Appendix E

Potentially Relevant Legislation

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List of potentially relevant Queensland legislation.

- River Improvement Trust Act 1940 (formerly Burdekin River Trust Act 1940)
- Sewerage and Water Supply Act 1949
- Forestry Act 1959
- Industrial Development Act 1963
- Beach Protection Act 1968
- State Development and Public Works Organization Act 1971
- Marine Parks Act 1982
- Rural Lands Protection Act 1985
- Soil Conservation Act 1986
- Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987
- Chemical Usage (Agricultural and Veterinary) Control Act 1988
- Recreation Areas Management Act 1988
- Mineral Resources Act 1989
- Fire and Rescue Authority Act 1990
- Aboriginal Land Act 1991
- Queensland Heritage Act 1992
- Nature Conservation Act 1992
- Local Government Act 1993
- Native Title (Queensland) Act 1993
- Transport Infrastructure Act 1994
- Fisheries Act 1994
- Environmental Protection Act 1994
- Agricultural and Veterinary Chemicals (Queensland) Act 1994
- Land Act 1994
- Electricity Act 1994
- Coastal Protection and Management Act 1995
- Integrated Planning Act 1997
- Sugar Industry Act 1999
- Vegetation Management Act 1999
- Water Act 2000
- Land Protection (Pest and Stock Route Management) Act 2002

(Source: Table 2-Chronological table of current Queensland Acts-Issue 21 (2002) at www.legislation.qld.gov.au)

List of potentially relevant Commonwealth legislation

- Australian Heritage Commission Act 1975
- Great Barrier Reef Marine Park Authority Act
- Environment Protection and Biodiversity Conservation Act 1999

Main Points of Key Legislation

Integrated Planning Act 1997 (IPA)

The primary purpose of the act "is to seek to achieve ecological sustainability" (p.28) through coordinating and managing planning and development at local regional and State levels. One of the main concepts associated with the IPA is the integration of all the processes associated with development applications. Various processes associated with development that may have required separate applications for permits or licenses have been combined in The Integrated Development Application System (IDAS) in an effort to more effectively assess and process development applications.

This act replaces the Local Government (Planning and Environment) Act 1994 as the main piece of legislation controlling development on non-government land in Queensland. Development control is achieved through the authority vested in local government planning schemes by the act. The IPA requires all local governments in Queensland to prepare an IPA compliant planning scheme by March 2003. Until a new scheme is prepared and approved the existing planning schemes remain in force as transitional planning schemes.

The assessment statuses of some forms of development are defined in the IPA in Schedule 8. Where the assessment status is not defined in Schedule 8 it is a function of the planning scheme to identify self-assessable and assessable development. All other development not defined as self-assessable or assessable is considered exempt development. Exempt development under IPA is roughly equivalent to development not requiring Council consent under the previous legislation.

Codes are required to assess certain forms of development against and these codes can be a function of another form of legislation or process e.g. the State Policy on Clearing on Freehold Land under the Vegetation Management Act.

IPA also defines requirements for the making of State Planning Policies.

Water Act 2000

The Water Act 2000 replaces the Water Resources Act 1989. The Water Act has assumed most of the functions of the Water Resources Act with some of these functions now integrated with the IPA.

One of the main objectives of the act was to provide a legislative base for water resource plans. Water resource plans have been prepared for some parts of Queensland in an attempt to ensure the sustainable use of the state's water resources. These plans specify allowable water allocations in a designated area, and can include conditions relating to harvesting overland flow water.

Rights to water are defined in general terms in sections 19 and 20 of the act. All rights to water are vested in the State (s 19) with certain exceptions (s 20). Water may be taken without a water entitlemen

- in an emergency for public purposes and firefighting (dwellings)
- by landowners adjoining watercourses, lakes and springs for domestic purposes and watering stock
- by landowners who collected water in dams from overland flow for domestic purposes and watering stock
- by any person from watercourses, lakes and springs for camping purposes and watering travelling stock; and
- "a person may take or interfere with overland flow water and subartesian water for any purpose unless there is a moratorium notice or a water resource plan that limits or alters the water that may be taken or interfered with" (p.39).

While the act allows for taking and interfering with overland flow water a planning scheme may require Council approval to be obtained for any 'operational works' where there will be a substantial alteration of the natural surface of the land. This may include dams, contour banks, drainage ditches and other earthworks associated with water harvesting and storage, and drainage operations.

Apart from the exceptions listed above approval is required for taking water, or interfering with water flows. Approvals come in the form of water licences (s 206) and water permits (s 237). If a water resource plan is in place then decisions on the grant of a licence or permit must be in accord with the plan. The most significant difference between the licence and permit is that a water licence is 'attached' to a parcel of land while a water permit is granted for a specified activity not necessarily associated with a particular property e.g. water for road construction works. Water licences and permits are obtained from the Department of Natural Resources and Mines.

Other approvals required under the act include; riverine protection permits, which can be issued for destroying vegetation, excavating, or placing, fill in a watercourse, lake or spring (s 266), and allocation of quarry material (s 280). Riverine protection permits can be obtained directly from the Department of Natural Resources and Mines while extracting quarry material from waterways requires a development application under IPA.

The relationship of the Water Act to the IPA is defined in sections 966 to 971. This generally relates to development applications under IPA, which require assessment under the Water Act including for;

- operational work for taking or interfering with water
- removal of quarry material and;
- operational work that is construction and maintenance of referable dams

A 'referable' dam is defined by the act in sections 481 to 483. In broad terms a referable dam is greater than 8 metres in height. Referable dams require development application approval under IPA, and acceptance of a 'failure impact assessment' by the Department of Natural Resources and Mines. Non-referable dams may also require development approval under a planning scheme depending on the definitions used in the scheme.

In general, existing applications, licences and permits applied for, or granted, under the Water Resources Act will be honoured under the Water Act (s 1048).

Vegetation Management Act 1999

This act is a relatively new piece of legislation, which has created a deal of confusion and angst among Queensland landowners. As with the Water Act and the IPA, the purpose of the act is aimed at achieving sustainability. The act, in the simplest sense, defines what native vegetation can and cannot be cleared on freehold land. The act is administered by the Department of Natural Resources and Mines (DNRM).

The Environmental Protection Agency (EPA), through the Queensland Herbarium, has determined the extent of regional ecosystems and their conservation status. The EPA has prepared regional ecosystem maps and these are used as the principle tool in determining the conservation status of regional ecosystems for the purposes of assessment. The maps are at the 1:100,000 scale and as such they may not delineate small patches, and narrow strips of remnant vegetation. There will also be errors in ecosystem classification as the majority of the work has been carried out using remote sensing. The maps however are the best available data and are defined by the act as the principle reference. If discrepancies are noted between the regional ecosystem maps and on ground observations a DNRM Vegetation Management Officer will decide the matter.

The act operates in conjunction with the IPA, which defines the clearing of most native vegetation on freehold land as 'assessable development' requiring development approval. Exceptions, not requiring development approval, are listed at item 3A, in Schedule 8 of the IPA.

The Department of Natural Resources and Mines is responsible for assessment of development applications with regard to clearing of native vegetation. In a region where a Regional Vegetation Management Plan exists, the code contained in the plan is used to assess the application. Where a Regional Vegetation Management Plan has not been prepared the 'Code for the clearing of vegetation' (Appendix 2) of the *State Policy for Vegetation Management on Freehold Land* (Queensland Government 2000) is used to assess the application.

The purposes of the code are listed as:

1. The protection of remnant endangered regional ecosystems
2. The protection of vegetation in areas of high nature conservation value
3. The maintenance of biodiversity
4. The maintenance of ecological processes
5. The prevention of land degradation; and
6. The maintenance of the sustainable productive potential and use of agricultural land (Queensland Government 2000, p.7)

The purposes of the code are achieved through certain measures, which are the basis for the criteria used when assessing an application to clear vegetation. For example, "Purpose 1 is achieved by not clearing in any remnant endangered regional ecosystem" (Queensland Government 2000, p.7) while "Purpose 3 is achieved by: not clearing in any remnant regional ecosystem to the extent of causing a change to its conservation status" and "not reducing the total extent of remnant vegetation in a bioregion to less than 30% of its pre-clearing extent" (Queensland Government 2000, p.8).

Other purposes are achieved by meeting performance requirements listed in the code. Acceptable solutions to meet the performance requirements are also listed. These include retaining vegetation along each side of a watercourse, to protect watercourses and adjacent habitat, as part of the requirements to maintain ecological processes (Purpose 4) and prevent land degradation (Purpose 5).

In general terms clearing of remnant vegetation will not be allowed;

- in any remnant endangered regional ecosystem
- in any remnant regional ecosystem to the extent of causing a change to its conservation status
- within 25 metres of the each bank of a creek or waterway
- within 50 metres of significant wetlands, lakes or springs
- where clearing may result in mass movement or soil erosion (slopes >8-18%, depending on soil erodibility)
- in areas where salinity or waterlogging is likely to be increased as a result
- where acid sulphate soils will be disturbed
- where land is not capable of sustainable use, (information extracted and interpreted from Queensland Government 2000, pp.7-11)

There are exceptions to the restrictions above including where "the clearing is essential for establishing a necessary fence, road or other built infrastructure and no other suitable alternative site exists" (Queensland Government 2000, p.7). The Code for clearing of vegetation is included as Appendix 3.

As previously mentioned not all clearing requires development approval. The exceptions are listed at item 3A, in Schedule 8 of the IPA. These are included as Appendix 4. A summary of the relevant exceptions is listed below.

- Clearing vegetation necessary to build a single residence and reasonable associated structures
- Clearing for essential management purposes including:
    - establishing and maintaining firebreaks
    - maintaining existing infrastructure e.g. fences, roads and sheds
    - maintaining existing gardens and orchards
    - preventing harm to people or property
- Clearing for routine management purposes in areas not mapped as endangered regional ecosystems or declared areas including:
    - establishing a necessary fence, road or other built infrastructure
    - supplying fodder for stock in drought conditions
    - re-clearing re-growth vegetation
- Clearing in a non-urban area as a natural and ordinary consequence of an approved development if the development area is less than 5 hectares and the area is not mapped as an endangered regional ecosystems or a declared area.
- Operational work associated with the use of a property for forestry purposes other than the initial clearing of native vegetation to establish a plantation.

(Note: Declared areas are areas declared by the Minister under the act as being of high conservation value, or vulnerable to land degradation. A Regional Vegetation Management Plan may also declare areas as being of high conservation value, or vulnerable to land degradation. Certain restrictions apply with regard to declared areas)

Nature Conservation Act 1992

Under the Nature Conservation Act 1992 (Qld) wildlife species (plant and animal) are prescribed and listed in a number of conservation categories i.e. presumed extinct, endangered, vulnerable, rare, common, international or prohibited. 'Protected wildlife' is a plant or animal in all conservation categories except 'international' and 'prohibited'.

The act provides for the management of 'protected areas', 'protected animals' and 'protected plants'. Protected animals are the property of the State and cannot be taken, used or kept without a permit or under the application of a conservation plan. Protected plants are the property of the State unless they occur on 'private land' i.e. freehold or leasehold.

Environmental Protection Act 1994

The act asserts that all persons have a general environmental duty not to cause environmental harm, and to report any harm that does occur.

The act defines environmentally relevant activities (ERAs) and provides for the issue of licences to carry out various works as well as the nature of Environmental Impact Statements that may be required for ERAs.

The provisions for contaminated land are also included in this Act.

Fisheries Act 1994

The Act regulates activities that occur with regard to fisheries and fishing with particular emphasis on tidal and marine areas. A licence is required to remove, damage or destroy marine plants, including mangroves and sea grass beds.

Coastal Protection and Management Act 1995

The main objects of the Act are:

- to provide for the protection, conservation, rehabilitation and management of the coast, including its resources and biological diversity;
- have regard to the goal, core objectives and guiding principles of the National Strategy for Ecologically Sustainable Development in the use of the Coastal zone; and
- provide, in conjunction with other legislation, a coordinated and integrated management and administrative framework for the ecologically sustainable development of the coastal zone.

An approval process for proposed works within control districts will be outlined in the Coastal Protection and Management Regulations. At present, an approval process is required for proposed works in erosion prone areas under the Beach Protection Act.

State Coastal Management Plan

The State Coastal Management Plan describes how the coastal zone is to be managed. It is a statutory instrument under section 29 of the Coastal Protection and Management Act 1995 and has the effect of a State planning policy under the Integrated Planning Act 1997. As a State planning policy, local government as assessment managers must have regard to the State Coastal Plan when undertaking relevant development assessment under the IDAS.

State Planning Policy for Acid Sulphate Soils

The Policy states that proposed works below 5m AHD may impact on acid sulphate soils and that an investigation into the presence of acid sulphate soils is required. An adequate management plan to mitigate any impacts of soil disturbance resulting from development proposals is required to be prepared prior to works commencing.

State Planning Policy for Good Quality Agricultural Land

The policy proposes the retention of good quality agricultural land in planning and development processes. The policy can be overridden in development assessment processes if the public interest is served by using good quality agricultural land for another purpose.

Land Protection (Pest and Stock Route Management) Act 2002

This is the primary act for the control of pest species in Queensland. It defines the type of plants and animals that are considered pest species and the level of control in relation to each declared pest.

Commonwealth

Environment Protection and Biodiversity Conservation Act 1999

This Act establishes a Commonwealth environmental assessment and approval system that will operate in addition to State systems. Approval is required under the Act for matters that will have or are likely to have a significant impact on environmental matter of national significance.

Under the Commonwealth's Environment Protection and Biodiversity Conservation Act 1999 (EPBC), Part 3, Division 1, Subdivision C, prior approval is required for any actions that are likely to result in a significant impact on:

A - World Heritage [areas]
B - Wetlands of international importance
C - A listed threatened species or community
D - Listed migratory species
E - Protection of the environment from nuclear actions
F - Marine environment
G - Additional matters of national environmental significance

Approval is not required if a bilateral agreement is in operation with respect to the proposed action (as described in Part 4, Division 1) or the proposed action is covered by a Ministerial declaration (as described in Part 4, Division 2).

If the project proponent considers that an action may have a significant impact on any of the environmental features listed above the proposal must be referred to the Minister for a decision to be made as to whether approval of the action is required (part 7, Division 1).

If the Minister decides, on the information provided, that the proposed action is a 'controlled action' then the method of assessing the proposal must be decided (Part 8, Division 3, Subdivision B). The impacts of a proposed controlled action may be in the form of;

a) an accredited assessment process
b) an assessment on preliminary documentation
c) a public environment report
d) an environmental impact statement
e) a public inquiry

Great Barrier Reef Marine Park Act (Cth) 1975

The Great Barrier Reef Marine Park Act (Cth) 1975 provides for the establishment, management, care and development of a marine park within the GBR region. Under the Act, the Great Barrier Reef Marine Park Authority (GBRMPA) is charged with these obligations.

One of the functions of the Authority is to furnish information and advice to the Minister in respect of matters relating to the Marine Park, including matters relating to the use or management of an area, which would or might affect the Marine Park (Sections 7(1)(ca) and 7(1A)).