Cumulative impacts – planners eat them for breakfast!

Jeff Humphreys, Senior Principal and ANZ Planning Discipline Chair

Presentation Overview

- The Planning System in Queensland
- The Nature of Planning
- *Sustainable Planning Act 2009*
- State Planning Policies, Regional Plans & Planning Schemes
- 4 Examples
- Environmental Impact Assessment & Development Applications
- Conclusion

The Planning System in Queensland

Preliminary comments

- Planning in Queensland is currently undergoing reform (again) with the foreshadowed commencement of the *Planning and Development Act* and associated Regulations in 2015
- In recent years planning has become more about the process than the outcomes (despite the rhetoric) with a disproportionate time spent on process requirements at the expense of strategic thinking
- It is unlikely that the new regulation will fundamentally change the parameters about how cumulative impacts can be dealt with
- Planning can only regulate new 'development' under the current legislation
- The key tools available to planners to address cumulative impacts are Regional Plans; Planning Schemes; Major Project Assessment; Environmental Impact Assessment and to the Development Assessment Process

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Nature of Planning – 3 points

1. Planning happens in an environment of uncertainty, and has been characterised as "Managing Uncertainty" or "Strategic Choice" (making decisions now with regard to their likely long-term consequences)

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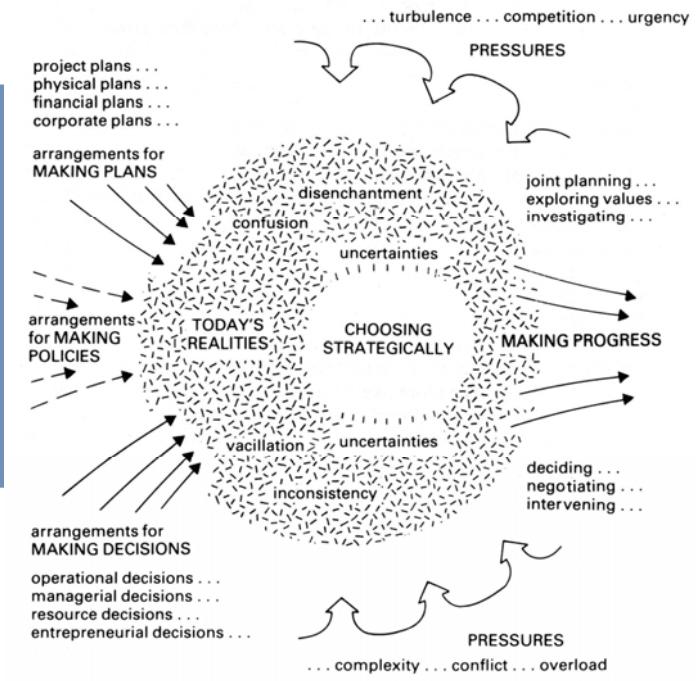
1. Managing Uncertainty & Strategic Choice

Friend & Hickling (1987)



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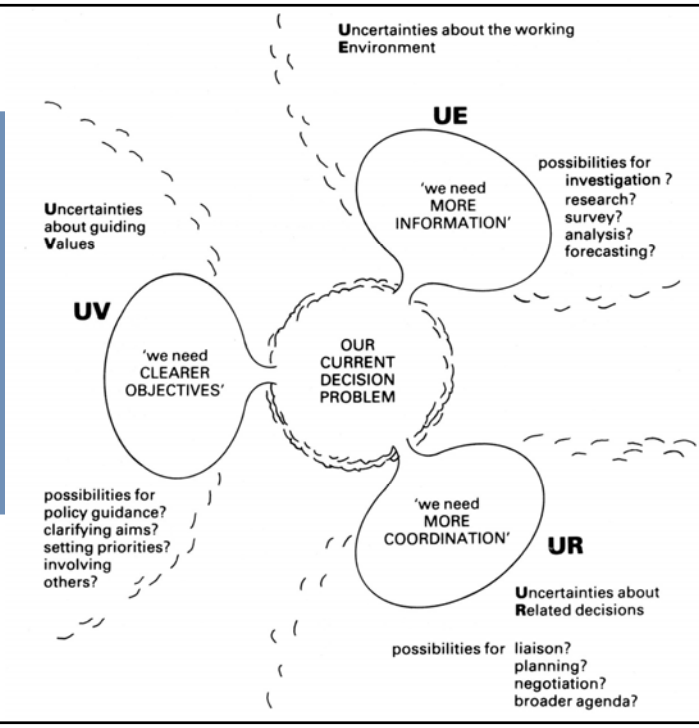

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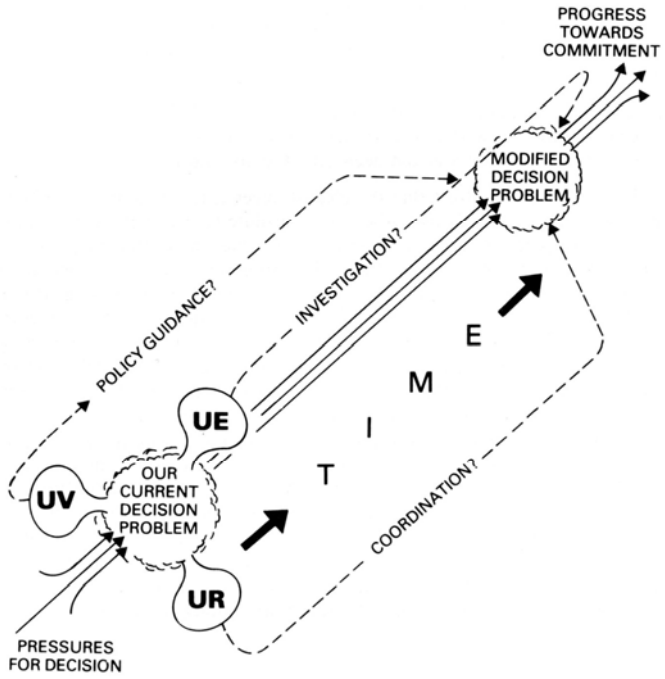

Nature of Planning – 3 points

1. Planning happens in an environment of uncertainty, and has been characterised as “Managing Uncertainty” or “Strategic Choice” (making decisions now with regard to their likely long-term consequences)
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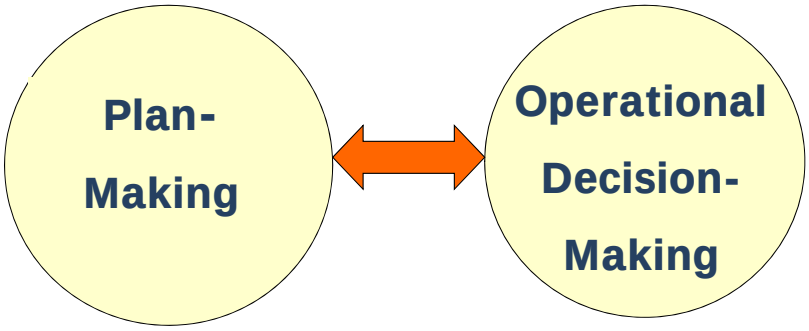
2. The Nature of Planning / The Practice of Planning

Two Activities:



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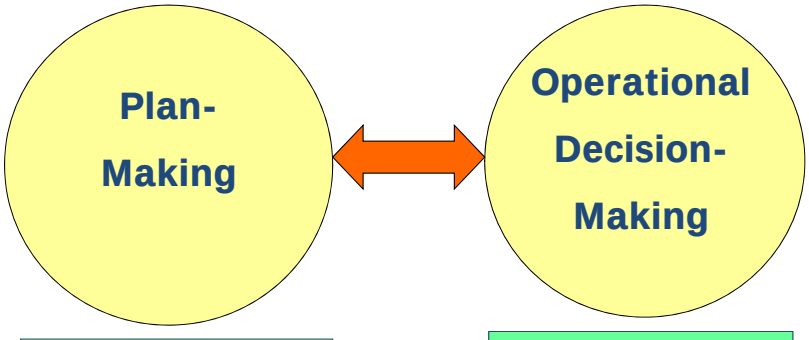
2. The Nature of Planning / The Practice of Planning : **The Sustainable Planning Act**



SPA
Chapters 2&3
(and 4)

SPA
Chapter 6

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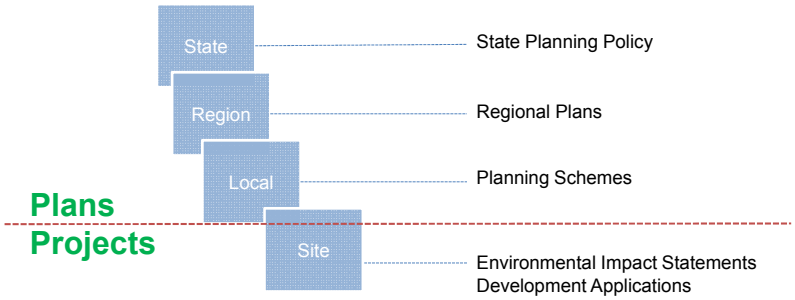
Nature of Planning – 3 points

1. Planning happens in an environment of uncertainty, and has been characterised as “Managing Uncertainty” or “Strategic Choice” (making decisions now with regard to their likely long-term consequences)
2. Planning is really two parts, plan-making and operational decision-making
3. Cumulative impacts are best dealt with at the plan-making phase

Framework of the Sustainable Planning Act 2009

- The purpose of SPA is to seek to achieve ecological sustainability. It includes (s11):
  - conserving life supporting capacities of air, ecosystems, soil and water
  - protecting biological diversity
  - addressing potential adverse impacts of climate change e.g. through sustainable settlement patterns and urban design
- While the ultimate quest for planners is to achieve ecological sustainability, in reality there is only a limited range of issues that planning schemes can affect. For example, planning schemes can only capture new “development” as defined by the Act
- There are no references to the term “cumulative impacts” in the Sustainable Planning Act 2009 or the associated Regulations
- The new Planning and Development Act is likely to dismiss ecological sustainability as the purpose and replace it with “economic prosperity”

Planning Hierarchy and potential to address cumulative impacts



State Planning Policy

- The State Planning Policy sets out the interests that must be addressed through local government planning schemes or regional plans
- It includes State Interests relevant to biodiversity, coastal environment, cultural heritage, water quality and natural hazards
- The natural hazard, risk and resilience section recognises that development should *"indirectly and cumulatively avoid an increase in the severity of the natural hazard and the potential for damage on the site or to other properties" (p35)*
- The SPP Interactive Mapping System now identifies Matters of State Environmental Significance providing a powerful tool in the identification of ecologically sensitive areas

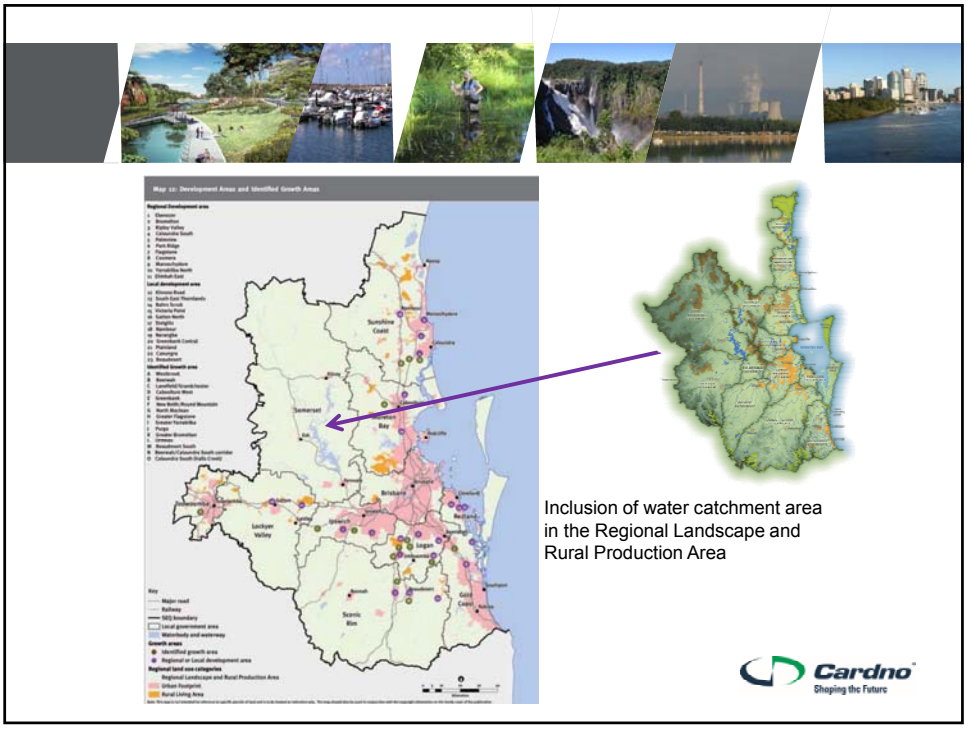
Regional Plans

- Regional Plans (where supported by regulatory provisions) sometimes can be best placed in the planning hierarchy to identify and set policies to respond to cumulative impacts. They can be catchment based, natural resource plans or land use plan driven
- However larger local government planning schemes can be similar to Regional Plans in their capacity to deal with issues of cumulative impact
- More recent initiatives like Priority Living Areas and Strategic Cropping land are attempts by State to provide some framework for the activities of potential resources projects and an attempt to keep existing communities happy and keep the economy diverse

Regional Planning - SEQ

- The SEQ Regional Plan 2009-2031 identifies areas of ecological significance and catchment protection policies
- In relation to drinking water catchment protection the SEQ Regional Plan states:

  *Catchment management is a core element of managing the quality of drinking water, and is achieved by managing existing uses, planning new development to manage risks and rehabilitating catchments. Local government planning schemes must identify drinking water catchment areas and include appropriate development controls. Planning studies in these areas must consider h**ow to avoid future types or scales of development that would pose an unacceptable risk to water quality….”*** **(p137)**


Inclusion of water catchment area in the Regional Landscape and Rural Production Area
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Regional Planning – Central Queensland
Source: rgc.org.au – Fitzroy River 2008
The Regional Plan for Central Queensland acknowledges "Over the past century the river catchments draining into the Great Barrier Reef have undergone extensive modification as a result of urban, infrastructure, agricultural, industrial and mining developments. The cumulative effect has created challenges for the region with regard to increased pollutant and sediment loads entering the reef and imposing risks to water quality" (p31).
But the Plan doesn't include any statutory measures to address this issue.
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Planning Schemes

- Approximately 125 planning schemes operating in Queensland, each with different zones/areas, codes, overlays and definitions although these are becoming increasingly consistent through the Queensland Planning Provisions
- Core matters for planning schemes include land use and development; infrastructure and valuable features (s89)
- Valuable features include "*resources or areas that are of ecological significance, including, for example, habitats, wildlife corridors, buffer zones, places supporting biological diversity or resilience, and features contributing to the quality of air, water (including catchments or recharge areas) and soil*" (s89)

Planning Schemes

- Typical planning scheme structure includes:
  - Strategic vision and strategic framework
  - Allocation of primary zoning and identification of overlays
  - Development assessment tables for zones and overlays
  - Zone codes
  - Use codes and other codes
  - Local plan provisions
- Under the Queensland Planning Provisions the key mechanism for delivering good planning outcomes including the protection of natural resources is through the Strategic Framework

Planning Schemes (cont'd)

The Strategic Framework sets the factual base and policy position for the Scheme and is the best place to begin to consider cumulative impacts

However sometimes local plans can be of equal significance

A good way to approach planning for cumulative impacts may involve:

- Technical studies to reduce uncertainty about the problem and develop a substantive policy direction
- Express broad strategic content in the Strategic Framework
- Develop responsive specific provisions in local plans
- Codify acceptable responses in local plan codes or zone codes or use codes

The relationship between Plans and DA

Critically, Section 326 of SPA requires that *the assessment manager's decision* (in relation to a development application) *must not conflict with a relevant instrument unless—*

…

(b) there are sufficient grounds to justify the decision, despite the conflict.

4 Examples of Addressing Cumulative Impacts in the Queensland Planning System

1. North of the Daintree River
2. Catchment management in Lake Kurwongbah
3. Rocky Point canefields
4. South-East Thornlands Structure Plan

Example 1 – North of the Daintree River

Impacts with a cumulative effect were those related to:

- Low-key Experience in the Wet Tropics World Heritage Area
- Traffic capacity of existing access arrangements, including ferry and two-lane road
- Impact on the ecology

Example 1 – North of the Daintree River

Response:

- Land use, traffic engineering and ecological studies funded by the federal government provided a detailed and sound technical underpinning for policy development
- Strategic Plan limited development to that which facilitated the exploration and appreciation of the natural environment, directing other development elsewhere
- Local Plan rigidly limited bed numbers north of the Daintree
- Famously, the Navicio integrated resort proposal at Cape Tribulation was defeated, despite only incremental effects on relevant qualities

Example 2 – Lake Kurwongbah catchment

Impacts with a cumulative effect were those related to:

- Effects on water quality
- Landscape values

Example 2 – Lake Kurwongbah catchment

Response:

- Strategic Plan and zoning scheme limited development to rural densities
- A rural residential development proposal in the Caboolture Shire part of the catchment by Duncombe was refused, the decision upheld on appeal, even though the specific impacts on water quality were held to be acceptable and/or manageable.
- The Court held that these matters were appropriate to deal with in a planning scheme and it wasn't the role of the Court to overturn an appropriately conceived planning scheme strategy.

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Example 3 – Rocky Point canefields

Impacts with a cumulative effect were those related to:

- The economy of the sugar industry
- Landscape values

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Example 3 – Rocky Point canefields

Response:

- The 1988 Strategic Plan and zoning scheme limited development initially on the basis of Shire Image
- Land capability and economic studies were completed showing the need to conserve available land if the industry was to survive beyond 2000.
- Development control plan and regulatory map prepared to prevent alienation for urban development and certain related purposes, acknowledging the planning scheme could not control all relevant factors
- Successfully defended in Planning and Environment Court

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Example 4 – South East Thornlands

Impacts with a cumulative effect were those related to:

- Koala habitat
- Landscape values

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Example 4 – South East Thornlands

Response:

- The koala habitat conservation issues were first explored in a thorough study by BAAM P/L

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FLORA AND FAUNA ASSESSMENT –

SOUTH EAST THORNLANDS COMMUNITY STRUCTURE PLAN AREA

Report prepared
for
Redland Shire Council

Prepared by:	Paulette Jones, Adrian Caneris & Dr Chris Schell
Checked by:	Dr Glen Ingram
Date:	March, 2006
File no:	File no. 0015-0017

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38 Middle Street
CLEVELAND 4163

Biodiversity Assessment AND MANAGEMENT PTY LTD

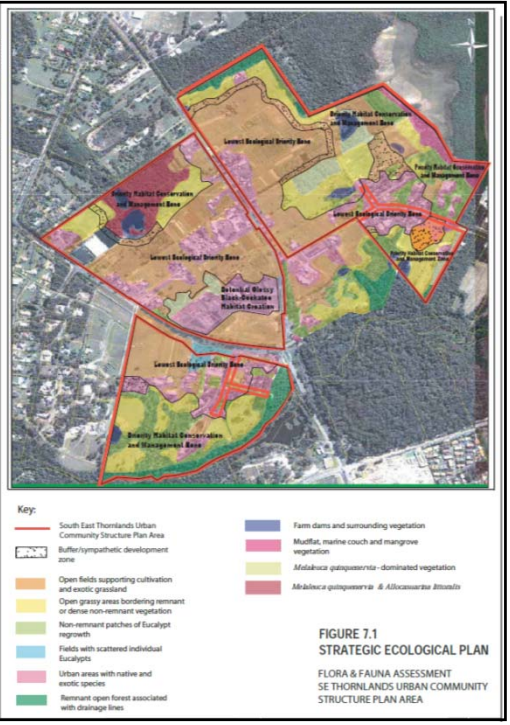


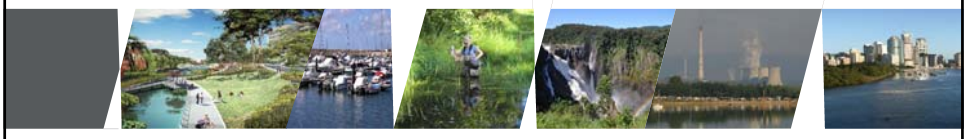
FIGURE 7.1
STRATEGIC ECOLOGICAL PLAN

FLORA & FAUNA ASSESSMENT
SE THORNLANDS URBAN COMMUNITY
STRUCTURE PLAN AREA

Planning Schemes and cumulative impacts

From a cumulative impact perspective there are still:

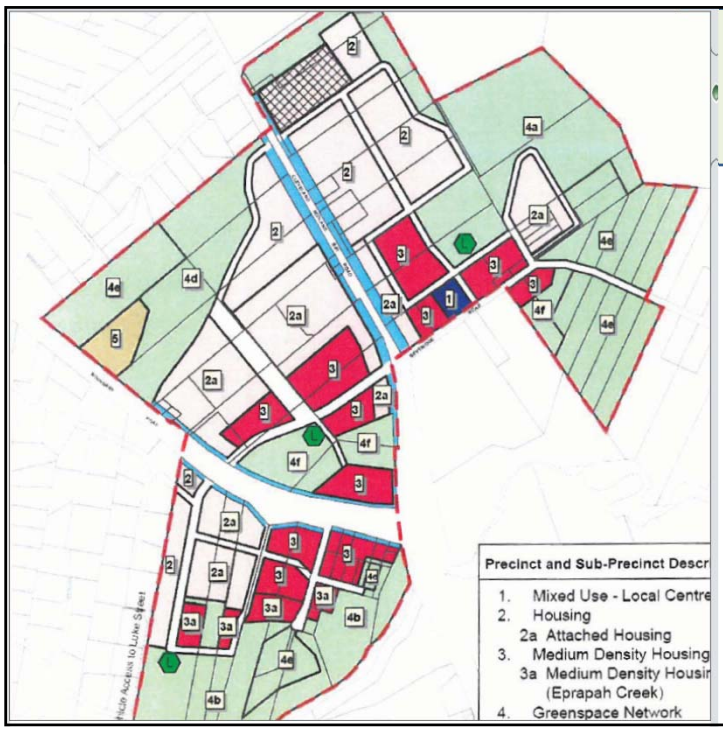
- often insufficient technical and strategic underpinnings
- focus on procedures and structure rather than on achieving planning outcomes
- problems associated with “plan-lag”
- limited opportunities to affect existing development if development applications are not made
- ability to “front-load” strategic assessments provide opportunities to deliver land use certainty and efficient delivery of infrastructure



Example 4 – South East Thornlands

Response:

- The koala habitat conservation issues were first explored in a thorough study by BAAM P/L
- Through an iterative process involving the Council, the State and the local community, a Structure Plan was settled upon reflecting the priorities identified in the BAAM study



About 55% of the Structure Plan area was included in the Greenspace Network

Example 4 – South East Thornlands

Response:

- The koala habitat conservation issues were first explored in a thorough study by BAAM P/L
- Through an iterative process involving the Council, the State and the local community, a Structure Plan was settled upon reflecting the priorities identified in the BAAM study
- Accordingly, the issues about conserving and enhancing koala habitat in this area were addressed in a way that fundamentally will be maintained into the future
- At the same time, core landscape values about separating urban communities were also established for this area

Environmental Impact Statements

- EISs are typically prepared for mining and major tourist projects
- Are there many examples of cumulative impacts being comprehensively considered through project specific EISs
- If a 'coordinated project' has the potential to cause environmental, social or economic impacts, the project proponent must prepare an environmental impact statement (EIS). The draft terms of reference (TOR) for the EIS are prepared by the Coordinator-General and set out the general and specific matters the project proponent must address when preparing the EIS
- While the Terms of Reference usually include a requirement to consider cumulative impacts it is not clear how this works in practice

Environmental Impact Statements

- The template for TOR (not-resource activity) states:

  "The detail at which the EIS deals with matters relevant to the project should be proportional to the scale of the impacts on environmental values. When determining the scale of an impact, consider its intensity, duration, ***cumulative effect,*** *irreversibility, the risk of environmental harm, management strategies and offsets provisions" p[3].*

  To the extent of the information available, the assessment should endeavour to predict the cumulative impact of the project on environmental values over time and in combination with impacts created by the activities of other adjacent and upstream and downstream developments and landholders—as detected by baseline monitoring. This will inform the decision on the EIS and the setting of conditions. The absence of a comprehensive cumulative impacts analysis need not be fatal to the project. The EIS should also outline ways in which the cumulative impact assessment and management could subsequently be progressed further on a collective basis (p4)

[3] *Cumulative impact is defined as 'combined impacts from all relevant sources (developments and other activities in the area)'*

Development assessment

- Addressing cumulative impacts through individual development applications tends to be reactive and not effective as:
  - Code assessable applications are assessed on their merits and can only consider the relevant code provisions included in a planning scheme that apply to a site
  - depending on the level of assessment of development there may be no assessment required against the Strategic Framework (only impact assessment)
  - potential for legal challenges through the development assessment process if conditions are not reasonable or relevant (e.g. reduction in scale/emissions to address cumulative considerations)
  - limited opportunities to affect existing development if development applications are not made
- On a positive note, if impacts have been assessed and codified in advance, then cumulative effects can be managed.

Concluding comments

Successfully addressing cumulative impacts in Queensland's planning system:

- Can be achieved if impacts are anticipated, studied in advance and incorporated appropriately into planning documents;
- Regional Plans (which may be supported by regulatory provisions) and planning schemes (using Strategic Frameworks, Zones and local plans) may be used to regulate environmental impacts to within acceptable thresholds which account for cumulative impacts
- Would benefit from a consistent and transparent approach to the assessment of environmental impacts