

# DRAFT QUEENSLAND PLANNING PROVISIONS – Achieving good planning outcomes or a missed opportunity?

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## 1.0 Introduction

Planning schemes prepared under the *Integrated Planning Act 1997 (IPA)* generally feature insufficient strategic content and demonstrate a commitment to delivering “vertical and horizontal integration” rather than assisting in delivering good planning outcomes<sup>1</sup>. Since the commencement of IPA, over a decade ago, there has been limited legislative guidance on the structure and content of planning schemes, with content shaped by decision rules and requirements to coordinate core matters, identify desired environmental outcomes, provide measures to facilitate desired environmental outcomes and include a priority infrastructure plan (IPA, s2.1.3). The result of this vacuum has been the preparation of planning schemes across Queensland each with significant variations in zones (also called, amongst other things, precincts, areas or domains), levels of assessment, codes, overlays, definitions, maps and organising principles. Such an approach has resulted in system inefficiencies, general confusion and duplication in effort in preparing planning schemes.

In response to the above issues the Queensland Government on 28 September 2009 released the *Draft Queensland Planning Provisions* (“the draft Provisions”). This paper provides an overview of the draft Provisions and a preliminary appraisal as to whether they promote or hinder the achievement of “good planning outcomes” in Queensland.

## 2.0 Preparation of the Draft Queensland Planning Provisions<sup>2</sup>

In February 2006, the Minister for the then Department of Local Government, Planning, Sport and Recreation announced that a review of the *Integrated Planning Act 1997 (IPA)* would be undertaken with a view to providing a contemporary planning and development system for Queensland. After undertaking an extensive consultation process, two primary issues concerning planning schemes had been identified, namely:-

- (i) the widespread inconsistencies in structure, language and application; and
- (ii) the duplication of effort to produce planning schemes.

The State Government subsequently endorsed a reform agenda entitled “*Planning for a Prosperous Queensland – A Reform Agenda for Planning and Development in the Smart State*”, containing eighty specific actions in response to the issues raised during the consultation process. The principal aim of the reform agenda was to facilitate a shift in the planning paradigm, from the current process-driven system towards an outcomes-based system. The introduction of new planning legislation (*Sustainable Planning Act 2009*), along with development of a standardised planning scheme, were identified as actions which were central to achieving the objectives of the reform agenda.

After further engagement with key stakeholders in working groups, the State government’s Planning Reform Implementation Team developed the first draft of the Standard Planning Scheme Provisions in February 2008. That first version has since been developed through iterations by the Planning Reform Implementation Team, in conjunction with specialist reference groups.

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<sup>1</sup> This is particularly relevant for the second generation schemes prepared in accordance with “*IPA Planning Scheme Template 2, September 2002*”.

<sup>2</sup> Source: *Reynolds and Schneider, 2009*.

The draft *Queensland Planning Provisions – 28 September 2009* (“the draft Provisions”) has now been released as a direct response to Action Number 28 of that reform agenda, which called for the preparation of standard planning scheme provisions. The draft Provisions seek to:-

- (i) *provide a clear and consistent framework for planning schemes in Queensland;*
- (ii) *assist in the expression of state, regional, local and community expectations for areas and land uses; and*
- (iii) *provide for the implementation of state, regional and local policies affecting land use and development (Draft QPP, p4).*

Comments on the draft Provisions close on 23 November 2009. The final version of the Provisions is expected to be released in December 2009 at the time of commencement of the *Sustainable Planning Act 2009 (SPA)*. This timing casts doubt as to what role submissions will play in influencing the final QPP content.

### **3.0 Overview of Key Sections<sup>3</sup>**

#### ***Strategic Framework (Part 3)***

The draft Provisions require that the Strategic Framework not only sets the policy direction for the scheme, but that the statutory component also be used in the assessment of Impact Assessable applications. The mandatory inclusion of a Strategic Framework in planning schemes is a positive step for planning across Queensland, albeit back to a position that existed prior to the IPA. However, given that the Strategic Framework will form part of the development assessment framework, will concern over the legal robustness of these provisions limit their development as truly strategic planning objectives?

#### ***Priority Infrastructure Plan (Part 4)***

The draft Provisions call up statutory guidelines which are available from <http://www.dip.qld.gov.au/planning-reform/priority-infrastructure-plans.html>.

#### ***Tables of Assessment (Part 5)***

The *Sustainable Planning Act 2009* introduces two new levels of assessment being Compliance Assessment and Prohibited Development. The draft Provisions introduce a standard format for the presentation of all levels of assessment. Assessment tables are only permitted for zones, overlays and local plans, and as such it is not clear whether separate Tables of Assessment will be permitted for Structure Plans for Declared Master Plan Areas. Precincts may also be used within the table to qualify when the level of assessment differs from the base zone.

#### ***Zones (Part 6)***

The draft Provisions bring about a return to the use of the “Zone” as the basic organising layer of the planning scheme. A standard suite of Zones is prescribed from which a local government must select the Zones it wishes to apply to land within its jurisdiction. The standard suite of Zones includes the following broad categories of zones - Residential; Centres; Recreation and Open Space; Industry; and Other. Each of the broad zoning categories contains both Level 1 Zones and Level 2 Zones. Level 1 Zones are general in nature and have been developed to provide smaller local governments with an appropriate range of simplified land use categories. Level 2 Zones provide a greater range of zonings which allow particular land use characteristics or specific development types to be addressed directly. Larger local governments which require greater flexibility and specificity in the classification of land will use Level 2 Zones.

Level 1 and Level 2 Zones will operate independently of each other. For each zoning category (e.g. Residential), if the Level 1 Zone is selected (e.g. General Residential Zone), no Level 2 Zones can be selected for that same zoning category (e.g. Residential living). The inclusion of a Mixed Use and Innovation Zones as part of the standard suite seeks to provide for

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<sup>3</sup> *Queensland Department of Infrastructure and Planning (2009) and Reynolds and Schneider, 2009.*

contemporary urban development forms, particularly outside of designated centres. However, local governments may lean towards the use of these zones to provide a means of bypassing the constraints imposed by the other zone categories.

For each Zone, a mandatory Purpose statement has been prepared and is prescribed for inclusion in planning schemes by the draft Provisions. The mandatory Purpose statement can be added to in order to respond to local circumstances. In addition to Zones, a local government may elect to use Precincts as a sub-category of particular Zones, in order to provide additional detail. This may include altered levels of assessment and additional place-based assessment provisions.

### ***Overlays (Part 7)***

The standard structure prescribed by the draft Provisions makes allowance for the incorporation of Overlays as a means of identifying and addressing specific state or local interests that may occur in a particular local government area. As with the case of zoning, the draft Provisions provide a standard suite of overlays from which a local government may select those which are relevant for incorporation into the planning scheme.

Each Overlay that a local government elects to incorporate in its planning scheme must be mapped and may be supported by an Overlay Code, drafted using the standard code structure. While the list of overlays is comprehensive, it would have been desirable for standard Overlay Codes to be drafted to address State Planning Instruments (especially for the various state planning policies).

### ***Local Planning (Part 8)***

To provide a further opportunity for local governments to adapt the standard structure in response to local dimensions, the draft Provisions prescribe that Part 8 of planning schemes may, at the discretion of the local government, contain Local Plan Codes. Local plans must be divided into the standard suite of Zones and Precincts may be used in the local plans to further divide the zones.

The optional inclusion of Part 8 in planning schemes provides local government with an opportunity to carry through finer grain local planning within a broader, standardised structure. That said, it will be interesting to see whether the State seeks to limit the extent to which this part is used by Councils to manipulate the intended format and function of the scheme as a whole.

### ***Other Codes (Part 9)***

Other Codes regulate specific uses (e.g. residential) or specific issues (e.g. landscaping, stormwater management, parking and servicing etc). The draft Provisions include the Telecommunications Facilities Code (the only code of any type detailed in the draft provisions). It contains acceptable outcomes but it is uncertain that these outcomes would be universally acceptable. Would a 30 metres high pole, tower or mast be appropriate in Hastings Street, Noosa or Oxford Street, Bulimba? The acceptable outcome also contains the undefined terms of 'commercial land', 'industrial land' and 'rural land' and the QPP does not define which zones apply to these terms.

### ***Planning partnerships (Part 10)***

In instances where a local government area contains a Declared Master Planned Area, any Structure Plan (including associated Master Plans, alternative level of assessment tables and development codes) will be contained within Part 10 of the planning scheme.

It is not clear whether the objectives of structure planning for Declared Master Planned Areas are best served by requiring that the associated Structure Plans are inserted, and remain, in a discrete section of the planning scheme. Why do Structure Plans for Master Planned Areas need to be separated from the planning scheme for the balance of the local government area? Whilst using Part 10 may serve as a convenient means of expediting the inclusion of Structure Plans within the planning scheme, surely it is more desirable to include the content of those Structure Plans in the scheme proper, at the next planning scheme review, so that the planning scheme remains an integrated, effective and usable instrument?

### **Schedule 1 –Definitions**

Schedule One of the Provisions will contain the suite of standard use and administrative definitions for the planning scheme. A number of the standard administrative definitions have been taken from the list of standard definitions released by the National Development Assessment Forum. It is a requirement of the draft Provisions that local governments not add a new definition, change or create a variation of development. Notably, the draft Provisions do not currently incorporate the threshold concepts of “minor building work” and “minor demolition”, which have proved very important to the practical implementation of Brisbane City Plan 2000.

Whilst, on balance, the standardisation of planning scheme definitions is a positive step, it brings with it significant challenges. First, despite the comprehensive work which has clearly gone into the development of the standard suite of use definitions, it will remain the case that the suite of definitions may not suit, or allow, all forms of development for which application is made or further result in ambiguity in an attempt to provide for all scenarios. For example, there is some confusion between the definition of a “Dwelling house”, “Dwelling Unit”, “Multiple dwelling” in the use definitions and “Dwelling” under the suite of administrative definitions.

Second, the suite of prescribed definitions may provide a false expectation of certainty (of interpretation and meaning) if the Provisions are subsequently amended or are further defined through Codes. For example, Codes may result in tests as to what constitutes a “High impact industry” rather than a “Low impact industry” by the inclusion of limits to gross floor area/emissions etc.

Finally, as with any of the standardised provisions, any precedent set by legal challenge in one local government area may have consequences across the State. This, of course, is not to say that the establishment of a broadly applicable precedent is a negative outcome of standardisation, only a potentially challenging new context in which practitioners will need to operate.

### **Schedule 2 – Mapping**

The prescription of a standard location and format for planning scheme mapping will assist in the useability of planning schemes for a broad range of users.

### **Schedule 3 – Register of Preliminary Approvals affecting the Planning Scheme and Schedule 4 – Planning Scheme Policies**

While it appears neat to include information on preliminary approvals and planning schemes, in practice it raises false expectations of accuracy because the schedules are likely to be often out of date given the potentially frequent changes to their contents and the timing implications of amending the planning scheme to update the schedules. Wouldn't it be more effective and efficient to simply refer to a planning scheme policy (or the like) containing this information or perhaps put them on the internet?

## **4.0 A Framework for Appraising the draft Queensland Planning Provisions**

Planning schemes can only assist in achieving good planning outcomes if they are robust and provide policies that address and integrate key outcomes. Under the draft Provisions the key mechanism for delivering good planning outcomes including the protection of natural resources, quality built environment and cultural and social wellbeing is through the proposed Strategic Framework.

### **What are good planning outcomes?**

The purpose of the *Sustainable Planning Act 2009* (SPA) remains consistent with that adopted by the IPA, that is, to “achieve ecological sustainability” (Part 2, section 3). Advancing, ecological sustainability includes the following “good planning outcomes”:-

- (i) *Sustainable use of natural resources;*
- (ii) *Avoiding or mitigating adverse environmental effects (including climate change);*
- (iii) *Housing choice and diversity;*

- (iv) *Economic diversity;*
- (v) *Coordinated infrastructure;*
- (vi) *Quality built environment;*
- (vii) *Community involvement; and*
- (viii) *Cultural, economic, physical and social wellbeing.*

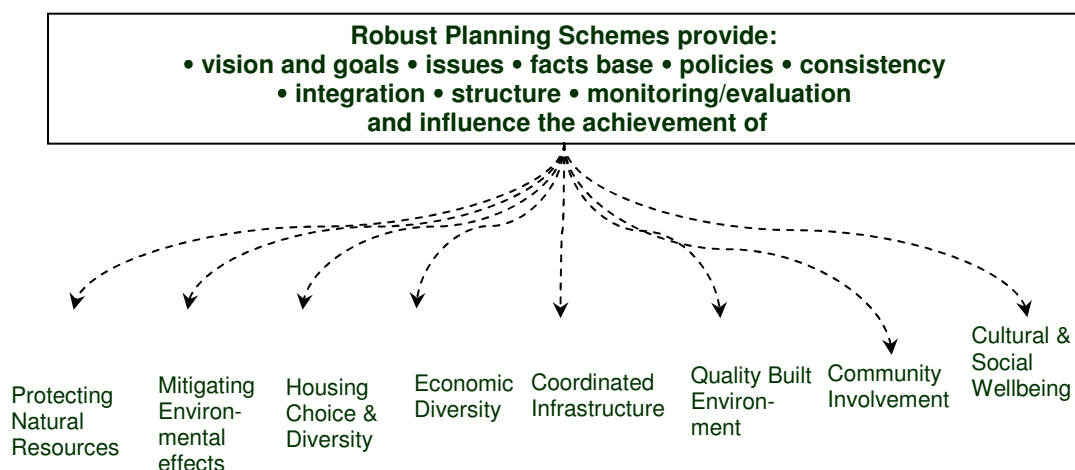
It should also be noted that while the ultimate challenge for planners is to achieve ecological sustainability, in reality there is a limit to the extent that planning schemes can affect these outcomes as provisions are generally only triggered when new development is proposed and is limited by the assessment process (e.g. self assessment or code).

**Characteristics of a robust planning scheme**

Berke and Godschalk (2009), in their article *Meta-Analysis of Plan Quality Studies*, outline the key characteristics of plan quality. In summary they are:-

- (i) Clear vision and goals – description of community needs, assets, trends and future vision;
- (ii) Identification of issues – assessment of major issues and trends;
- (iii) Facts base – analysis of current and future conditions and explanation of reasoning;
- (iv) Policies – specification of principles to guide public and private land use decisions to achieve vision and goals;
- (v) Internal consistency – issues, vision, goals, polices and implementation are mutually reinforcing;
- (vi) Integration – integration with other plans or polices of public and private parties;
- (vii) Structure and presentation – provisions to enhance understanding or a wide range of readers; and
- (viii) Monitoring and evaluation – provisions for tracking change in community conditions.

**Figure 1. An overview of a framework to appraise the draft Provisions.**



So, using this framework, how do the draft Queensland Planning Provisions measure up? Only time will tell how well these characteristics are embodied in the new QPP planning schemes.

## 5.0 Will the draft Provisions deliver good planning outcomes?

Evaluation of the draft Provisions against the Berke and Godschalk criteria indicates that the draft Provisions provide:

- (i) clear vision and goals through an optional Community Statement and Strategic Vision;
- (ii) require certain issues to be addressed and expressed through the preparation of a Strategic Framework, which sets the policy position for the scheme;
- (iii) consistent structure, presentation, mapping and terminology that will make the use of multiple schemes more efficient;
- (iv) greater certainty regarding land uses, with a limited ability to prohibit certain prescribed classes of development; and
- (v) opportunities to incorporate local policy content into the Strategic Framework, Levels of Assessment, Zone Codes, Precinct Codes (for Zones and Local Plans), Overlay Codes, Local Plan Codes, Other Codes and Structure Plans for Declared Master Plan Areas.

As may be expected, the draft Provisions do not provide guidance about the background studies necessary to inform the content of the planning scheme. The draft Provisions will also not ensure that all elements of the planning scheme are internally consistent. This will require the exercise of professional judgement.

It is also surprising that the draft Provisions contain no requirement or guidance for planning scheme monitoring and evaluation measures. This could be achieved by the specification of performance indicators.

## 6.0 Will the draft Provisions hinder good planning outcomes?

It is disappointing that the draft Provisions provide insufficient guidance on how to “appropriately reflect” State Planning Instruments or State Planning Policies in planning schemes. For example, standard Overlay Code provisions should have been drafted for Bushfire Hazard, Landslide Hazard, Flood Hazard, Potential and Actual Acid Sulfate Soils, Airport Environs, Good Quality Agricultural land, State Heritage, Coastal Management, Koalas, Water Resource Catchments, Fish Habitat Areas and Extractive Resources. The draft Provisions should define which Zones that fall within “urban” and “non-urban” categories (to improve integration with the operation of the *Vegetation Management Act*). As such, there is no apparent likely improvement in the process for negotiating scheme content with State agencies or provide efficiencies in the scheme amendment process and a lost opportunity to improve the operation of the IDAS process once QPP planning schemes are operational.

Further, the draft Provisions:

- (i) may lead to a “dumbing down” of sophisticated planning provisions present in a number of the larger Councils planning schemes;
- (ii) may not result in a comprehensive Strategic Framework as concern over the legal robustness of these provisions (used in development assessment) may limit their development as truly strategic planning tools;
- (iii) do not provide guidance on the preparation of background investigations and underlying assumptions to be used in preparing the Strategic Framework (e.g. PIFU projections);

- (iv) provide insufficient flexibility in the mandatory Zones, with too many artificial restrictions for higher growth Councils creating a reliance on the Mixed Use Zone, Precincts and Local Plans to compensate;
- (v) may result in greater complications in scheme drafting to provide for compliance assessment;
- (vi) may result in lengthy tables of assessment to provide for all the variables (Zones, uses, Overlays, Local Plans, Precincts, aspects of development);
- (vii) do not provide guidance on the content of sample Zone Codes, Precinct Codes, Overlay Codes and Local Plan Codes;

## 7.0 Other Observations

### ***Decision Rules (section 1.5)***

The summary of assessment rules by category of development is a positive inclusion that should assist a broad range of users in understanding and using planning schemes. However, the rules, as currently expressed, are unlikely to operate effectively in practice.

The draft Provisions seek to specify which of the planning scheme provisions take precedence in the event of a conflict. Section 1.5 of the draft Provisions state (emphasis added):

- (4) *Where there is conflict between provisions within the planning scheme, the following rules apply:*
  - a) *the strategic framework prevails over all other elements to the extent of the inconsistency*
  - b) ***overlays prevail over all other elements (other than the strategic framework) to the extent of the inconsistency***
  - c) ***zones prevail over overlays***, local plans and other codes to the extent of the inconsistency except where it is identified in the local plan code that local plan provisions prevail over the zone or zones
  - d) *local plans prevail over other codes to the extent of the inconsistency.*

As outlined above, there seems to be a conflict between (b) whereby overlays are to prevail over all other elements and (c) where zones prevail over overlays. Further, it seems that the stated relationships between zones and local plans (i.e., that zones prevail over local plans) are contrary to the established principle that the specific provisions prevail over more general provisions and Part 8 of Module B.

### ***Building Work Regulated Under a Planning Scheme (section 1.6)***

Section 1.6 of the draft Provisions includes a statement that clarifies the relationship between Building Work regulated under a planning scheme and the *Building Act 1975*. Notably, the draft Provisions do not currently incorporate the threshold concepts of “minor building work” and “minor demolition”, which have proved very important to the practical implementation of Brisbane City Plan 2000 as they provide thresholds below which it is not necessary to make an application pursuant to the planning scheme.

### ***Strategic Framework***

Some mandatory statements have an emphasis or bias that may be appropriate for some local government areas but not others (e.g. settlement pattern mandatory statement refers to agriculture and rural residential development).

### ***Section 10.1.2 Structure Plan Area Code***

These may not be relevant for many local government areas and where present the Structure Plan Code may be lengthy so numbering is likely to be a problem.

### ***Section 10.2 Other Master Plans***

These may also not be relevant for many local government areas and where present the Structure Plan Code may also be lengthy so numbering is also likely to be a problem.

## 8.0 Unintended Consequences?

The following provides an overview of the potential unintended consequences of the draft Provisions:-

- (i) *The Appearance of Standardisation* - while there is an expectation of “standardisation”, in reality there will still be significant variation in planning schemes across the State, through variations in strategic frameworks, Priority Infrastructure Plans, Tables of Assessment, Zone Codes, Overlay Codes, Local Plan Codes, Other Codes and Structure Plans for Declared Master Plan Areas;
- (ii) *Planning Cycle Lag* – the draft Provisions will not apply to the amendment of planning schemes which exist prior to the commencement of the Sustainable Planning Act 2009. However, at such time as a review of an existing planning scheme is required under the IPA, the new planning scheme is to be prepared consistent with the requirements of the draft Provisions. When do all local governments have to have a planning scheme in place consistent with the QPPs? What year will the intended benefits accrue?;
- (iii) *Mixed Use Zone and Precincts* – local governments may rely on the Mixed Use Zone and Zone/Local Plan precincts as a means of reflecting detailed planning provisions contained in many current schemes;
- (iv) *Climate Change* - the draft Provisions require that climate change be addressed in the Strategic Framework under Settlement Pattern. As standard planning schemes start to incorporate climate change in the Strategic Outcomes (against which development applications will be assessed), it may soon follow that proponents will need to quantify sea level rise and the climate change impacts of individual development proposals. How does a local government draft robust Acceptable Measures relating to greenhouse gas emissions? The issue of climate change has long been a “sleeper” in development assessment and the inclusion of climate change impacts in an assessment provision of planning schemes potentially sets the stage for some very complex planning assessments (and appeals);
- (v) *Levels or Types of Assessment* - are there any consequences arising from changes to definitions and implications on levels and types of assessment (e.g. compliance assessment)?;
- (vi) *Amendments* – will the automatic amendments of planning schemes to accommodate changes to the QPPs create unintended and potentially adverse consequences?;
- (vii) *Flexibility* - do the draft Provisions provide sufficient flexibility in providing for emerging uses?;
- (viii) *Road testing* - it is not clear whether there has been any road testing of the draft Provisions to determine whether they provide an accurate and functional suite of standard Zones, Codes and Definitions that can efficiently regulate development. What does a fully worked Table of Assessment look like? Has this exercise been done in preparing the draft Provisions?

## 9.0 Key Concerns

Key concerns associated with the commencement of the final version of the Provisions, anticipated to be released in December 2009, include:-

- (i) that the Provisions are being rushed into action without sufficient practitioner road testing;

- (ii) that once in force it will be difficult to bring about changes to the Provisions even when the case for change is well made;
- (iii) that large Councils will not “sign-up” to use these provisions and that therefore the greatest potential benefits will not be realised if these Councils continue to operate “non-standard” schemes for many years; and
- (iv) that an opportunity has been lost to provide practical guidance on overlay codes (particularly those relating to State Planning Policies) that should be “standardised” by now and with it the opportunity to bring some efficiencies to the integration of State interests into planning schemes and with it increased efficiencies in the operation of the IDAS.

## **10.0 What do the draft Provisions mean for local government?**

The draft Provisions provide:-

- (i) an emphasis on creating a robust Strategic Framework to guide development in the local government area;
- (ii) no change in the significant work required to develop zone, overlay and local plan code provisions;
- (iii) challenges in understanding and designing schemes to reflect Compliance Assessment;
- (iv) challenges in designing schemes around a limited suite of residential zones and challenges arising from applying standard use and administration definitions to an existing framework of expectations, approvals and established principles and practice;
- (v) opportunities for including local government administrative matters (section 1.9); and
- (vi) no change in the existing relationship with State agencies with significant resources still required to negotiate scheme content and continuing IDAS process complexity.

## **11.0 What do the draft Provisions mean for the development industry?**

The draft Provisions will result in some time efficiencies associated with familiarity about the following:-

- (i) overall structure/order of components;
- (ii) standard definitions;
- (iii) zones;
- (iv) overlays;
- (v) code and assessment table structure;
- (vi) mapping;
- (vii) compliance assessment; and
- (viii) certainty associated with specified prohibitions.

There will still be significant variations between schemes relating to differences in the strategic framework, codes, levels of assessment and precincts under zones and local plans. For example, gross floor area, height and site cover requirements for the standard “General Residential Zone” will vary across each local government.

## 12.0 Conclusions

The draft Queensland Planning Provisions as a standardised planning scheme template will largely resolve the widespread inconsistencies in planning scheme structure, language and application across local governments and may reduce the amount of duplication in effort that has been required to produce planning schemes under the *Integrated Planning Act 1997*. However, it is not clear whether the draft Provisions will, as a total package, provide a better framework for the creation of a robust planning scheme that can deliver good planning outcomes in the pursuit of ecological sustainability. Also, full standardisation in the Queensland context is not desirable and not considered achievable in any case.

The draft Provisions may facilitate the achievement of good planning outcomes by focusing on strategic policy development, providing significant opportunities for local policy variation and resolving widespread inconsistencies in planning scheme structure, language and application.

The potential benefits associated with the draft Provisions may be hindered by:

- (i) not addressing planning cycle lag – benefits (sufficient to justify this exercise) will only accrue benefits when all larger Councils have QPP schemes in operation;
- (ii) not providing adequate guidance on the translation of State Planning Policies into standard provisions;
- (iii) providing insufficient flexibility in the mandatory zones;
- (iv) providing a set of definitions which do not appear to be fully resolved in terms of their detailed drafting and their comprehensiveness;
- (v) not significantly improving the process for negotiating scheme content with State agencies; and
- (vi) unintended consequences associated with the prescription of zones, definitions and use of Strategic Framework in development assessment.

Practitioner road testing and the feedback which can be gained from the early application of these Provisions to drafting planning schemes will be necessary to refine the Provisions and thereby ensure that they will significantly progress the advancement of ecological sustainability and deliver good planning outcomes in Queensland.

## References

- Berke, P., and Godschalk, D., (2009) *Searching for the Good Plan, A Meta-Analysis of Plan Quality Studies*, Journal of Planning Literature, Volume 23 Number 3, February 2009, pp 227-240.
- Queensland Department of Infrastructure and Planning (2009) *Draft Queensland Planning Provisions*, Brisbane.
- Reynolds, S., and Schneider, M., (2009) *Creating a Standard Planning Scheme: The Queensland Planning Provisions*, Humphreys Reynolds Perkins Planning Consultants, Brisbane.
- Perkins, D (2009) *The Draft Queensland Planning Provisions*, Humphreys Reynolds Perkins Planning Consultants, Brisbane.