, and include air, water and coal dust information.[723] The data is by no means comprehensive, and may miss pollution from particular operators. This represents a gap in available knowledge for NRM groups, who could utilise the data for on the ground work.

For more information on how to access public information, see FAQ 28.1 at the end of this Guide.

26. Mineral Resources Act 1989 (Qld)

26.1. Proposed changes to the Mineral Resources Act

26.1.1. *Mineral and Energy Resources (Common Provisions) Bill 2014 (Qld)*

This Bill was foreshadowed by the *Mining Lease Notification and Objection Initiative Discussion Paper*.[724] This Bill proposes to amend mining lease applicant's obligations, objections to mining leases and grounds for objections to a mining lease. When a mining lease is granted, the area it is granted over will no longer be required to correlate to the area under an exploration or prospecting permit.[725] A mining lease applicant will no longer have to place a certificate of public notice on a 'datum' post upon the mining tenure,[726] nor will they require written consent to enter restricted lands.[727]

Currently anyone can object to the grant of a mining lease,[728] but under this Act such a right would be limited to 'affected persons'.[729] Affected persons are proposed to be defined as the owner of land subject to the lease, the owner of land necessary for access to land subject to the lease, and the

[721] For example, see the Department of Environment and Heritage Protection, Model Mining Code (Accessed 25/6/14) available at: http://www.ehp.qld.gov.au/land/mining/pdf/model-mining-conditions-em944.pdf
[722] Department of Environment and Heritage Protection, Environmental Authorities (Accessed 28/6/14) available at: http://www.ehp.qld.gov.au/management/env-authorities/
[723] Department of Environment and Heritage Protection, Monitoring (Accessed 28/6/14) available at: https://www.ehp.qld.gov.au/management/monitoring.html
[724] Department of Natural Resources and Mines, Mining Lease Notification and Objection Discussion Paper (Accessed 1/7/14) available at: http://mines.industry.qld.gov.au/assets/legislation-pdf/mining-lease-notification-and-objection-discussion-paper.pdf
[725] *Mineral and Energy Resources (Common Provisions) Bill 2014* (Qld) cl 393, 396.
[726] *Mineral and Energy Resources (Common Provisions) Bill 2014* (Qld) cl 418.
[727] *Mineral and Energy Resources (Common Provisions) Bill 2014* (Qld) cl 391.
[728] *Mineral Resources Act 1989* (Qld) s 260.
[729] *Mineral and Energy Resources (Common Provisions) Bill 2014* (Qld) cl 420.

local government council.[730] Objections to the Land Court have also been limited to mining leases that require site-specific assessment of the environmental authority[731] – even landholders cannot object where a mining lease is a low-risk operation. Upon objecting to a site-specific mining lease, the Land Court would no longer consider whether 'there will be any adverse environmental impact caused by those operations and, if so, the extent thereof', but rather whether the 'proposed mining operations are an appropriate land use' and 'the proposed mining operations will conform with sound land use management'.[732]

Certain considerations for granting a mining lease will now be considered by the Minister, rather than the Land court. These include whether:[733]

- Whether the applicant has the necessary financial and technical capabilities to carry on mining operations under the proposed mining lease; and
- Whether the past performance of the applicant has been satisfactory; and
- Whether any disadvantage may result to the rights of—
    - holders of existing exploration permits or mineral development licences; or
    - existing applicants for exploration permits or mineral development licences; and
- Whether the public right and interest will be prejudiced.

Implications for NRM Groups

The implications of this Bill are discussed at section 25.1.1.

26.2. Recent changes to the Mineral Resources Act

26.2.1. *Small scale mining no longer requires an EA*

An EA is no longer required for small scale mining of precious minerals such as quartz, opals, and gemstones.[734] Miners must obtain a Mining Claim under the *Mineral Resources Act 1989* (Qld) (**MRA**) in order to remove the need for an EA. Mining Claims for small scale mines now come with a set of standard conditions and eligibility criteria, which the miner must comply with.

Example: Small Mining Claims

Blake owns a 60ha property running cattle. A small mining company begins to take interest in land surrounding and on his property. One company, First In Pty Ltd, starts up a small operation extracting opals and quartz using machinery. They qualify as a small scale mining claim and therefore

[730] *Mineral and Energy Resources (Common Provisions) Bill 2014* (Qld) cl 420.
[731] *Mineral and Energy Resources (Common Provisions) Bill 2014* (Qld) cl 421. See above at 25.1.1. regarding the requirement for site-specific EA assessment.
[732] *Mineral and Energy Resources (Common Provisions) Bill 2014* (Qld) cl 423
[733] *Mineral and Energy Resources (Common Provisions) Bill 2014* (Qld) cl 423, 424
[734] Mining and Other Legislation Amendment Act

do not need an EA under the EP Act. They are governed solely by the standard conditions of the Small Scale Mining Code.[735]

First In Pty Ltd decide to apply for a second mine after the success of the first one. The cumulative impact of the mines starts to affect the quality of the water Blake relies upon for his cattle and domestic use. An EA with unique conditions could impose water quality standards on the mines to prevent the degradation of water values.

Blake can only object to the mining claim, and not an environmental authority. As such, he is limited in what issues he can raise.[736] He is restricted to 'good reasons', 'public interest' and non-compliance with the Act. It is unclear whether cumulative impacts will be a 'good reason' for rejecting a mining claim.

Challenges and Opportunities

NRM groups could engage directly with small scale miners if their operations affect targets such as water quality and vegetation cover. The impacts for small mines could probably be manageable with simple changes. If a proponent's activities appear within the code, but still are impacting upon NRM goals, groups could either try to work on the ground with the operator, or write to the Minister asking for a change in the code.[737]

Implications for NRM Groups

The removal of the need for an environmental authority for small scale mining activities could threaten targets of NRM groups, as the cumulative impacts (or even small releases) of contaminants could impact on NRM plan targets such as those relating to vegetation cover, biodiversity, soil contamination and water quality.

26.3. Key features of the Mineral Resources Act 1989

With a few rare exceptions, most of Queensland's minerals are owned by the Queensland government.[738] The MRA is the primary Act governing mining in Queensland. To conduct mining operations in Queensland, a person must first obtain a 'tenure', which comes in five forms: Prospecting Permit; Exploration Permit; Mineral Development Licence; Mining claim; or a Mining Lease. Mining Claims usually deal with precious minerals other than coal,[739] and can be objected to by landholders.[740] There are no opportunities to object to prospecting permits, exploration permits or mineral development licenses, however. The most common of the five are mining leases (**ML**).

[735] Department of Natural Resources and Mines, Small Scale Mining Code (Accessed 25/6/14) available at: http://mines.industry.qld.gov.au/assets/mines/small-scale-mining-code.pdf
[736] *Mineral Resources Act 1989* (Qld) s 78(2).
[737] Queensland Government, Minister for Environment and Heritage Protection (Accessed 1/7/14) available at: http://www.qgd.qld.gov.au/env-minister.html
[738] *Mineral Resources Act 1989* (Qld) s 8.
[739] *Mineral Resources Act 1989* (Qld) s 52.
[740] *Mineral Resources Act 1989* (Qld) s 71.

Applications for a ML must be publicly notified.[741] Currently, anyone (affected landholders and members of the public) can lodge a submission and an objection to an application for a mining lease.[742] As with mining claims, any 'properly made' objection to the mining lease will be automatically referred to the Land Court for a hearing.[743] Objections to MLs should focus on the size, shape, duration, intensity and location of a proposed mine, over environmental concerns.[744] Objectors to a mining lease are notified once the application is decided. The objection will then be automatically referred to the Land Court for hearing along with any other objectors.[745]

For landholders, councils, and community groups, it is important to be aware of relevant applications and timelines for lodging objections. Failure to lodge submissions on an EIS or ML in time may result in the decision makers not having sufficient information on the impacts of the mining activities.

26.3.1. *Enforcement*

A person cannot conduct mining activities without authorisation.[746] The enforcement of mining leases and other permits allowing parties to conduct activities is the responsibility of DNRM.

26.3.2. *Mineral Resources Data*

The DNRM website provides a link to an interactive map program covering the whole of Queensland.[747] It can be used to view exploration permits, production permits (i.e. a mining lease), infrastructure permits, borehole positions, and many other layers of data. The information can be added or taken away as a layer over the map of Queensland.

For more information on how to access public information, see FAQ 28.1 at the end of this Guide.

27. Petroleum and Gas (Production and Safety) Act 2004 (Qld)

27.1. Recent Changes to the P&G Act

27.1.1. *CSG Bores and Water Changes*

Recent changes[748] have removed the need for a water license to use produced water[749] obtained through activities conducted under an EA, such as coal seam gas (**CSG**) activities. The water can now be given over to landholders from operators, and used for any suitable purpose. For example, agricultural purposes are a prescribed beneficial use under the Act.

[741] *Mineral Resources Act 1989* (Qld) s 252B(4).
[742] *Mineral Resources Act 1989* (Qld) s 260(1).
[743] *Mineral Resources Act 1989* (Qld) s 265.
[744] The list of factors the Court will consider are found in section 269(4) of the *Mineral Resources Act 1989* (Qld). Environmental Objections are dealt with under the *Environmental Protection Act 1994* (Qld) as objections to EAs.
[745] *Mineral Resources Act 1989* (Qld) s 265.
[746] *Mineral Resources Act 1989* (Qld) s 402.
[747] See Department of Natural Resources and Mines, Interactive Resource Tenure Maps (Accessed 1/7/14) available at: http://mines.industry.qld.gov.au/geoscience/interactive-resource-tenure-maps.htm
[748] *Land, Water, and Other Legislation Amendment Act 2013* (Qld).
[749] *Petroleum and Gas (Production and Safety) Act 2004* (Qld) s 15A.

The procedures for converting petroleum or water observation bores to a water supply bore have also been simplified. If the water bore has been drilled in accordance with the regulations,[750] and notice has been given to the DNRM,[751] it can be converted.[752] It must be converted in accordance with the construction and abandonment code.[753] It can also be decommissioned by an operator in accordance with the regulations.[754]

27.1.2. *Re-use of waste CSG water*

The *Waste Reduction and Recycling Act 2011* (Qld) promotes efficient use of waste that can be re-used as a resource. 'Associated water' – water pumped from coal seams through the CSG process – can be approved for a 'beneficial use' (i.e. re-use rather than disposal as waste) under a general approval, which is a document that sets out conditions for the management of such water.[755] Under general approvals, individual CSG operators do not require a specific approval for the beneficial use of water as long as the general approval conditions and the *CSG Water Management Policy 2012*[756]are complied with. In this way, general approvals operate like codes for compliance. CSG operators must give notice to the administering authority, including the contact details of the producer and the user, a statement of intention to operate under the general approval, and the destination of the water by real property description. All general approvals are required to be published on the DEHP's website.[757] Two new general approvals exist for the use of associated water in irrigation,[758] and use of associated water in a range of circumstances including aquaculture, coal washing and dust suppression, industrial operations and land management.[759] The previous *CSG Water Management Policy 2010*[760] has been replaced by the new *CSG Water Management Policy 2012.*[761]

Example: CSG Water Monitoring Bores

Lucy owns a cattle grazing property which has had gas exploration bores dug upon it. At the end of the exploration, the company, *CSG Pty Ltd*, decides not to pursue CSG mining on Lucy's land. The

[750] Petroleum and Gas (Production and Safety) Regulation 2004 s 19.
[751] *Petroleum and Gas (Production and Safety) Act 2004* (Qld) s 283(1)(a)(ii).
[752] *Petroleum and Gas (Production and Safety) Act 2004* (Qld) s 283.
[753] *Petroleum and Gas (Production and Safety) Regulation 2004* s 52E(2); Department of Natural Resources and Mines, CSG Well Code of Practice (Accessed 1/7/14) Available at: http://mines.industry.qld.gov.au/assets/petroleum-pdf/code-of-practice-csg-wells-and-bores.pdf
[754] *Petroleum and Gas (Production and Safety) Act 2004* (Qld) s 292.
[755] *Waste Reduction and Recycling Act 2011* s 163.
[756] Department of Environment and Heritage Protection, CSG Water Management Policy (Accessed 24/6/2014) available at: https://www.ehp.qld.gov.au/management/non-mining/documents/csg-water-management-policy.pdf .
[757] *Waste Reduction and Recycling Act 2011* s 165(2).
[758] Department of Environment and Heritage Protection, General Beneficial Use Approval— Irrigation of Associated Water (including coal seam gas water, (Accessed 28/6/14) available at: https://www.ehp.qld.gov.au/management/non-mining/documents/general-bua-irrigation-of-associated-water.pdf.
[759] Department of Environment and Heritage Protection, General beneficial use approval Associated water (including coal seam gas water), (Accessed 28/6/14) available at: https://www.ehp.qld.gov.au/management/non-mining/documents/general-bua.pdf
[760] Department of Environment and Resource Management, CSG Water Management Policy (Accessed 2/7/14) available at: http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2010/5310T2426.pdf.
[761] Department of Environment and Heritage Protection, CSG Water Management Policy (Accessed 24/6/2014) available at: https://www.ehp.qld.gov.au/management/non-mining/documents/csg-water-management-policy.pdf.

bores that were being used by the company for petroleum and monitoring purposes are therefore transferred back to Lucy under their Land Access Agreement. The process is now quicker, as a 'licensed water bore driller' is not required to make the conversion. Instead, *CSG Pty Ltd* can undertake the conversion in accordance with the regulations and notify the regulator.

Possible Challenges & Opportunities for NRM groups:
Landholders will now have easier access to existing water bores on their property. Previously, if a company did not undertake a conversion to a water observation bore to a water supply bore, then landholders may have been left with the structure on their property, without being able to legally use it. This can prevent landholders from having to dig more bores if they need to do so in the future, as well as save them the expense of having to do so.

Example: Beneficial Use of CSG Water

Bob operates a large scale agriculture business and has had some CSG exploration and extraction on his land. He wishes to use the water extracted during the CSG operations for his business. Under the recent changes, Bob can now use the water without obtaining a water licence under the *Water Act 2000* (Qld). CSG Pty Ltd can now use the associated water for any purpose,[762] and therefore can give Bob. In using the water for beneficial uses, CSG Pty Ltd must ensure it complies with the general beneficial use water guidelines.[763]

If the water has a pH below 6 or above 10.5, with an electrical conductivity greater than 15,000 µS/cm, it will still be regulated waste (See section 27.4.1), however, and require additional approvals for its transport and storage. [764]

Possible Challenges & Opportunities for NRM groups:

Removing the requirement for a water licence to dispose of this water may help NRM groups to more easily achieve targets surrounding water quality and efficiency. The water could help supplement watercourses which have a heavy demand from irrigation, and even allow agricultural users to take less water directly from watercourses. Use of water must still comply with the DEHP policies and standards.[765]

Implications for NRM groups

These changes alter the way in which water from CSG operations is dealt with in Queensland. The changes have aimed to simplify the process in order for people to access more water for beneficial use. Depending on the process used and the quality of the water, waste water from CSG activities

[762] *Petroleum and Gas (Production and Safety) Act 2004* (Qld) s 185(5).
[763] Department of Environment and Heritage Protection, General Beneficial Use Guidelines (Accessed 1/7/14) available at: http://www.ehp.qld.gov.au/management/non-mining/documents/general-bua.pdf
[764] Environmental Protection Regulation 2008 Sch 7 Part 2.
[765] For more information consult Department of Environment and Heritage Protection, CSG Water (Accessed 1/7/14) available at: http://www.ehp.qld.gov.au/management/non-mining/csg-water.html

can be used in a range of activities, including irrigation, dust suppression, and supplementation of water systems. NRM groups are well positioned to obtain the water to improve waterway health, or coordinate producers with users. This could decrease the water use burden on existing waterways.

The beneficial use of water is, however, surrounded by a degree of scientific uncertainty. The guidelines only address pH and total dissolved solids, rather than the actual nature of components in the water.[766] If NRM groups could work with operators and users, they may be able to fill the regulatory gap in maintaining or improving water quality.

27.2. Key features of the P&G Act

Under the *Petroleum and Gas (Production and Safety) Act 2004* (Qld) (**P&G Act**), which is the primary Act dealing with CSG in Queensland:

- CSG is defined as *petroleum*,[767] which is deemed as property of the State,[768]
- A gas company requires a *petroleum authority*[769] to access private land[770] and conduct *authorised activities*[771] on *authorised areas*[772]
- Authorised gas companies must compensate for their activities and access to land.[773]

CSG activities are split into 'preliminary' and 'advanced'.[774] *Preliminary* activities are meant to have little impact on the land and its use.[775] *Advanced* activities require a Conduct and Compensation Agreement (**CCA**) before any work can be undertaken.[776]

A landholder and gas company must negotiate a CCA. If negotiation initially fails after 20 days, either party can seek a conference or other alternative dispute resolution mechanism.[777] If this fails, the matter can be referred to the Land Court to assess compensation.[778]

[766] These concerns have been raised by the Queensland Murray Darling Committee I their Comments on the Draft General Beneficial Use Approval Associated water (including coal seam gas water) submission (Accessed 2/7/14) available at: http://www.qmdc.org.au/publications/download/1888/policy-submissions-1/qmdc_comments_draft-general-beneficial-use-approval-associated-water-including-coal-seam-gas-.pdf

[767] *Petroleum and Gas (Production and Safety) Act 2004* (Qld) ss 10, 299.

[768] *Petroleum and Gas (Production and Safety) Act 2004* (Qld) s 26(2).

[769] *Petroleum and Gas (Production and Safety) Act 2004* (Qld) s 18(2).

[770] *Petroleum and Gas (Production and Safety) Act 2004* (Qld) s 502(3).

[771] *Petroleum and Gas (Production and Safety) Act 2004* (Qld) s 22.

[772] *Petroleum and Gas (Production and Safety) Act 2004* (Qld) ch 5 pt 2 div 1.

[773] *Petroleum and Gas (Production and Safety) Act 2004* (Qld) s 532(1).

[774] *Petroleum and Gas (Production and Safety) Act 2004* (Qld)sch 2.

[775] Defined in *Petroleum and Gas (Production and Safety) Act 2004* (Qld)sch 2

[776] *Petroleum and Gas (Production and Safety) Act 2004* (Qld) s 500(1).

[777] *Petroleum and Gas (Production and Safety) Act 2004* (Qld)ch 5 pt 5 div 1 subdiv 4.

[778] A referral must occur within 50 days under the Act, see: *Petroleum and Gas (Production and Safety) Act 2004* (Qld)ch 5 pt 5 div 1 subdiv 4-6

27.3. Enforcement

The DNRM investigates and enforces licensing requirements and current laws and policies related to the P&G Act through its CSG Compliance Unit. The unit works in conjunction with other departments such as the DEHP and GasFields Commission Queensland. The unit's role includes:

- Responding to safety, land access and environmental concerns
- Informing, educating and listening to landholder and community concerns
- Monitoring compliance relating to CSG activities
- Managing and investigating complaints
- Inspecting sites where CSG activities are conducted
- Coordinating CSG Net where landholders monitor their own bores on monthly basis and load this data into the department's groundwater monitoring database for analysis
- Verify the monitoring data that is being supplied by CSG companies and cross reference it with landholder bore monitoring data.

27.4. Legislative Interactions

27.4.1. *Interaction with Environmental Protection Act 1994*

Associated water is regulated waste where it has a pH of below 6 or above 10.5, and an electrical conductivity greater than 15,000 µS/cm.[779] Regulated waste requires additional tracking, transport, and disposal requirements under an EA.[780] Users must also comply with their general duty not to harm the environmental under the EP Act.[781]

27.4.2. *Interaction with Waste Reduction and Recycling Act 2011*

The *Waste Reduction and Recycling Act 2011* (Qld) promotes efficient use of waste that can be re-used as a resource. Associated water from CSG activities, which would otherwise be regulated as waste under the EP Act, can instead be appropriated for a 'beneficial use' under the *Waste Reduction and Recycling Act* and related policies. For more information about re-use of associated water from CSG activities, see section 27.1.2 of this Guide.

27.5. CSG Water Usage Data

Associated water taken during CSG activities is required to be recorded by the operator of the CSG extraction, and reported by amount, date and location.[782] This information is required to be given to the DNRM, however it is not publicly available. Requests for the information could be made on an informal basis to the department. This presents a major hurdle for NRM groups wishing to assess how much groundwater is taken in their area in the course of CSG operations.

For more information on how to access public information, see FAQ 28.1 at the end of this Guide.

[779] Environmental Protection Regulation 2008 Sch 7 Part 2.
[780] Environmental Protection Regulation 2008 ss 55-58.
[781] *Environmental Protection Act 1994* (Qld) s 319.
[782] *Petroleum and Gas (Production and Safety) Act 2004* (Qld) s 801(2)(f).

Access to Information and Responsible Departments

28. How can NRM groups access information?

28.1. *Public Information*

28.1.1. *How do I access documents and information about licences, applications, etc.?*

Sometimes, information and documents relating to the administration of legislation are available on the website of the government department that administers the particular legislation. Types of information that may be available include information about licences and authorities granted, applications for authorities made, and plans made under legislation.

The relevant department's website is usually the first place to look for information. However, not all information is available online. If the information sought cannot be found on the department's website, a phone call to the department may assist in locating the information. It may be available in hardcopy via a public register, to be inspected at departmental offices or via the Right to Information process.

28.1.2. *Accessing information held in a department's public register*

Some information in public registers is available online on departments' websites, while other information may be available only in hardcopy, or after making an online request through a department's website. Searching a public register may involve the payment of a fee.

The following are some commonly-sought types of public information that are required to be kept for inspection by the public:

- If the information sought relates to resource tenures, it is likely that DNRM will hold it. DNRM is required to keep information relating to all tenures in Queensland (mining leases, petroleum leases and all exploration licences). DNRM is moving towards an online database of information where anyone can access a summary of a tenure as well as search an interactive map for the location of major mines, exploration licences, pipelines, petroleum facilities and other important areas. For example, DNRM's website publishes maps and information about current mining and energy projects.[783]
- If the information sought relates to environmental impacts or ongoing operating conditions of resource projects, it is likely that DEHP will hold it. DEHP manages a number of public

[783] Department of Natural Resources and Mines, Maps, Data, Statistics and Publications (Accessed 8/7/2014) http://mines.industry.qld.gov.au/mining/maps-data-statistics-publications.htm.

registers, some of which can be accessed online, while others are available for inspection in hardcopy at departmental offices.[784] A public register of some environmental authorities is available on its website.[785] Other data required to be kept in DEHP's public registers, but which may not be available online, includes environmental authorities, data about monitoring programs carried out under the EP Act or an EA, temporary emissions licences, and EISs and their terms of reference.[786]

- Documentation relating to development applications, assessment and approvals is required to be kept by DSDIP or local councils assessing the applications.[787]
- There will be a new public register for environmental offsets, with DEHP and local governments each required to administer their own register.[788] For more information about this register, see section 7.2.9 of this Guide.
- See section 3.3.6 of this Guide about the Water allocation register.

28.1.3. *Right to Information*

NOTE: See sections 28.1 and 28.1.2 of this Guide – do not lodge a Right to Information (RTI) request unless you first informally ask for the document you need and unless you have checked your rights under legislation to obtain a copy without going through RTI.

RTI is the Queensland equivalent of freedom of information (FOI) in other states and nationally.[789] RTI provides a right of public access, subject to certain exemptions, to information and documents held by government agencies.

Under the RTI, the public can access to documents held by Ministers, government departments, local governments, public authorities and some government owned corporations. Relevantly, this includes policy documents such as manuals, rules and guidelines that inform government decision making. There are, however, some documents which are exempt from RTI such as cabinet documents, information in contempt of Parliament or court, information subject to legal professional privilege, National or State security information, law enforcement or public safety information[790] or information that is contrary to the public interest.[791] RTI applications may be refused if documents requested are available under another Act, or through other public means.[792]

[784] DEHP's website has information about searching their registers: Department of Environment and Heritage Protection, Lists and registers (Accessed 8/7/14) available at: http://www.ehp.qld.gov.au/about/listsregisters/index.html.
[785] Department of Environment and Heritage Protection, Public register of environmental authorities, (Accessed 8/7/14) available at: http://www.ehp.qld.gov.au/management/env-authorities/index.php.
[786] For a full list of information required to be kept by DEHP and/or the Chief Executive, see sections 540 and 540A of the *Environmental Protection Act 1994* (Qld). For a list of information available on DEHP's website, see Department of Environment and Heritage Protection, Publication scheme, (Accessed 8/7/14) available at: http://www.ehp.qld.gov.au/about/rti/publicationscheme/index.html.
[787] *Sustainable Planning Act 2009* (Qld) ss 723-736. Local councils may publish information about development applications online, for example Brisbane City Council does this via their PD Online service: Brisbane City Council, Planning and Development Online (Accessed 8/7/14), http://pdonline.brisbane.qld.gov.au/MasterView/masterplan/enquirer/default.aspx.
[788] *Environmental Offsets Act 2014* (Qld) s 90.
[789] Relevant laws in Queensland are the *Right to Information Act 2009* (Qld), the *Information Privacy Act 2009* (Qld) and the Commonwealth *Freedom of Information Act 1982* (Cth).
[790] See the full list in Schedule 3 RTI Act. Schedule 1 also lists documents to which the RTI Act does not apply.
[791] *Right to Information Act 2009* (Qld) s 49.
[792] *Right to Information Act 2009* (Qld) ss 47, 53.

They may also be refused if the number and volume of documents requested and the difficulty associated in identifying them means that the request would substantially and unreasonably divert the resources of the agency or interfere with the performance of the Minister's functions.[793]

If you decide to put in an RTI application, you should try to do so as early as possible. Under the *Right to Information Act* an agency has 25 business days (5 weeks) to make a decision, but there are situations that can extend this, such as if the agency has to consult with a third party.[794] If your application is refused and you appeal, further time will pass. This may be relevant if you are seeking documents to support a submission (for example under the SPA or EPA) which is due within a certain timeframe.

RTI requests must be lodged with the relevant government body or Minister holding the documents.[795] They must be made in writing, specify that they are made under the RTI Act, include the prescribed fee,[796] include an address for return mail, include enough information about the documents sought to enable the agency to identify them, and specify whether the information is sought on behalf of a third party.[797]

28.2. *Legislation and Keeping Track of Changes*

28.2.1. *Finding detailed information on the Acts that are relevant to their targets*

Other than this Guide, detailed information about Acts is most often available on the website of the government department that administers the particular Act. For a list of government departments that are relevant to environmental, planning and land law, and information on the Acts they administer, and their website addresses, see FAQ 28.3.

Contacting the relevant department informally, for example by phone, is another way to gain information about how a particular legal framework is administered. In particular, the following contact details[798] may be most relevant to NRM work:

For vegetation management
Department of Natural Resources and Mines
Information: http://www.dnrm.qld.gov.au/land/vegetation-management
Contact details: http://www.dnrm.qld.gov.au/land/vegetation-management/vegetation-contacts

- Mackay: 07 4999 6835
- Rockhampton: 07 4837 3453
- Cairns: 07 4799 7126
- Mareeba: 07 4799 7126

[793] *Right to Information Act 2009* (Qld) s 41.
[794] *Right to Information Act 2009* (Qld) s 18.
[795] *Right to Information Act 2009* (Qld) s 24. You must submit a separate application to each agency or Minister you seek information from.
[796] The standard application fee is $38, but additional fees will apply for searching, making the decision, and providing copies of the requested documents. See *Right to Information Regulation 2009* (Qld) Regs 4-6.
[797] *Right to Information Act 2009* (Qld) s 24.
[798] Current as at 10/7/14.

- Townsville: 07 4799 7126
- Bundaberg: 07 4529 1391
- Charleville: 07 4529 1391
- Dalby: 07 4529 1391
- Gympie: 07 4529 1391
- Ipswich: 07 4529 1391
- Roma: 07 4529 1391
- Toowoomba: 07 4529 1391

For regional planning

Department of State Development, Infrastructure and Planning

Information on regional planning: http://www.dsdip.qld.gov.au/regional-planning/

Information on planning reform: http://www.dsdip.qld.gov.au/about-planning/

Information on development assessment: http://www.dsdip.qld.gov.au/development-applications/

Fact sheets: http://www.dsdip.qld.gov.au/fact-sheets-and-guidelines/resources/fact-sheets-and-guidelines.html

Contact details: http://www.dsdip.qld.gov.au/contact-us/

- Regional planning: 07 3227 8548
- Regional offices contacts: http://www.dsdip.qld.gov.au/contact-us/regional-contacts.html

For water resources

Department of Natural Resources and Mines

Information on catchments and resource planning: http://www.dnrm.qld.gov.au/water/catchments-planning

Information on *Water Act 2000* (Qld) reforms: http://www.dnrm.qld.gov.au/water/catchments-planning/water-reform

Contact details: http://www.dnrm.qld.gov.au/our-department/contact-us

- General Qld Gov line: 13 74 68
- CSG-LNG hotline: 13 25 23

28.2.2. *Keeping up to date about new policies, guidelines, Bills and Acts*

Any proposed changes to legislation are published on the Queensland Legislation website. The website publishes weekly[799] and cumulative[800] updates to legislation. There is also an email

[799] Queensland Government, Weekly update to legislation for 2014 (accessed 2 July 2014), https://www.legislation.qld.gov.au/Leg_Info/WeeklyUpdate.htm.

[800] Queensland Government, Cumulative update to legislation (accessed 2 July 2014), https://www.legislation.qld.gov.au/Leg_Info/current_annotations/00_Part_1_Update.pdf.

subscriber service, which sends weekly updates about any changed and new legislation.[801] Bills currently being considered by the Parliament are also listed on the website, by year.[802]

Changes to subordinate legislation, such as regulations, become public upon notification of the regulations on the Queensland Government's website.[803]

Whether changes to policy are publicly notified varies. There may, for example, be statutory requirements for public consultation on particular policies. Often, changes to policy are notified on the website of the government department that administers the policy.

28.3. *Queensland Department responsibilities and functions*

The following departments are relevant to environmental, planning and land law. Information about who administers which Acts, or parts of an Act, and department, can be found online in the Administrative Orders.[804]

Department	*Minister*	*Function*	*Relevant Acts Administered*
State Development, Infrastructure and Planning http://www.dsdip.qld.gov.au/	Deputy Premier Jeff Seeney MP	This department encourages economic development, oversees planning, and provide assistance to business.	*State Development and Public Works Organisation Act 1971* (Qld); *Sustainable Planning Act 2009* (Qld); *Regional Planning Interests Act 2014* (Qld);
Agriculture, Fisheries and Forestry	John McVeigh MP	This department conducts agricultural research and support, management of	*Biosecurity Act 2014* (Qld); *Fisheries Act 1994* (Qld);[805] Forestry Act 1959 (Qld);[806]

[801] Queensland Government, Automated weekly email notifications (accessed 2 July 2014), https://www.legislation.qld.gov.au/Core_pages/contact.htm#email.
[802] Queensland Government, Bills introduced into Parliament (accessed 2 July 2014), https://www.legislation.qld.gov.au/Bill_Pages/bills_home.htm.
[803] Queensland Government, Subordinate Legislation Notification (Accessed 26/6/14) available at: https://www.legislation.qld.gov.au/Leg_Info/weeklynotiflist.htm. The subordinate legislation itself can also be found on the website: Queensland Government, SL as made (accessed 2 July 2014), https://www.legislation.qld.gov.au/SL_AsMade/SL_AsMade.htm.
[804] See the Queensland Government, Administrative Orders (Accessed 1/7/14) available at: https://www.qld.gov.au/about/how-government-works/government-responsibilities/
[805] Except for Fish Habitat Areas which are administered with the Minister for National Parks, Recreation, Sport and Racing - See the Queensland Government, Administrative Arrangements Order No.1 of 2014 pages 16-17.
[806] Jointly administered with the Minister for National Parks, Recreation, Sport and Racing - See the Queensland Government, Administrative Arrangements Order No.1 of 2014 pages 16-17.

http://www.daff.gov.au/		biological risks and the allocation and monitoring of fish stocks.	*Nature Conservation Act 1992*.[807]
National Parks, Recreation, Sport and Racing http://www.nprsr.qld.gov.au/	Steve Dickson MP	This department manages the national parks in Queensland, encourages active lifestyle programs, and oversees the racing industry.	*Fisheries Act 1994* (Qld);[808] *Forestry Act 1959* (Qld);[809] *Nature Conservation Act 1992* (Qld);[810] *Marine Parks Act 2004* (Qld);
Aboriginal and Torres Strait Islander and Multicultural Affairs http://www.datsima.qld.gov.au/	Glen Elmes MP	This department manages Aboriginal and Torres Strait Islander policy and programs, as well as administering cultural diversity programs generally.	*Aboriginal Cultural Heritage Act 2003* (Qld);[811] *Aboriginal Land Act 1991* ; *Land Act 1994* (Qld);[812] *Torres Strait Islander Cultural Heritage Act 2003* (Qld)
Natural Resources and Mines http://www.dnrm.qld.gov.au/	Andrew Cripps MP	This department administers land, water, mining, and petroleum services. It also oversees mine health and safety.	*Land Act 1994* (Qld);[813] *Mineral Resources Act 1989* (Qld);[814] *Petroleum and Gas (Production and Safety) Act 2004* (Qld);[815] *Soil Conservation Act 1986* (Qld); *Vegetation*

[807] To the extent that it is relevant to demonstrated and exhibited native animals and the Act is jointly administered by the Minister for National Parks, Recreation, Sport and Racing and Minister for Environment and Heritage Protection - See the Queensland Government, Administrative Arrangements Order No.1 of 2014 pages 16-17.
[808] As it relates to Fish Habitat Areas - See the Queensland Government,. Administrative Arrangements Order No.1 of 2014 pages 23-24.
[809] Jointly administered with the Minister for Agriculture, Fisheries and Forestry - See the Queensland Government,. Administrative Arrangements Order No.1 of 2014 pages 23-24.
[810] To the extent that it is relevant to the management of the protected area estate and forest reserves, excluding Nature Refuges and the Act is jointly administered by the Minister for Agriculture, Fisheries and Forestry and Minister for Environment and Heritage Protection - See the Queensland Government,. Administrative Arrangements Order No.1 of 2014 pages 23-24.
[811] To the extent that it is relevant to the transfer of land as Aboriginal land prior to the dedication of national parks (Cape York Peninsula Aboriginal land) under the Nature Conservation Act 1992 and associated transfers of land as Aboriginal land - See the Queensland Government, Administrative Arrangements Order No.1 of 2014 page 24.
[812] To the extent that it is relevant to dealing with land associated with the dedication of national parks (Cape York Peninsula Aboriginal land) under the Nature Conservation Act 1992, associated transfers of land as Aboriginal land and actions agreed in Indigenous Land Use Agreements for those lands - See the Queensland Government, Administrative Arrangements Order No.1 of 2014 page 24.
[813] Except to the extent administered by the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs and Minister Assisting the Premier - See the Queensland Government, Administrative Arrangements Order No.1 of 2014 pages 18-21.
[814] Except to the extent administered by the Treasurer and Minister for Trade - See the Queensland Government, Administrative Arrangements Order No.1 of 2014 pages 18-21.
[815] Except to the extent administered by the Treasurer and Minister for Trade - See the Queensland Government, Administrative Arrangements Order No.1 of 2014 pages 18-21.

			Management Act 1999 (Qld); *Water Act 2000* (Qld)[816]
Environment and Heritage Protection	Andrew Powell MP	The department is responsible for environmental policy, planning, and regulation. It also identifies and conserves places of heritage importance.	*Environmental Offsets Act 2014* (Qld); *Environmental Protection Act 1994* (Qld); *Nature Conservation Act 1992* (Qld);[817] *Wild Rivers Act 2005* (Qld); *Waste Reduction and Recycling Act 2011* (Qld); Water Act 2000 (Qld);[818] *Wet Tropics World Heritage Protection and Management Act 1993* (Qld);

Ministerial and departmental information is available online.[819] Ministers change from time to time at the direction of the government. The information about which Minister administers which Acts is also available online.[820]

[816] Except to the extent administered by the Minister for Environment and Heritage Protection and the Minister for Energy and Water Supply) and Chapter 8 s. 999, Part 4A and Part 5 jointly administered with the Minister for Energy and Water Supply - See the Queensland Government, Administrative Arrangements Order No.1 of 2014 pages 18-21.
[817] Except to the extent that it is relevant to demonstrated and exhibited native animals and to the extent that it is relevant to the management of the protected area estate and forest reserves, not including nature refuges and this Act is jointly administered by the Minister for National Parks, Recreation, Sport and Racing and Minister for Agriculture, Fisheries and Forestry - See the Queensland Government, Administrative Arrangements Order No.1 of 2014 pages 18-21.
[818] Chapter 3 only - See the Queensland Government, Administrative Arrangements Order No.1 of 2014 pages 18-21.
[819] Queensland Government, Our Structure (Accessed 01/07/2014) available at: https://www.qld.gov.au/about/how-government-works/government-structure/
[820] See the Queensland Government, Administrative Arrangements Order No.1 of 2014 pages 18-21.

Frequently Asked Questions

1. Does legislation have to be reviewed or updated regularly?

In Queensland, there is no requirement for legislation to be regularly reviewed or updated. This means that once an Act is in force, it could stay that way indefinitely unless it is repealed.

Some legislation or sections of legislation have in-built review provisions, but this will vary Act by Act. For example, s 680ZI of the SPA requires that Chapter 8A of the Act be reviewed within three years of the commencement of that chapter.

In contrast to Acts, subordinate legislation (eg. a regulation) in Queensland expires on 1 September, ten years after the subordinate legislation was made. Note, however, that a regulation can be made to exempt subordinate legislation from this expiry date.

2. Can NRM targets be written in regulations?

There is no specific requirement for NRM targets to be written into regulations, although it is possible that regulations may reflect similar environmental goals as NRM groups. The content of regulations varies depending on the nature of the legislative framework (i.e. some regulations are administrative and do not involve management targets), and the policies of the Government in drafting legislation and regulations. Where applicable, NRM groups may wish to liaise with government departments to encourage NRM targets to be given regulatory force.

3. The legislation I'm looking at has the decision maker as the 'chief executive.' Who is the chief executive? Who is the Minister? How do I find out who the chief executive or Minister is?

The Queensland Government sets out all ministers, their responsibilities, the Acts they administer, and the departments they oversee, and who is in charge of the department. This information is available online.[821]The chief executive is the senior-most public servant responsible for a department, and is usually the 'Director-General' of a department. A reference to the 'Chief Executive' in legislation will be a reference to the 'Director-General' who heads the department administering the Act. There is a list of Director-Generals, and their contact details, online.[822]

The chief executive is not the Minister. The chief executive is appointed by government, as an employee. A Minister is appointed by the government of the day through formal conventions. Ministers often change due to political circumstances.

[821] See the Queensland Government, Administrative Orders (Accessed 1/7/14) available at: http://www.qld.gov.au/about/how-government-works/government-responsibilities/assets/administrative-arrangements-order-no-1-2014.pdf
[822] See the Queensland Government, Directors-General and Chief Executive Officers (Accessed 1/7/14) available at: http://www.qgd.qld.gov.au/directors_general.html

4. What are the 'principles of ecologically sustainable development (ESD)'?

ESD is often used in legislation in Australia, in the 'objects' section of the Act.[823] The principles of ESD include:

- Precautionary principle;
    - Threats of serious or irreversible environmental damage ad lack of full scientific certainty should not be a reason for postponing measures to protect the environment
- Intergenerational equity;
    - The present generation has a duty to ensure that future generations have the same health, diversity and productivity resulting from the environment as they do.
- Integration;
    - Decisions should incorporate long and short term economic growth, as well as social and environmental considerations
- Conservation of biological diversity;
    - Maintaining biodiversity should be a fundamental consideration in decision making

Statutory definitions differ, but generally include the above principles to some extent, both explicitly and implicitly.

5. What are matters of state environmental significance?

The State Planning Policy defines 'matters of state environmental significance'[824] as:

- protected areas (including all classes of protected area except coordinated conservation areas) under the Nature Conservation Act 1992
- marine parks and land within a 'marine national park',
- 'conservation park', 'scientific research', 'preservation' or 'buffer' zone under the Marine Parks Act 2004
- areas within declared fish habitat areas that are management A areas or management B areas under the Fisheries Regulation 2008
- threatened wildlife under the Nature Conservation Act 1992 and special least concern animal under the Nature Conservation (Wildlife) Regulation 2006
- regulated vegetation under the Vegetation Management Act 1999 that is:
- Category B areas on the regulated vegetation management map, that are 'endangered' or 'of concern' regional ecosystems
- Category C areas on the regulated vegetation management map that are 'endangered' or 'of concern' regional ecosystems
- Category R areas on the regulated vegetation management map
- areas of essential habitat on the essential habitat map for wildlife prescribed as 'endangered wildlife' or 'vulnerable wildlife' under the Nature Conservation Act 1992

[823] For example, it is included in the Environmental Protection Act 1994 (Qld) s 3 and the *Sustainable Planning Act 2009* (Qld) ss 3, 8
[824] State Planning Policy, section 17.

- regional ecosystems that intersect with watercourses identified on the vegetation management watercourse map
- regional ecosystems that intersect with wetlands identified on the vegetation management wetlands map
- high preservation areas of wild river areas under the Wild Rivers Act 2005
- wetlands in a wetland protection area or wetlands of high ecological significance shown on the Map of Referable Wetlands under the Environmental Protection Regulation 2008
- wetlands and watercourses in high ecological value waters as defined in the Environmental Protection (Water) Policy 2009, schedule 2
- legally secured offset areas

6. How do I find out what types of developments are prohibited, exempt, self-assessable, compliance assessable or assessable developments under SPA?

This information can be found in the Schedules to SPA and SPR, state planning regulatory provisions and local government planning schemes. For example:

- Prohibited developments can be found in Schedule 1 of SPA, a State planning regulatory provision or a local government planning scheme;
- Exempt development is any development not encompassed by the other categories of assessment;
- Self-assessable development may be found in SPR Schedule 3, a State planning regulatory provision or a local government planning scheme;
- Compliance assessable development is prescribed in Schedules 18 and 19 SPR; and
- Assessable development is prescribed in SPR Schedule 3, but may also be declared under a local government planning scheme or a State planning regulatory provision.

7. What is a State planning instrument?

State planning instruments articulate the government's position on planning and development related issues and provide for the protection and management of those issues within the planning and development system. Types of State planning instruments include state planning regulatory provisions, state planning policies, regional plans, and standard planning scheme provisions.

The hierarchy of state planning instruments is as follows:

1) State planning regulatory provisions
2) State planning policies
3) Regional plans
4) Standard planning scheme provisions

8. When planning for coastal hazards, which laws and policies should be consulted? Which are legally binding?

Legally binding

- The *Sustainable Planning Act 2009* (Qld)
- The State Planning Policy
- State Development and Assessment Provisions
- Local government planning schemes
- The *Coastal Management and Protection Act 1995*

Non-binding

- Draft State Planning Policy Guideline on Coastal Hazards
- Coastal Hazard Technical Guide
- Guideline: A risk assessment approach to development assessment in coastal hazard areas
- Guideline for Preparing a Coastal Hazard Adaptation Strategy
- The CMP 2014

9. What is the State of the Environment report?

State of the Environment (**SoE**) reports are published by State and Federal governments every four and five years respectively.

In Queensland, SoE reports are required every four years under the EP Act[825] and the *Coastal Protection and Management Act 1995* (Qld).[826] SoE reports are whole-of-government reports, coordinated by the DEHP. These Acts specify that the report must:

- Assess the condition of Queensland's major environmental and coastal resources;
- Identify significant trends in environmental and coastal values;
- Review significant programs, activities and achievements of persons public authorities relating to the protection, restoration or enhancement of Queensland's environment and coastal zone; and
- Evaluate the efficiency and effectiveness of environmental and coastal management strategies.[827]

SoE reports vary in structure but generally focus on atmosphere, water, land and cultural heritage.[828] The next Queensland SoE report is due in 2015.

[825] *Environmental Protection Act 1994* (Qld) s 547.
[826] *Coastal Management and Protection Act 1995* (Qld) s 166.
[827] *Environmental Protection Act 1994* (Qld)s 547 and *Coastal Management and Protection Act 1995* (Qld) s 166.

Nationally, SoE reports are prepared every five years under the EPBC Act. The Act does not specify any regulations for content or reporting processes, and the scope and content of SoE reports are determined by the Department of Environment. The report itself is prepared by an independent committee of experts.[829] The next SoE report is due in 2016.

10. What can I do to manage soil erosion on my land?

The *Soil Conservation Act 1986* (Qld) provided a framework for managing erosion. It is, however, rarely used, and DNRM is currently unlikely to have the technical capacity to prepare soil conservation plans. The responsibility therefore falls on voluntary efforts of landholders to conduct soil conservation. Regional NRM bodies may have the required expertise to assist landholders in devising an erosion management strategy, which will not have legislative force, but would nevertheless assist with soil conservation efforts. This sort of voluntary engagement with environmental management facilitates the achievement of NRM goals relating to land management and water quality.

11. What Acts should NRM groups consider if they want to implement a soil conservation program?

The kinds of legislation that will be triggered by a proposed soil conservation program will depend upon factors such as the tenure of the land, and the exact nature of the measures proposed in the program. For example:

- if the program triggers a State Interest, it could be subject to SPA;[830]
- if vegetation clearing is involved, it may be subject to the VMA;[831]
- if it involves biosecurity matters, it may be subject to the *Biosecurity Act 2014* (Qld);[832]
- if it involves the construction of levees, it may be subject to the *Water Act 2000* (Qld).[833]

Depending on the proposal, there may also be other laws that regulate the program.

12. Which body is responsible for the management of riparian vegetation?

The clearing of vegetation, including riparian vegetation in some cases, is regulated by the VMA.[834] The VMA is administered by DNRM, which has some powers of enforcement relating to vegetation clearing offences,[835] and DSDIP, which deals with the development approval process and development offences.[836]

---

[828] This is in line with the definition of the environment in the *Environmental Protection Act 1994* (Qld)s 547 s8.
[829] http://www.environment.gov.au/topics/science-and-research/state-environment-reporting/about-soe-reporting#independent
[830] For more information about State Interests, see section 16.2.3 of this Guide.
[831] For more information about the vegetation management framework, see section 1 of this Guide.
[832] For more information about the *Biosecurity Act 2014* (Qld), see section 14 of this Guide.
[833] For more information about the *Water Act 2000* (Qld) and construction of levees, see section **Error! Reference source not found.** of this uide.
[834] For more information about the vegetation management framework, see section 1 of this Guide.
[835] *Vegetation Management Act 1999* (Qld) ss 54A, 54B.
[836] *Sustainable Planning Act 2009* (Qld) ss 574, 578, 580, 581, 590, 594.

13. Do NRM plans have to be considered as part of a development application to clear vegetation?

The considerations required for a development application will depend on which authority assesses the application. If the proposed development relates to a matter of state interest and is assessed by SARA, Module 8 of the SDAPs, relating to native vegetation clearing, will have to be considered.[837] These do not include reference to NRM plans. If proposed development does not relate to a matter of state interest, and is therefore assessed by the local government in which the proposed clearing is to take place, considerations that the local government has to consider will be set out in the local government planning scheme for that area.[838]

14. How can an NRM group ensure that water quality parameters are upheld in a permit to irrigate?

A permit to irrigate takes the form of a water licence in Queensland. The conditions of that licence can vary widely depending on who it was issued to, and where it is to be used. A water licence may have requirements not to take water if the pH or salinity reaches certain thresholds. Water quality is not a primary consideration for a user of water under a water licence to an individual. Rather, water quality is addressed usually by limiting the available quota for users within a particular region.

The first step to ensuring any conditions of a water licence are upheld is obtaining the licence itself. The second step would be to obtain information about water quality in the area, or, preferably, at the point of taking. The third step, if compliance with the licence conditions is not been met, is to either complain to DNRM or seek an injunction personally under the Act (as discussed at section 3 of this Guide).

15. What are the responsibilities for Local Councils in respect of coastal erosion?

A council does not have to prepare a shoreline erosion management plan unless the threat of erosion is deemed 'imminent'. Previously, a council would have to prepare such a report if a beach was within an erosion prone area. A management plan can outline actions to be taken, such as rehabilitating native vegetation, restricting access to the beach or preventing the establishment of new structures.

There is a risk that delaying preventative measures may result in continuing erosion and encourage ad hoc, expensive responses. However, the CMP notes that shoreline erosion management plans may also be prepared by individuals or groups. NRM groups with coastal protection targets may wish to take the initiative of preparing a plan to encourage local government to adopt a more precautionary approach to managing erosion.

16. What is an area of High Ecological Significance?

[837] For information on SARA and SDAPs, see sections 16.2 and 1.1.5 of this Guide.
[838] For more information about local government planning schemes, see section 18 of this Guide.

An area of HES was used under the former Coastal Plan to protect ecologically significant areas. The Coastal Plan did not support development in such areas where actions could not be managed. The new Coastal Management Plan does not protect areas of HES. Protection is provided where there are threatened species present, as these are matters of State Environmental Significance. Mitigation is now required for any impacts, rather than minimisation and rehabilitation.

The CMP weakens protections for biodiversity in coastal areas by requiring protection for MSES rather than the broader category of areas of HES. The CMP encourages offsetting over minimisation and rehabilitation, which may also have adverse outcomes for biodiversity targets. NRM groups may consider working with developers to design effective offsets, or with local governments to recognise additional MLES.

17. Is the construction of private access to beaches supported?

Under both the old and new Coastal Management Plans, exclusive private access to the beach is not supported. Establishing a new public access to a beach may be easier under the new CMP: where there is no demonstrated community demand or a public safety need, access may be allowed as long as it has an eco-friendly design. The CMP is less prescriptive than the CP, but this may create an opportunity for NRM groups to work closely with local governments to design locally appropriate measures. NRM groups could also engage with coastal communities to educate them about the environmental impacts of inappropriate public access to the beach.

18. What constraints does the new State Planning Policy place on sea dumping?

Under the old SPP 3/11, dumping contaminated spoil in coastal waters was prohibited. Even if the spoil was not contaminated, the old SPP only permitted disposal in coastal waters for limited purposes, which did not include maritime development. The new single SPP permits dredging for public marine developments, and does not contain prohibitions on dumping contaminated dredged material in coastal waters. Additionally, the SPP does not contain any specific provisions for protecting the outstanding universal values of the Reef.

Protection against dredging and dumping of contaminated spoil in coastal waters is weaker under the single SPP. For coastal areas adjacent to the Great Barrier Reef, NRM plan targets for water quality may need to consider this as a potential risk.

19. Can I use pesticides along a river?

The use of pesticides is dependent upon Schedule 3 of the *Fisheries Regulation*, which lists waterways that are declared Fish Habitat Areas.[839] This means that the use of pesticides is prohibited in these areas.[840] NRM groups have the opportunity to conduct education and collaborative activities with individuals or groups that facilitate sustainable usage of fisheries in line

[839] *Fisheries Regulation 2008* (Qld) Schedule 3.
[840] *Fisheries Regulation 2008* (Qld) s 621(1)(b).

with NRM goals for fisheries management and biodiversity. As a review of the fisheries regulation is currently being undertaken and stakeholder consultation is expected, NRM groups may have the opportunity to encourage regulation that leads to the sustainable management of fisheries.

The Environmental Protection Act 1994 (Qld) may be relevant where the use of a pesticide causes environmental harm, environmental nuisance or contamination of a waterway and so possibly an offence under that Act.

Responsibility for pesticides is split between the national pesticide regulator – the Australian Pesticides and Veterinary Medicines Authority (APVMA) – and state and territory governments.

20. What is a Special Management Area?

Recent amendments have changed 'national parks (scientific)' to the category of a national park with an automatic declaration of it being a Special Management Area (**SMA**) (scientific).[841] SMAs are designed to continue the protections offered under the former tenure,[842] but they do not appear to be a 'like for like' exchange. An SMA declaration can be removed by the Minister without any prior notice or public consultation,[843] whereas previously a national park (scientific) could only be revoked by regulation, after the Legislative Assembly had passed a resolution after 28 days' notice.[844] SMAs are subject to the broader management principles of national parks, which (as discussed above in section 5.2 of this Guide) now allow for ecotourism and educational and recreational activities.[845]

The legal protection available for areas of high scientific value is less secure under the new system of SMAs. This may have implications for NRM groups with biodiversity targets to protect threatened plants and animals. However, just as the Minister may easily revoke an SMA declaration, the Minister may also declare a new SMA by erecting a notice at the prescribed national park and publishing the notice on the department's website and in the gazette. [846] This may offer a simpler process for recognising areas of special scientific value.

21. What is the process for making a Management Plan for a National Park?

Management Plans are no longer a requirement for National Parks. The Minister can agree to one, and publish a draft plan on the DNPRSR website[847] and invite the public to comment on the plan.[848]

[841] *Nature Conservation Act 1992* (Qld) s96, as amended by s 153 NCOLA Act (No 2).
[842] Explanatory notes to the Bill, p4. There are two types of possible SMAs – SMA (controlled action) and SMA (scientific). The former is managed to restore the area's natural and cultural resources, or continue an existing use which is consistent with maintaining the area's natural and cultural values, s 17(1A)(a) *Nature Conservation Act 1992* (Qld). The latter is managed to protect the area's exceptional scientific values, allow for scientific study and monitoring, and control threatening processes relating to threatened wildlife, s17(1A)(b) *Nature Conservation Act 1992* (Qld).
[843] See *Nature Conservation Act 1992* (Qld) s42B introduced by s 139 NCOLA Act (No 2).
[844] *Nature Conservation Act 1992* (Qld) s32 superseded (current as at 30 June 2013).
[845] *Nature Conservation Act 1992* (Qld) s17(1A) sets out additional management principles which 'may' apply to SMAs.
[846] *Nature Conservation Act 1992* (Qld) s 42A.
[847] Department of National Parks, Recreation, Sport and Racing (Accessed 6/6/14) available at: www.nprsr.qld.gov.au
[848] *Nature Conservation Act 1992* (Qld) s 115(3),(4).

The submission period is 20 days. In making the plan, the Minister must consider all properly made submissions by law.[849]

The default requirement for management statements instead of management plans removes an opportunity for NRM groups to contribute to the conservation and management of national parks. However, management plans are still possible under the NCA if the Minister considers them appropriate in the circumstances. This may provide an opportunity for NRM groups to encourage the use of management plans in particularly vulnerable areas, but also poses a challenge in ensuring quality management of those parks which do not qualify for plans.

22. What does revocation of a Wild Rivers declaration mean for land use?

Revocation removes protection froms mining within previously exempt areas (high preservation areas). Developments can now take place within 1km of former wild rivers. For Cape York (Lockhart, Archer, Stewart and Wenlock basins), land use could include:[850]

- Forestry
- Extractive resources and mining (except open cut/strip mining)
- Grazing
- Animal husbandry (poultry farms, feedlots, piggeries)
- Aquaculture
- Ecotourism facilities
- Residential, commercial and industrial infrastructure
- Weirs or residential dams
- Agricultural water storage facilities
- Transport, power and communications infrastructure
- Environmentally relevant activities for dredging and extracting rock or other material in a wild river area; and
- Tidal works or certain other operational works in a coastal management district in a wild river area.
- Destroying marine plants

However other legislation provides some restrictions on land use or requirements for permits or approvals before certain land use such as mining is undertaken in those high preservation areas and so needs to be checked.

23. Will the declaration of a Regional Interest Area under the *Regional Planning Interests Act 2014* (Qld) affect my use of the land?

The central purpose of this Act is to regulate resources activities on land. It follows that any areas of regional interest will not affect activities such as agriculture. A declaration will not affect existing land uses, or existing mining activities. For the majority of landholders, the Act will not

[849] *Nature Conservation Act 1992* (Qld) s 116.
[850] Per the draft Cape York Regional Plan, page 21, (Accessed 24/05/14) available at: http://www.dsdip.qld.gov.au/resources/plan/cape-york/draft-cape-york-regional-plan.pdf

affect how they use their land. It will, however, affect how resource activities are conducted on their land.

Acronyms and Abbreviations used in this Guide

CP	Coastal Plan
CMP	Coastal Management Plan
CSG	Coal Seam Gas
DEHP	Department of Environment and Heritage Protection (Qld)
DNRM	Department of Natural Resources and Mines (Qld)
DoE	Department of Environment (Cth)
EA	Environmental Authority
ERA	Environmentally Relevant Activity
EIS	Environmental Impact Statement
EP Act	*Environmental Protection Act 1994* (Qld)
EPBC Act	*Environment Protection and Biodiversity Conservation Act 1999* (Cth)
HES	High ecological significance
MRA	*Mineral Resources Act 1989* (Qld)
MLES	Matters of local environmental significance (see SPP)
MNES	Matters of national environmental significance (see EPBC Act)
MSES	Matters of state environmental significance (see SPP)
P&G Act	*Petroleum and Gas (Production and Safety) Act 2004* (Qld)
P&G Regulation	*Petroleum and Gas (Production and Safety) Regulation 2004*
RDIA	Regional interests development approval
RE	Regional Ecosystem
SDAP	State Development Assessment Provisions

SDPWO Act	S*tate Development and Public Works Organisation Act 1971* (Qld)
SPA	*Sustainable Planning Act 2009* (Qld)
SPR	*Sustainable Planning Regulation 2009* (Qld)
SPP	State Planning Policy, made under the *Sustainable Planning Act 2009* (Qld)
TEL	Temporary Emissions Licence
WHES	Wetlands of high ecological significance