
Comparison of the Environmental Regulation of Land Management in the Sugar Industry under the Sugar Industry Act 1991 (Qld), the Sugar Industry Bill 1999 and the Integrated Planning Act 1997 (Qld)

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Continuing increases in the area of land use poses a challenge for agricultural industries to be sustainable. Planning legislation such as the Integrated Planning Act 1991 (Qld), in addition to specific industry legislation, provide the legal basis for the different industries to comply with the principles of ecologically sustainable development. As Australia's fifth largest rural industry and the dominant land use along the coastal margin of Queensland, the sugar industry faces considerable challenges in addressing the issue of sustainability. The mechanisms by which land use sustainability is addressed by sugar industry legislation and the implications for environmental protection are discussed in relation to the mechanisms provided under the Integrated Planning Act.

Introduction

Since 1992 environmental legislation enacted in response to the implementation of the principles of ecologically sustainable development have largely focused on processes of integrated planning and management. The *Integrated Planning Act 1997 (Qld) (IPA)*¹ is one piece of land planning legislation that establishes "a framework to integrate planning and development assessment so that development and its effects are managed in a way that is ecologically sustainable".² Sugarcane

growing is the dominant land use along 2,100 kilometres of the coastal margin of Eastern Australia between Grafton in northern NSW to Mossman in far northern Queensland, covering an area of around 542,000 hectares. As the major land-user along the coastal margin of Queensland, the sugar industry has the potential to be considerably affected by land planning legislation such as IPA. However, many production aspects of the sugar industry, including assignment of land for sugarcane growing, are already regulated under the *Sugar Industry Act 1991 (Qld) (SIA)*.

The purpose of this article is to compare regulation of land use within the sugar industry as imposed under the SIA with that imposed by the IPA and examine the degree to which environmental protection is afforded under the regulations. An outline of the origins of regulation

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¹ *Integrated Planning Act 1991, Act No 6, 1999, Qld.*

² Long title of the IPA.

in the sugar industry, as it relates to land management, is provided together with an examination of the regulation of land use under the SIA and implications of this regulation for environmental protection. The regulation of land use and environmental protection afforded under the Sugar Industry Bill 1999, tabled before Parliament in September 1999 are also examined. These land use regulations and scope for environmental protection are compared to land use regulations and any subsequent environmental protection, as they relate to the sugar industry, provided under the IPA.

Origins of regulation in the sugar industry

The sugar industry has the distinction of being the most highly regulated agricultural industry in Australian. The origins of regulation stem from the inter-dependence of the miller on the grower for the provision of sugarcane and the grower on the miller for processing of sugarcane. The form of regulation under SIA originates from the passing in 1915 of the now repealed *Regulation of Sugar Cane Prices Act 1915* (Qld) and the now repealed *Sugar Acquisition Act 1915* (Qld) in response to the agitation of cane growers at the conditions of sale of their sugarcane.³ The *Regulation of Sugar Cane Prices Act* provided for the constitution of Central and Local Sugar Cane Prices Boards which negotiated the price received for sugarcane. The price determined by the Central Sugar Cane Prices Board was based on the commercial cane sugar (ccs) content of the cane, such that one unit of ccs had equal value in each mill area. The ccs content is driven in part by the biology of sugarcane – maximal ccs will occur when the cane ripens approximately 12-15 months after planting; and in part by the time between harvest and crushing.⁴ The Local Sugar Cane Prices Boards, on which cane growers and millers had equal representation,

negotiated awards for delivery and acceptance of cane in their area. If either party considered the award to be unjust, an appeal could be lodged with the Central Sugar Cane Prices Board. These awards provided for a close liaison between millers and growers to ensure efficient delivery of the sugarcane to the mill. The *Sugar Acquisition Act* provided for the compulsory acquisition of sugar by the Queensland government through the Queensland Sugar Board established under this Act. Subsequent marketing at the domestic and later, export, level was performed by the Sugar Board. Marketing of sugar by a single body (the Sugar Board) enabled higher prices to be obtained.⁵ In 1924 the first large export of sugar occurred as a result of overproduction for the domestic market. The continued oversupply of the domestic market in subsequent years in combination with poor prices obtained on the world market led to the introduction of production control measures. Two forms of control were implemented: peak production⁶ and cane assignment.⁷ Peak production was a negotiated amount of sugarcane that received a premium price and was determined at the farm and mill level. Assignment was entitlement held by a cane grower which allowed the holder to deliver cane to a mill for payment. The Central Sugar Cane Prices Board set the mill peaks and controlled the granting, cancellation and transfer of assigned areas. The Local Boards allocated farm peaks on an annual basis.⁸ This system remained largely unchanged until record low world sugar prices in 1985 resulted in review,⁹ and significant changes, to the regulatory structure of the sugar industry with the passing of the *Sugar Industry Act 1991* (Qld).¹⁰ Some key structural features of the sugar industry retained were production control restrictions

³ Until passing of the *Regulation of Sugar Cane Prices Act*, the cane grower was informed by the mill of the price the mill was prepared to pay for the sugarcane; if the price was unsatisfactory the grower had no recourse but to leave the cane standing in the field. Source: HT Easterby, *The Queensland Sugar Industry: An Historical Review* (Government Printer, Brisbane, 1931), p 142.

⁴ ccs content can drop dramatically after harvest; current recommendations are for crushing to occur within 16 hours of harvest. Other factors, such as mill efficiency, plant variety or climatic conditions, can also influence ccs.

⁵ A series of agreements with the Commonwealth Government (Commonwealth Sugar Agreements) from 1920 also secured protection for establishing domestic prices and restricted importation of sugar products. Easterby, op cit n 3, pp 59, 143; Queensland Sugar Corporation, *Australian Sugar Notes*, (Brisbane), p 50.

⁶ Introduction of mill peaks occurred in 1930. Easterby, op cit n 3, p 148.

⁷ The first cane assignments were considered in 1927 Easterby, op cit n 3, p 65.

⁸ NJ King, RW Mungomery and CG Hughes, *Manual of cane-growing* (Angus and Robertson, Sydney, 1965), pp 353-355.

⁹ Sugar Industry Working Party Report, 1985; Report of the Sugar Industry Review Working Party 1990.

¹⁰ *Sugar Industry Act 1991*, Act No 20 of 1991, Qld.

through land assignment and peak production¹¹ and the acquisition of all sugar produced in Queensland by a single body, now known as the Queensland Sugar Corporation (QSC).¹² The QSC absorbed the marketing responsibilities of the Queensland Sugar Board and the production and regulation responsibilities of the Central Sugar Cane Prices Board.¹³ The major changes (relating to land management) were a legislated increase in assigned area of at least 2.5 per cent of the aggregate of all assigned area per annum¹⁴ from 1991-1995, and thereafter, at level determined by the QSC;¹⁵ and a greater flexibility in the granting and variation of assignment through the involvement of Local Boards (previously Local Sugar Cane Prices Board).¹⁶ In September 1995, the Sugar Industry Review Working Party (SIRWP) was established by the Queensland and Commonwealth governments to again review the sugar industry's regulatory arrangements. The report of the SIRWP¹⁷ contained 74 recommendations, largely related to marketing, production and administrative arrangements. After consideration of report and extensive consultation by committees comprised of industry and government representatives, the Sugar Industry Bill 1999 was tabled before parliament in September 1999. This Bill contains extensive changes to legislation governing the sugar industry and repeals any sugar industry legislation existing prior to passing of the Bill.¹⁸

Environmental regulation under the Sugar Industry Act 1991 (Qld)

Land assignment is the key control on sugar production. Land assignment places an obligation on the grower to supply the mill with sugarcane and an obligation on the mill to accept the sugarcane¹⁹

and refers to cane grown on a specified number of hectares situated within the boundaries of a description of land assigned to a mill.²⁰ Since 1940, area assigned for cane growing has increased from 185,000 to around 542,000 hectares in 1998, with an increase of over 40 per cent occurring since 1988.²¹ The scope for environmental regulation under the SIA is limited to regulation of the conditions under which assignment is granted or varied. However, given that land use, and in particular expansion of the sugar industry, has been identified as one of the major environmental impacts of the industry,²² regulation of assignment has the potential to be significant in the provision of environmental protection. Regulation of assignment is achieved by control of the conditions under which assignment is granted. There are two means by which assignment may be granted: under an increase in total assignment area (expansion assignment)²³ or variation of assignment through authorised transactions.²⁴

Expansion assignment

Expansion assignment may be granted under s 138 of the SIA to the extent determined by the Queensland Sugar Corporation (the Corporation) under s 149. Guidelines for expansion assignment, which include "matters which the Corporation will have regard for in determining an application for the grant of assignment"²⁵ must be written²⁶ and form subordinate legislation. Under these guidelines,²⁷ the Corporation must be satisfied that, amongst other things, the land proposed for assignment is:

²⁰ Ibid, s 136 (2)

²¹ Australian Sugar Year Book, 1940-1941; *Canegrower* magazine, p 4.

²² For example, Chenoweth and Associates, *Nature Conservation Issues in Sugarcane Areas*, (report prepared for Queensland Department of Environmental Protection and Heritage, 1995); Mary Maher and Associate, *Environmental issues and the Assignment System*, (Boston Consulting Group, Sydney, 1996); Gutteridge Haskins and Dawkins, *Environmental Audit of the Sugar Industry*, (1996); Sugar Industry Working Party Report 1985; Sugar Industry Working Party Report 1990. Issues of concern relate primarily to nature conservation issues such as habitat destruction and fragmentation of habitat.

²³ SIA, op cit n 19, s 138-139.

²⁴ SIA, op cit n 19, s 140-149.

²⁵ SIA, op cit n 19, s 139 (1b).

²⁶ SIA, op cit n 19, s 139.

²⁷ *Sugar Industry (Assignment Grant) Guideline (No 2) 1995 (Qld)*, *Sugar Industry (Assignment Grant) Amendment Guideline (No 1) 1997 (Qld)*.

¹¹ Ibid, Pt 9.

¹² Ibid, s 2.11.

¹³ Queensland Sugar Corporation, op cit n 5, p 52.

¹⁴ SIA, op cit n 10, s 9.14.

¹⁵ SIA, op cit n 10, s 9.15.

¹⁶ SIA, op cit 10, ss 9.6 - 9.12. Greater responsibility for the administration of the variation of assignment grant, and consideration of expansion assignment is given to the Local Boards.

¹⁷ Sugar Industry Review Working Party Report, November 1996.

¹⁸ Sugar Industry Bill 1999, Explanatory Notes.

¹⁹ *Sugar Industry Act 1991 Act No 20, 1997, Qld*, ss 154 and 156, except under the circumstances listed in ss 155 and 157.

“capable of producing commercial crops of sugarcane when subjected to correct agricultural practices”

and

“able to be prepared and used for the growing of sugarcane without undue damage to the environment.”²⁸

The Corporation also issues Administrative Procedures for Expansion Assignment²⁹ which outline in greater detail the procedures for application for expansion assignment (by the grower) and the factors which need to be considered before granting of assignment (by the Local Board or the Corporation). These procedures indicate that the Corporation has delegated the power to consider and determine assignment to the Local Boards³⁰ in accordance with s 27 of the SIA. Thus, the Local Boards effectively act as the Corporation and are required to follow the provisions stipulated under ss 138 – 139 of the SIA and the guidelines. The Administrative Procedures also provide that “local boards *should* liaise ... with relevant public authorities for town planning information, infrastructure planning information and general land usage information”³¹ [italics added] and that, where appropriate, local boards *should* include any applicable land use restrictions as a condition of the grant.³² While there is provision for an annual audit conducted by a joint committee to assess compliance with conditions of the grant,³³ this audit is primarily to ascertain whether the assignment has been made effective, that is, planting has occurred within the stipulated timeframe.³⁴ Additionally, a particular grant of assignment is only subject to one audit, unless at the time of the first audit, the assignment had not been made effective.

Authorised transactions

Variation of assignment entitlements occurs

²⁸ *Sugar Industry (Assignment Grant) Guideline (No2) 1995* (Qld), s 8. Preconditions to grant of assignment

²⁹ Queensland Sugar Corporation, *Expansion Assignment Administrative Procedure*, (March 1999). Annual meetings in March of each year approve any changes to the administrative procedures as needed.

³⁰ *Ibid*, ss 4.2.6, 6.1.1.

³¹ *Ibid*, s 4.2.6.4.

³² *Ibid*, s 5.2.

³³ *Ibid*, s 5.3.

³⁴ *Sugar Industry (Assignment Grant) Guideline (No 2) 1995*, s 10. Conditions of grant of assignment.

through application by a party or parties to the Local Board.³⁵ Provided the application constitutes an authorised transaction,³⁶ the Local Board may make an order directing the Corporation to assign or vary the assignment accordingly.³⁷ Prior to issuing an order the local board must be satisfied that:

“the land may be prepared and utilised for growing of sugarcane without undue damage to the environment”³⁸

and

“the land of the assignment ... is capable of producing commercial crop of sugarcane when subjected to correct agricultural practices.”³⁹

Also under the SIA, Local Boards have the authority to “include conditions that restrict or prohibit the use of part of the land of an assignment for the growing of sugarcane”⁴⁰ when providing an order to the Corporation.⁴¹ These conditions could include provisions such as: exclusion of land classified as class 4 or 5 by Department of Primary Industry land suitability criteria, or wetlands, or watercourse, for use as assignment.⁴²

Environmental protection under the Sugar Industry Act 1991 (Qld)

The provisions within the SIA which provide for environmental protection by regulation of cane assignment are;

- inclusion of land use restrictions as conditions of the granting of an authorised transaction (by the Local Board);
- consideration (by the Local board or Corporation) that the assigned land “may be prepared and utilised for growing of sugarcane without undue damage to the environment” (expansion assignment and authorised transactions) and;
- consideration (by the Local board or Corporation) that the assigned land “is capable of producing commercial crop of sugarcane when subjected to correct agricultural

³⁵ SIA, op cit n 19, s 142.

³⁶ SIA, op cit n 19, s 141.

³⁷ SIA, op cit n 19, s 142.

³⁸ SIA, op cit n 19, s 144 (2c).

³⁹ SIA, op cit n 19, s 144 (3).

⁴⁰ SIA, op cit n 19, s 142 (4).

⁴¹ SIA, op cit n 19, s 140-146.

⁴² Draft standard conditions imposed by Herbert Cane Protection Productivity Board.

practices” (expansion assignment and authorised transactions).

Attachment of conditions to assignment grants is the primary mechanism by which environmental regulation of land utilised for cane growing, and subsequent protection of the surrounding environment, is afforded under the SIA. Conditions attached to expansion assignment grants provide for the regulation of land not currently used to grow sugarcane, while conditions attached to authorised transaction orders can provide for the regulation of existing sugarcane land, which was not subject to any past assessment of suitability for cane growing or undue damage resulting from cane growing. For example, if assignment, for which an authorised transaction was being considered, was on land which would now be regarded as unsuitable for growing sugarcane (as stipulated by the conditions imposed by the Local Board), the Local Board has the power to attach conditions to the new assignment grant, thus effectively removing the “unsuitable” land from assignment and minimising any environmental damage that may have resulted from the use of that land for cane growing. Further environmental regulation is provided under the Administrative Procedures where there is provision for the Local Boards to consult with relevant public authorities in determining suitability of expansion assignment and to include any recommendations of the public authorities as conditions of the assignment.

Potentially, there is considerable scope for environmental protection under the SIA, however the degree to which environmental protection is provided is highly discretionary as:

- there is no obligation for the Local Boards to attach any assignment conditions (authorised transactions);⁴³
- there is no obligation for the Local Board to either consult with or include any land use restrictions recommended by the public authorities (expansion assignment);⁴⁴
- there are no obligations under the SIA for monitoring of compliance with the conditions

of assignment after the grant or authorised transaction has occurred, or recourse if conditions of assignment are not met;⁴⁵

- while the Administrative Procedures provide for the conduct of an audit to assess compliance with the conditions of an expansion grant, this is primarily focused on whether the grant has been made effective and in practice, as at November 1999, no audits had been conducted;⁴⁶
- finally, there is no legal obligation to follow conditions contained with the Administrative Procedures which do not constitute subordinate legislation

This leaves the extent to which environmental protection is provided to the assessment of the suitability of the land to grow cane and interpretation of “undue” damage to the environment. In the event of the Corporation or Local Board deciding that either of these conditions are not met, a particular application for grant of assignment may not be granted.⁴⁷ However, no guidance is offered as to what constitutes “undue damage” leaving this assessment highly discretionary while assessment of land suitability is focussed on the economic aspects of production, as opposed to environmental considerations.

Future implications of the Sugar Industry Act 1991 and the Sugar Industry Bill 1999

The majority of provisions contained in the Sugar Industry Bill 1999 are due to commence on 1 January 2000,⁴⁸ and will repeal any existing sugar industry legislation.⁴⁹ Given that achievement of one of the policy objectives of the Bill is through changing “existing environmental land use

⁴⁵ Despite this some self-regulatory action has been taken by the industry in the requirement of re-vegetation of improperly cleared riparian areas by growers in Herbert and Mackay Region, however, whether it was in response to non-compliance with the conditions of assignment, or contravention of the *Water Resources Act* 1989, is unclear. (source: *Canegrower* magazine).

⁴⁶ Personal communication: P Morrison, Sugar Industry Liaison Officer.

⁴⁷ *Sugar Industry (Assignment Grant) Guideline (No 2)* 1995, s 8; SIA, op cit n 19, s 144 (2).

⁴⁸ Sugar Industry Bill 1999, s 2(2).

⁴⁹ Sugar Industry Bill 1999, Explanatory notes, p 2.

⁴³ SIA, op cit n 19, s 144 (4) “an order of a local board... may include conditions”.

⁴⁴ Expansion Assignment Administrative Procedures, s 4.2.6.4, “Local boards should liaise....”, s 5.2 “Local Boards should include....”.

requirements in the process of approving new cane land ... to help ensure the industry's long term sustainable development",⁵⁰ it might reasonably be expected that a significant change from that offered under the SIA 1991 has occurred. However, the extent to which environmental regulation is provided under the Bill in order to achieve sustainable development remains discretionary, and essentially represent a formalisation of the requirements contained within the Administrative Procedures of March 1999. That is, Cane Production Boards (previously known as Local Boards) are required to make guidelines about;

"the environment ... in relation to application for grants or variation of cane production areas"

or;

"anything relevant to cane growing on land included in cane production areas."⁵¹

These guidelines must be taken into consideration during assessment of the application for variation or expansion of Cane Production Areas (previously known as assignment). Assignment may only be granted if the Cane Production Boards are "satisfied that any consultation required for the purposes of the grant" under any guidelines has taken place,⁵² and that land included in the cane production area will be "suitable for growing cane, having regard for conditions applying to the cane area".⁵³ However, as in the SIA, there is no requirement for imposing any conditions on the cane production area⁵⁴ or assessment of compliance with conditions of the grant, despite the provision that a grant may be cancelled if the grower has not complied with any conditions.⁵⁵ Additionally, there is no requirement that the application be rejected if the conditions imposed by boards are not met – only that consultation has taken place. As at November 1999, only two Local Boards had produced guidelines and these were not in force, despite the Industry Code of Practice statement that, "as of 1 July 1999 any application for a cane production area (assignment) will be subject to, and conditional

upon, local board guidelines".⁵⁶ While a key change in the Bill which could influence the environmental regulation of land used for sugarcane production, is the greater power conferred upon local authorities in administration of cane production areas,⁵⁷ any resultant environmental protection afforded, due to this change, remains highly discretionary for the reasons discussed above.

Environmental regulation of the Sugar Industry under the Integrated Planning Act 1997 (Qld).

The IPA is based around the designation of development activities as assessable, self-assessable or exempt development. Under the Act, "all development is exempt development unless it is assessable and self-assessable development".⁵⁸ Assessable and self-assessable development is that "which is defined in Schedule 8 Pt 1 or 2, or that which is defined in a planning scheme"⁵⁹ and is subject to assessment under the Integrated Development Assessment System (IDAS).⁶⁰ However, certain activities are identified as exempt development and cannot be made assessable or self-assessable under a planning scheme. Declaration that:

"operational work associated with ... management practices for the conduct of an agricultural use; weed control, pest control"

is exempt development⁶¹ and therefore not subject to any assessment process⁶² suggests that the IPA has little application to the cane grower. However, under the definitions provided in the IPA, operational work does not constitute "destruction or removal of vegetation"⁶³... that materially affects

⁵⁶ *Canegrowers, Code of Practice for Sustainable Cane Growing*, p 4.

⁵⁷ Cane Production Boards (CPB) are responsible for the administration of granting, transfer, cancellation and variation of cane production areas while expansion is determined by the CPB in association with a negotiating team. Sugar Industry Bill, ss 6-37.

⁵⁸ IPA, s 3.1.2.

⁵⁹ IPA, Sch 10, where a planning scheme is an instrument made by a local government (s 2.1.1).

⁶⁰ IPA, Ch 3.

⁶¹ IPA, Sch 8 s 13.

⁶² IPA, s 3.1.2.

⁶³ Although as no definition of vegetation is provided in IPA, whether vegetation constitutes "native" vegetation as defined under *Water Resources Act 1989* (Qld) or any vegetation for

⁵⁰ *Ibid*, at p 3.

⁵¹ Sugar Industry Bill, s 144. Functions and powers of a cane production board.

⁵² *Ibid*, s 10(3.b).

⁵³ *Ibid*, s 10(4.b).

⁵⁴ *Ibid*, s 8(6).

⁵⁵ *Ibid*, s 31(1c).

premises or use ... or drainage work".⁶⁴ Drainage work includes installing, repairing or altering or removing a stormwater installation⁶⁵ on premises.⁶⁶ Under this definition, drainage works that may need to be conducted on new or existing sugarcane land, may constitute drainage under the meaning of the IPA. Conversion of previously unassigned land into sugarcane land, such as under grant of expansion assignment, could constitute a material change in use,⁶⁷ dependent upon previous land use and designation under any applicable planning schemes.⁶⁸ None of the activities associated with the conversion of previously unassigned land to sugarcane land (for example, land clearance, drainage works, soil movement) constitute specified assessable or self-assessable development⁶⁹ and therefore, by default, are exempt development and not subject to any approval process. Similarly, any activities associated with the management of existing assignment that are not specified as exempt development would also be, by default, exempt development. As the IPA provides for assessable and self-assessable development to also be *that which is defined in a planning scheme*,⁷⁰ certain activities relating to sugarcane farming, such as land clearing or drainage works, may be declared assessable or self-assessable under a planning scheme and therefore, subject to assessment.

Additionally, s 6.1.35C (applications requiring referral coordination) may be invoked if:

- "(a) for development that is assessable under a planning scheme and that the assessment manager is satisfied is not minor or of an ancillary nature ; and that is for 1 or more of the following...
- (iii) material change of use on prescribed land⁷¹ (other than development for a

example, improved pasture, is debatable.

⁶⁴ IPA, s 1.3.5

⁶⁵ Stormwater installation includes surface channels upon any property which are used or intended to be used for the conveyance of stormwater. Source: National Plumbing and Drainage Code, Part 0: glossary of terms.

⁶⁶ IPA, s 1.3.5.

⁶⁷ IPA, s 1.3.5.

⁶⁸ Notwithstanding difficulties in determining material change of use as defined in the act as discussed by B Homel, "Just a Process Change? The Impact of IDAS on Environmental Protection in Queensland" (1999) 16 EPLJ 81.

⁶⁹ IPA, Sch 8 pts 1, 2.

⁷⁰ IPA, Sch 10.

⁷¹ Prescribed land means land located in, or having a common

dwelling house, outbuilding or farm building)."

This could be applicable to the consideration of applications for expansion assignment adjacent to wetland, fish habitat reserves or other protected areas as defined in the *Nature Conservation Act* 1992 (Qld).

Future implications of Integrated Planning Act 1997

As of 3 December 1999 two relevant provisions came into force. These provisions are contained in Sch 8 and relate to the conduct⁷² and maintenance or repair of existing drainage works.⁷³ Under commencement, conduct of drainage work⁷⁴ on newly assigned sugarcane land could be required to have a development permit, therefore the development would be subject to IDAS, where the local government would be the assessment manager. Whether code or impact assessment would be required would depend upon the stipulations within any relevant regulation, planning scheme, or temporary planning instrument.⁷⁵ Maintenance or repair of existing drainage works (for example, works on existing cane assignments) could constitute self-assessable development and need to comply with any applicable codes. This may provide greater opportunity for sugarcane farming activities to invoke requirement of a development approval. However, the expiration of s 6.1.35C on 30 March 2000 removes the opportunity for approval to be invoked for land under consideration of expansion assignment, which is adjacent to prescribed land.

Environmental protection under Integration Planning Act 1997

The mechanism for environmental protection

boundary with an area listed in sch 2 of the repealed Local Government Planning and Environment Regulation 1991.

⁷² IPA, Sch 8 Pt 1 s 2.

⁷³ IPA, Sch 8 Pt 2 s 8; see 66 for the relationship between drainage works as defined under the IPA and drainage works required for assigned land.

⁷⁴ Additionally, the *Water Resources Act* 1989 requires a permit for the clearing of native vegetation from watercourses.

⁷⁵ IPA, s 3.1.3.

provided by regulation of land assignment for sugarcane under the provisions of IPA is highly discretionary. It hinges upon identification of the relevant activities (for example, land clearing, soil movement, drainage work) as assessable or self-assessable development under a planning scheme.⁷⁶ However, there is no obligation to create a planning scheme⁷⁷ (although Fisher notes that it is "inevitable that there will be a planning scheme for every area of local government")⁷⁸ or enforce a planning scheme if one exists – although there is the requirement that planning schemes are taken into account during impact assessment.⁷⁹ Any self-assessable development identified in a planning scheme must comply with any codes identified in the planning scheme. Any assessable development identified in a planning scheme requires a development permit and the planning scheme may also identify whether code or impact assessment is required.⁸⁰ If a development approval is required an application must be made and the development is subject to the IDAS.⁸¹ While a planning scheme may not prohibit or regulate any development or use of the premises,⁸² conditions may be attached to the development approval.⁸³ The subject of these conditions is at the discretion of the assessment manager, other than that they must be "reasonable and relevant and not be an unreasonable imposition

on the development".⁸⁴ As such, they may confer variable degrees of environmental protection. The creation of development offences in IPA provides for enforcement of the conditions of the development approval,⁸⁵ and thus, potential environmental protection.

Conclusion

Environmental regulation of land use under SIA, the Sugar Industry Bill and IPA is discretionary – in the case of the SIA and the Sugar Industry Bill, it is dependent upon any assignment conditions imposed by the Local Boards; in the case of the IPA, it is dependent upon applicable planning schemes and conditions attached to relevant development approvals. Enforcement opportunities under these Acts and Bill are limited. Under the SIA and the Sugar Industry Bill, there are no provisions for monitoring compliance to assignment conditions, although the Sugar Industry Bill does provide for the cancellation of assignment in the event of non-compliance. In IPA enforcement opportunities are available through the provision of development offences. However, the opportunities for triggering development approval for land assignment are limited. With the commencement of new provisions on 3 December 1999, a greater number of opportunities could exist, although the expiration of s 6.1.35C on 30 March 2000, may also reduce these opportunities.

In an era where integrated land planning and management is the focus for implementation of the principles of ecologically sustainable development, IPA and SIA initially appear to provide effective approaches for the environmental regulation of existing land use and land expansion in the sugar industry. However, the discretionary nature by which that regulation is provided, combined with the lack of enforcement opportunities mean that the degree of "protection of ecological processes and natural systems"⁸⁶ afforded, is limited. The difficulties associated with effective environmental regulation of land use and land expansion in the Sugar Industry under the *Sugar Industry Act* 1991, the *Sugar Industry Bill* 1999 and the *Integrated*

⁷⁶ There is potentially substantial strength available within a planning scheme for environmental regulation (see P England, "Toolbox or tightrope? The status of environmental protection in Queensland's Integrated Planning Act" (1999) 16 EPLJ 135, 137, however the development of an appropriate planning scheme is not an easy task as discussed in DE Fisher, "Planning for the environment under the Integrated Planning Act" (1998) 4 QEPR 121.

⁷⁷ IPA, sch 1 s.1.1.

⁷⁸ Fisher, op cit n 76, p 124. Additionally, urban encroachment onto sugarcane land has been a source of conflict and concern for the Sugar Industry. Under the State Planning Policy on conservation of good quality agricultural land 1/92 soil types in each region which are regarded as significant for agricultural production have been identified and the policy requires local government to take these constraints into account in strategic land use planning (see Chenoweth and Associates, op cit n 22). Therefore an application for development to convert agricultural land into urban land would need to consider the planning policy and presumably would provide some protection for the sugar industry with regards to loss of good quality agricultural land.

⁷⁹ IPA, s 3.5.5 (b), (c).

⁸⁰ IPA, s 3.1.3.

⁸¹ IPA, Ch 3.

⁸² IPA, ss 2.1.23 (2), (4).

⁸³ IPA, ss 3.5.29-3.5.32.

⁸⁴ M Walton, "The Integrated Development Assessment System of the Integrated Planning Act 1997 (Qld)", (1998) 4 QEPR 65.

⁸⁵ IPA, ss 4.3.1-4.3.5.

⁸⁶ IPA, s 1.3.3.

Planning Act 1997 reflects the difficulties associated with making planning and management decisions that incorporate the principles of ecologically sustainable development, as opposed to decisions focused on environmental protection.