

3. Queensland

3.1 Legislative framework

The Queensland position on vegetation conservation and management shows a clear distinction between freehold and leasehold land. With 78% of the State being under lease, the provisions relating to leasehold land are significant. However, many important ecosystems are only found in the coastal regions, which are almost exclusively freehold and where the majority of the Queensland population live. It is therefore important to consider the provisions relating to both freehold and leasehold land.

The role of local government and its powers are broad and relatively undefined, for example, the *Local Government Act 1993* grants local government the jurisdiction to make local laws for, and otherwise ensure the good rule and government of, its territorial unit (s25). This includes the jurisdiction to make local laws with respect to any matter required or permitted to be prescribed under the *Local Government Act or any other Act*, or necessary or convenient to be prescribed or exercised for carrying out or giving effect to its local laws (s26). The only restriction on this grant of

power is that a local government has no jurisdiction to do anything which the State also lacks the jurisdiction to do, or to make a local law that Parliament would not make. Any local law that is inconsistent with a State law will also be invalid to the extent of the inconsistency.

This broad grant of power enables local government to potentially have a dominant role in vegetation conservation and management. It must, however, be viewed in context. The actual extent of local government's work on these issues depends also on whether it is perceived to form part of the 'core business' of the local government, or whether it is seen as a discretionary 'extra'. Local governments have the power to encourage vegetation conservation through the implementation of incentive-based instruments, such as a differential rating system based on the conservation status of the land. However, this is a discretionary exercise of power and is not a requirement which must be implemented (*Local Government Act*, ss561–562 and 572–574).

It is useful to consider these distinctions when considering the position in Queensland. Table 3.1 identifies legislation important to vegetation management in Queensland and the jurisdiction, with the primary implementation role under the Act.

Table 3.1: Environmental and land use legislation and implementing jurisdiction

Legislation	Jurisdiction
<i>Coastal Protection and Management Act 1995</i>	State and local government
<i>Environmental Protection Act 1994</i>	State and local government
<i>Forestry Act 1959</i>	State
<i>Integrated Planning Act 1997</i>	State and local government
<i>Integrated Resort Development Act 1987</i>	State
<i>Land Act 1994</i>	State
<i>Local Government Act 1993</i>	Local government
<i>Nature Conservation Act 1992</i>	State
<i>Soil Conservation Act 1986</i>	State
<i>State and Regional Planning and Development Act 1971</i>	State
<i>Transport Infrastructure Act 1994</i>	State
<i>Water Resources Act 1989</i>	State

Queensland has recently reviewed their land use and planning legislation. This review culminated in the passing of the *Integrated Planning Act 1997*, which commenced operation on 1 April 1998.

3.2 Powers of local government

The Local Government Act provides the source for the powers granted to local governments. This is a broad grant of power, which may be restricted by provisions in other legislation.

3.2.1 Local Government Act 1993

The Local Government Act contains a broad and general grant of power to local governments in Queensland. A local government has jurisdiction to make local laws for the good rule of its territorial unit, and to otherwise ensure good rule and government (s25). This includes the jurisdiction to make local laws with respect to any matter required or permitted to be prescribed under the Local Government Act or any other Act, or necessary or convenient to be prescribed or exercised for carrying out or giving effect to its local laws (s26). The only limit on this jurisdiction is that a local government does not have any power to make a law that the Queensland Parliament could not make, or to do anything which the State government has no power to do (s30). Essentially, *local governments have the power to do anything that the State government can do and could, if desired, pass local laws enforcing or enacting vegetation conservation*, either directly or in relation to existing State legislation. This means that local governments could, if willing, introduce a broad range of incentives for promoting vegetation management and conservation. A range of councils in south-east Queensland are currently using incentive-based instruments to address native vegetation issues.

The above, however, must be clarified. The State government can override a local law where it is in the interests of the State to do so (s112), a local government can exercise State powers where these are delegated by legislation, and State law will

override a local law to the extent of any inconsistency between a State and local law (s31).

Establishment of joint authorities

Part 2 of the Local Government Act provides that joint local governments can be established by regulation. Where this is done, the joint local government has all the powers of an individual local government, except that it has no power to make a rate or levy payable on land (s51). It is possible for local governments to work together without requiring regulations to establish a joint local government. Section 59 provides that a local government can make arrangements with other local governments to extend its jurisdiction into other local government areas. These sections could be used *where a regional approach to vegetation conservation was needed, either with the local governments working together until the required regulations were passed or as an alternative until joint arrangement prescribed by regulation were determined*.

Rates and charges

When considering the issue of rates and charges, the importance and effect of land tenure becomes apparent. Section 533 provides that all land is rateable except:

- vacant State land;¹⁸
- land occupied by the State or a State entity, except land which is leased from a private person;
- land in a State forest or timber reserve other than land occupied under an occupation permit or stock grazing permit under the *Forestry Act 1959* or the *Land Act 1994*;
- Aboriginal and Torres Strait Islander land under Aboriginal and Torres Strait Islander land Acts other than land used for commercial or residential purposes;
- certain land under the *Transport Infrastructure Act 1994*; and

18. Crown land is referred to as State land in Queensland.

- land exempt from rating under an Act or regulation made under this Act, such as land used for religious or educational purposes.

This means that rateable land includes leasehold land which is used for residential or stock grazing purposes or occupied under an occupation permit, freehold land, and land occupied by the State which is leased from a private person.

Local governments can impose on rateable land a levy, general rate, differential general rate, separate rate or charge, special rate or charge, or a utility charge (s559). A rate or charge can only be made for a financial year and requires a resolution of the council at the local government's annual budget meeting (s560). The Act further requires that the local government must make a general rate or differential general rate for each financial year (s561).

Differential general rates are applied where land within a municipality is to be rated according to the classification of that land by the council, for example, rural land may be charged at one level, and urban land may be charged at another level. As far as we are aware, the classifications for rating do not have to be the same as the land use zoning provisions. Before these rates can be charged, the local government must have approved the classification of land into at least two categories (s562). *It may be possible to implement a differential rate on the basis of the conservation status of the land to encourage a landowner to conserve and manage the vegetation on their land.*

The Local Government Act also provides that a local government may remit the whole or part of unpaid rates, or accept another arrangement for unpaid rates (s627). This power may only be exercised in certain circumstances. One instance in which it may be exercised is for the preservation, restoration or maintenance of structures or places of cultural, environmental, historic, heritage or scientific significance to the local government's area. It can also be used for any factor prescribed by regulation. It would clearly be possible to use this power to *provide a rate rebate on the basis of the environmental value of the vegetation to the area. For example, the areas of vegetation which are*

protected by a management agreement, or a restrictive covenant on the use of the land, may be eligible for a rate rebate of a certain amount.

In addition to differential rates, a local government can make and levy a *special rate or charge* on rateable land if the rate or charge is for a service, facility or activity and, in the opinion of the local government, the land has or will specially benefit from or will have special access to the service, facility or activity. A special rate or charge can be made and levied on the bases the local government considers appropriate, and the amount charged can vary depending on the extent to which land will benefit from the rate. Before such a rate or charge can be implemented, however, there must be a resolution of council making the rate or charge, and identifying the land to which it will apply (s567). *Environmental levies may possibly be levied under this section. It would have to be demonstrated, however, that the levy is for a service, facility or activity which provides a special benefit to that land.* A general environmental levy may not be able to fit this criteria. As levies are already imposed in some local government areas in Queensland, legislative amendment to clarify the position of a levy would be advisable. Alternatively, section 563, which allows a local government to identify rateable land for the purpose of making a levy in any way it considers appropriate, could be relied upon.

Roads

Section 497 grants local governments the control of all roads within their area. This includes the capacity to take all necessary steps for construction, maintenance and improvement of roads. Although there is no specific reference to the management of roadside vegetation, given the broad general grant of power to local governments, it would appear that this power, in conjunction with that granted by section 497, would be sufficient for *local governments to regulate the use of and impacts on roadside vegetation.*

3.2.2 Transport Infrastructure Act 1994

Section 26 of the Transport Infrastructure Act grants the Chief Executive of the Department of Transport

the same powers over State roads as local government has over local government-controlled roads. The State can also enter into an agreement with local governments to carry out work on a local road (s27), and a local government can exercise, for a State-controlled road in its area, all the powers that it may exercise for a local road within its area (s43). This would appear to mean that both the State and local government may exercise some control over the roads within a municipality. It may be possible for the State to use this power to implement a roadside vegetation conservation program, which could then be taken over by the local government, or continued by the State government where the local government lacks the resources to continue such a program.

3.3 Land use and planning

3.3.1 Integrated Planning Act 1997

The Integrated Planning Act was passed by Parliament in December 1997 and entered into force on 1 April 1998. This Act aims 'to seek to achieve ecological sustainability through coordinated planning, and the management of development and its effects on the environment' (s1.2.1). The Act repeals the Local Government (Planning and Environment) Act. It provides a basis for coordinating and integrating local, regional and State level planning into local government planning schemes, and therefore makes local planning schemes the central mechanism for planning control. The Act binds both State and local government and all other persons in Queensland (s1.5.1). This is important when considering the large areas of Queensland which are leasehold land.

It is interesting to note that the term 'development' used in the Integrated Planning Act does not include changes to the environment. It is primarily concerned with building works, plumbing, subdivision and operational work. Operational work is itself defined to include 'planting trees or managing, felling and removing standing timber for an ongoing forestry business' and specifically excludes removing or destroying vegetation. Vegetation clearance is therefore expressly excluded and vegetation management is not included within this Act. In effect, this will make it more difficult for

local governments to act to conserve remnant vegetation.

The Act provides for protection of existing use rights and prevents retrospective legislation or regulations affecting those rights. Chapter 1, Part 4, states that an existing use, or existing right to a use, is protected and cannot be amended or removed by an instrument under the Act. Protection of existing uses is a standard provision within most planning law. For example, if a person applies for and is granted planning approval for a development which has commenced but not been completed, this approval will still exist even if a new planning scheme provides that the development is illegal in that area. However, the provisions under the Act go further than this, to protect the right to undertake a certain use on that land, even where that right has not yet been exercised. For example, if a block of land is zoned so that residential dwellings are permitted and a permit has been issued allowing the development, it will still be permitted even if the land is rezoned so that residential dwellings are discretionary, despite the fact that the building, and therefore the use, has not yet commenced. This right is protected for a period of four years, unless otherwise stated in the development approval.

There are also provisions concerning compensation which provide that a local government may be required to pay compensation to a landowner if a change to a planning scheme or planning scheme policy reduces the value of the landholder's interest or, because of such a change, the land can only be used for community infrastructure.

In summary, the new provisions relating to existing use rights and the right to compensation may well act as disincentives to local government involvement in vegetation management and conservation. The risks of rezoning land and the possibility of paying compensation to landowners may well encourage local governments to avoid such steps.

Concern has been expressed about the terms of this Act, with an overriding concern that the environment may be more adversely affected under the Act than it was under previous legislation. These concerns relate, in particular, to the impact

assessment provisions contained in the Act, which do not include specific reference to the impact of the development on the environment. These assessments are carried out by a local government, or the Minister if the development is outside the jurisdiction of a local government (ss3.5.5 and 3.1.7).

The Act provides for integrated planning at a local, State and regional level for the purpose of ecological sustainability (s1.2.1). Ecological sustainability includes the protection of biological diversity (s1.3.6).

The Act also provides for the preparation of State planning policies which deal with matters of State interest (s2.4.1). These policies will apply to all land within the State unless otherwise stated (s2.4.2). Local governments can also make local planning schemes, however, they must be consistent with the Act and integrate any State or regional matters. They can also include environmental objectives and performance indicators (s2.1.3). The core matters which can be included in a planning scheme include land uses and development, infrastructure, and valuable features such as 'resources or areas that are of ecological significance (such as habitats...places supporting biological diversity...)' (Schedule 1, s4).

Schedule 1 outlines the procedures which must be followed when preparing a planning scheme. This includes the following stages: preliminary consultation and preparation, consideration of State interests, final consultation and adoption.

Once a planning scheme has been accepted for an area, the Minister or local government may propose an amendment to the scheme. Where this is done, the same process as for making a planning scheme must be followed (s2.1.5).

When an application is made to a local government to approve a development, it may be either an exempt development, a self-assessable development or an assessable development (s3.1.2). Assessable and self-assessable developments are defined in Schedule 8 of the Act; exempt developments are all other developments. Part 3 of Schedule 8 lists those exempt developments which cannot be made

assessable or self-assessable developments. It includes 'operational work associated with (a)...(b) weed control, pest control, fire hazard reduction and the conservation or restoration of natural areas, and (c)...' (Schedule 8, s13). It would therefore appear that local governments would be unable to make vegetation clearance a development requiring approval under this Act.

When determining a development application, an exempt approval does not require specific approval; a self-assessable development, if it complies with the codes applying to the development, does not require approval; and a development permit is only necessary for an assessable development (s3.1.4). This application will be determined by the assessment manager, usually the local government (s3.1.7). However, if a development concerns a State interest, the Minister can become the assessment manager for the application and decide on the matter (s3.6.7).

It is possible for conditions to be imposed on a permit. The only proviso is that the conditions must be relevant and reasonably required in respect of the development (s3.4.30).

A landholder can appeal a council decision concerning approval to the Planning and Environment Court.

The Act also provides that a failure to comply with a planning scheme, or with the conditions on approval, are offences (ss4.3.1–4.3.7).

As with most planning law in Australia, local government control over land use is based on the implementation of a planning scheme which has the approval of the State. *It would be possible to include a conservation zone in a planning scheme, in which most developments are prohibited, and require management of that land for conservation, if that is in accordance with the stated objectives of the planning scheme.*

Under the Act, a local government can also acquire land to help achieve the desired environmental outcomes as stated in its planning scheme (s5.5.1). In doing this, the local government must follow prescribed notice requirements, and compensation

may be available to landholders who lose their land under these provisions (Part 4).

Other material changes include:

- enabling the Minister to prepare a planning scheme where local government fails to do so;
- allowing a planning scheme to extend beyond a local government's boundaries into adjoining areas where the Minister has authorised it and imposed a condition to that effect (planning schemes can include local, regional and State dimensions);
- planning schemes must be reviewed every six years;
- the Minister may establish regional planning advisory committees;
- where a local government or the Minister designates land for community infrastructure, the designation may include an environmental management program;
- the Minister can only issue directions about the development application if the local government fails to do so, or the matter concerns a State interest;
- the Planning and Environment Court retains jurisdiction to hear matters arising from the Act, including appeals from development applications; and
- certain activities are offences under the Act and punishable by way of a fine.

3.3.2 Land Act 1994

The Land Act is one way in which statewide controls on vegetation management could be implemented. The Act essentially applies to all land in Queensland except land owned by the Commonwealth. The objects of the Act include sustainability, land evaluation based on land capability, cultural and social opportunities and values of the land, development, community

purpose, protection of environmentally and culturally vulnerable and sensitive areas and features, and consultation and administration.

The Act allows the Governor in Council¹⁹ to grant unallocated State land as freehold land (s14), and also allows the Governor to lease land, which may be subject to reservations and conditions (ss15 and 21). Unallocated State land may be dedicated as a reserve for community purposes by the Minister and can then be leased. However, the lease must be consistent with the purpose for which the land was reserved (s31). Such a reserve can be revoked by the Minister by issuing a notice to that effect in the Gazette.

A large proportion of land in Queensland is held as leasehold land. In July 1995, 78% of Queensland was leasehold land (Queensland Department of Natural Resources and Energy, 1997a). Because State land, although covered by a planning scheme, will not always be bound by the requirements of the scheme, it is important to consider the provisions in the Land Act which relate specifically to leasehold land and conditions which may be imposed on the use of leasehold land. Section 199 provides an overarching condition that the lessee, licence holder or permit holder has the responsibility for the duty of care for the land. The more specific conditions concerning vegetation which may be imposed include that all noxious plants must be kept under control (s200), and can relate to improvement or development on or to the land, sustainability and protection of the land, the provision of services and any other condition the Minister thinks fit (s203). If a condition of a lease is breached, and after the issuing of a remedial action notice there is still no compliance, the lease must be forfeited to the Crown (s214).

Covenants

Freehold and leasehold land can be subject to covenants, which may be registered on the title of the land or lease (*Land Titles Act 1994*, s97A, and *Land Act*, s373A). Under the Land Act, however, the covenant can only relate to the transferring of land,

19. The Governor in Council is the executive government comprising the Ministers and the head of government. It is essentially the same as Cabinet.

for example, that two parcels of land must be transferred together. Despite provisions in other States for the creation of conservation covenants, and attempts by Albert Shire Council to register 'environmental easements', which are, in fact, covenants, it remains clear that common law covenants cannot be used as a mechanism to protect vegetation in Queensland (*Property Law Act 1974*, s181, and *Land Titles Act 1994*, s97A).²⁰

Tree management

The provisions within the Land Act relating to tree management were proclaimed on 24 October 1997 (SL 355). These provisions provide that *where land is held under a lease or licence, the destruction of trees without a permit is prohibited. A person must not clear a tree or allow a tree to be cleared on State or leasehold land unless a permit has been issued; the removal is part of routine management purposes* as outlined in sections 268–270; where the person is a trustee as outlined in the regulations; or for the clearing of trees for safety purposes along a transport corridor (as provided under the Transport Infrastructure Act). If a person clears without a permit, they are guilty of an offence, liable for a fine, and may need to cover the cost of remedial work.

An application for a permit must be made in writing to the relevant State authority and may need to be accompanied by maps outlining the areas to which the permit will apply. When considering an application to clear, the Chief Executive of the Department of Natural Resources and Energy must consider a series of 25 factors, including 'the protection of restricted vegetation types and areas of high nature conservation value, particularly riparian lands and areas of heritage values' (s262). A permit may be issued or refused. If issued, it will be subject to conditions that the person will not destroy, damage or otherwise interfere with trees to which the permit does not extend. The permit will also specify the manner in which the trees can be removed and other relevant conditions, including

requiring compliance with a tree management plan. If, once a permit has been issued, there is evidence that the conditions attached to the permit have not been complied with, the permit can be cancelled and a fine imposed for a breach of the Act (s266).

The Land Act also includes provisions for the development of a tree management plan, broadscale tree clearing policies and routine management. Section 252 states that the objects of the tree management provisions are to:

...manage trees on unallocated State land and on reserves, deeds of grant in trust, roads, licences, permits and leases on which the State owns the trees, consistent with the following principles:

- a. to maintain the productivity of the land;
- b. to allow the development of the land;
- c. to prevent degradation of the land;
- d. to maintain biodiversity;
- e. to maintain the environmental amenity values of the land;
- f. to maintain the scientific, recreation and tourism values of the land; and
- g. to ensure public safety.

A *tree management plan* must also identify several factors, including the major vegetation types and any planned revegetation or rehabilitation.

Broadscale Tree Clearing Policy

A Broadscale Tree Clearing Policy was approved by the Governor in Council in October 1997 and applies to leasehold land. The principles of the policy are to facilitate tree management consistent with several policies, including maintaining the productivity of the land, allowing the development of the land, preventing degradation of the land, and

20. There are additional provisions under the Nature Conservation Act which provide for the creation and registration of conservation covenants and, as these are statutory covenants, they are not prohibited from registration by the Property Law Act or the Land Titles Act. This power to enter into a covenant is only available to the State and is not available to local governments for the making of covenants on land which is classed as a nature refuge. See later comments on the Nature Conservation Act.

maintaining regional biodiversity. This policy contains three categories of vegetation types which must be considered when developing local guidelines:

- *Endangered and vulnerable* is the classification for vegetation where less than 10% of the pre-European distribution of that vegetation type remains undisturbed. The clearing of vegetation in this class is prohibited.
- *Of concern vegetation* is vegetation of which 10% to 30% of the pre-European distribution of that vegetation remains intact. Up to 50% of this vegetation on a property may be cleared.
- *Not of concern* vegetation is the class of vegetation where more than 30% of the pre-European vegetation remains. Up to 80% of this vegetation on a property may be cleared.

In addition to these restrictions, no clearing is to occur if to do so would move that vegetation type from one classification to another. The State is also divided into zones with more specific requirements as to the clearing of vegetation in those zones.

This policy has been adopted, with 34 local guidelines being approved by the Minister for Natural Resources and Energy (Queensland Department of Natural Resources and Energy, 1997a). The outcomes of these policies are yet to be determined, with a moratorium on issuing of permits for broadscale tree clearing on leasehold land in place until the legal implications of native title issues can be clarified (Queensland Department of Natural Resources and Energy, 1997a). Under the Land Act, the categories of the Broadscale Tree Clearing Policy will only apply to leasehold land, however, if they are adopted and local guidelines developed, these will then be binding on freehold land as council policy when councils consider a development application.

Comments on the current situation in Queensland

Vegetation clearance is a controversial issue, with broadscale clearing still occurring in Queensland. In 1995, permits to clear 551 700 hectares of land were issued, 72% of these being for regrowth. It is

difficult to make an objective judgement about the impact of new clearing guidelines in Queensland, precisely because they are new. In the past, clearing permits were provided as a matter of course. The new guidelines provide a framework through which the values of native vegetation can be considered prior to issuing a permit. The guidelines will need strong support, implementation and enforcement if they are to be successful. It is also important to note that clearing on freehold land remains unregulated unless local governments deem vegetation clearance a development, as has been done by Brisbane City Council, or local laws are passed regulating clearance.

3.3.3 Soil Conservation Act 1986

The Soil Conservation Act is one of the older Acts concerning environmental protection. It specifically concerns soil erosion, which is presented as the main aspect of land degradation. The Act allows for the preparation of property plans to address issues of soil management on a property. There are provisions for offences arising from breaches of a property plan, and for the making of regulations relating to soil conservation. There are, however, no sections that directly refer to vegetation conservation. The Act considers soil conservation in isolation, and is therefore of limited application to the issue of vegetation conservation, despite the fact that vegetation management will influence soil conservation issues.

3.3.4 Forestry Act 1959

The Forestry Act applies primarily to State land. It concerns the classification, reservation and management of State forests and timber reserves, the control of forest products and the control and prohibition of fires. The Act defines State land as land which is held under the Land Act as a pastoral lease, stud holding, grazing homestead perpetual lease, special lease, development lease, and so on, or land that is held under a lease or licence prescribed in the regulations.

The Governor in Council can declare land to be a State forest, and any part of a State forest may then be declared a timber reserve (s25). A declaration can be revoked by a resolution of the State

Parliament. Timber reserves can be revoked more easily, requiring only a declaration by the Governor in Council to that effect. State forests are to be managed by the Primary Industries Corporation (a State body) for 'the permanent reservation of such areas for the purpose of producing their timber and associated products in perpetuity and of protecting a watershed therein.' In carrying out this objective, the corporation shall have regard to 'the benefits of permitting grazing in the area; the desirability of conservation of soil and the environment and of protection of water quality; the possibility of applying the area to recreational purposes' (s33). The corporation also has the power to regulate the use of State forests, and may grant permits to carry out certain activities such as camping, stock grazing and mineral exploration (s35).

As with the Soil Conservation Act, the Forestry Act applies to State land, and is therefore of limited importance to local governments.

3.3.5 *Integrated Resort Development Act 1987*

The Integrated Resort Development Act allows for integrated development approval by the State government. Approval by the State government overrides local planning schemes, and therefore overrides any local laws or policies. The Minister decides which projects are able to be considered for integrated development. Although the provisions of this Act remove the control from local governments, vegetation issues are not completely excluded, as legislation such as the *Nature Conservation Act 1992* can still bind the Crown.

3.3.6 *Coastal Protection and Management Act 1995*

The Coastal Protection and Management Act aims to provide for the protection, conservation, rehabilitation and management of the coast (s3). This is to be achieved by preparing coastal management plans that state principles and policies for coastal management; identifying key coastal sites and coastal resources in the coastal zone; planning for their long-term protection and management; and by declaring control districts in the coastal zone as areas requiring special development controls and

management practices (s4). The coastal zone is defined as 'coastal waters and all areas to the landward side of coastal waters in which there are physical features, ecological or natural processes or human activities that affect, or potentially affect, the coastal resources' (s11). This means that the coastal zone could potentially extend large distances inland. The Act establishes a Coastal Protection Advisory Council to advise the Minister about the need for special coastal zoning, development of coastal plans, and preventive and remedial measures for coastal management. This would therefore include advice on the management and conservation of coastal vegetation. Regional coastal management plans can be developed with public consultation, and will be finally made by the Governor in Council. The Act also includes provisions for offences, and compensation provisions for the restriction on use of coastal land covered by a regional coastal management plan and development controls under the Act.

3.3.7 *Water Resources Act 1989*

The use of the Water Resources Act in relation to vegetation conservation is potentially wide-reaching. The Act specifies that the bed and banks of a water course or lake are to be vested in the Crown (s26), and also allows for regulations to be made specifying land use within a declared water catchment area, including subdivision, and the rezoning of land. These provisions could be used to great effect by the State to ensure that local governments manage catchment areas for vegetation conservation as well as for water supply. However, it would appear that this Act has been applied only in regard to the bed and bank of a water course and not to a catchment area.

3.4 *Other relevant legislation*

3.4.1 *Nature Conservation Act 1992*

The Nature Conservation Act has as its objective the conservation of nature through an integrated and comprehensive conservation strategy (ss4-5). The Act provides for community consultation and education, as well as for the management of protected areas and conservation (which is defined as 'the protection and maintenance of nature while

allowing for its ecologically sustainable use' (s9)). The Act comprises four main parts relating to protected areas, wildlife and habitat conservation, interim conservation orders, and management and conservation plans.

Protected areas

The protected areas to which the Act applies are national parks (scientific); national parks (Aboriginal land); national parks (Torres Strait Islander land); conservation parks; resources reserves; nature refuges; coordinated conservation areas; wilderness areas; World Heritage management areas; and international agreement areas (s14). These areas must be managed in accordance with the management principles outlined in the Act and the purpose for which the protected area was created (s15). The Governor in Council can declare by regulation that an area of State land is to be dedicated as a national park (scientific); national park; conservation park; or resources reserve (s29). Similarly, the conservation status of an area can be revoked by regulation (s32), however, the approval of Parliament is also needed to revoke the status of an area. Where the area is a national park, it is possible to carry out certain activities in that park if a licence or permit is granted, and the use is not inconsistent with the management of the area and is ecologically sustainable (s35). Land within a protected area may be leased, again with the proviso that the use of the land and lease provisions must be consistent with the management principles for the area, and ecologically sustainable.²¹

If a proposal for the declaration of freehold land to become a nature refuge is unable to be agreed upon by the landowner and the State, it is possible for the State to compulsorily declare the area to be a nature refuge. To do this, the Minister must give written notice to the landowner that a recommendation is to be made to the Governor in Council to compulsorily declare the area to be a nature refuge. Any objections to this which are received must be considered, and the Governor in

Council may pass a regulation declaring the area to be a nature refuge and specifying the area covered by the declaration and the purpose of the refuge (s49). Compensation may then be sought by the landowner. Compensation paid through this mechanism is not subject to capital gains tax, while any voluntary sale of land acquired after 20 September 1985 is subject to capital gains tax.

It is possible to use this Act to *create nature refuges or coordinated conservation areas for the purpose of vegetation conservation* on freehold land. Such areas are to be managed under the terms of the conservation agreement by the private landholder to conserve the area's natural resources, and provide for the controlled use of the area's natural resources and the interests of the landholder; and to take into account the area's natural, educational and commercial values (ss22–23). A conservation agreement can then be drawn up which will be binding on the landowner (see below).

Conservation agreement

The Minister may prepare a proposal for a nature refuge, a coordinated conservation area or a wilderness area to be declared (s44). The proposal must outline the areas to be included and specify the purpose for the declaration. Once this proposal is made, each affected person with an interest in the land must be notified. In practice, landholders are encouraged to voluntarily enter into an agreement. If the Minister and the landowners agree that an area should be declared for the reasons specified in the proposal, the Minister, on behalf of *the State, can enter into a conservation agreement with the landowner* in relation to the area (s45). Before a conservation agreement can be entered into, the consent of everyone with an interest in the land must be received in writing. The agreement must be consistent with the conservation objectives of the nature refuge, and it can be binding on the State, the landowner and successive landowners. It can contain terms requiring the State to provide financial assistance and technical advice, or to carry

21. The Nature Conservation (Protected Areas) Regulation 1994 provides for the declaration and naming of protected areas. The Nature Conservation Regulation 1994 concerns the application for and consideration of the issuing of licences under the Nature Conservation Act, for example, stock cannot be grazed in a protected area unless a permit has been issued for that purpose.

out certain activities. It may similarly require the landowner to carry out certain activities, prohibit certain uses of the land, restrict the use or management of the land, and require the landowner to repay any money given by the State under the agreement if it is broken. A conservation agreement will remain in force for the period of time specified in the agreement. Alternatively, it may be revoked on the request of the landowner who entered into the agreement, in the terms stated in the agreement, provided that the Minister believes the area is no longer needed as a protected area (s49). An agreement may also be varied by agreement between the State and the landowner (s48).

Section 51 provides that a conservation agreement applying to a nature refuge may be recorded by the Registrar and, if this is done, it is binding on the landowner and successive title holders. Similarly, a conservation covenant, if registered, will be binding on successive title holders. Under section 134, the Registrar, upon receipt of written notification that a conservation agreement or covenant has been agreed upon, must maintain the records in such a way that a search of the register under any Act relating to land will show that a conservation agreement or covenant exists and is binding on that land. Strictly, this is different to registering the existence of such an instrument on the title of the property, as the information is noted in 'Administrative Advice Files'; however, the effect is the same.

Management and conservation plans are to be prepared for each protected area (except a nature refuge where the agreement says a management plan will not be prepared). The Minister must notify the public of an intention to prepare a plan, public submissions may be made which must then be considered, the final management plan must then be approved by the Governor in Council and, once it is approved, it will *have the status of a regulation* for that area. Local governments must then ensure that their decisions are consistent with the plan, and cannot issue a permit or give any approval which is inconsistent with the plan (s123).

Compensation

Where land is compulsorily declared a protected area, it may be possible for the landowner to seek compensation if their interests have been injuriously affected.²² The State may be required to pay compensation for the restriction or prohibition of certain uses of the land (s67), or if the restriction already applies under another law. In considering whether or not compensation is payable, the Land Court must consider the capacity of the land to sustain the existing use, the change of value of the land because of the declaration, and the existence and terms of the management agreement. Compensation may also be available where a conservation plan is approved for an area and the landholder's interest in the land is injuriously affected by a restriction or prohibition contained in the plan (s126). However, it is not available if

22. The phrase 'injurious affects' is used in relation to compensation provisions contained in the Nature Conservation Act. A landholder suffering injurious affection may be eligible to claim compensation. Previous court interpretations of this phrase in other jurisdictions suggest that the injurious affects must relate to things done upon the actual land acquired and do not extend to losses consequent upon the carrying out of a larger public purpose. There is no right to compensation for injurious affects which are unrelated to restrictions in user enjoyment or development of the land concerned (see *McInnes v Commissioner of Highways* (1992) 58 SASR 563 and *Flokeston v Metropolitan Region Planning Authority* [1968] WAR 164). This interpretation suggests that the State may be liable to pay compensation in relation to the restriction of uses on that land, such as the loss of production from the land, but not for indirect costs such as the possible overall decrease in the value of the property due to the restrictions placed on the use of the land by the covenant. In *McInnes v Commissioner of Highways* (1992) 58 SASR 563, Matheson J stated that compensation for injurious affection is limited to things done upon the actual land acquired and does not extend to losses consequent upon the carrying out of a larger public purpose. This case concerned a claim for compensation for loss of business where the landholder had part of his land acquired for a bypass road, which consequently resulted in a loss of business. This consequential loss of business could not be compensated for. The second case also concerned the acquisition of land for a road, in that case the landowner claimed additional compensation for the resultant loss in the value of his property due to the neighbouring highway. In *Flokeston v Metropolitan Region Planning Authority* [1968] WAR 164, the court held that there is no right to compensation for injurious affection which is unrelated to the loss of land, and compensation does not extend to damage to land resulting from activities on the land which was acquired. These cases suggest that compensation would only be payable for the loss of land or the restriction of activities on the land which is the subject of the reserve.

compensation has already been paid for the restriction of prohibition.

Wildlife and habitat conservation

Part 5 of the Act concerns wildlife and habitat conservation. 'Wildlife' is defined as 'any taxon or species of animal, plant, protista, procaryote or virus' (s7). The part is therefore directly relevant to vegetation conservation and management. There is a general provision (s73) that native wildlife (other than protected wildlife) is to be managed to:

- (a) conserve the wildlife and its values and, in particular to:
 - (i) ensure the survival and natural development of the wildlife in the wild;
 - (ii) conserve the biological diversity of the wildlife to the greatest extent possible;
 - (iii) identify, and reduce or remove, the effects of threatening processes relating to the wildlife;
 - (iv) identify the wildlife's critical habitat and conserve it to the greatest possible extent; and
- (b) ensure that any use of the wildlife
 - (i) for scientific study and monitoring;
 - (ii) or educational, recreational, commercial and authorised purposes; or
 - (iii) by Aboriginal people under Aboriginal tradition or Torres Strait Islanders under Island custom; is ecologically sustainable.

While these principles overarch the management of all wildlife, there are more specific requirements depending on the classification of the wildlife as either presumed extinct, endangered, vulnerable, rare or common. All protected plants and animals are the property of the State, except where the protected plant is found on private land²³ (ss83–84),

until the plant or animal is taken under licence or permit. A person must not take a rare or vulnerable plant without a permit or licence (s89), and to do so may attract a heavy fine or up to two years imprisonment. If an area is outlined in a conservation plan as containing a critical habitat or an area of major interest, it is also an offence to take, use or interfere with the wildlife, other than under the conservation plan or under a licence or permit (s97).

Part 6 concerns the issuing of interim protection orders where rare or threatened wildlife is subject to a threatening process which is likely to have a significant and detrimental effect on that wildlife (s102).

Regulations

The Act provides for the Minister to make regulations concerning the use of land in protected areas, and the taking of animals or plants from protected areas.

Relevance of the Nature Conservation Act to local government

It may be possible for a local government to adopt the Nature Conservation Act as a framework for the protection of vegetation within its municipality, or to comment on the preparation of management plans for protected areas. This would, however, require that the State be actively involved in working with local governments under the Act. Alternatively, a local government could actively encourage and work with the State to implement the requirements of the Act.

3.4.2 Environmental Protection Act 1994

The Environmental Protection Act aims to provide for ecologically sustainable development, and to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends (s3). The main provisions concern the

23. Private land is defined as freehold land, or land that is subject to a lease which contains an entitlement to a deed of grant in fee simple.

preparation of State environmental policies, preparation and implementation of environmental management programs, and environmental offences. The offences include the causing of serious or material environmental harm or environmental nuisance. Environmental harm is defined (s14) as:

any adverse effect, or potential adverse effect (whether temporary or permanent and of whatever magnitude, duration or frequency) on an environmental value, and includes environmental nuisance.

The provisions of this Act are aimed more towards pollution and other environmental damage, rather than addressing issues of vegetation conservation. It may, however, be possible to require that environmental management programs contain provisions relating to vegetation, as vegetation clearing is considered an adverse effect on the environment and therefore amounts to environmental harm.

3.5 Summary of opportunities

The legal powers granted to local governments in Queensland clearly allow them to take an active role in vegetation conservation. Such a broad grant

of powers allows for all of the incentives, except for covenants, to be offered by local governments. In many instances, however, strong policy support and encouragement will be necessary to assist those councils who are not able or willing to offer these incentives. In order to maximise the range of incentives available, local governments require that conservation covenants be able to be entered into and registered on title.

In addition to the incentives considered in this report, the powers of a local government to make local laws and to form joint authorities have also been included in Table 3.2 to indicate the other powers which have been granted to local governments for general purposes which may be used for vegetation conservation. For example, local laws could be passed protecting native vegetation on council-owned and council-managed land, and joint authorities could be formed to allow for vegetation management and planning at a regional level.

Local governments in Queensland are in a position whereby they can lead by example. This should be strongly encouraged so that local governments consider vegetation management as part of their core business.

Table 3.2: Opportunities available to local governments to offer incentives for vegetation conservation

Incentive	Amendment
Environmental levy	N/A as can already charge levy
Management agreement	Policy support/encouragement
Covenant	Amend Property Law Act and <i>Land Titles Act 1994</i> so that covenants can be registered on title
Grants to individuals and community groups	Policy support/encouragement
Rate rebates	N/A as can currently be offered
Acquisition and sale of land	N/A as are available to local governments
Local laws	Encourage local governments to pass local laws protecting native vegetation on council-owned and council-managed land
Joint authorities	Encourage local governments to form joint authorities for the purpose of vegetation planning at a regional level