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**IMPLEMENTING THE ROSS THROUGH
STATUTORY PLANNING**

Prepared by

**BRANNOCK HUMPHREYS
PLANNING AND ENVIRONMENT
CONSULTANTS**

November, 1994

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2.0 THE ROLE OF THE PLANNING SYSTEM

2.1 Introduction

- 2.1.1 The values which contribute to the ROSS occur on both public and private land in various locations throughout South East Queensland. In Queensland, public land used for public purposes is not subject to the provisions of the Local Government (Planning and Environment) Act and thus, is outside local government planning controls. Therefore, the principal relevance of the current planning system to the implementation of the ROSS is the control it affords the over private use of land.
- 2.1.2 The importance of the planning system to the implementation of ROSS is evident when the amount of private land intended to comprise the ROSS is considered. Of the 500,000 ha of land expected to be included in the ROSS, almost 50% is in private ownership. Whilst about 20% of this private land is expected to be purchased by the state government, purchase is intended to be phased over the next 20 years.
- 2.1.3 Furthermore, whilst voluntary agreements may be struck over the use of some of the remaining private land, this cannot be expected to relate to a significant proportion of private land.
- 2.1.4 Clearly, for these reasons, the need for planning and land use control over private land is fundamental to the achievement of the ROSS.

2.2 ROSS Functions

- 2.2.1 The ROSS is intended to serve a number of different functions, which individually or in combination will relate to a particular parcel of land. The intended key functions of the ROSS may be summarised as follows:
- recreation (active and passive);
 - conservation (ecological and cultural);
 - regional framework (identity, image and buffer);
 - landscape (visual quality); and
 - economic (direct and indirect).

2.3 ROSS Location and Extent

- 2.3.1 Criteria are currently being determined by the Department of Lands for the identification of suitable land for inclusion in the ROSS. Whilst the broad geographic dimension of the ROSS has been described in the SEQ 2001 project reports, the predominant types of land which are expected to be included in the ROSS comprise the following:
- bushland;
 - agricultural land;
 - water catchments;
 - coastal waters;
 - foreshores;

- mangroves;
- flood plains;
- ridge lines;
- wetlands;
- natural corridors - riparian and habitat;
- forest plantations;

2.3.2 It would appear from the work undertaken to date on the definition of ROSS, that the ROSS is intended to have a number of different categories such as 'core', 'conceptual', 'actual' and 'buffer'. Such differentiation between land included in the ROSS will not assist implementation of the ROSS through the planning system as disparate policy emphasis may be applied to different areas, when this is not intended. For example, the tenure of ROSS land has no bearing upon the ROSS functions which that land services, so the planning intent for the use of ROSS land should logically be based up function, not tenure. These proposals by the ROSS Unit should be reviewed by the ROSS Committee.

2.4 **Planning System Functions**

2.4.1 The planning system can assist to achieve the functions of ROSS over private land in a variety of important ways. ROSS assistance will stem primarily from the following key strategic policy and development control functions of the planning system:

Strategic Policy Functions

- promote policy objectives;
- balance policy choices; and
- identify regional policy issues.

Development Control Functions

- promote appropriate development;
- prohibit inappropriate development;
- require appropriate form (intensity) of development;
- restrict the extent of development;
- require land improvement \ rehabilitation \ linkages;
- regulate ongoing operations; and
- facilitate assessment of ROSS issues prior to decision making.

2.4.2 Accordingly, the planning system is well suited to play a significant role in the establishment and maintenance of the ROSS in South-East Queensland, in particular as it relates to the use of private land.

3.0 THE EXISTING QUEENSLAND PLANNING SYSTEM

3.1 Introduction

3.1.1 The existing Queensland planning system provides both opportunities and constraints to the effective implementation of the ROSS. The Local Government (Planning and Environment) Act 1990 includes a range of provisions within which the current Queensland planning system operates.

3.1.2 This section discusses the current inadequacies of the Queensland planning system in terms of ROSS implementation as well as the opportunities available to further ROSS objectives. Each is discussed in turn below.

3.2 Inadequacies of the Current Planning System

3.2.1 The inadequacies of the planning system presently in effect in Queensland result for two principal reasons. Firstly, the political nature of any planning system has characteristics which lead to ineffective land management in certain circumstances. Secondly, the current planning system in Queensland contains legislative provisions which specifically prohibit and \ or constrain the effective implementation of the ROSS.

3.2.2 The first reason for inadequacy relates to fundamental characteristics of any local government planning process and these are not restricted to Queensland alone. These matters are summarised below and are not in any way intended to infer criticism of the planning process, but rather to highlight the importance of other regulatory and proprietary mechanisms implemented outside the statutory planning system in meeting land use objectives:

- The political process: Land use decisions at the local government level are made principally in the local interest where varied competing considerations need to be addressed. These may favour economic benefits over social or cultural values. These may also favour local interests over regional or State interests.
- Robustness: Local government planning requirements are subject to change and these may occur on an ad hoc basis in response to changing local circumstances.
- Resources: Local government is typically under resourced to undertake comprehensive studies into land use planning matters such as open space and conservation. Therefore, they are often unaware of the broader strategic issues underlying such matters.

3.2.3 The second category of constraint results from legislative provisions currently in place in the Local Government (Planning and Environment) Act 1990. Each of the key provisions which would constrain the implementation of the ROSS are detailed below.

(i) Compensation Provisions

- 3.2.4 Section 3.5 of the Local Government (Planning and Environment) Act (the Act) provides inter alia for the payment of compensation where an interest in land is injuriously affected by the coming into force of a provision in a town planning scheme. Exclusions where compensation is not payable are detailed at Section 3.5(4)(c) of the Act and these include a range of development control provisions, which accordingly do not attract compensation.
- 3.2.5 The compensation provisions of the Act are the most far-reaching of any state in Australia and effectively impair the ability of local government to protect certain values of open space. Where development rights presently exist the compensation provisions of the Act introduce a high risk of liability to compensation, should existing development rights be reduced by the introduction of a planning control.
- 3.2.6 It is unclear from the provisions of the Act or case law, whether compensation arises from the introduction of policy provisions in a Strategic Plan or Development Control Plan. Even if it so, it is likely that compensation would only be payable if the previous policy provisions inferred that some development rights could reasonably have been expected to have been conferred and where the new policy provisions reduce that expectation.

(ii) Open Space Contribution Provisions

- 3.2.7 Section 5.6 of the Local Government (Planning and Environment) Act provides for a local government to obtain parkland contributions as a condition of subdivision approval. Whether the land to be subdivided is for a residential, rural-residential or industrial use, a local government may require:
- an area of land to be provided for use as a park;
 - a monetary contribution to be paid to the local government in substitution for the provision of that land;
 - works to be provided for the improvement of land for use as a park (including the development of recreation facilities);
 - or any combination of the above.
- 3.2.8 If it is determined that land is to be provided for use as a park, the Act prohibits the local government requiring as parkland more than 10% of the land to be subdivided. The Act further states that the land required must be suitable for the type of park land proposed.
- 3.2.9 The key problem that arises from the implementation of these statutory requirements is that the 10% requirement is considered by most local governments to contribute too little open space, not being based on any clear analysis or fact. It is an historic requirement widely understood to have been derived from active recreation space standards defined by the National Capital Development Commission (NCDC) in 1972. These standards do not include any allowance for land which serves any function other than active recreation space. It therefore does not account for regional open space and land which serves conservation, visual amenity or buffer functions. The standards are also oriented toward

urban development and do not appropriately apply to semi-urban or semi-rural circumstances.

(iii) Local Planning Policy Provisions

- 3.2.10 Section 2.8 of the Act provides for a local government to adopt local planning policies and to have regard to their provisions when deciding upon an application made in accordance with the Act. The Act stipulates that local planning policies are to have application throughout the whole planning scheme area. These statutory requirements limits the extent to which local planning policies can contribute to ROSS objectives, as a local planning policy designed to promote the establishment of open space in a particular part of a Scheme area may be challenged to be unlawful under the current Act.

(iv) Planning Study Provisions

- 3.2.11 Section 2.7 of the Local Government (Planning and Environment) Act requires planning studies to be prepared prior to the preparation and gazettal of a planning scheme. Various matters are required to be addressed by these planning studies and these matters exclude explicit reference to regional open space and visual assessment. Whilst this does not preclude such assessment, it does not promote the explicit consideration of ROSS objectives in the preparation of local government planning instruments.

(v) Third Party Zoning Provisions

- 3.2.12 The Act provides for any person to apply to local government for the rezoning of land with the owner's consent. Such an application is necessary when a use is proposed that is prohibited in the existing zone. This means that the apparent certainty of use conferred by the existing zoning is unrealistic or a 'myth', whereby the zone of the land may be changed to facilitate development. In such circumstances, the primary planning consideration is the Strategic Plan and the guidance contained within. Because of the apparent certainty provided by the zoning of land, Strategic Plans commonly do not address in adequate detail the issues which arise from rezoning applications. This limits the protection of values such as those which the ROSS is intend to preserve.
- 3.2.13 It is to be noted that whilst other planning systems in Australia do not provide for third party rezoning applications, this is not supported as an acceptable solution. Providing more detailed policy guidance for decision-making which promotes the establishment and maintenance of the ROSS is included in Strategic Plans, the flexibility of use provided by the current Act need not necessarily inhibit the achievement of ROSS objectives.

(vi) Non-Standardised Planning Instruments

- 3.2.14 Each local government has its own system of detailed provisions and variations for the control of land use. In some circumstances, these are very effective when interpreted by Courts and the development industry (eg. by influencing the valuation of land). However, in other circumstances, a planning control may be entirely ineffective and fail to achieve planning objectives which could otherwise have been successfully implemented.

3.2.15 More standardised planning controls to deal with specific planning issues across the region would greatly assist the implementation of regional planning objectives such as those underlying the ROSS.

3.3 **Opportunities Presented by the Current Planning System**

3.3.1 The Local Government (Planning and Environment) Act provides for a planning system which has proved effective in implementing a wide range of planning policy objectives. The elements of the current planning system which assist to achieve these results and which provide an opportunity for further planning control and policy implementation are discussed below.

(i) State Planning Policies

3.3.2 In 1992, amendments were made to the Local Government (Planning and Environment) Act which provided for the adoption of State Planning Policies (SPPs) by the State Government, to which regard must be had by local government in preparing planning strategies and in deciding planning applications. State Planning Policies are intended to deal with planning issues of more than local significance and are for this reason appropriate as a tool to implement ROSS objectives.

3.3.3 SPPs allow for the consistent application of policy objectives across local government boundaries and permit detailed planning analysis and guidance to be issued to local government with limited resources.

(ii) Strategic Plans

3.3.4 The Act requires a Strategic Plan to form part of a Planning Scheme unless special exemption is granted by the Minister. The Strategic Plan is a policy tool to guide decision making on town planning matters and may include maps, illustrations and detailed policy discussion. For this reason, the potential role of the Strategic Plan in implementing ROSS objectives is significant. Providing ROSS objectives are incorporated into Strategic Plan provisions successfully, the Strategic Plan provides the most direct and efficient means of implementing the ROSS through the planning system.

3.3.5 The weight accorded to Strategic Plan considerations in development control matters, including by the Planning and Environment Court, has increased over time as the level of detail and analysis included in Strategic Plans and their planning studies has increased. Where policies are supported by State Planning Policies, such policies have proven to be an overriding consideration. Since 1992, amendments to the Act have assisted to endorse Strategic Plans as the key decision making tool for local government.

(iii) Development Control Plans

3.3.6 Development Control Plans (DCPs) are provided for by the Act and are optional strategic planning and/or development control instruments, which may be included within the Planning Scheme to implement planning objectives. DCPs may apply over a particular

part of a planning scheme area and/or apply to a particular planning consideration (eg. such as open space provision, environmental protection etc.).

- 3.3.7 A DCP is typically used to include a far greater level of development control and/or policy discussion in the planning scheme than is normally included, when specific and detailed analysis is undertaken to address a particular issue. For example, DCP policy for a township may be illustrated on a cadastral base where shire-wide Strategic Plan policy is typically illustrated (though not necessarily) on a non-cadastral base. Furthermore, a DCP may be introduced for any part of the planning scheme area at any time after a planning scheme has come into force.
- 3.3.8 For all of these reasons, the DCP provides opportunities for ROSS implementation, particularly prior to the overall review of an existing planning scheme.

(iv) Local Planning Policies

- 3.3.9 Whilst Local Planning Policies (LPPs) are limited by the Act to refer to the entire scheme area, they nevertheless provide opportunity to introduce planning policy in a very rapid way which has some weight in decision making processes. This should only be used as a short term measure prior to amendment of the Scheme.

(v) Zoning

- 3.3.10 The zoning of land has the most direct effect upon use rights applicable to a particular parcel of land. It may permit certain uses to occur without the approval of Council, or may identify uses permissible within that zone only with Council consent. In the latter case, the intent of the zone can clearly express how Council intends to exercise its discretion in considering such applications.
- 3.3.11 A zone may be drafted to achieve a particular purpose and throughout Queensland a very wide range of zones has been designed. Typical zones include those relating to public open space and private open space. More recent zoning innovations include the Brisbane City Council 'conservation' zone, which aims to secure the high environmental quality of certain land in private ownership by significantly restricting use rights. The zone is useful when applied over part of a private allotment to secure the environmental value of that part. The balance of the land may be included in another zone permitting viable use.
- 3.3.12 Zones are typically the means by which development and subdivision requirements are implemented in a planning scheme [discussed below at (vi)] and therefore affect development rights beyond solely land use rights.
- 3.3.13 Therefore, zoning is typically fundamental to the implementation of a planning scheme under the current planning system. However, zoning is not restricted to any particular form or function and indeed may guide and control a very wide range of uses within a local government area.
- 3.3.14 For these reasons, zoning must be included as a valuable tool for the implementation of the ROSS in South East Queensland.

(vi) Development Requirements

- 3.3.15 Development requirements (including subdivision requirements) within a planning scheme are statutory and mandatory provisions for development. The Act does not stipulate their form or content and this allows for a wide range of provisions with varying levels of flexibility.

(vii) Conditions of Development Approval

- 3.3.16 The Act stipulates the process by which development applications to local government are lodged, considered and approved. The Act provides for conditions to be attached to a development approval and for these conditions to be binding on successors on title, that is, to 'run' with the land.
- 3.3.17 Conditions of approval may influence the form of a development or the extent to which development occurs over a particular parcel of land (for example, this may include the transfer of land to public ownership). Conditions may require ongoing management of a resource or restrict impacts to predetermined levels. For these reasons, conditions of approval are a valuable means by which ROSS objectives may be secured.

4.0 REVIEW OF OTHER PLANNING SYSTEMS

4.1 Victoria

- 4.1.1 The Victorian Planning and Environment Act (1988) requires each local government to have a Planning Scheme. These schemes, amongst other provisions, zone land in a similar manner to Queensland Planning Schemes. Private land which is intended to be acquired by government as open space must be reserved and identified on the Planning Scheme maps as 'Proposed Public Open Space' (PPOS). Such land intended for future public purchase is known as 'reserved' land.
- 4.1.2 The landholder may require the government to purchase the land. If the government does not then purchase the land, it must be included in a zone under the planning scheme, whereby the land will no longer be 'reserved'. Land can not be compulsorily purchased by government unless that private land is first identified as 'reserved land' in a local Planning Scheme.
- 4.1.3 Other private land with characteristics which contribute landscape, conservation or regional framework functions to the region is usually subject to planning policy and development controls designed to protect and enhance those functions. These policies and controls may be and often are required by a statutory regional authority or by State Government. Significantly, such land is not specifically referred to as part of any 'open space' system. The reason for this distinction is that 'open space' is a term under the Victorian planning system, understood to refer to public land, because of the 'reserved land' process which has been well established under that system.
- 4.1.4 The disadvantage of this distinction is that it does not facilitate integrated strategic analysis or policy development relating to all land which contributes to regional open space functions (as defined by the RPAG ROSS). Rather, it erects artificial 'open space' boundaries based upon tenure.
- 4.1.5 Within the Melbourne metropolitan area, regional open space is primarily owned and managed by a statutory authority called Melbourne Parks and Waterways (MPW). MPW prepares planning and management strategies for all land either under or intended to be under their control. MPW is the acquisition authority for reserved Proposed Public Open Space.
- 4.1.6 Some of the problems of the 'reserved land' approach to open space provision which have been identified by MPW include the following:
- The land owner rather than the acquiring authority controls the timing of the instigation of the compensation process. Such demands can not be budgetted for in an orderly acquisition programme.
 - Loss on sale compensation is also available to a land owner if land is sold which is affected by a PPOS reservation. Although rarely claimed, the presumption is that such a reservation diminishes the value of the property and this does not necessarily follow.

— The reservation/acquisition approach presumes the land:

- has no end use except for open space;
- must be in public ownership.

However, it is feasible for the land to often remain in private ownership and be partly developed and still achieve open space objectives.

— Reservations (like broadly defined ‘open space’ zones) do not state specific purposes for which the land is reserved. There is no distinction as to which particular type of open space is sought as an end result (e.g. conservation area, visual backdrop to park, active recreation area, etc.). Apart from the land owner not knowing why the land is to be acquired, the responsible planning authority can not indicate the strategic role of the open space.

4.2 New South Wales

4.2.1 The New South Wales process for providing regional open space is similar to Victoria whereby land must be included in a ‘Regional Open Space’ (or similar named) zone if it is intended to be purchased by government. Any application for development on such land must be referred to the government and if approval is refused, for the reason that the land is required for the specified public purpose, then the private landholder may require acquisition by government. However, before zoning land as ‘Regional Open Space’, approval must be obtained from State Treasury to ensure adequate funds are available to ultimately purchase the land.

4.2.2 A similar clear distinction exists in NSW between ‘regional open space’ and other private land not intended to be purchased, which serves similar functions. Policies and planning controls over such private land may be (and have been) included within Regional Environmental Plans (REP’s) and/or State Environmental Planning Policies (SEPP’s) which are accorded weight under the state planning legislation.

4.2.3 For example, a Regional Environmental Plan is titled ‘Blue Mountains Regional Open Space’. This REP principally identifies land to be reserved for purchase, defines appropriate use of that land and clarifies that the Department of Planning will be the acquisition authority. The use of land outside the regional open space ‘line’ is not the subject of this REP. However, it is possible that adjoining land could be the subject of a separate REP to protect landscape or conservation values (by seeking to control such matters as building setbacks; height of buildings etc.). For example, an REP which aims to control the use of private land with values supporting important regional open space is the ‘Parramatta River’ REP.

4.2.4 The separation of open space policy objectives in separate REP’s and/or SEPP’s is necessitated because of the statutory requirement to reserve land (by zoning) prior to public purchase. Therefore, it is necessitated by the delineation of open space areas based upon tenure (or intended tenure) and not solely by function. This is not as desirable an approach as the delineation of open space areas based solely upon function - to which a

broad range of policy considerations could apply in a single policy document, regardless of intended land tenure. For example, in N.S.W. a development proposal on private land outside but adjacent to open space proposed to be purchased, may not be subject to planning considerations appropriate to the functions which that land serves, for the reason that the tenure boundary confers a kind of quality judgement about the relative significance of the land, when in fact some other unrelated factor may have dictated the boundary location.

4.3 **United Kingdom**

4.3.1 The planning system in the United Kingdom has proved very effective in protecting open space at the regional level. Areas are classified under a variety of policy categories which include:

- Green Belts;
- Areas of Outstanding Natural Beauty (AONB);
- National Parks;
- Special Sites of Scientific Interest (SSSI).

4.3.2 The underlying characteristic of the United Kingdom planning system is the level and weight of policy guidance conferred upon local government by the national government. Local government has a duty to implement national government policy and this is attained through the plan preparation process and the development approval system. Local government planning instruments must incorporate planning policy provisions consistent with national guidance.

4.3.3 National policy is expressed in Planning Policy Guidance Notes (PPGs); Regional Planning Guidance Notes (RPGs); Mineral Planning Guidance Notes (MPGs) and Government Circulars. Statutory requirements are conferred in a variety of legislation.

4.3.4 Green Belts serve a range of functions similar to those intended by the ROSS. A 'presumption against development' within the green belt is a clear policy principle and is reflected in both national and local government planning instruments. The cadastral definition of the green belt is primarily a local government responsibility and included in local government planning instruments; however, is based upon a broad geographic definition by the national government and in any event, is ultimately ratified by the national government.

4.3.5 Areas of Outstanding Natural Beauty serve primarily a landscape function and are defined by local government taking into consideration regional landscape issues.

4.3.6 National parks in the United Kingdom comprise a mixture of tenure including large proportions of private land often in use for agricultural purposes. They are subject to separate planning instruments which include very restrictive development controls. However, development is permitted in accordance with clear guidelines. A key characteristic of National Parks is national funding for maintenance of use, buildings and other elements of the natural landscape.

4.3.7 Special Sites of Scientific Interest identify land with high ecological value which necessitate special consideration in the planning process.

5.0 POTENTIAL PLANNING SYSTEM MECHANISMS

5.1 Introduction

5.1.1 The range of mechanisms available under the planning system to implement ROSS objectives are wide ranging and adaptable to complement the range of functions which the ROSS is intended to promote. Most of the mechanisms detailed below can be initiated under the current planning legislation in Queensland. Those mechanisms which cannot be identified together with the changes to the current legislation which are required to facilitate implementation.

5.2 State Planning Policy

5.2.1 A State Planning Policy (SPP) including the following elements could significantly assist to achieve ROSS objectives:

- state the significance of the ROSS to SEQ
- define the appropriate functions of the ROSS
- provide guidance for plan preparation, including:
 - criteria for ROSS definition
 - appropriate planning mechanisms
- provide guidance for development assessment, including:
 - appropriate information requirements to be submitted with applications for development approval within the ROSS;
 - define matters for consideration within the ROSS;
 - describe appropriate conditions of development approval which may assist to achieve particular ROSS objectives.

5.2.2 The delineation of the ROSS could be undertaken in three alternative ways through the utilisation of a SPP.

- (a) State delineation: The SPP itself defines the ROSS by including detailed mapped areas which would form the basis of local government planning instrument controls and development assessment. The state government could also introduce powers to require local government to amend existing planning instruments and to incorporate the ROSS as defined in the SPP, into new local planning instruments.
- (b) ROC delineation: The SPP identifies the criteria for the definition of the ROSS and perhaps includes a broad mapped delineation of the ROSS. These criteria are utilised by Regional Organisations of Council's (ROC's) in SEQ to delineate the ROSS and this delineation would be encompassed in each relevant local Planning Scheme.
- (c) Local delineation: the SPP identifies the criteria for the definition of the ROSS and perhaps includes a broad mapped delineation of the ROSS. The SPP requires local government to use the stated criteria and to define, generally in accordance with the broadly mapped ROSS, the precise boundaries of the ROSS on their own local planning instruments.

- 5.2.4 The final delineation of ROSS will be best determined as part of the local government plan preparation process rather than determined by a state authority and imposed 'down' to local government. However, local government delineation should be based upon a ROSS framework determined firstly by the ROSS Unit and subsequently interpreted by the relevant Regional Organisation of Council (ROC). This process allows for public consultation processes to consider ROSS objectives including opportunity for co-ordination between different local governments and input from state authorities. In this way, a greater level of community 'ownership' of the ROSS can be fostered and this will assist on-going implementation and management of the ROSS. In any event, the relevant state Minister is expected to retain overriding control to determine the ROSS boundary illustrated on any local government planning instrument, in line with ROSS objectives.
- 5.2.5 Therefore, the recommended process is a mixture of the three approaches and it is described in the draft Planning Circular included at Appendix A. This draft Circular could form the basis of a State Planning Policy and in its presented form could rapidly inform local government of planning issues relevant to the ROSS, whilst an SPP is being prepared.

5.3 Strategic Plans

- 5.3.1 Strategic Plans can greatly assist the implementation of ROSS objectives. The ROSS should be both illustrated on Strategic Plan maps and its objectives incorporated within Strategic Plan policy objectives and implementation provisions. In order to maintain consistency across SEQ, it is preferable for each local government to incorporate similar policy provisions and this would best be facilitated by an SPP such as that described above.
- 5.3.2 The level of detail of strategic mapping necessary to illustrate the ROSS will vary between local governments as some SEQ authorities have strategic plans which have cadastral bases and others do not. It is preferred that the ROSS be delineated on a cadastral base where a suitable level of detailed investigation has been undertaken as to how that land meets with the stated ROSS criteria. Should adequate analysis not be available then it is appropriate to illustrate the ROSS more broadly.
- 5.3.3 The ROSS objectives and implementation provisions within Strategic Plans should not be included as a separate Preferred Dominant Land Use category. Rather the ROSS should be the subject of a separate 'layer' of planning policy. Strategic planning objectives and implementation provisions should include those matters set out in the draft Planning Circular detailed at Appendix A as well as refer to other planning instrument mechanisms available to assist the implementation of the ROSS. A range of such measures are described in the following sections.
- 5.3.4 Where adequate analysis has been undertaken, the required Strategic Plan Planning Studies should identify which parts of the ROSS are known to serve particular ROSS functions and include the methodology and results of such detailed examination.

5.3.5 Whether adequate preliminary analysis has been undertaken of the ROSS or not, Strategic Plans should certainly promote further investigation of the land by subsequent applicants, in terms of defined ROSS objectives. Where the land has previously been determined to form part of the ROSS, this will assist to confirm its ROSS contribution (or otherwise) and assist development assessment by local government - for example, by the clarification of appropriate conditions of approval. Where previous detailed analysis has not been undertaken, this requirement will clarify whether the land possesses ROSS values.

5.4 **Development Control Plans**

5.4.1 A Development Control Plan provides the opportunity to prepare a planning instrument specifically designed to address the ROSS, over land either known or suspected to form part of the ROSS, or both. The provisions of such a plan would be similar in content to those described above for a Strategic Plan though may be expressed in more detail to also address local issues.

5.4.2 In addition, a DCP may be supplemented by specific development requirements such as those described in the following sections. In this way, the policy objectives of the ROSS and the statutory planning mechanisms available to assist its implementation, may be incorporated together within the one planning instrument.

5.4.3 Accordingly, a DCP may assist legibility and clarify the circumstances within which ROSS policy and statutory considerations should be implemented.

5.5 **Zoning**

5.5.1 The use of zones in local government planning schemes is required by the Act and determines use rights applicable on land. The flexibility of using land for different purposes and the application procedures necessary to do so, are conferred by the design of the zone and the use rights which it provides.

5.5.2 A range of zones could be designed to safeguard the functions of ROSS and to assist implementation of ROSS objectives, affording different levels of flexibility where different functions are known to exist.

5.5.3 For example, where ROSS land serves primarily an open landscape, or a 'breathing space' function, it may be appropriate to permit agricultural or recreation uses. Where ROSS land serves to preserve ecological functions, such uses may be discouraged or be required to gain Council approval. An SEQ example of the latter is the 'Conservation Zone' recently introduced in the City of Brisbane Town Plan. Many other examples exist in SEQ and elsewhere of zones intended to serve landscape, conservation and other non-urban objectives.

5.5.4 The critical elements of zoning which will hinder the implementation of ROSS are -

- use rights permitted by the zones without Council approval; and
- the intent of the zones.

- 5.5.5 Providing that permitted uses on ROSS land are in accord with the precise ROSS functions to which that land contributes, then Councils assessment of consent development enable ROSS objectives specified in planning policy to be addressed. If this is not the case, then ROSS objectives are threatened.
- 5.5.6 In exercising their discretion, Council must have regard to the Statement of Intent for each zone. Where the Statement of Intent supports development not in keeping with the ROSS functions to which that land contributes, the objectives of ROSS will also be threatened .
- 5.5.7 Accordingly, land which is known or suspected to form part of the ROSS, may be appropriately included within a wide range of zones, providing the intent of the zone and the permitted use rights are compatible with ROSS objectives.
- 5.5.8 A clear constraint to changing existing use rights to support the ROSS, are the compensation provisions of the Local Government (Planning and Environment) Act. These should be removed from the new legislation currently being drafted by DHLGP in order to accommodate changing planning circumstances - such as those illustrated by the ROSS initiative.

5.6 **Development and Subdivision Requirements**

- 5.6.1 Development requirements (including subdivision requirements) may relate to either specific development or to the land upon which development occurs. They are able to achieve three fundamental functions of the planning system:
- to promote appropriate forms (intensity) of development;
 - to define the extent of development;
 - to achieve land improvement, rehabilitation and/or linkages.
- 5.6.2 The types of development and subdivision requirements which may assist to implement the ROSS are very diverse. A discussion of relevant development requirements is included in the draft Planning Circular at Appendix A.
- 5.6.3 In particular, the objectives of ROSS would be assisted were the 10% limitation on open space contributions revised by DHLGP in the current review of the planning legislation. A more equitable means which clearly incorporates contributions to the ROSS should be developed.

5.7 **Regulatory Maps**

- 5.7.1 The current Act provides for the inclusion of Regulatory Maps within a planning scheme in order to implement special planning scheme development and subdivision requirements. Regulatory Maps provide a clear opportunity to guide the application of ROSS-specific development and subdivision requirements within a planning scheme area. They act as 'overlay' controls and may for example identify land of regional open space significance, which may be the subject of special development and subdivision requirements.

5.8 Development Conditions

- 5.8.1 Development conditions attach to development approvals issued by local government and are able to achieve at least the same functions as those development requirements specified in a planning scheme. However, conditions may be tailored to serve very particular circumstances and may include requirements regulating the on-going operation and management of a development. This latter function provides opportunity to further the promotion of the ROSS whilst permitting economic use of ROSS land in certain circumstances.
- 5.8.2 The types of condition which may assist to further establish and maintain ROSS are discussed in the draft Planning Circular at Appendix A.

5.9 Local Planning Policies

- 5.9.1 A Local Planning Policy (LPP) prepared to accord with the current Act and which relates to the entire scheme area, may assist to rapidly clarify ROSS policy, to describe the circumstances where Council may exercise discretion or impose prescribed development requirements and identify conditions of development approval likely to be imposed should development of ROSS land be contemplated.
- 5.9.2 However, such a policy should only be considered a temporary planning measure pending the incorporation of similar provisions into the Planning Scheme, where such provisions carry more weight being subject to public consultation and gazettal processes.
- 5.9.3 As LPPs could provide a very useful and effective means to clarify Council policy on important matters, the DHLGP should be urged to modify their provisions in the new planning legislation currently being prepared to allow LPPs to relate to parts of a planning scheme area and to specifically include maps for illustrative purposes.

5.10 Statutory EIS Provisions

- 5.10.1 The Local Government (Planning and Environment) Regulations include a list of 'designated areas', within which any application for Council approval is to be subject to the environmental impact assessment provisions of the Act. These provisions trigger a statutory process which involves state government departments directly with the local decision making process.
- 5.10.2 By including ROSS land as a designated area, an EIS procedure could be triggered to ensure ROSS objectives are given due regard. Note that in order for this to occur, the ROSS would need to be defined on a cadastral base.
- 5.10.3 However, the EIS and designated area provisions of the current Act are not supported as a mechanism to implement to the ROSS and they are intended to be substantially revised in the new planning legislation currently being prepared by DHLGP. A Planning Scheme can better accommodate impact assessment conditions and better integrate such considerations into the planning process.

6.0 PREFERRED MECHANISMS

6.1 A State Planning Policy

- 6.1.1 The current means available to implement planning policy of more than local significance is via a State Planning Policy. Similar provisions exist in other States of Australia and in the United Kingdom. Such policy guidance is appropriate and necessary to provide the context and framework for local plan preparation and local decision-making. A SPP would have weight even if its provisions were not yet incorporated into a local Planning Scheme and where they were, would ensure consistency across local government boundaries.
- 6.1.2 A single SPP is proposed to protect and enhance the key values of the ROSS - the SPP should not distinguish between land under private and public ownership.
- 6.1.3 A draft Planning Circular is included as Appendix A and this could form the basis for a subsequent SPP. The contents of an SPP are self-evident from the content of the draft Planning Circular.
- 6.1.4 It is important to introduce the Planning Circular as soon as possible and certainly before the ROSS is delineated, because increased development activity typically occurs prior to the introduction of more sophisticated planning control, in order to secure increased development rights.

6.2 Review of the Act

- 6.2.1 This report has recommended that a number of important issues be given detailed consideration by DHLGP in the review of the Local Government (Planning and Environment) Act:

- 1. State Planning Policies

SPP's should be retained as a planning instrument. The new Act should provide for SPP provisions to very clearly over-ride those in a local Planning Scheme.

- 2. Local Planning Policies

LPP's should be retained as a planning instrument. The new Act should provide for LPP's to apply to any part of a Planning Scheme area and to include maps.

- 3. Open Space Contributions

The maximum 10% park contribution provisions of the Act should be revised to require land for open space purposes based on more of a performance standards approach. Such measures would account at least for the provision of regional open space and intended population density amongst other things.

4. Compensation for Injurious Affection

The new Act should delete provision for the payment of compensation for injurious affection. Compensation provisions could remain where land is so controlled such that it is effectively serving a public purpose. The changes must allow local government to plan for development to accord only with current planning policy, even if that development permits a lesser yield than the previous planning controls.

5. Planning Studies

Planning studies which support local planning instruments should be required to specifically address regional open space provision and to also require visual landscape assessment.

6.3 Implications for the ROSS Committee

6.3.1 This report has recommended that a range of steps be taken to implement the ROSS in SEQ. The ROSS Committee will play a fundamental role in the implementation of these recommendations and the following issues should be considered by the ROSS Committee as a matter of priority:

1. Encourage DHLGP to introduce the draft Planning Circular at Appendix A as advice for local government - to include a broad strategic ROSS map.
2. Encourage DoL to prepare a State Planning Policy in consultation with DHLGP, based upon the draft Planning Circular and which would include within its Planning Guidelines:
 - (a) model development control measures to encourage consistent land use control throughout the ROSS, and
 - (b) criteria and guidelines for ROSS delineation.
3. Encourage DHLGP to secure government approval for the State Planning Policy.
4. For planning purposes, do not define ROSS in a variety of ways based upon land tenure or intended tenure (e.g. 'core', 'buffer', 'managed' or 'planned'). This will hinder implementation through the planning system. Rather, for planning purposes ROSS should be defined solely on a functional basis, taking into account only the values of the ROSS. Any definitions based upon tenure should be for ROSS Unit internal administrative purposes only, such as to guide the expenditure of public money.
5. Do not consider ROSS to be 'flexible' or changing as suggested by the ROSS Policy Paper of RPAG. Rather, endeavour to confirm its basic extent and to establish its 'permanence'.

6. Target land for ROSS purchase such that the most threatened and (ROSS) value laden land is targeted first. That land which is able to be controlled through the planning system need not be a high priority for purchase.
7. Define the criteria for Ross delineation as clearly as possible such that application of the criteria by different groups will be reasonably consistent.
8. Facilitate Regional Organisations of Councils to delineate the ROSS and provide regular co-ordination between the ROCs on the ROSS issue to ensure consistency across SEQ.

(draft Planning Circular)

THE REGIONAL OPEN SPACE SYSTEM (ROSS)

Position Statement

overall aims

1. Purpose of the Policy

2. The Need to Conserve Regional Open Space

functions and objectives of ROSS

3. The Role of Planning Schemes

Forward planning and development assessment

Private land

4. The Role of the Development Approval Process??

To facilitate detailed examination of the contribution of particular parcels of land to the ROSS by requiring submission of certain information and assessment.

To provide flexibility for a wide range of uses within the ROSS providing ROSS objectives are met.

To promote development form and ongoing operation in keeping with the functions of ROSS.

5. Determining ROSS Land

Specified in Guidelines with criteria

Any land included within the ROSS can be challenged by a person providing they can prove it (like Ag Land provisions)

6. Future Advice

Policy Principles

(draft Planning Guidelines)

THE REGIONAL OPEN SPACE SYSTEM (ROSS)

note to check existing Guidelines for format

(draft Planning Circular)

THE REGIONAL OPEN SPACE SYSTEM (ROSS)

Position Statement

The Queensland Government considers that the establishment of an extensive and accessible regional open space system for the South East Region is necessary to strengthen the identity and image of the region as a whole and of the urban and rural communities of which it is comprised. This regional open space system is to be integrated with the future settlement pattern to form a number of discrete human scale regional centres framed by a network of green open spaces. It will protect and enhance the conservation, cultural and recreational landscape resources of the region. The result should be a world class open space system with recreational, conservation, cultural and economic benefits for residents and visitors.

1. Purpose of the Circular

1.1 This Circular proceeds the preparation and issue of a State Planning Policy dealing with the establishment and maintenance of a regional open space system for South East Queensland. Prior to the issue of the State Planning Policy, the Government intends this Circular to provide guidance to Local Authorities on how this issue should be addressed when carrying out their range of planning duties. This Circular has been jointly prepared by the Department of Housing, Local Government and Planning and the Department of Lands.

1.2 Local Authorities, the Planning and Environment Court, and the Government are encouraged to have due regard to this Circular when carrying out their planning functions.

1.3 The principles contained at the end of this Circular should be read in conjunction with the main text.

1.4 This Circular applies to the South East Queensland region which includes the Local Authorities identified in Appendix A.

2. Background

SEQ 2001

2.1 In November 1990, a major public seminar titled SEQ 2001 was held in Brisbane, with the purpose of examining the patterns of urban growth in South East Queensland (SEQ), an area which stretches from the New South Wales border to Noosa Shire and from the Coast to Toowoomba. One outcome of the seminar was the formation of a Regional Planning Advisory Group (RPAG) consisting of representative of the state government, local governments and the community.

2.2 In July 1993, the RPAG presented to the government a set of policy papers on a wide range of issues concerning the management of growth in SEQ. One of these addressed open space and recreation and recommended that a Regional Open Space System (ROSS) be

established. That recommendation was re-enforced in the final report of the SEQ RPAG, released in May 1994.

2.3 The Queensland Government has agreed to establish a ROSS in south east Queensland and this Circular explains is an important initial step in the implementation of the ROSS.

The Need for Control

2.4 At the regional level, increasing urbanisation and rapid growth will place increased pressures on the available open space within the SEQ region. Consequently, the Government considers it imperative that a regional open space system be formally established now to ensure the protection of the open space values and landscape setting of the region.

2.5 The overarching principle of importance to the ROSS requires the advanced recognition and provision of an accessible strategic open space network which has regional and metropolitan significance for public use, outdoor recreation, conservation and landscape setting in a manner that ensures that recreational, ecological, cultural, social and economic benefits will accrue to the healthy functioning of the region and its urban communities.

3. Purposes of ROSS;

3.1 The ROSS is intended to be an essential component of our urban and rural environment and to serve a number of basic human needs in a manner similar to other areas of set aside land for the purposes of housing, employment, industry, services, transport and the like. In particular, the ROSS will serve the following key functions:

- (a) Regional Framework - to shape the form as well as the location of urban development in the region; to act as a buffer to separate incompatible land uses; to prevent uninterrupted urban sprawl; and to define the limit and shape of the metropolis.
- (b) Recreation - to provide opportunities for passive as well as active outdoor recreation;
- (c) Conservation - to protect the environment, culture, heritage and natural corridors linking habitats;
- (d) Landscape Protection - to contribute to scenic quality, environmental amenity and cultural enhancement and to contribute to the livability of SEQ;
- (e) Economic Potential - to facilitate certain sustainable commercial activity taking advantage of natural and cultural resources without destroying their intrinsic value.

4. Delineation of ROSS

4.1 The ROSS will not include all open space in SEQ. It is to comprise a selection of open space lands which are special in some respect, and selectively or collectively are of regional significance.

4.2 The Government intends to define the ROSS in accordance with strict criteria which have been established to address the key functions of the ROSS. Land defined as falling within the ROSS will be identified in a subsequent State Planning Policy.

4.3 Prior to the accurate definition of the ROSS, a broad strategic area is identified on the maps at Appendix B to this Circular, which are to be used as a trigger to identify land suspected to contribute to one or more ROSS functions. This broad delineation should be used by Local Government in developing forward planning strategies to promote the ROSS and as a guide to those circumstances where an applicant should be required to assess the land in terms of meeting ROSS objectives.

4.4 The criteria for delineating the ROSS appear as Appendix C. As a guiding principle, on the outer edge of the ROSS, readily recognisable features such as roads, streams or belts of trees should be used to define the boundaries.

5. The Role of Planning Schemes

5.1 The essential characteristic of the ROSS is its permanence and its protection must be maintained as far as can be seen ahead.

5.2 The ROSS is to be delineated through local planning instruments. Whilst its general extent is illustrated at Appendix B of this Circular, a more detailed delineation is expected to be undertaken in the near future. Once the ROSS has been defined, it should be altered only in exceptional circumstances. If such an alteration is proposed by local government, the government will wish to be satisfied that the local government has considered opportunities for development within non ROSS areas.

5.3 Local Governments will be expected to include provisions regarding the maintenance of the ROSS when preparing, amending or reviewing planning schemes, particularly when framing Strategic Plans, Development Control Plans or Local Planning Policies. Applications for rezoning, consent uses or subdivisions should be considered in the context of such provisions. In the absence of specific ROSS provisions, or where such provisions are considered inadequate, the Government will be guided by the principles set out in this Circular when considering applications for the approval of planning schemes, rezonings and other scheme amendments.

5.4 Strategic Plans are particularly important in establishing an appropriate framework for the maintenance of the ROSS. When considering the adequate future distribution of development in Strategic Plans, settlement patterns that accord with ROSS objectives, both directly and indirectly, should be evaluated.

5.... Where land has already been committed for purposes inconsistent with ROSS objectives ...

Forward Planning

Strategic Plans

5.5 Strategic Plans can greatly assist the implementation of ROSS objectives. The ROSS should be both illustrated on Strategic Plan maps and its objectives incorporated within Strategic Plan policy objectives and implementation provisions. In order to maintain consistency across SEQ, it is expected that each local government will incorporate similar to those model policy provisions included at Appendix D.

5.6 The level of detail of strategic mapping necessary to illustrate the ROSS will vary between local governments as some SEQ authorities have strategic plans which have cadastral bases and others do not. It is preferred that the ROSS be delineated on a cadastral base where a suitable level of detailed investigation has been undertaken as to how that land meets with the stated ROSS criteria. Should adequate analysis not be available then it is more appropriate to illustrate the ROSS more broadly.

5.7 Where adequate analysis has been undertaken, the required Strategic Plan Planning Studies should identify which parts of the ROSS are known to serve particular ROSS functions and include the methodology and results of such detailed examination.

Development Control Plans

5.8 A Development Control Plan provides the opportunity to prepare a ROSS - specific planning instrument over land either known or suspected to form part of the ROSS, or both. The provisions of such a plan would be similar in content to those described above for a Strategic Plan though may be expressed in more detail to address local issues.

5.9 In addition, a DCP may be supplemented by specific development requirements such as those outlined in the following section and at Appendix E of this Circular. In this way, the policy objectives of ROSS and the statutory planning mechanisms available to assist its implementation, may be incorporated together within the one planning instrument.

5.10 Accordingly, a DCP may assist legibility and clarify the circumstances within which ROSS policy and statutory considerations should be implemented.

Local Planning Policies

5.11 A Local Planning Policy provides the benefit of being relatively quickly implemented and is a useful and effective means to clarifying Council policy on important planning matters. A Local Planning Policy should only be seen as a short term temporary measure prior to the coming into force of more detailed planning scheme policy and requirements.

5.12 A Local Planning Policy may be prepared to describe the circumstances where Council may exercise discretion or impose prescribed development requirements relating to ROSS land.

Forward Planning

- the need to review and amend;
- proposals preceding an approved planning framework;
- land committed for inappropriate uses;

5.2 Planning Scheme Provisions

6. Implementation through Development Assessment

6.1 ROSS Land Suitability Assessment

6.2 Relevant Planning Considerations

6.3 Planning Conditions

7. Further Advice

Policy Principles

Appendixes

Appendix A Example Planning Policy Statements

The ROSS objective and implementation provisions within Strategic Plans should be included as a separate preferred dominant land use category.

Appendix B Example Planning Scheme Provisions

APPENDIX A

DRAFT PLANNING CIRCULAR