DEPARTMENT OF NATURAL RESOURCES AND MINES
INTEGRATED RESOURCE MANAGEMENT

IMPLEMENTING NATURAL RESOURCE MANAGEMENT PLANS:
Ensuring that 'Something Happens' after a Plan is Approved

RESOURCE PLANNING GUIDELINES

GUIDELINE G100

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Purpose of this Paper

This paper examines the various institutional arrangements and land-related mechanisms available to implement plans for natural resource management in study areas covering many different landholders.

The paper has been written for landholders, individuals, community groups, regional planning bodies and staff of public authorities to explain the mechanisms available to ensure that the worthy ideals of a natural resource management plan are actually given effect. It is background relevant to regional planning, regional co-ordination and implementation of plans.

This paper originated before the regional NRM bodies under NHT2 were established and although it mentions them, has not been written with their specific requirements in mind. For that reason it is being released on an interim basis with a view to obtaining critical feedback and an early revision.

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'Anyone who isn't confused doesn't understand what's going on.' – Dimitri Simes

EXECUTIVE SUMMARY

This paper examines the various institutional arrangements and land-related mechanisms available to implement plans for natural resource management in study areas covering a number of different parcels of land. The paper assumes that some 'sponsor' organisation such as a governmental department is sufficiently concerned about natural resource management to set up a 'co-ordinating body'. A study area can be at the scale of a neighbourhood, a catchment, a local government area or a region. The paper is written for involved stakeholders who wish to make sense of the mechanisms available to them to achieve the goals incorporated into a natural resource management plan.

Why bother with a co-ordinating body? The use of land can have effects reaching far beyond the boundaries. Landholders differ in their capacity and willingness to manage sustainably. A joint approach can equalise this capacity and bridge gaps in trust. A joint approach makes it easier to tap into sources of finance, to understand regulatory requirements or to access contemporary technical knowledge.

How important is it for the co-ordinating body to exercise statutory power? The paper argues that this is not critical. Most landholders do not need to be forced to cooperate in community-driven natural resource management planning. It is the *lack of sustained application of existing powers* which impedes progress. It is precisely to remedy this situation that co-ordinating bodies are appointed and their service in doing so is of a higher order than simply possession of statutory power over statutory tools. Nor is statutory power necessary in order to bring people together: simple advisory committees may be highly effective in co-ordinating.

Also, there are several possible constitutional forms, ranging from an *unincorporated* local interest group, an *incorporated* community association, a private or public *corporation*, an *existing public authority* to a *multi-lateral official body*. These various options do not necessarily define the level of statutory power. For example, a body established through legislation may remain essentially advisory, or conversely, an advisory body can be quite effective in prodding the regulatory authorities to action.

There are several possible bases for choosing the members of a co-ordinating body: *geographic*, *organisational*, *sectoral* or *skills-based* representation. Also, for co-ordinating bodies established by a public authority, a distinction can be drawn between bodies which are part of the bureaucracy reporting to a relevant officer, and those which report directly to the political level.

To implement natural resource management plans, a wide range of tools or mechanisms, bewildering in their scope and complexity, is available. A co-ordinating body needs to understand them in order to choose the most suitable. Tools are classified according to their origin and their level of statutory force. The main categories are *tenure-related*, *regulatory*, *custodial management*, *development* and *advisory* mechanisms.

The paper offers a brief stepwise guide to implementation, placing in rough sequence the actions a co-ordinating body needs to take to apply the information in this paper. The Appendix explains the main tools available.

PART I – DEFINING A CO-ORDINATING BODY AND ITS ENVIRONMENT

BACKGROUND

Purpose of this Paper

This paper examines the various institutional arrangements and land-related mechanisms available to implement planning for natural resource management in study areas covering a number of different parcels of land. The paper tries to render a complex matter understandable by explaining the concepts which underpin implementation. It is confined to natural resource management: it does not cover 'regional frameworks for growth management' or strategies for transport infrastructure. The concepts can apply to a portfolio of properties managed by a single body such as a local government, or to a region with many landholders. The paper is a guide to co-ordination, not a guide to constructing physical works.

The target audience of this paper is the informed and involved layperson or landholder, the officer of a council or State department, or a community group such as a regional body. Some sections are relevant particularly to landholders; others have been written with public authorities in mind.

Scope of this Paper

The paper assumes that some organisation – called the 'sponsor' – is sufficiently concerned about natural resource management in the study area to set up a co-ordinating entity of some kind – called the 'co-ordinating body'. The sponsor and co-ordinating body may well be the same entity, or they may at least have overlapping membership. The sponsor is usually a public authority although often individuals band together on their own initiative to set up a body. It may take a keen and active continuing interest, or may initiate the establishment of a co-ordinating body then depart from the scene. Under the NHT2 regional arrangements, the sponsors are the Commonwealth and State Governments; the co-ordinating bodies are the regional NRM bodies; and they in turn can sponsor sub-regional catchment co-ordinating committees.

A study area warranting establishment of a co-ordinating body can be at the scale of a neighbourhood, a catchment, a local government area or a region. At some stage the stakeholders are likely to see the benefit of preparing a plan embodying the strategic thinking necessary to overcome fragmentation, incapacity and inaction. The plan may be commissioned by the sponsor, or the co-ordinating body, or it may have been in existence before they were established. Indeed, the co-ordinating body may have been set up specifically to implement the plan.

To take useful action, it is not essential to have a strategic NRM plan, as the co-ordinating body can assemble various existing plans and policies (of which no doubt there are several) relevant to the area and proceed to implement them, even as a modern plan is being drafted. In principle, it is probably more important initially to create a focused co-ordinating body than to write a plan. However, the risk of doing ill advised or unpopular work is greater if there is no coherent, endorsed plan. Under the NHT2 regional arrangements of course, a plan is pivotal.

This paper assumes that a plan, no matter how basic, for natural resource management does exist and explains how to implement it.

'Implementation' means giving effect to intentions. Planning at least establishes overall intentions for the specified study area. Plans may go further and outline how these goals can be achieved in terms of priorities and funding, or identify the various tools available to implement the planning. Critical questions are: Who decides what issues should receive priority? Who are the sovereign landholders? Which tools are preferable? Are statutory powers necessary to apply them? How much coercive regulation should be applied? What institutional arrangements will most generate cooperation and energy?

The central, umbrella question is: how do the stakeholders ensure that the plan is implemented and does not remain a paper exercise, collecting dust on a shelf? An almost universal plaint in natural resource management is that 'nothing happens' after all the good work of planning is completed and agreement is reached among participants. In many ways the preparation of a plan is the easy stage. This paper aims to help stakeholders to ensure that something actually does happen afterwards.

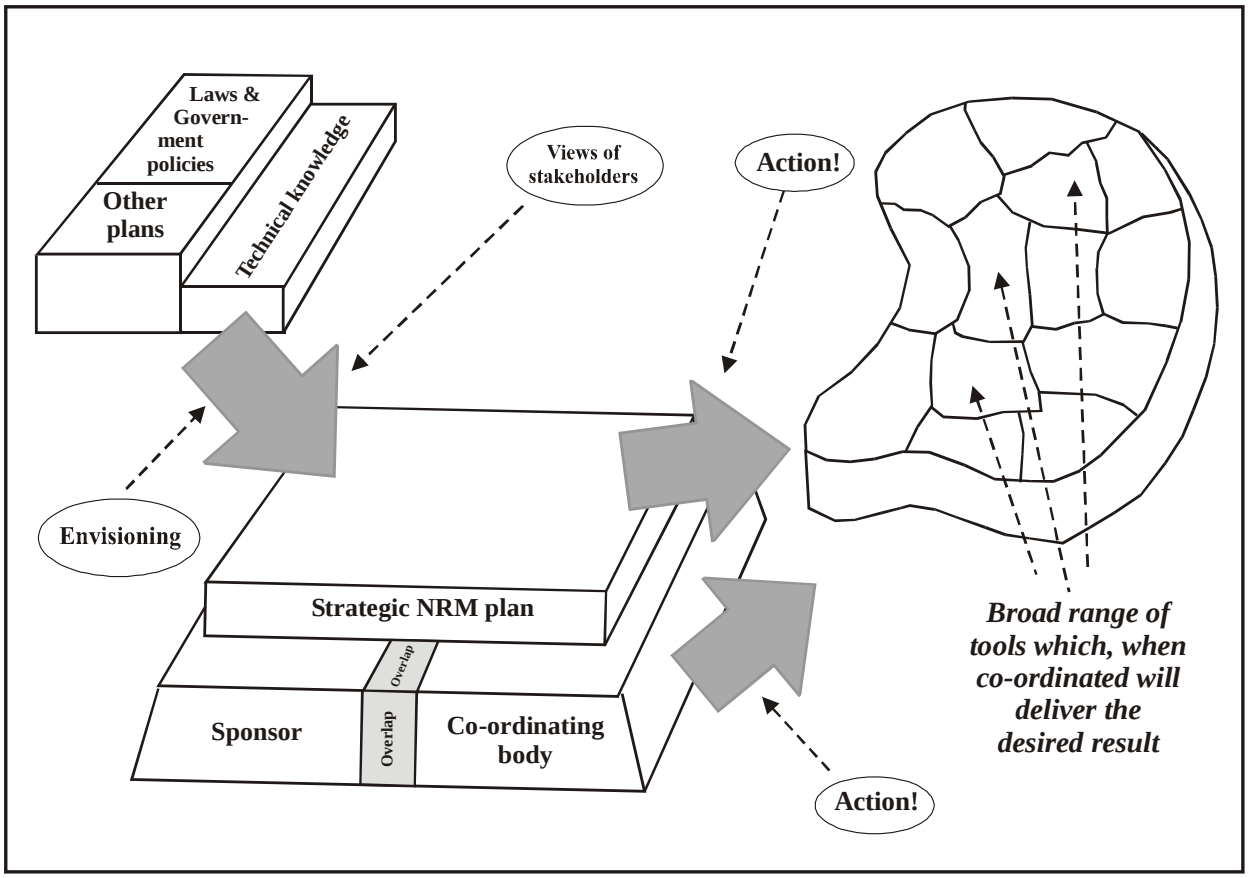

Fig. 1 – Model of Processes Involved in Creating and Implementing NRM Plans

DEFINITIONS OF TERMS

Glossary

Allocation: The assigning of State land or natural resources to some person or organisation for a purpose, through tenure- or ownership-related mechanisms such as leases, freehold deeds, water permits and reserves for public purposes.

Binding on title: Runs with the land; that is, obligatory upon any successor in title.

Co-ordinating body: Body of people who give themselves or are given a mandate to co-ordinate natural resource management in a defined multi-property study area to achieve the goals of a plan. It may be an organised group of people, a government department or local government, or even an individual. It may be a subcommittee of another co-ordinating body such as a regional NRM body operating at a broader scale.

Executive: An operational role, capable of *executing* decisions, such as by employing staff or signing contracts, not simply an advisory or planning role. Statutory powers are not necessary to allow this, but incorporation is desirable (and funding authorities may insist on it).

Implementation: The process by which a decision is reached as an outcome of a policy, plan or strategy; and is then put into effect. The term is not confined to construction of on-ground works, but includes changing policy, advocacy, reforming regulations, technical reporting and generally applying tools.

Land: In this paper, 'land' includes land-related natural resources such as water, vegetation, minerals and quarry products. 'Private land' includes privately held leasehold and freehold.

Landcare: A community-based movement sponsoring practical activity that furthers sustainable resource management in a collaborative way.

Landholder: Person or body in charge of a property, having the right to occupy it and the duty to manage it. This term embraces holders of tenures of all kinds, so is wider than 'landowner', a term normally confined to owners of freehold land. In virtually every study area, 'landholders' will include the local government and the Department of Natural Resources and Mines because the roads, public reserves and river beds which they hold are widespread. The term also includes holders of native title rights.

Management: Mobilising resources (e.g. people, infrastructure, finance) to achieve goals. Management of land includes both development and continuing use or maintenance. Management of land can be undertaken at various scales; e.g., a landholder might manage a paddock or their entire area of title; or a designated body might manage water through an entire catchment. 'Organisational management' means mobilising resources within organisations.

Natural resource management: Stewardship of land, water, native vegetation, minerals, extractive resources and catchments under the principles of ecologically sustainable development.

NRM plan: A statement of resource-related goals desired for a study area; and the means or strategies by which these goals can be achieved. A strategic NRM plan may derive from policy or it may set policy. It usually takes a spatial or geographic approach and usually includes maps.

NRM planning: A spatial process for determining the most appropriate uses of land and natural resources; or determining the best purpose for resources in their environmental, geographical, sociological and economic context. Includes:

- *assessment of the resources*;
- *scientific or socio-economic research*;
- *visioning* or *goal-setting*;
- *evaluation* of land or resources.

Non-statutory: Not backed up by legislation, backed only by contract or civil law.

Public authority: A collective term covering Commonwealth and State departments, local governments, statutory authorities and government-owned corporations. 'Official' refers to actions by public authorities.

Regional Landscape Areas: An emerging term, to describe an area covering a group of landholders who support cross-tenure multiple use management. Landholders would enter a voluntary agreement to cooperate in the management of properties within the defined area.

Regulation: Process for constraining landholders' freedom to manage by using the coercive powers of government, for example through planning schemes, local laws or taxation. Does not include allocation by way of leasing or appointing trustees: these arrangements are transfers of the right to occupy.

Sponsor: The entity that brought about the plan or acts to establish a co-ordinating body. It may be an organised group of people, a Minister, a government department or local government, or an individual.

Stakeholders: Includes persons and institutions involved in the preparation or implementation of a plan for natural resource management. In this paper, it does not include citizens or remote residents who have only an intangible, passive or proxy interest. It could include:

- Commonwealth Government;
- State departments such as:
  - Department of Local Government and Planning
  - Department of Natural Resources and Mines (NR&M)
  - Department of Primary Industries
  - Environmental Protection Agency/Queensland Parks and Wildlife Service (EPA)
- local governments; regional organisations of councils;
- regional planning advisory committees, regional NRM bodies,
- river improvement trusts, catchment and sub-catchment committees;
- progress associations and neighbourhood committees;
- landcare or bushcare groups;
- industry associations; resource users and their peak associations;
- other special interest groups;
- Indigenous people and groups;
- landholders.

State land: All land that is not held as freehold, freeholding lease, or by the Commonwealth or under Aboriginal or Islander tenures. A collective term, different from *public land*. Reserves and roads are public land. State leasehold is State land, but is private land – the public has no right of access.

Statutory force: Describes a provision that is backed by legislation or regulations and can be imposed upon stakeholders. For example, planning schemes are statutory instruments and have the force of law.

Statutory recognition: Describes a provision that does not have any coercive force, but is mentioned in legislation. For example, 'regional planning advisory committees' are established under the *Integrated Planning Act 1997* but have only advisory powers.

Study area: An area with multiple landholdings, to be covered by a strategic plan. The area may be delimited by administrative or government districts, bioregions, watersheds or other boundaries.

Tenure: The method of holding ownership or occupation rights in land.

Tools: Land-related mechanisms to assist landholders, authorities and other bodies to achieve their goals; and to assist in bringing those individual goals in line with the broad community-orientated goals set out in the NRM plan. In other words, they are tools to implement the plan. They may be contractual, coercive or voluntary; market or non-market. Examples: leases, planning schemes, financial grants, covenants. A plan itself can be viewed as either a pre-condition to allow tools to be applied effectively, or, if at a more detailed scale than the plans they currently administer, as tools in their own right.

The Critical Concept of Landholder's Sovereignty

Critical to understanding why co-ordination is necessary and why it often fails is an understanding of the concept of landholder's sovereignty. The following discussion applies to private or public landholders.

For both leasehold and freehold land, landholders have wide powers to manage their properties and to decide whether or not to develop them. Under both classes of tenure, a landholder enjoys possession (subject to native title), is entitled to peaceable enjoyment of the property and can eject trespassers. This fundamental *sovereignty* or authority to manage has its roots in common law and originated as a protection for landholders against capricious or unjust exercise of force by mediaeval governments.

However, it is not absolute. It is overlain by various *positive* obligations to undertake certain activities; and *negative* obligations to refrain from certain activities.

The positive obligations may derive from:

- *tenure*; for example, on leasehold land, conditions can require the lessee to develop the property – to erect x metres of fencing, to spend $y on improvements within z years or so. These conditions are mostly accepted when a landholder purchases or is issued with a lease. Similarly, trustees of reserves are subject to positive obligations in the legislation and in any conditions of appointment. Also, all lessees and trustees of State land are subject to a duty of care for the land they occupy;
- *regulation*; for example, conditions of a development approval may require tree planting or fencing; and landholders of all tenures have a duty to positively control noxious weeds;
- *contract*; for example, landholders can take out voluntary covenants or similar contractual agreements which require positive management.

Then, the discretion of landholders to positively manage is then fettered by the negative obligations or restrictions which a range of laws, regulations and planning schemes impose, largely regardless of tenure. For example, a grazier is prevented from building a feedlot unless permits are in place.

Most of the positive obligations, under tenure and contract, are accepted voluntarily. Cases of regulation to impose positive obligations (the second arrow point), are rather rare in natural resource management, other than when a permit for a new development is sought. In other words, legislation to impose retrospective positive obligations is not common. Governments respect landholders' sovereignty. For example, graziers are not obliged by law to grain feed their cattle.

This sovereignty has both favourable and unfavourable implications for a co-ordinating body. It means that landholders generally cannot be forced to carry out works (such as fencing watercourses) against their wishes unless it is already a condition of their lease or becomes a condition of an approval to change use. So, tangible incentives may be necessary to persuade landholders of the merits of certain works. Also, improvement works cannot be negotiated *en masse*: they must be negotiated one by one; no single spokesperson can bind every landholder; they are all independent proprietors. Conversely, if landholders agree with the proposed scheme, they bring their own sovereign powers to support it.

For leasehold land, the boundaries, terms and conditions of leases can be adjusted (most easily at the time of renewal) to overcome the negative aspects of landholder sovereignty. The opportunity to craft suitable conditions can arise during the s.16 evaluation of most appropriate use before a new lease is offered (see Guideline) or during the preparation of a property resource management plan.

It is because of the central power of landholders to choose to support or not to support the intentions of a plan that landholders will usually be the object of a co-ordinating body's attention. It is, ultimately, landholders who decide whether to undertake works on their properties.

GUIDING PRINCIPLES TO FOLLOW WHEN IMPLEMENTING A PLAN

There are several principles which stakeholders in a co-ordinated study area should follow when implementing actions.

Ecologically Sustainable Development

The first, and overriding, principle is that the concept of ecologically sustainable development (ESD) should guide implementation at all stages. It is the basis for the land ethics by which State land is administered, it underpins the code of practice for agricultural land and underpins the duty of care on freehold and leasehold land. ESD was endorsed by the Commonwealth and State Governments in 1992 in the form of the *National Strategy for Ecologically Sustainable Development*. ESD is now encapsulated in or underlies much State legislation, including the *Nature Conservation Act 1992*, *Environmental Protection Act 1994*, *Land Act 1994*, *Integrated Planning Act 1997*, *Vegetation Management Act 1999* and *Water Act 2000*. ESD establishes a *purpose* for writing and implementing an NRM plan. ESD is explained in Resource Planning Guideline on *Ecologically Sustainable Development*.

All stakeholders involved in the use of land are under an obligation to show *stewardship*, to use their best endeavours to facilitate management in accordance with the principles of ESD. This concept is explained in Resource Planning Guideline on property rights *There is Nothing New Under the Sun*.

Continual, Honest Consultation

Consultation must be continual and frank. It should be iterative, incremental and based upon mutual learning between stakeholders, including but not only landholders, technically knowledgeable advisers and any co-ordinating body. It should acknowledge and respect others' views. Without trust based upon honest warts-and-all consultation, progress will be slow and solutions unlikely to endure. Consultation is a pre-condition both for legitimacy and for effective implementation. Consultation must be fair dinkum, meaning that there must be a genuine opportunity to influence the results.

Incremental Progress

Even though a complete suite of goals may not be achievable under existing circumstances, progress towards at least some of these goals can still be made. Implementers should make a start where they can. Like a jigsaw puzzle, so long as the broader picture is known (such as through a strategic NRM plan), certain actions may be fitted into the broader picture incrementally as resources become available and windows of opportunity or sympathy open up. Effective implementation of some parts can create a 'snowball effect' when stakeholders see its benefits. In other words, the 'tyranny of small decisions' can be made to work positively. Implementation in small steps is a legitimate way of doing business, so long as one knows generally the direction of travel.

Sequential and Concurrent Timing

Both sequential and concurrent modes of operation are useful. Sometimes action depends upon a critical prior step: for example, a grant of enabling funds. But often it is not necessary to pursue every action to its finality in one cautious sequence. Many actions arising from the NRM plan can be tackled concurrently: for example, by appointing several subcommittees with delegated tasks. This concurrent mode requires strong skills in co-ordination but can speed up progress and generate momentum.

Soft-handed Application

Implementers should use as 'soft' an approach as possible, provided that it is not at the expense of getting the job done. To put it another way, implementers should use the least heavy-handed and simplest tactics that they can in order to achieve results.

Every Tool is Available

The co-ordinating body does not need sole authority over a tool or a statutory process to utilise it. No matter how weak its official powers, in principle every tool is available to it, though its influence over each varies. Explanation: every tool has a lead agent or responsible authority. Even if the co-ordinating body does little more than point out its wishes to the lead agent or landholder, it is capable of influencing that entity to apply the tools it controls and to adjust them to circumstances. Of course, this advocacy by the co-ordinating body may be indirect and result in a slower rate of progress than it could achieve if the

tools were under its direct statutory or administrative control. However, the rate of progress need not be nil for any of the tools, even those administered by a remote level of government.

Reversibility

Stakeholders should retain as many options to change land use in future as practicable. They should particularly avoid those forms of degradation or intensification of use which are in practice irreversible. This principle explains why erosion, subdivision, clearing of vegetation and invasion of weeds are so serious and should be targeted by a co-ordinating body for remedial action. It explains why nature conservation is actually a highly flexible form of land use, as it closes off no options and in ecological terms at least, all others can derive from it.

Clear Accountability

Organisations rarely work effectively or efficiently when the accountability is muddled. This applies to both internal relationships within the organisation and to the external role of the organisation in the broader administrative spectrum. Unclear accountabilities internally often manifest themselves as power struggles (although power struggles can have other causes). For example, energetic chairpersons with a completer-finisher style of operation may interfere with the jurisdiction of the group's executive officer. A co-ordinating body needs to be clear as to what its role is, whether it is advisory or executive, whom it advises and what is the extent of its statutory powers.

Accountability can however be *shared* without being *muddled*. The real world is not clinical and a sharp separation of roles is not possible, because (for example) the responsibilities of various authorities overlap and often these relationships cannot be simplified without exhausting and sterile bureaucratic argument.

WHAT PURPOSE DOES CO-ORDINATION SERVE?

Why is co-ordination through NRM plans necessary to achieve goals? Why don't busybodies leave individual landholders to their own devices to achieve sustainable use of land as best they can?

Sharing Knowledge

The development and use of land can have long-lasting and irreversible effects or consequences reaching far beyond the boundaries. If we are to remedy environmental damage and unsustainable practices, we need to understand the causes and the remedies. An NRM plan is born through private concerns (e.g. if farmers suffer by flooding), community concerns, scientific concerns (e.g. over a threat to rare species), economic concerns (e.g. localised depression or declining townships), or governmental concerns (e.g. threat to the Great Barrier Reef). NRM planning brings collective knowledge to the surface and focuses the attention and energies of many who have something to contribute to solutions.

There may be entrenched beliefs in the community that are counterproductive to sustainable land use – 'cattle keep the weeds down', 'the government doesn't care about the man on the land', 'the land would recover if only we had normal seasons'. Misconceptions that the land is elastic, that once an area is degraded it is easy or cheap to make it usable again, may blinker landholders' thinking.

Historical patterns of use may also dictate beliefs. Many landholders find it difficult to radically change their habits because of tradition, sunk investment, shared family proprietorship, estate planning or reluctance to encounter the perceived risks. Joint approaches can encourage them to try new ideas.

Co-ordination may address problems that have not yet been raised in the local community. Foresight, technical knowledge and experience gained elsewhere may highlight a potential invisible problem that can be attacked before it becomes obvious. Examples include incipient salinity and acid sulphate soils. In this way, the government has a central role in noting State-wide and national advances in good management practice and instigating the preparation and implementation of NRM plans pro-actively. This is applying the conventional wisdom that 'prevention is better than cure.'

Co-ordination can translate contemporary scientific knowledge of techniques of land management into terms which landholders and communities can comprehend. Using soil salinity as an example, scientific

trials may have demonstrated planting regimes effective for combatting an emerging problem before it drastically affects production. This knowledge may not otherwise be readily available to stakeholders.

Mustering Stakeholders' Capacity

Landholders differ in their capacity and willingness to manage sustainably. A joint or community-driven approach can overcome poor communication or conflicts of interest between holders of the different parcels, or their natural reluctance to become involved in their neighbours' affairs. A joint approach makes it easier to tap into sources of financial incentives or to understand regulatory requirements.

Co-ordination between stakeholders is necessary to help ensure that all entities have the strategic goals in focus and that their capacities are shared. Co-ordination reduces contradictions between the entities and illuminates across professional disciplines. It ensures greater robustness because if many entities are involved, gross mistakes are less likely. In fact the modern drive towards NRM planning tacitly or explicitly acknowledges that unco-ordinated approaches have been failing.

Without co-ordination, the activities of authorities can be incomplete: for example, a river improvement trust may clear snags from a river, damaging other values of the river and leaving untouched the noxious weeds along the bank; or a works crew may push rubble onto a patch of inconspicuous but valuable remnant native grassland. Conversely, authorities may fail to undertake worthwhile projects because of uncertainty about their jurisdiction or the attitudes of neighbours or lobby groups.

Co-ordination can bridge gaps in trust. Suspicion of 'government' is widespread in rural Queensland, but 'government' is a multi-faceted term. Establishment of a local dialogue through a co-ordinating forum can help to compartmentalise suspicion and bring a helpful face to the otherwise anonymous 'government'. This is aided if the government is represented by a capable and respectful local officer who takes account of their concerns and dutifully conveys messages back to the central corridors. Also, co-ordination may usefully place officers from various authorities in touch with each other.

Motivation and Perception: Public and Private Interest

Environmental degradation and concomitant loss of income are frequently exacerbated by poor social and economic circumstances. Many districts badly affected by land degradation have depressed economies which place further pressures on landholders to overuse their land. They must increase their income just to stay ahead of their banks.

Cause and effect become intertwined. The widespread need of rural landholders to retain or achieve financial viability places pressure on them to operate unsustainably. But profit is far from the only or sometimes even the main consideration. Landholders operate under a range of motives including a desire to satisfy family and societal expectations, an eye to capital appreciation and a sense of civic or ethical duty. The combination of these motives leads to property management practices which range between the long-term, holistic and visionary; to the short-term, insular and myopic.

People wear several hats: some civic and some private. Community concern about the negative, off-site effects of private activities is frequently a catalyst for demands for collective action by landholders or governments. But the landholders in the study area may perceive that it is in the public interest for them to be left alone to run their farming businesses. Although there can be wide acceptance in principle that collective action to intervene in private management is often necessary to remedy society's problems, there may be no agreement on how much collective action is warranted in this particular study area. So a potential adverse reaction from landholders may discourage governments from taking any action at all.

Inefficient or broken feedback loops mean that landholders do not have sufficient information to understand the effects on the community or themselves of their management. One mark of good strategic NRM planning is how effectively it reveals to stakeholders the consequences of their management, to their community and themselves. However, most landholders do not need to be forced to cooperate in community-driven natural resource management planning, for they realise that problems are shared.

It is beneficial if the alignment of public with private interest is well advanced through NRM planning because if there is a mismatch between the plan and the individual visions of the stakeholders, then

implementation of the plan will always suffer. However, it is not essential that every tension must be resolved before implementation can begin. By the principle of incremental progress, advantage can be taken of opportunities whenever they arise and this may 'kick start' other elements of the plan.

Stakeholders Surrender Influence to Gain Empowerment

Co-ordination comes at a cost; it requires time and resources. The nature of co-ordination is also at the heart of the difficulty of implementing NRM plans. To co-ordinate activities, participating stakeholders initially have to give up, share or delegate some of their powers or independence. Ironically, this surrendering of influence can be ultimately empowering as the work prospers and the energies of other parties are brought to bear on what are really common problems. But the process can seem risky, especially for landholders who fear invasion upon their privacy and for public servants who are accountable to their council or Minister for discharging statutory functions without showing favouritism.

Merits of Centralisation vs Decentralisation

The sponsor and co-ordinating body need to consider the level of centralisation that they favour. The very existence of an NRM plan is a source of central co-ordination; and co-ordination implies a degree of centralisation of power. The level of centralisation has two dimensions, spatial and organisational.

Spatial Aspects

This dimension refers to the geographical area to be covered by the co-ordinating body. Let's say, for example, that there is a State-wide strategic plan for achieving some natural resource goal. This is a form of centralisation – one vision being assigned to the entire State. The State co-ordinates activity by the regions. Within each region targets and goals may be set and these will act as unifying regional visions. At a smaller scale still, some co-ordination of activity in catchments or communities by regional catchment bodies is likely to be useful. Within catchments, even more specific co-ordination may be desirable – this process continues on down to the property scale. Each level of co-ordination is centralised relative to the level below it, and decentralised relative to the level above.

Organisational Aspects

This dimension refers to the degree of administrative delegation that the sponsor is prepared to offer to the co-ordinating body, or that the co-ordinating body is prepared to offer to any branches, subcommittees or employees. This degree of delegation should depend on the significance of the interests at stake and the depth of competence at various levels.

Is Centralisation or Decentralisation Preferable?

Both centralised and decentralised arrangements have strengths. Centralisation is helpful to keep an ideal or a national goal in focus, to encourage a realistic, measured view of problems and independence of local political influence. Also, a broader range of funding options opens up and the body can access the greater intellectual and statutory capacity of the higher levels of government, business and civil society.

Decentralisation is helpful to ensure local relevance and to gather knowledge of local economic, social and biological conditions, locally available resources and local infrastructure. Greater community pride in implementing the plan is possible as is an increased capacity to handle future related problems.

Criteria for deciding between the two modes include geographic considerations such as natural boundaries; degree of conflict between landholders (such as farmers and graziers); and funding arrangements. Centralised control is appropriate if the skills necessary are scarce or sensitive compliance action is required. For example, if an issue is sensitive at a State level, or requires State-level policy capacity, then centralised control is indicated. Delegation is more appropriate for situations which are less critical or fall within the problem-solving capability of the potential delegates: for example, where the regional community is able to muster sufficient funds to handle the issue. This logic can be applied down to a property level. Some problems in public policy are dauntingly complex and pushing them on to (say) 14 regional bodies may simply be obliging them to re-invent a solution 14 times over. But other problems are complex *because* they are addressed State-wide: a regional or local approach dissolves them.

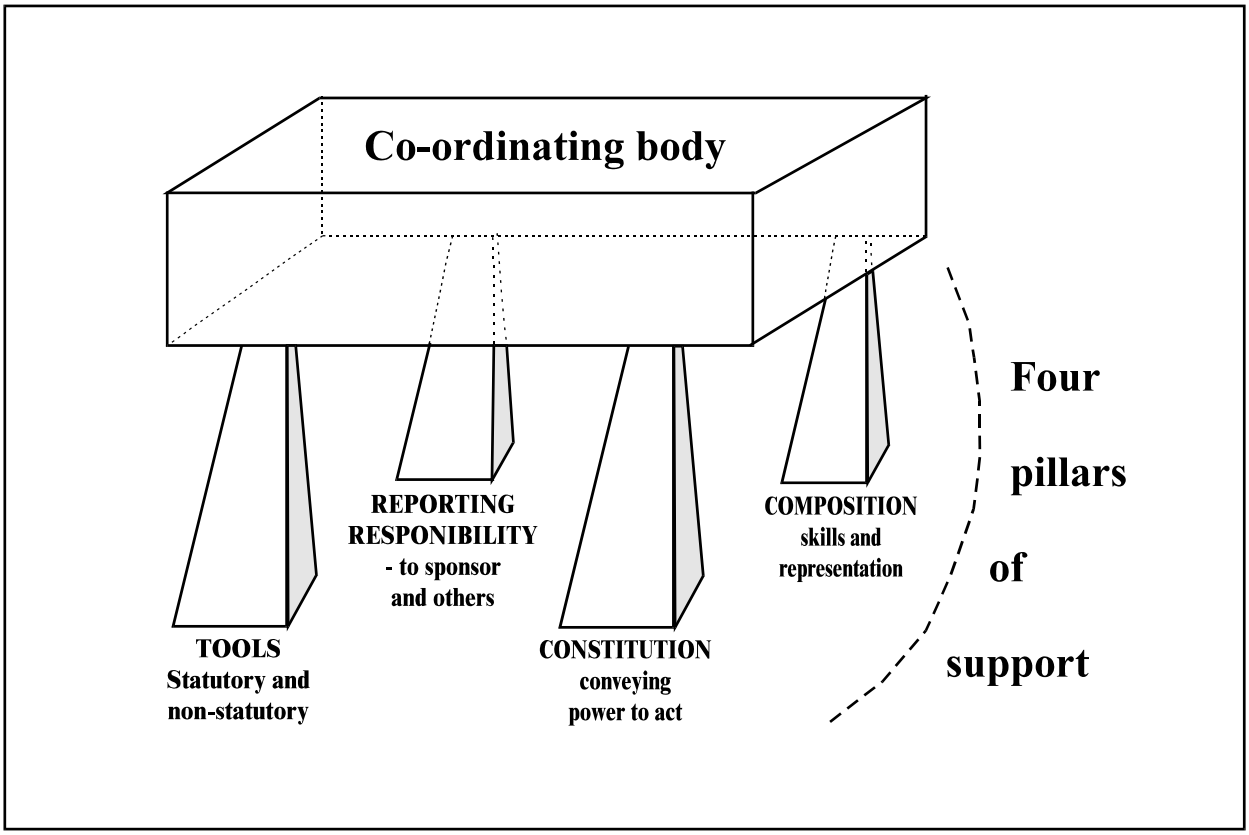

Fig. 2 – Model of Elements Which Support a Co-ordinating Body

PROBLEMS FACING LANDHOLDERS IN IMPLEMENTING NRM PLANS

The willingness and capacity of landholders to participate are critical to success in implementing the NRM plan. *Capacity* to implement the plan may be the primary prerequisite for *willingness* to implement it. *Please note: this account is not meant to be critical of landholders. It is meant to be highly sympathetic by revealing the extent of the obstacles they face in satisfying their own and the community's expectations for natural resource management*. Many landholders feel that they are unfairly blamed for land degradation. This paper blames no-one, for the problems are shared.

Problems Facing Private Landholders

The following factors are obstacles to implementation of a plan by private landholders:

Interest in the plan:
- landholder may not think that the NRM plan is relevant for them: scale of the plan may be too broad, it may not cover aspects of personal concern to landholder; it may be replete with 'parenthood' statements that mean little;
- landholder may not agree with the intent of the plan, or may be hostile to others' perceived meddling in their sovereignty;

Understanding what the plan requires:
- landholder may not know how the NRM plan relates to their own property – requires information translated in a digestible format at a suitable scale;
- landholder requires information or leadership from trusted sources such as respected peers;

Time:
- landholder may not be able to balance implementation with existing commitments such as family, work or business;

Technical knowledge:
- landholder may not have access to necessary expertise in natural resource management, engineering, agriculture or other relevant field (see list under 'Skills-based Representation' later);

Financial considerations:
- implementation may result in loss of income – short- or long-term or both;
- implementation may impose prohibitive out-of-pocket costs – of materials, contractors or labour;

Project management:
- health or age considerations may interfere;
- landholder may not have access to necessary equipment or the practical skills to engage workers or cope with weather;
- landholder may not know about the institutional considerations necessary for effective project management e.g. leadership, insurance, dealing with bureaucrats or professional experts.

For successful implementation, *all* of these potential obstacles must be overcome; and the absence of *any one* of them may block progress. The more profitable and more experienced landholders are better positioned to work around them, but for the average landholder, the obstacles may well be formidable.

Unwilling or incapable landholders cannot be expected to cooperate with the plan on their own. External 'incentives' of either stick or carrot variety may be needed. A significant proportion of landholders would probably pick up sustainability voluntarily in due course, but need some assistance in doing so or doing so quickly; and a minor proportion of landholders would never do so without help. 'Incentives' certainly doesn't always mean money: encouragement by neighbours or simply lack of ridicule may be enough.

Problems Facing Public Landholding Authorities

As well as the obstacles listed above, concerned officers within public landholding authorities face additional or parallel problems that private landholders don't have to deal with. They might include:

Interest in the plan:

- junior or middle-level officers may be enthusiastic, but senior management (whose approval is necessary) may not, perhaps for important strategic reasons;
- the urgency of other business may squeeze consideration of this problem off the agenda; care of this land may be seen by the authority as outside its core business, or currently of low priority;

Understanding what the plan requires:

- jurisdictional friction between departments or confusion as to which authority is responsible for implementing parts of the plan may delay progress;

Technical knowledge:

- even if individual officers have relevant knowledge and skills, they may be incidental to the authority's core disciplinary skills so it may not be able to guarantee continuity and hence may not be willing to embark on a project;
- specifically, the authority may lack a works or operational capability or other requisite supporting skills;

Financial considerations:

- the authority may have no discretionary funds – individual departments do not control their own budgets; the entity which is committed to the work is frequently not the entity which controls the purse strings;
- commitment to cross-jurisdictional functions may suffer when budgets are tight: the 'let *them* pay' syndrome;
- the annual budget planning cycle may be relatively inflexible (e.g. there may be only one opportunity a year to lodge budget bids);
- the modern trend to a tight base funding supplemented with project funds may make it challenging for a landholding authority to institute long-term programs of works or maintenance or to recruit or retain skilled staff who are prepared to make a long-term investment of their careers in a given study area;

Project management:

- staff turnover, lack of or doubt about legal power, lack of individual authority or delegation within the authority may all weaken effectiveness or speed.

PART II – JOB DESCRIPTION OF A CO-ORDINATING BODY

SHOULD THE CO-ORDINATING BODY ENCOURAGE OR IMPOSE COOPERATION?

In implementing the NRM plan, a co-ordinating body has to overcome the impediments itemised above. Its legal status and constitution are vital to success in this. Options for these are discussed in this section.

Legal Status: Are Statutory Powers Necessary?

By the guiding principle 'Every Tool is Available' explained earlier, a full range of tools is potentially available for any co-ordinating body, regardless of how weak its official powers. Most tools, especially those for voluntary management, are in principle available for all stakeholders to use.

The corollary or flipside of this guiding principle is that the co-ordinating body, even if a statutory authority with statutory powers, will not control all of the tools. Necessarily, each existing department or other public authority will retain some of its own portfolio powers and some of its own statutory mechanisms. No co-ordinating body, other than the Department of NR&M, can ever expect to administer more than a small proportion of the tools potentially available, and it follows that the absence of statutory powers need not be considered fatal to the effectiveness of the co-ordinating body. (NR&M administers a wider range of instruments for managing natural resources than any other authority. These include tools for tenure over land, water, extractives and vegetation; landcare and integrated catchment management).

Not all powers are 'official'. Statutory power is not necessary for and does not preclude application of the less coercive functions. Specifically, the benefits of extension, education, voluntary agreements and so on are available to *all* co-ordinating bodies. For example, a local government can print leaflets or run field days for hobby farmers. A non-official community group can also print leaflets or run field days.

Most often in natural resource management, the critical missing ingredient is not statutory power, for many Acts cover the territory. It is the *lack of sustained application of existing powers* which impedes progress. It is precisely to remedy this situation that co-ordinating bodies are appointed and their service in doing so is of a higher order than simply possession of power over yet another tool.

It's best to try simple measures first. It is very tempting for an enthusiastic sponsor or co-ordinating body to seek statutory or other official powers to bring stakeholders together, rather than rely upon goodwill, which is often slow to take root. However, there is one critical consideration. Given landholders' sovereignty and their sensitivity to erosion of their independence, the cooperation of landholders is almost a pre-condition for success of a co-ordinated arrangement. In other words, a voluntary agreement is more-or-less essential anyway.

Desire for Statutory Force for a Plan may be Futile

Because community groups and co-ordinating bodies often feel frustrated at their lack of clout and the difficulties in achieving tangible progress once a plan is approved, they often call for statutory force to be given to their planning. What actually does 'statutory force for a plan' mean?

For private land, a plan by itself can rarely force landholders to undertake certain works, because of landholder sovereignty. For public authorities, a plan by itself can rarely force the landholding authorities to undertake desirable works, partly because of landholder sovereignty (where the authority administers land) and partly because authorities derive their capacity to do work not from a plan but from their annual budget. For sound reasons of governance, treasuries oppose hypothecation of funds through sundry commitments made in sundry ways outside the established budget process. Such a practice would destroy a government's ability to determine macro-fiscal policy.

A third point is that a plan by itself is usually given effect through property-specific tools. They are applied under their own heads of power. The force of the plan which serves those tools is therefore necessarily indirect. So most plans reduce to being advisory to the body applying the tools, or perhaps to obliging the body to take certain provisions into consideration when it applies the tools.

There are Three Dimensions to Imposition

There are three distinct dimensions or perspectives to the 'degree of imposition' which a co-ordinating body exercises upon the stakeholders. Where it positions itself in each dimension depends on its constitution, resources and inclinations, as well as the condition of the lands in its area and the degree to which their management has off-site effects. *Please note: this is complex, but to understand the merits of having more or less statutory power, it is necessary to disaggregate these three dimensions and consider each in turn.*

Strength of the Tools

The tools the body chooses in its mix can, by their nature, be more or less coercive. As explained in Appendix 3, some tools are contractual, others regulatory, some voluntary.

The co-ordinating body or the local government can write specific-purpose NRM plans which in themselves have no statutory force, examples being a biodiversity plan, a heritage trails plan, an open space plan. Each can have an action plan or list of recommendations which can feed into the planning scheme, the works operations programs, the infrastructure capital work budgets and the training and recruitment of outdoor staff. The results derive from the strength of the tools used to implement the planned actions and the willingness of the body administering each to apply them, as explained next.

Strength of Involvement

Sometimes a co-ordinating body may administer tools in its own capacity; sometimes the tools are controlled by its constituent member authorities. Sometimes it may have a concurrence role, statutory or informal: for example, certain applications may be passed to it for comment before the administrator makes a decision.

The co-ordinating body can apply each tool with a degree of enthusiasm or zeal which varies on a continuum from vigorous to casual. Only the first two activities in the following list may require statutory powers, and not always those. The co-ordinating body can:

- apply the tool directly;
- take legal action to force some body to use the tool;
- fund the use of the tool;
- make contractual agreements about the use of the tool;
- make submissions to the administrators of the tool or co-ordinate administrators of several tools;
- give advice about or offer assistance with the application of the tool, to any party;
- even oppose the use of a tool by some regulatory authority or other body.

Strength of Co-ordination

The sponsor or the co-ordinating body can bring differing levels of imposition in the task of co-ordinating, as follows, and as distinct from the task of applying the tools:

1. *No intervention* by the co-ordinating body; in other words, leave landholders to their own devices. (This Option 1 is, by definition, not a co-ordinating mechanism, but it is included as a point of reference).
2. *No statutory powers*: co-ordinating body only advises and networks with stakeholders and leaves their powers untouched. The body may exert executive functions – disburse grants, funnel funds. Example: regional NRM bodies.
3. *Statutory power only to plan*: again, co-ordinating body leaves stakeholders' powers untouched but it enjoys a statutory right to prepare a plan.
4. *Statutory power to co-ordinate*: co-ordinating body is given statutory power to bring stakeholders together. May also have power to levy ratepayers. Example: a sustainability levy.
5. Co-ordinating body *acquires land* in a program to achieve some public policy objective or to overcome landholders' resistance or incapacity. This action may or may not have statutory backing.

This continuum is not a list of options for constitutional form, a matter dealt with in the following section, although the two concepts are related and one may partially reflect the other. Nor does it equate to the authority to exercise executive functions, which usually require nothing more than incorporation.

The options are not mutually exclusive: a co-ordinating body may adopt one mode in its dealings with some stakeholders, while it has a different relationship with other, more or less capable stakeholders.

It is important for the co-ordinating body to recognise when a given level of imposition is required, as well as to articulate logical reasons for doing so. A critical consideration is the extent of the mandate it enjoys: it cannot lightly exceed the expectations held by its sponsors or constituents.

The above analysis explains what is arguably the most complex matter in this paper. An entity appointed as a co-ordinating body may bring some tools in its own capacity as well as exercising co-ordination in a new, different capacity. The following five options refer only to the powers to co-ordinate, not to the powers to administer or apply tools. The section after this then goes on to outline options for constitutional form.

Explaining the Five Options for Achieving Co-ordination

The five main options identified deserve some explanation.

Leave Landholders to Their Own Devices – Option 1

This option will be appropriate where conflicts between landholders and the intention of the NRM plan are unlikely. It is likely that the current uses of the study area are in line with the objectives of the NRM plan *and* the lands are being managed sustainably. It may not be necessary to seek any form of management agreement with landholders.

However, the prospect of leaving landholders entirely to their own devices should be approached sceptically. Expert management by landholders may not last, or properties might be sold, or external conditions such as available markets may change, leading to financial stress. Many factors may undo the positive work achieved by competent current managers.

Another reason for not leaving even competent managers to their own devices is that competent managers by bringing their experience into a co-ordinating body may add significant value to the body's work. This applies especially if they are held in respect as role models by their communities. First rate managers can export their understanding to a wider audience.

No Statutory Powers: Co-ordinate by Networking: – Option 2

Under this option, the role of the co-ordinating body is to disseminate information and advice to stakeholders, to put people in touch with people. This type of co-ordination uses debate, education and extension services to create an informed community. The body may be simply a non-executive advisory committee. Examples include regional strategy groups under integrated catchment management or Natural Heritage Trust arrangements. Interdepartmental committees operate in this mode, being influential (though largely invisible) co-ordinating mechanisms within government. Or the body may be incorporated and co-ordinate through voluntary contractual agreements or memoranda of understanding, to involve the landholders in the joint co-ordinating effort. In this mode the body may act as a conduit for funding and disburse grants, construct works or employ staff. The majority of co-ordinating bodies operate in this mode. A body does not need statutory power in order to draw up an NRM plan.

In SEQ the concepts of *regional landscape areas* and *regional parks* were developed by the EPA in 2000. In regional landscape areas, landholders who support cross-tenure multiple use management would enter a voluntary agreement to cooperate in the management of properties within the defined area. A regional landscape area is likely to have public lands as its core and the term *regional park* is intended to apply to such public lands. Both *regional landscape areas* and *regional parks* are 'labels', not tenures.

Statutory Power Only to Plan – Option 3

An example of a power to write a plan which is only advisory is the statutory duty of a regional planning advisory committee under the *Integrated Planning Act 1997* to produce a regional plan. Examples are the SEQ 2001 and FNQ 2010 'regional plans for growth management'. These then feed the planning schemes of the constituent local governments.

The symbolic value of having a statutory head of power to plan can be considerable, but it must be balanced against the additional bureaucratic burden which must be borne to comply with any due process set out in the statute.

Statutory Power to Co-ordinate – Option 4

The Commonwealth or the State may pass legislation which establishes a body with explicit powers to bring the landholders together into a co-ordinated framework, or enables another public authority such as a local government to do so. The powers of co-ordination can be as strong or as gentle as the legislation specifies and landholders may be brought into the scheme sometimes with or sometimes without their agreement. At the gentle end, this option merges with the previous one. At the stronger end, the legislation may also create and assign to the body a new regulatory power, such as to issue permits or to levy ratepayers. These are better described as tools in their own right rather than co-ordinating powers.

Case examples where strong arrangements have been put in place are few. Examples include:

- Queensland Recreation Areas Management Board – under the *Recreational Areas Management Act 1988* (EPA), a landholder can have their property listed as part of a recreation area;
- the Brisbane Forest Park Board – under the *Brisbane Forest Park Act 1977*. This legislation was a precursor for the recreation areas legislation;
- the EPA as administrator of *Co-ordinated Conservation Areas* – under the *Nature Conservation Act 1992* an area can be managed to conserve its natural and cultural values by co-ordinated management involving the various landholders. This device includes provisions for education and recreation and provides for the interests of the various landholders to be maintained;
- the Co-ordinator-General under the *State Development and Public Works Organisation Act 1971*;
- a stand-alone statutory authority such as the Great Barrier Reef Marine Park Authority or the Wet Tropics Management Authority.

A similar arrangement is appointment of a local government as trustees of a number of State reserves under the *Land Act 1994*. However, this is better regarded as a tool rather than a special statute-based co-ordinating mechanism. Another example is the mooted Trust for Nature with power to buy and sell land and to enter into statutory covenants. Such a body could operate as a co-ordinating body if it chooses to buy a number of properties in a study area.

Usually, these co-ordinating bodies do not interfere with the existing powers of separate authorities. This is not just 'turf protection': for reasons of good governance authorities are reluctant to allow 'holes' to be created in their regulatory jurisdictions in defined parts of the State.

Change Ownership – Option 5

The co-ordinating body if incorporated may choose to purchase lands by agreement, or encourage the local government or the State to do so. Also, certain public authorities can compulsorily acquire freehold or leasehold land under various statutes if it is required for a public purpose. It could be argued that this option is hardly a co-ordinating mechanism, as it seeks to buy out the equity of landholders rather than co-ordinate amicably between them. But land purchase can serve purposes other than removing landholders from the scene. Other possibilities include:

- the body could purchase land to allow public access, which is problematic on private land;
- the body could establish a revolving fund: it buys properties, places or negotiates covenants on title to secure sound management practice, then onsells;
- the body could buy the land to extinguish development rights – such as by abandoning an existing approval or by amicably negotiating a downzoning in the planning scheme.

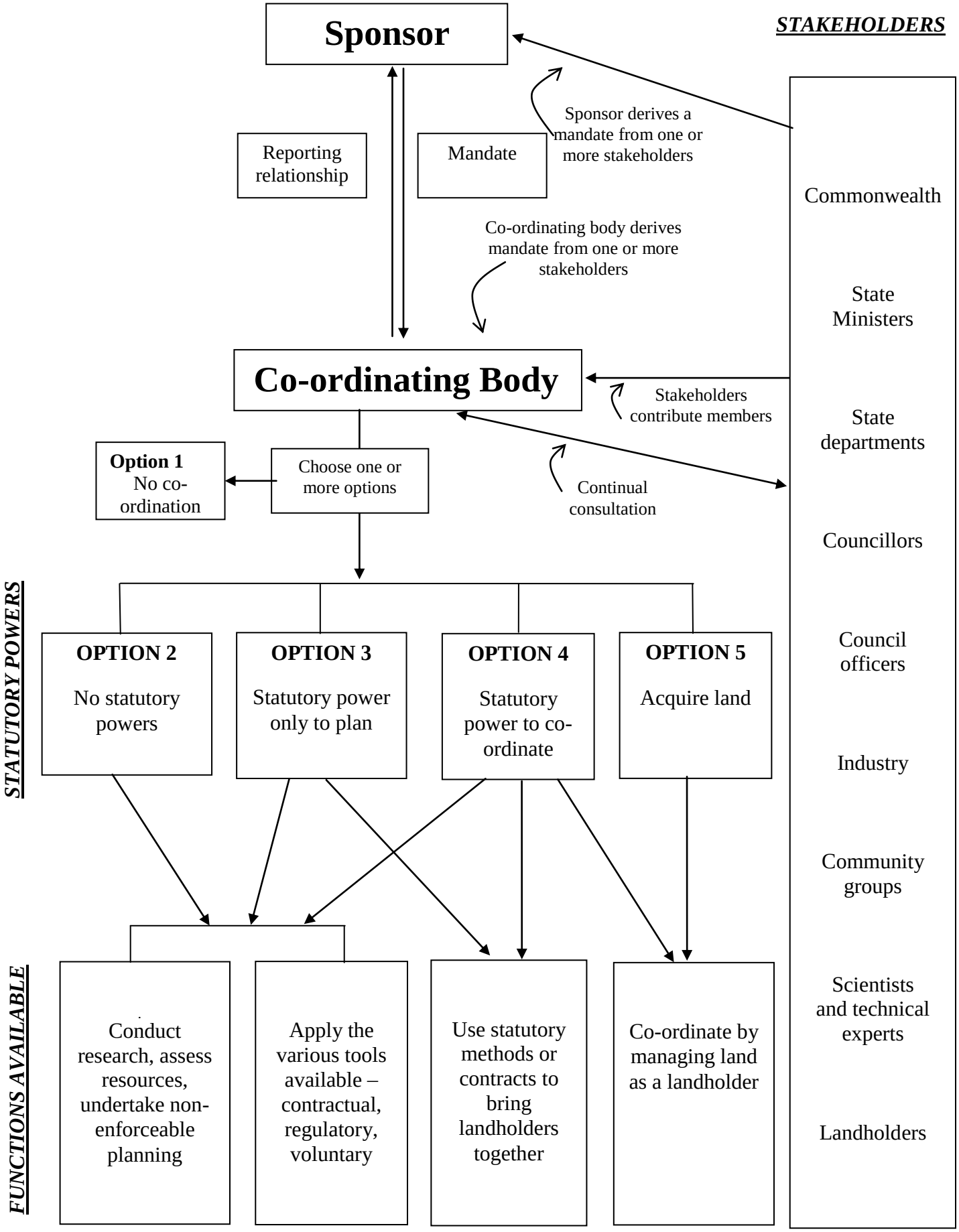

Fig. 3 – Powers and Functions of a Co-ordinating Body

CONSTITUTION AND COMPOSITION OF THE CO-ORDINATING BODY

Constitution: What Institutional Form is Best?

Various options are available for a constitution or institutional form of the co-ordinating body, deriving from various statutes or none. Examples follow. Each of the formal kinds has standard operating procedures which, most basically, specify roles and responsibilities, scope of its deliberations and methods of appointing members. It may be possible or desirable to establish an interim co-ordinating body while administrative machinery cranks up establishment of the enduring one.

Please note: this account should not be interpreted to imply that any particular current or proposed institutional arrangements are less than ideal or should be altered. It is mean simply to provide guidance for those contemplating establishment of a new body.

Individual Co-ordinator

An individual may take it upon himself or herself to act as a co-ordinator. To do this effectively s/he would have to be in close contact with stakeholders, especially the local community. Such an individual would effectively become a representative of an informal co-ordinating body – the people s/he meets.

Existing Public Authority

A State department, local government or statutory authority can act as a co-ordinating body. These bodies usually have many responsibilities on their minds and it can be difficult to secure space on their agendas. By contrast, a dedicated co-ordinating body set up under one of the other options just for that purpose allows sustained, focused attention towards ensuring that implementation actually occurs. Nevertheless, this option has many merits: it can make co-ordination simpler and can bring its own statutory powers, experienced crews or equipment. If the authority has a can-do manager on its staff, these skills may offset a lot of other disadvantages.

Non-official Community Group

Citizens, ratepayers, landholders or residents do not need any official permission to establish a co-ordinating body. They can organise themselves, using any of many different legal mechanisms, being:

- *unincorporated*: such as a local interest group – for example, a landcare group or social group;
- *incorporated*: such as a community association, a cooperative, or a private or public corporation under the *Companies Act* (Clth). For example, the Australian Bush Heritage Fund, active in Queensland in purchasing land for conservation, is a private company.

Official Multi-lateral Body

Where a large number of entities potentially have a role to play in implementing an NRM plan (this is usual), a special multi-lateral co-ordinating body, recognised as part of the official apparatus, is probably the best vehicle to facilitate co-ordination. Such a body can bring a legitimacy, depth of insight and breadth of knowledge that no single participating individual or organisation can have, however well educated or experienced they or their staff may be; and that no organisation unconnected with government can have by itself.

A body may be established through legislation or regulation, even though it is not assigned any new regulatory powers, so it remains essentially advisory. Usually, this statutory recognition is not strictly necessary because a Minister or a local government already has wide reserve or explicit powers to appoint such advisory committees as are conducive to the efficient administration of their portfolios. However, statutory recognition enhances the status of a committee, may authorise the payment of sitting fees and crystallises the method of appointing members.

Repeating a previous explanation, the following range of constitutional forms is separate from the continuum of powers that the body may exercise. Please also note that some of the following options are

also listed under 'Non-official Community Group' above, the difference being that they are listed here because they can be accredited by governments as part of the official apparatus.

Examples include:

- interdepartmental committee;
- non-statutory advisory committee, unincorporated;
- non-statutory advisory committee which becomes incorporated;
- advisory committee set up under some general statute;
- advisory committee set up under its own statute;
- government-owned company under the *Companies Act*, such as the South East Queensland Water Corporation, a company owned by local governments;
- statutory authority set up under some general statute such as the *Government Owned Corporations Act 1993* or the *River Improvement Act 1940*;
- statutory authority such as the Wet Tropics Management Authority, set up under its own statute.

The first two and the fourth would not normally exercise executive functions, though individual members may bring their own executive capabilities and exercise them upon the advice of the committee.

An existing authority, such as a local government, wishing to bring on board other stakeholders, can establish a committee with broad, multi-lateral representation and this may be solely advisory or exercise executive powers.

Reporting Arrangements: To Whom Should the Co-ordinating Body Report?

Reporting to Sponsors: Co-ordinate or Integrate?

When a need for a co-ordinating body arises, sponsors should check whether an existing body might fulfil the required functions. Co-ordination can be simplified by cutting some actors out of the picture, by persuading them to disband, to delegate their powers or to surrender their landholdings.

It should not be assumed that a single co-ordinating body for all aspects of natural resource management in a study area is the ideal, for progress is often made out of friction at the edges of overlapping responsibilities. Monolithic bodies can become unrepresentative, conservative or factionalised. However, the current maze in natural resource management is simply far too fragmented and reflects upon stakeholders. Sponsors should always consider not just *co-ordination* between bodies in their area, but *combination* or *integration*. Three options for integration are listed, from lightest touch to heaviest:

- *advise several sponsors* – a co-ordinating body may be appointed in an *advisory* capacity to serve several sponsors. In other words, the same group of people is appointed or accredited by each of several sponsors to act as its advisory committee. Desirable conditions are that the body is constituted through due process and has the confidence of the community;

- *exercise delegations* – the co-ordinating body could be appointed to exercise delegated powers. Under various Acts of State Parliament, Ministers or councils can delegate various powers to individuals, staff or other entities. If a co-ordinating body can gain the confidence of several authorities, it can not just co-ordinate between them but perhaps even exercise a range of the governmental powers in the study area. A desirable condition is that the body has legal recognition as an incorporated body, a transparent appointment process and the confidence of the community. But in addition there must be a legislative head of power and this will specify who can and who can't act as a delegate;

- *amalgamate or affiliate* – existing bodies such as catchment committees, reserve trustees or landcare groups can be collapsed into a new co-ordinating body, or can re-position themselves as members, affiliates, satellites or sub-committees.

Reporting to Public Authorities: Officers or Elected Members?

For co-ordinating bodies established by a public authority, a distinction can be drawn between bodies which are part of the bureaucratic apparatus, reporting to the relevant officer level (department or branch); and those which report directly to the political level (Minister or the council). The latter form is more usual in local government where the elected representatives are more involved in operational detail. In State administration, committees report directly to the Minister where their purpose is to allow the Minister to gauge community and sectoral opinion. Where the purpose is essentially scientific or technical, they advise the relevant public service manager. This need not preclude periodic briefings to the Minister. The factors listed below should be weighed up case-by-case in order to determine which model will most satisfactorily achieve this goal.

Advantages of reporting to the department or branch include:

- the department, in receiving the body's report, can examine it and slot it into the flow of its own business, which then itself becomes a surrogate mechanism for co-ordination;
- the department would tend to see the body's business as being its own rather than in the political arena outside its own business. (This is less likely to be an issue in local government);
- the task of co-ordinating input into ministerial or council advice may be less complex than if the body reports separately to the Minister or council;
- the issues are less likely to become politicised or hijacked by unhelpful media attention.

Advantages of reporting directly to the Minister or council include:

- the co-ordinating body can provide an alternative to the departmental point of view, insights which may be absent from departmental briefings. Their report can sidestep bureaucratic politics and the body can be confident that their alternative views will be considered by the political level;
- the co-ordinating body can counter hijacking of issues by feeding objective information directly to the political decision-makers.

Composition: Who Should Represent Stakeholders?

There are several possible bases for choosing the members of a co-ordinating body:

- *geographic* representation (members represent component sub-areas);
- *organisational* representation (members represent named bodies such as the Local Government Association of Queensland, Agforce or the Queensland Conservation Council);
- *sectoral* representation (members represent activity sectors such as local government, pastoral industry, community nature conservation);
- *skills-based* representation (members represent fields of expertise such as public administration, farming, biology).

The makeup of the co-ordinating body will be influenced by, among other aspects:

- the nature of what needs to be done: ranging from simply providing advice, to monitoring land condition, to exercising executive functions;
- the level of power of imposition the co-ordinating body is to have upon landholders; or the extent of any taxing powers (people taxed must have representation on any taxing authority);
- the extent to which the co-ordinating body wants to hold land;
- the level of centralisation or decentralisation required for the body's operations;
- the level of connectivity to State or local government required to gain official support.

The co-ordinating body can take its membership from:

- the *Indigenous community* – who have broad and diverse interests, such as affiliation with the land, native title, protection of culturally significant sites or alternative uses of natural resources;
- *State Ministers* – who can bring influence at Cabinet level and are powerful and effective co-ordinators in their own right;

- the *State public service* – who are best placed to access the powers of the relevant departments; who can advise stakeholders about departmental regulations and policy; who can tap into sources of public funding; who influence or drive policy-making; who can access technical and scientific knowledge, plant and equipment; who administer State lands; (but see caution below);
- *local government Councillors or officers* – who control future land development through statutory planning; who have a pervasive presence in and knowledge of local communities;
- *scientists* – who have access to knowledge about the biophysical values of the study area and best technical practices; who can supervise research projects e.g. to assess condition and trend;
- *landholders* – who are usually familiar with the realities of living in the area; who can bring their landholder sovereignty to the program; who have practical skills;
- *industry and peak bodies* – who can gain acceptance of codes of practice among their constituents; who, more readily than outsiders, can moderate extremists among their number;
- *community groups*, who can tap into currents of community thinking; who exercise real political influence;
- *those involved in drafting the NRM plan* – who may include any or all of the above. The greater the institutional separation between the planners and the doers – administrators of the tools for implementation – the lower the likelihood that the plans will eventually be implemented.

It may not be possible or necessary to have all of the above represented. The number of people on the co-ordinating body should be sufficient to ensure that input from each relevant group is tabled, but not so great that effective facilitation becomes tedious, or people lose their voice in the crowd. A large number will dilute aberrant opinions, but efficiency can suffer if there are more than about a dozen members. If the stakeholders who want to have input are numerous, sub-groups which in turn report to the co-ordinating body can be formed. But if the stakeholders are to develop sufficient trust in the body's intentions and abilities, it may be necessary to offer representation to all major classes of stakeholders.

Organisational Representation

A caution is sounded about inclusion of public servants on certain kinds of external bodies. A public servant may have a conflict of interest in advising the Minister and the government through the normal departmental channels and also at the same time being a party to advice proffered to Ministers from a different source, such as a body with independent statutory powers or an activist lobby group. A department cannot divest itself of its responsibility to advise its Minister. Its officers have a core responsibility, set out by virtue either of legislation or the ethics of the public service, not to place themselves in a position of conflict of interest by dividing their loyalty to some different entity, even if (or especially if) that body is a statutory entity. The risk of conflict of interest is less if there is a specific piece of legislation establishing the role, or if the public servants attend as observers, or if the committee reports to a department not a Minister. Parallel remarks apply to council officers.

Issues are sometimes racked up to a political level because of a want of trust at a more subordinate level. This tactic may be misguided: a more robust result will be obtainable by building trust at every level.

Turning now to debate within the co-ordinating body, sometimes representatives of stakeholder bodies will take, or be expected to take, a political stance and not to depart from the official views of the body they represent. This stance can place them at odds with other members of the co-ordinating body – perhaps their home organisation's traditional enemies. Such behaviour may be quite inappropriate: there is a principle well-established in common law that a representative on a multi-lateral committee has been appointed to advance the business of the committee and must make judgements on the basis of the merits of its deliberations, not blindly following the policies of their home organisation or voting in a bloc with allies. This principle applies even to public servants appointed by statute to represent their departments. It is not lawful for several public servants on a body to caucus together and present a single 'whole-of-government' view resistant to argument.

Public servants on committees frequently show a much-ridiculed tendency to be non-committal about issues raised. Without contradicting the previous paragraph, this attitude has a sound ethical and statutory basis. A Minister's discretion to make decisions under statute cannot be fettered except by statute. A public servant cannot commit their department/Minister and even a Minister cannot make a binding commitment until the moment of decision. Nor can a public servant express views which could embarrass the government.

Despite the above cautions, a plea is expressed for inclusion of both government and community sectors on co-ordinating bodies. Public servants can dispel stereotypical attitudes about remote bureaucracies and can add an invaluable depth of understanding of how to cope with the administrative processes of government. On the other hand, involvement of community representatives ensures sensitivity to public opinion, directly rather than filtered through the political forums of parliament or council. But where there are complicated internal governmental procedures to work through, it may be sensible for public servants to meet in a parallel interdepartmental committee. This can spare community representatives boredom and confusion and can reduce the numbers of government people on the main body. It can also be a forum in which public servants can speak more frankly without placing public service anonymity at risk.

Skills-based Representation

Problems of bloc voting, numbers-stacking or factionalisation can be partly overcome by choosing members on the basis of their skills rather than their representation and by selecting for breadth in disciplines or skills. Skills typically needed to implement an NRM plan include the following:

- spatial planning;
- outdoor works and operations;
- property valuation;
- biology, ecology, zoology, botany;
- parks management, recreation planning; open space planning;
- river engineering;
- farming; forestry; agricultural science;
- plant and equipment;
- law;
- small business;
- accounting;
- public administration;

to name just a few. If these skills are not available within the members of the body, of course they may be sought in its staff, or in its network of community contacts.

A problem is that many people specialise in strategic planning, and have no concept of the practicalities required to actually get a crew of workers to pour concrete or pull weeds. Conversely, there may be expertise in getting works done, with no perception of either the process of strategic planning or the broader policy environment. Strategic planners become bored with on-ground operations and practical people become confused by theoretical analysis.

Further, technical skills alone are not enough. It cannot be assumed that a good action plan, set out in easy-to-understand recipe form, will be implemented. Also necessary as implementers are people who have a can-do, problem-solving, energetic approach to the tasks and with good connections to the official bodies or with the negotiating skills to forge them. To make any co-ordinated system work, multiple administrative actions will be necessary – change in tenures, joint appointment of staff, writing of contracts – and if they are not pursued energetically, momentum may fade. A leader or executive officer with the courage to act even if only some of the pieces of the jigsaw are in place is a great asset.

Appointment: Should Representatives be Elected or Nominated?

Members can be chosen through election or nomination. Both methods have disadvantages. If by election, the most outspoken candidates may be successful, and these people may not be good at allowing effective communication of differing viewpoints. Many capable people, especially women and rural landholders, are shy in company and will defer to more vocal or aggressive candidates. Commercial or property interests may launch a well-funded campaign and swamp the electioneering capacity of innocent community folk. An election may personalise issues which may simply require a non-partisan and objective analysis. Elections are expensive and take time.

On the other hand, if a sponsor nominates members, the nominees should be locally respected. Communities may be hostile to having certain individuals thrust upon them. The sponsor may be tempted

to select passive individuals who won't disturb established relationships rather than vocal members who will challenge situations which need to be challenged. Sponsors may nominate political allies (although governments have a record of choosing capable and respected people to run boards).

Regardless of which basis is used for selection, appointees can be sought:

- by advertising;
- from the network of people already known to be competent or active in that field; or
- by inviting peak sectoral bodies to nominate a panel of names from which the sponsor may make a selection.

The selection of chairperson is usually of critical importance to the successful functioning of the co-ordinating body, especially where hard-nosed opposition is experienced. Good facilitation skills are essential. The chair should have the capacity to achieve workable results from confused proceedings.

Direct election of a chair from the electorate holds a greater risk of wasteful personalisation than election of the chair by the co-ordinating body from among its membership. The members are in the best position to select the most capable of their number, especially if they have observed their skills at close quarters.

PART III – TACKLING THE WORK

TOOLS AVAILABLE TO THE CO-ORDINATING BODY

A wide range of tools or mechanisms is available for implementing the NRM plan and for either encouraging or enforcing sustainable land management practices. The tools available are bewildering in their scope and complexity. Nevertheless, a co-ordinating body needs to understand them in order to choose the most suitable for the study area, the tasks and the landholders in mind.

Background

Historically, land has been made available for development – which is an increase in the intensity of use – according to this sequence:

- the State as original owner of a resource (now subject to native title) *allocates* it to a potential user, by *proprietorial* or *tenure-related* mechanisms such as leasehold or freehold, which alter the legal 'interest' in the land; this conditional right of possession can then be transferred from one person to another;
- a State department, local government or other public authority *regulates* the *development and use* of the land by its holders, through *regulatory* mechanisms such as planning schemes or local laws;
- the holder of land *manages* it to achieve personal goals, by voluntary *custodial management* mechanisms, such as property management planning;
- public authorities and others *facilitate management* and *development* by constructing infrastructure and voluntary *development* mechanisms, such as joint ventures to build dams;
- public authorities, peak bodies, scientists and community groups *assist* the landholder to adopt practices that they think ought to be followed, using voluntary *advisory* mechanisms.

These terms are somewhat ambiguous. 'Regulation' is often applied to any involvement by governments. The term 'management' is particularly fluid. Despite the risk in using familiar generic words in precisely defined ways, this classification has been adopted by the Department of Natural Resources and Mines. This classification is explanatory in three main ways: by explaining their legal origins, it helps to differentiate the range of mechanisms on the basis of their inherent characteristics; it explains landholder sovereignty; and it differentiates the voluntary mechanisms that landholders can apply by themselves from those that need governmental action. So long as they do not exceed the proprietorial rights they enjoy as holders of the land, landholders are at liberty to manage, within the framework of the regulatory restrictions.

There are other ways of classifying the mechanisms. It is common nowadays to distinguish 'regulatory' from 'market' or 'economic' mechanisms. This two-way split by itself does not seem to be very helpful from a landholder's viewpoint, because it doesn't distinguish the mechanisms based upon tenure and proprietorship or at least downplays their distinctiveness. This classification also does not relate back to legal origins, because it overlooks the fact that markets do not exist without regulation. A strong regulatory framework initiated and managed by governments, not landholders, is needed in order that so-called 'market' mechanisms can work. The very concept of 'legal property' is a creature of the State. The 'market' is a method which could be used to apply mechanisms in any of the five categories: for example, land can be allocated through market-based auction; rights to a joint venture development could be tendered; competitive bids called for advisory stewardship payments.

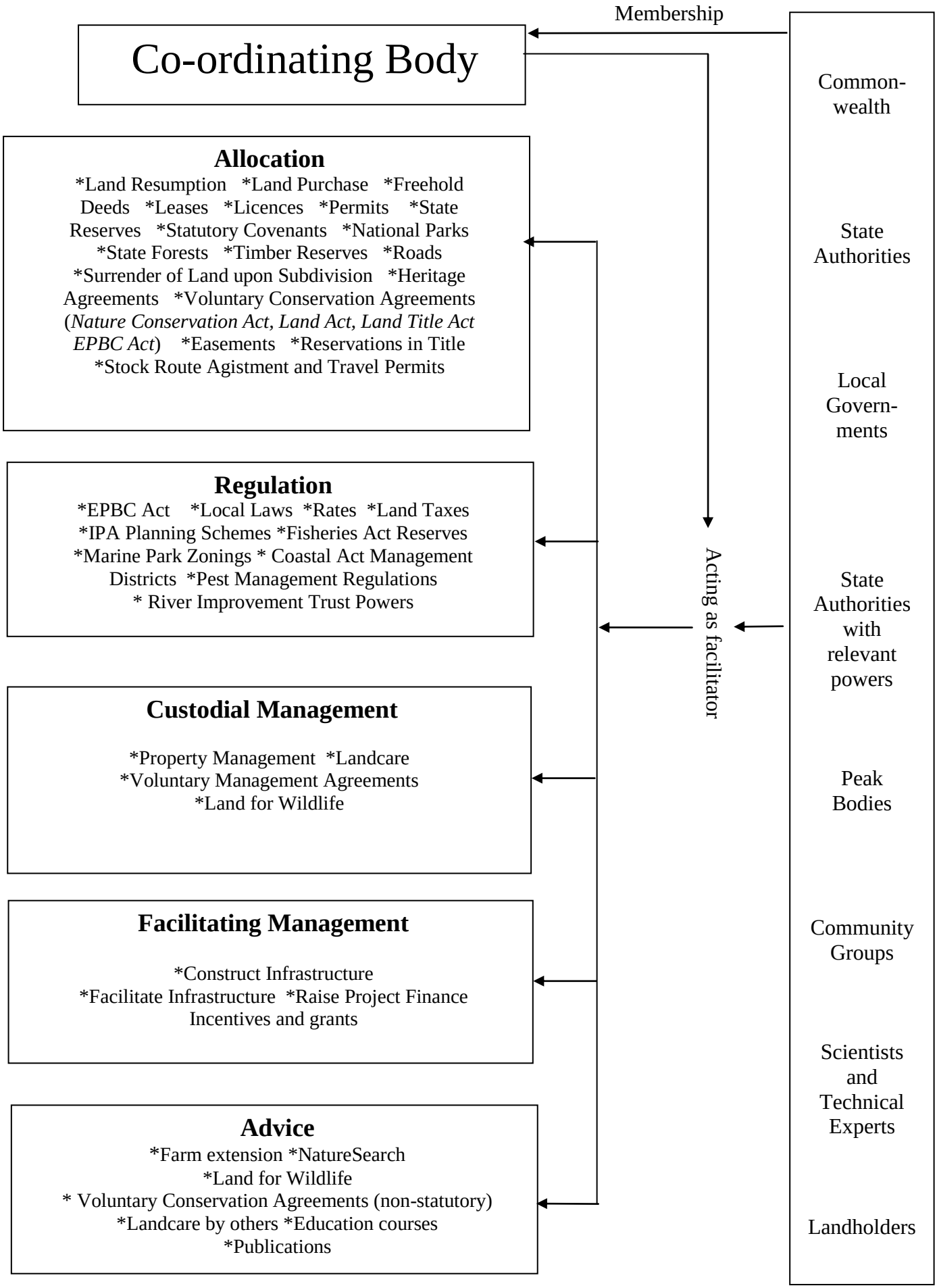

Fig. 4 – Applying the Various Tools

Some Observations About Choosing and Applying Tools

1. The often-heard assertion that tenure and its enforcement have failed, regulation has failed and that only voluntary incentives will work, is a misunderstanding. The truth is that Australia's natural resources are stressed because *all methods have been only partly successful*. All methods have partly failed because, among other aspects:

   - none of the methods has been adequately resourced;
   - the market signals are indistinct or faulty; there are numerous perverse incentives and the externalities have remained external;
   - scientific knowledge has been inadequate to convincingly demonstrate cause and effect, short and long-term consequences, local and offsite effects.

2. Despite its unpopularity, regulation or the threat of regulation remains an effective method of changing antisocial behaviour. The assertion that the best results come from voluntary means is incomplete. The most robust and enduring results occur when landholders come to experience their own conviction about ESD and find that it is profitable. However, regulation has a critical role to play in bringing about that conviction, especially while the economic signals remain ambiguous or perverse. Also, landholders and industry are more antagonistic about ever-changing regulatory regimes or unclear or inconsistently applied regulations than to regulation as such.

   We tend to use these terms loosely. For example, the proposition that 'voluntary measures work better than regulation' would be almost unanimously accepted by landholders. Yet the propositions that 'there should be regulations to rein in the cowboys in the industry' and 'lessees should comply with the conditions of their leases' would also be very widely supported. These propositions sit together uneasily. The speech on property rights mentioned earlier attempts to clarify language.

3. People advocate the tools with which they are familiar, and tend to overlook the merits or versatility of other tools. For example, landcare people are inclined to favour voluntary property management fuelled by government funding; local government planners focus on planning schemes; economists favour market-based trading in property rights. It is easy to underestimate the importance or complexity of other people's expertise. This is a particular trap when the co-ordinating body is made up of people familiar with only a small number of the tools.

4. Sustainable, integrated resource management is difficult. We need all of the tools that we can muster. Each tool has its niche in the armoury. There is no sensible reason to disparage any of the tools; rather we should be sharpening them so that each can do service when the circumstances are appropriate. Of course, the relevance and popularity of each tool will change from time to time.

5. In particular, we should not overlook any tools simply because *at the present time* we are unable to fund their application adequately. Funding is a variable, not a fixture. All tools require funding.

6. Generally, landholders oppose proprietorial and regulatory limitations on management practices, because the protection of their independence is an article of faith. However, this resistance should not be exaggerated: many landholders lack only the funds or technical knowledge about how to manage sustainably, not the willingness to satisfy the community's expectations to do so.

Tools Classified According to Administering Body

The tools available for natural resource management are described in the Appendix and NR&M's Resource Planning Guidelines. In this section, some of the most commonly used are classified according to the entity able to utilise them. Some tools are tenure-specific, some are tenure-blind. They are not mutually exclusive: for example, a planning scheme (regulation) could be amended to tighten development control over land reserved under trusteeship (allocation).

Commonwealth

The Australian Constitution unambiguously reserves to the States the right to make laws about land administration, natural resource management, the environment and statutory planning. (Statutory planning

is largely devolved to local governments which are creatures of the States). However, the Commonwealth has progressively become more involved in these fields by relying upon its power to make laws about external treaties. Land use affects its capacity to negotiate internationally in fields such as world heritage, wading birds and greenhouse. The Commonwealth holds some significant parcels of land, such as for defence, and may as a landholder be prepared to join with neighbours in a co-ordinated program.

The main regulatory mechanism is the *Environment Protection and Biodiversity Conservation Act 1999.* In addition, the Commonwealth exercises significant financial leverage and sets the direction of jointly funded programs like the Natural Heritage Trust and its associated programs, including the National Reserves System which funds the purchase of land for conservation.

State Government

Each State Minister is accountable to the Parliament for the discharge of his or her portfolio responsibilities. Numerous departments and statutory authorities are active in fields relating to management of natural resources and cooperation by all of them is necessary for optimal outcomes. Duties are split between head offices (mainly policy and legislative reform), research stations (mainly scientific investigations) and regions (mainly implementation). Also, departments are divided into different branches and each may hold different views about activities in the study area. Many Ministerial discretionary functions are delegated to regional staff but the departments are regionalised to different extents and the boundaries do not always match. It may be necessary for a co-ordinating body to make contact with more than one officer of a single department involved in the study area. This complexity is impossible to avoid and does have the advantages that it offers several points of access into a department and minimises the risk that a monolithic front will be presented.

Many departments hold land under various tenures. The holdings are sometimes large and can make a significant contribution to co-ordinated management. Also, State land is ubiquitous, in the form of roads (the State is a neighbour to nearly every parcel in Queensland) and the beds of boundary watercourses, not to mention the 64% of Queensland covered by leases for farming and grazing.

The State administers a wide range of regulatory instruments and a wide range of advisory tools. It is the major supplier of infrastructure and facilitator of private sector projects.

Ministers do not need statutory power to enter into contracts, as they have a reserve power to sign contracts conducive to the administration of their portfolios.

Local Government

Local governments are major landholders, although often as trustees on behalf of the State. They manage most roads. They have earthmoving equipment and works gangs. They levy property taxes (rates) and can use them to impose penalties and offer incentives for land use reasons. They prepare and administer local laws and regulatory tools for fire protection and environmental health. They provide sport and recreation facilities and services. Local governments administer planning schemes and the Integrated Development Assessment System, the main tools for development control. They can provide an advisory service on land management. Indeed, they have a general power of competence to do all things necessary for the good governance of their area.

The co-ordinating body should become familiar with the local government's capacities. For example:

- establish a relationship with the Mayor and relevant Councillor(s) including the chair of the planning, works or environment committee;
- establish a relationship with the Town Planner, Recreation Planner, Environmental Officer and Works Engineer;
- be aware of the meeting cycle and the dates by which submissions are required;
- identify the lands for which it has ownership or management;
- assign to someone the task of developing an in-depth knowledge of the planning scheme; and to track significant applications in the study area.

Community

Landholders and other community members by themselves cannot directly administer the statutory tools, but as explained elsewhere they can make representations to the authorities to do so.

People can form their own co-ordinating body, or a satellite to an existing one. They can have themselves appointed as trustees of reserves. They can hold fund-raisers or field days. They can form a landcare group, a catchment co-ordinating committee or progress association, or amalgamate existing ones. Many funding programs are available to help new-born community groups. They can form a cooperative or association to hold land. They can form a relationship with the local schools or clubs and build community capacity indirectly. Natural resource management is a long-term mission and educating children is a good way to tackle it.

There is strength in numbers, but more particularly, in any community there is a wealth of untapped talent in tasks such as organising, advocacy, fund-raising, door-knocking, secretaryship and land management, to mention just a few. A community group can mobilise attention and energy and perhaps act as a stepping stone to establishing an official body or acting as a go-between. There is an emerging deep-rooted movement towards sustainable living, a notion which is widely acknowledged among outer urban dwellers. A community group will often be able to lead the community in quite innovative ways.

Community groups can have a significant influence on decision-making by their council, not least by simply attending Council meetings. A watchful public gallery can influence decisions and even determine which subjects are pulled out of committee reports for debate. It can demand that development applications all be debated in open session.

STEPWISE GUIDE FOR ACTION

In this section is a brief stepwise guide to implementation, placing in rough sequence the actions which a co-ordinating body needs to take to apply the information in this paper.

1. Empower the Co-ordinating Body

Many administrative activities are needed to ensure that the co-ordinating body itself has the necessary capacity to fulfil its role. These activities include:

- *confirm its mandate;*
- *pay respects* to the traditional owners;
- *establish an office or headquarters;*
- undertake *corporate planning* of its own operations;
- undertake *policy analysis*, interface with governments;
- *consult* with stakeholders;
- *raise funds*;
- *recruit and develop staff*; and
- *manage information.*

Detailed advice on these functions is outside the scope of this paper. Although most are desirable pre-conditions for effectiveness, some may not matter in a given case. Anyway some elements of this Step 1 can progress in tandem with Steps 2-10. Many bodies get stuck on corporate overheads for too long.

2. Establish Smooth Meeting Procedures

To maximise effectiveness, committees must give attention to the details of their own operation. Committees with a representative or ceremonial role can perhaps afford to meet only quarterly. Committees with an operational role, on which the processing of routine business depends, need to meet sufficiently frequently to put discipline into the operations. Staff who require committee decisions should have a regular timetable (e.g. monthly) with regular deadlines for the completion of agenda papers. The venue for meetings is important and community representatives may prefer evening meetings. Time of day may determine who can act as representatives.

3. Interpret the NRM Plan

The first substantive task should be to examine the NRM plan in order to understand its implications for the study area and the stakeholders; to decide which aspects or actions to pursue; and to identify holes (currently non-feasible goals). The co-ordinating body should consider the constraints to better management and identify those which it is well positioned to remedy. The NRM plan should be examined iteratively as matters progress. Existing resource condition and trends should be monitored.

This initial 'feasibility study' may reveal provisions which are quite ridiculous or impractical because of inadequate understanding on the part of planners who drafted the original plan. Such is frequently the case when there has been insufficient community, professional, governmental or technical consultation. The NRM plan may contain insufficient detail, sections may not fit the local context, or be outside the jurisdiction of the co-ordinating body or information may have become available subsequently.

This initial interpretation of the NRM plan is a translation of the plan into action statements, not a *review* or *evaluation* of the plan, for a review should come after experience of implementation has been gained. This initial process may require some additional or 'infill' planning to round out the current plan.

4. Assemble All Relevant Plans

No doubt the NRM plan is not the only planning document relevant to the study area. The body should list the current spatial plans and other studies in operation or underway and their status or level of force. As described in the previous step, interpret them to clarify their implications. Assemble a store or inventory of information or sources of information, including a register of capable people and skills.

5. Identify Other Involved Organisations and Seek Cooperation

The next step is to identify other involved public and private institutions: clarify their roles, powers and activities in the study area and consider cooperating, joining forces or even amalgamating with them. This will help to answer the question 'Which bodies exercise influence in this study area?' Contact should be established with NR&M and the EPA, who will certainly be running numerous relevant initiatives.

It may be worthwhile to give public notice of intention to implement the NRM plan through inviting expressions of interest in cooperating. The methods used should ensure that all stakeholders are contacted. Notices may be placed using local or State newspapers, interest groups' newsletters, public notice boards, community broadcasting networks (radio and television), telephone calls and personal visits, billboards on affected land, web page, email or mail-outs to landholders. Joint round-table gatherings involving a wide selection of stakeholders can energise people and break down barriers.

6. Identify Tenure Arrangements and Landholders

For a small study area, ascertain who owns or holds or claims which land; in other words, who exercises or claims landholder's sovereignty over each parcel and what is their tenure status. For a large study area such as a region it may not be practicable to investigate every parcel but it may well be possible to assess some critical properties such as the river frontages or wetlands in this way. The rights and interests of traditional owners and other Indigenous persons must be recognised and acknowledged. Consider which parcels would be better held under a different form of tenure or different ownership.

7. Identify the Tools Available

Identify the other controls in force over the study area and how they affect land or landholders. More specifically, identify all the tools accessible to the co-ordinating body or under its influence and identify the actions necessary to apply them. This step may require the body to revisit some other steps.

8. Make Submissions

A co-ordinating body must seize opportunities as they arise. This means making submissions on any of numerous subjects and may mean acting according to externally imposed deadlines in order to influence the passage of events. For example, the local government may be exhibiting its planning scheme, or may

be processing an application for an irreversible and unsympathetic development. For another example, the stakeholders will expect the co-ordinating body to be aware of sources of funding, all of which have deadlines for lodging of bids or exertion of lobbying pressures. The body should ascertain how much money is available in the budgets of the main involved bodies for implementation of the NRM plan.

9. Prioritise Actions

One of the most useful functions of a co-ordinating body is establishing priorities for the various actions needed to implement the NRM plan. An action plan and budget should be drawn up. There are various criteria but three in particular must be assessed:

- level of threat or urgency;
- niches of opportunity where influence can be felt quickly;
- value-for-money or value-for-effort.

Measuring value-for-money or benefit can be a very difficult task. Partly this is because the cost (both monetary and non-monetary) of any activity is rarely truly realised in the first place. Many of the costs of poor management are borne by off-site interests, while many of the benefits of good management are realised beyond the landholder's time horizon. While this may appear problematic, it may be used to the benefit of NRM planning. The effects of mismanagement on neighbours may lead to pressure on the poor manager. The benefits of good management may be borne by a number of stakeholders, and if this can be convincingly demonstrated, it may generate a broader financial base. Also, the cost of not implementing the plan should be assessed.

Principles to help assess the three main dimensions of priority include:

Remove those threats which are most irreversible. Ensure that options for future management are kept open. For example, prevent soil erosion because only half an inch of new soil might be created every 1000 years. Oppose detrimental development applications such as subdivision which cannot be undone.

Reduce or eliminate threats which are festering sores. For example, remove grazing cattle from river banks, sources of weed infestations, breeding colonies of rabbits or foxes. Removing sources of continuing deterioration is more important than remedying some serious but stable degradation, because the opportunity to remedy that might still be available at not much extra cost in some future time. Write a code for a planning scheme so that new problems are not repeatedly created with new applications.

Remove threats which stretch to a wider area. In other words look beyond the property boundaries to the impact which threatening processes have on a larger area. Examples are loss of fishing and recreation opportunities, treatment costs at some downstream plant or erosion creep onto neighbours' land, or distant salinisation following tree clearing.

Seize the opportunity to implement projects which may snowball. Demonstrated success breeds success, creating a desire to join the bandwagon. Where there are insufficient powers or too few receptive landholders to achieve the desired priority actions directly, incrementally commence achievable activities of lower priority, anticipating that sceptical stakeholders can be persuaded gradually of the merits of the program, through demonstrating progress, extension, peer pressure, or simply the passage of time.

Halt actions by landholders who are in breach of legal requirements. Policing is unpopular, unpleasant, time-consuming and expensive. However, if blatant disregard for proprietorial or regulatory obligations goes unchallenged, their effectiveness suffers.

10. Assemble the Capacity to Apply the Tools

Work through the list of obstacles to sustainable management listed earlier in this paper and assemble the employees, funds, technical knowledge, communicators, volunteers and other components of capacity necessary to overcome them. This step partly repeats Step 1. Consult continually, including with traditional owners and Indigenous people.

11. Apply the Tools

After all the planning, negotiation, investigation and prioritising, it is now time to get down to work!

MONITORING IMPLEMENTATION

It is essential to monitor the progress with implementation in order to determine whether arrangements put in place have been effective in achieving the goals of the NRM plan. Monitoring allows stakeholders to compare progress against predictions and to alter course as appropriate. Many of the biophysical indicators of environmental health can be quantified and can be tracked as the program proceeds. Have the mechanisms or works been effective in achieving what they set out to do? Were those objectives appropriate or optimal anyway?

End of body of *Implementing NRM Plans*

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APPENDIX: TOOLS AVAILABLE TO ACHIEVE SUSTAINABLE MANAGEMENT

The purpose of this Appendix is to promote a better understanding of the range of tools potentially available, so that stakeholders may be encouraged to apply those at their disposal with confidence. Tools available can be classified in several ways. The following classification aligns with that adopted by the Department of Natural Resources and Mines. The tools of allocation are covered in more detail then the others because there is less explanatory material about them available elsewhere. Much of the content of this Appendix also appears in Guidelines on *Forms of Tenure* and *Tenure-related Mechanisms for Achieving Sustainability* but is repeated here for ease of reference by regional bodies.

Allocation: the Tenure-related Mechanisms

'Allocation' means transfer of ownership, in whole or in part. The term usually refers to allocation by the State of resources under its assumed original ownership (now subject to native title). The State may choose to release a resource in part only, for example when a lease is issued for defined purposes. Even freehold land is not conveyed absolutely: for example, the State retains the rights to minerals.

Most forms of tenure are accepted voluntarily by the applicant so can be considered as *contractual* in nature.

The Department of NR&M represents the State for the natural resources of land (other than certain parks and freehold), water, minerals and quarry products. The Environmental Protection Agency represents the State for national and conservation parks and fauna. The Department of Primary Industries acts as agent for the State for dealings in commercial timber on State lands. Separate systems of leasing/licensing apply to each. This Appendix will cover mainly just the tenure arrangements for *land*.

The main forms of land tenure available in Queensland approximately in order of decreasing State interest and increasing private interest are:

- unallocated State land;
- national parks and conservation parks;
- State forests;
- roads;
- State reserves;
- deeds of grant in trust;
- road licences and other licences – for short-term and for low-intensity activities;
- permits to occupy – for short-term or low-intensity uses, terminable on due notice;
- statutory covenants;
- profit à prendre;
- term leases;
- perpetual leases;
- Aboriginal and Torres Strait Islander transferred or granted land;
- freehold.

Native title will be mentioned but is strictly a collection of rights rather than a form of tenure. Some of the forms less relevant to this paper will not be mentioned further.

Primary tenure is allocated directly by NR&M, then the owner/lessee/licensee/trustee can issue *secondary* tenure to another party (so long as they do not offer rights of occupation or ownership in excess of those that they enjoy themselves). For example, a landholder could issue a lease or permit to the co-ordinating body to occupy the landholder's land to undertake works, for a defined period of time and subject to conditions. In this way, a co-ordinating body could as the new custodial manager apply its expertise and funds to solve a problem that may be beyond the landholder's capacity, but the landholder would not need to fear long-term dispossession or public access.

Native Title

In June 1992, the High Court ruled in the *Mabo* decision that Australia's common law recognised a form of native title to the land. The common law provided that governments could extinguish native title by valid

exercise of their sovereign power: such as by legislation, granting a tenure (such as private freehold) or using the land in a manner which is inconsistent with the continued existence of native title. Further, in 1996, the High Court in *Wik* held that pastoral leases did not necessarily extinguish and may co-exist with native title. However, if there were any inconsistency, the native title rights and interests must yield to that extent to the pastoralists' rights.

The Commonwealth and Queensland Governments responded to Mabo and Wik by passing legislation in 1993 and 1998. A more secure tenure cannot be issued without clarifying native title status. An Indigenous Land Use Agreement might be signed with the Indigenous representatives to allow development or change of tenure over a defined area.

Unallocated State Land

Unallocated State land is the original and residual form, formerly called 'vacant Crown land'. It in effect operates as a 'land bank' from which land is allocated and to which land is returned when previous tenures expire or are retrieved by the State. It includes most land below marine high water mark and the beds and banks of non-tidal watercourses where they form the boundary of an allotment. ('Banks' includes the area covered by normal mid-season flow of water, not the high land fronting the river. There is no State frontage along most rivers).

State Reserves

State land can be set aside – 'reserved' – for any of the following *community* purposes:

- Aboriginal purposes
- beach protection
- coastal management
- drainage
- environmental purposes
- heritage, historical & cultural purposes
- natural resource management
- navigational purposes
- open space & buffer zones
- parks and gardens
- public boat ramps, jetties and landing places
- public halls
- public toilet facilities
- roads
- scenic purposes
- scientific purposes
- showgrounds
- sport and recreation
- strategic land management
- Torres Strait Islander purposes
- travelling stock requirements
- watering-places.

Under earlier legislation, it was possible to set aside land also for *operational* purposes such as works depots, water supply, sewerage plants and abattoirs, but since 1994 reservation has been restricted to the above *community* purposes – operational land is now allocated as freehold or leasehold. Many long-standing reserves for operational purposes remain, however.

The Minister can appoint trustees to manage a reserve. A trustee can be a public authority, an incorporated body, a group of individuals or an individual. A community group can be appointed as trustees, if it is prepared to accept legal responsibility. Alternatively, the official trustees (often the local government) can appoint a community committee with an advisory role, having no legal or executive powers in relation to the reserve. Provisions relating to trustees include:

- the trustees of a reserve must manage for the purpose for which it was set aside;

- the Minister may appoint a trustee subject to conditions. This may include a condition that the trustees abide by a management plan;
- a trustee has a duty of care for the trust land;
- the trustees must obtain a permit from the Department if they wish to clear defined vegetation.

On reserved land, the available provisions also include the following:

- the Minister may, by gazettal, change the purpose of a reserve. So a recreation-related purpose could be added;
- a reserve may be leased to a private party.

The State can issue a lease directly, or the trustees with approval can issue a lease, for up to 30 years for a purpose consistent with the purpose of the reserve. Departmental policy requires that a management plan be submitted before the Minister will approve of secondary leases for commercial purposes such as licensed clubs. Leases are often issued for grazing but this is problematic as grazing, a *private* activity, usually diminishes the condition of the *public* reserve and hence its value for its gazetted *public* purpose. Leases can however incorporate conditions requiring rehabilitation or some other protective action, or compliance with a management plan.

Reserving the land and appointing trustees are convenient ways of giving statutory protection to a site and of involving the community in its management.

National and Conservation Parks and State Forest

The Governor in Council may by regulation set State land aside for a national park (scientific), a national park, a conservation park or a resources reserve. This form of reserving lies in the *Nature Conservation Act 1992*. The Governor in Council may also set aside 'Crown land', which has a defined meaning, as a State forest or timber reserve (*Forestry Act 1959*). All these reserves are administered by the EPA.

Roads

Most roads are State land set aside for public passage. They remain State land but are under management of the local government or (for declared main roads) the Department of Main Roads. It is policy that every freehold allotment be served by a dedicated road. If (among other considerations) the local government is able to certify that a road is not required for public traffic, it can be closed temporarily and licensed, or closed permanently and sold or reserved for a public purpose.

Along much of Queensland's coast and some of its rivers, there is a strip of land termed an *esplanade*. This is legally a road.

Statutory Covenants

There are two main kinds of covenant, both entirely voluntary:

- *common law restrictive covenants*, not registered on title, not a tool of allocation so are classified along with 'management' mechanisms;

- *statutory covenants*, one end of which is upheld by a State Minister, a local government or certain statutory authorities and which are enforceable by statutory powers. Statutory covenants are a tenure-related instrument which can be placed voluntarily on freehold or leasehold land for land use purposes. They are registered on title, so they survive transfer of ownership and are automatically renewed by an incoming landholder upon purchase. Also, they may be signed in order to secure some financial or other concession granted by a public authority using taxpayers' funds. (There are strong ethical inhibitions against using public moneys for works of private benefit on private land, but this practice is defensible where landholders have voluntarily surrendered some development rights by secure covenants).

The power to register covenants on title was introduced by amending legislation in March 2000. The statutory covenant is a grant of an interest by a landholder to the public authority and it follows that the authority can surrender or relinquish it unilaterally, but the landholder cannot revoke it unilaterally.

Profit à Prendre

The *Land Title Act 1994* contains a power to create a profit à prendre, which is a right to take a resource such as commercial timber from affected land which may be in someone else's possession. This instrument allows registration on title of a private contract between two private parties: the owner of the land and another party. Ownership of the resource would appear to remain with the landowner until the time of harvest, whereupon it transfers to the holder of the profit. The profit à prendre is registered upon lodgement of the appropriate form and may be for a defined period of time. If the affected land constitutes only part of a lot, a sketch or survey plan will be required to unambiguously identify the subject land. The profit à prendre survives a change in ownership of either the land or the resource.

State Leasehold

The State may lease land for a term of up to 50 years (100 years if a major high-investment development or timber plantation), or in perpetuity. A range of types of lease was replaced in the 1994 legislation by just term and perpetual leases, but cases of various other types survive and are subject to transitional arrangements.

Lessees are entitled to peaceable occupation for the term of their leases provided that they pay the rent and observe the purpose and conditions. In the absence of the lessee's agreement, conditions cannot be changed except at the time of renewal or as indicated below. But as leases are a contract between two parties, special conditions can be inserted at the time of issue or subsequently. For example, a condition could specify that riverbanks be fenced from grazing, or that the lessee adhere to detailed provisions spelt out in a defined property management plan. Few current leases include such sustainability conditions. Indeed the opposite is more usual: many current pastoral leases were written in the settlement era and explicitly require tree clearing or other forms of development.

New sustainability conditions could be a trade-off for some other benefit, such as a more secure tenure, or a roll-over for a new term. Indeed, the main obstacle to updating leases in this way may be not reluctance of landholders but practicalities such as stamp duty and lease administration fees (on a lessee's side) and a shortage of experienced land officers (on the government's side).

The Minister may approve an application by a lessee that a lease be used for additional purposes. So 'nature conservation' or similar could be added to the purpose of a lease issued for grazing.

The main obligations upon State lessees to manage sustainably are as follows:

- lessees are under a duty of care for the land;
- lessees must keep noxious plants under control;
- lessees require a permit to destroy 'trees' (defined broadly). Applicants may be required to submit a 'tree management plan';
- lessees must give the Minister information, such as a report upon the condition of the land, if asked;
- the Minister may conduct a review of leases issued under the 1994 Act every 15 years. As a result of the review, a condition about protection and sustainability can be changed *with or without* the lessee's agreement (but this decision may be appealable);
- the Minister may issue a *remedial action notice* to protect land at risk of serious degradation, or if the duty of care is being breached, or if the land is being used beyond its capability.

A special case of leasehold applies to the railways. Railways are mostly held by QRail under sub-lease from the Department of Transport, which holds a head lease from the State. QRail can be asked to prepare a management plan or to join a local advisory committee or trustees.

It is sometimes claimed that leasehold is inferior to freehold because government cannot manage land as well as private individuals. This is a misunderstanding. The State is not responsible for managing State leasehold land: the lessee is; and the land is private land.

Freehold

Freehold is well known as the most secure form of tenure available under Queensland's Western system of land tenure. The property rights embodied in freehold land are however not absolute, for the State can retain certain proprietorial rights, in one of the following ways:

- when land is freeholded, the deed of grant, which is the first conveyance from the State, is issued subject to *reservation* of certain *resources* to the State. ('Reservation' in this context has a meaning different from the process of 'reserving' land for public purposes, as described earlier). In all deeds the State reserves the rights to minerals and petroleum and, since 1992, the quarry materials, even though most other resources including vegetation pass to the purchaser;

- a deed of grant or a lease may be issued subject to a *reservation* of a stated *area* for a public purpose, at an unspecified location within the allotment (s.23, *Land Act*). The land subject to the reservation remains State land and is not legally part of the allotment but the landowner has full use of it until resumed by the State. This little-known device was commonly used to provide for a future road without the need to survey the boundaries of the road through the allotment. It is mentioned here because a large number of reservations survive in the southern hinterland of South-east Queensland and could potentially be used for public access.

Native fauna, ownership of which is retained by the State, is not considered to be connected to the land and so does not feature in land legislation.

Acquisition

It is possible for governments to acquire freehold or leasehold land, with or without the landholder's consent. Acquisition amounts to buying back the private property rights which have previously been allocated. Governments may wish to do this for a number of reasons, such as to build infrastructure, to provide public open space or to prevent development.

There are several mechanisms by which property may be acquired:

- *purchase.* The State or a local government has the power to hold freehold land in its own right and to deal commercially with land in the market place. A standard REIQ contract may be used;

- *acquisition by agreement*. If the landholder consents to the acquisition, the two parties enter into a s.15 agreement, given effect by a proclamation;

- *compulsory acquisition* or *resumption*. If the landholder does not consent, certain public authorities including local governments may proceed under the *Acquisition of Land Act 1967* to compulsorily acquire the land, subject to payment of compensation. A Notice of Intention to Resume must be given to the landholder who has a right to object. Unless objections are upheld, the land may then be taken by proclamation published in the *Government Gazette*. Freehold is no more immune to compulsory acquisition than leasehold. Except in limited circumstances the State cannot resume a person's land for a private purpose, that is, in order to lease or sell to another private person or company.

Properties must be of high cultural or biophysical significance *and* required for a public purpose to justify dispossession of the landholders, an act not taken lightly and rarely done for resource management purposes.

What Can a Co-ordinating Body Do?

Unless the co-ordinating body is NR&M itself, it cannot administer the tools of allocation of State land directly, but it can, for example:

- suggest changes to terms and conditions of leases;*

- submit to the Minister that conditions on a State lease have not been met; perhaps thereby expediting a review of the lease;*
- identify unallocated State land ripe for reservation for community purposes, or long-standing redundant reserves which can be re-reserved for a modern purpose;
- identify and facilitate simplifications in tenure arrangements; for example, a council might agree to close a road and include it into a reserve under their trusteeship, or two reserves might be amalgamated, or land could be exchanged under s.18 of the *Land Act 1994*;
- sub-lease land it controls directly, such as freehold it owns or reserve over which it is trustee.

* As a co-ordinating body is not a party to a landholder's lease, it has no official role in offering advice on leases which in effect are private contracts. Also, any such advice could be very negatively viewed by the landholder or in the local community, unless negotiated in advance.

Regulation

Regulatory mechanisms place restrictions upon the method by which land is developed, and are usually non-voluntary or *coercive* in nature, although conditions on permits can sometimes be negotiated. There are many different forms. A large number of regulatory provisions in natural resource management are being consolidated under the *Integrated Planning Act 1997*.

None of the tenure or advisory mechanisms such as covenants allow a landholder to contract out of his or her other statutory regulatory obligations to comply with relevant Commonwealth, State or local legislation.

Examples of regulatory powers include:

- vegetation management controls on freehold land (the *Vegetation Management Act 1999*);
- restrictions on clearing vegetation or damaging the physical form within a watercourse;
- declaration of catchments within which certain kinds of development are prohibited;
- pest management orders or entry notices;
- local laws (formerly called 'by-laws'), under the *Local Government Act 1993*; including vegetation protection orders (VPOs) to protect valuable and significant vegetation. The power to write local laws for development-control purposes like this was removed by the *Integrated Planning Act 1997* but pre-existing VPOs remain in force;
- property taxation (rates, land tax);
- restrictions on disturbing marine plants (e.g. sea-grasses, mangroves and salt couch) under the *Fisheries Act 1994*, by the Queensland Fisheries Service.

Regulatory instruments can be designed to suit a wide range of purposes, but cannot be too far ahead of public and landholders' opinion. As a rule, they are not suitable for directly changing ongoing lawful management practices. Also, most operate by setting a threshold below which a permit is not needed.

A person seeking to develop land requires permission under *all* relevant statutes. The absence of a single one may be fatal to the proposal. A lease, for example, may allow a certain business to be conducted; but this will be negated if the planning scheme prohibits that business.

The Queensland Statutory Planning System

Statutory planning under the *Integrated Planning Act 1997* is the primary mechanism for development control in Queensland. A range of explanatory materials about the system, introduced in March 1998, is available so this account will be brief.

Statutory development control achieves ESD by co-ordinating and integrating local, State and regional dimensions; and by managing both the process by which development takes place and the effects of development. The system is administered by local governments.

The primary mechanism for achieving these outcomes is the planning scheme. The scheme has two parts: the plan and the development assessment process.

The plan outlines the preferred future direction for land uses in the local government area. It does this by setting out the outcomes that will be sought through the development assessment process and mapping out the future distribution of land uses.

The engine of the scheme is the development assessment process which comprises the rules that guide how the environmental effects of development will be assessed and, where appropriate (and where possible) mitigated. It is proposed that the primary mechanism for doing this will be through codes which encapsulate those decision rules which apply to the assessment of the environmental effects of development. These codes can be specific to a particular development; or they can apply to a range of developments or to areas in which development may take place. Two important features of codes are first, that they are performance-based, meaning that assessment is based on the extent to which the proposal meets the requirements of the code; and second they are meant to integrate the large-scale objectives of the plan as set out in the desirable environmental outcomes. Also forming part of the development assessment process is an impact assessment process that addresses development where the environmental effects cannot be accurately predicted.

Some features of the statutory planning system include:

- existing lawful management practices can continue without a permit: the planning controls are triggered only when an applicant wishes to change land use or reconfigure (e.g. subdivide) an allotment;
- council can adopt an infrastructure charges code which levies developer contributions at the time of subdivision for funds to purchase land for local community purposes – such as public park. This power could be used to retrieve a strip of land along (say) a river;
- council can adopt planning scheme policies and codes for each of a number of activities (such as gravel extraction, timber harvesting, vegetation clearing), to set out standards which applications much satisfy in order to justify approval.

The system has a significant unrealised potential to achieve the objectives of community-based natural resource management, but this requires an investment of time and energy by community groups as well as by the authorities.

What Can a Co-ordinating Body Do?

The co-ordinating body will sometimes be a regulatory authority itself, but even if it is not, it can use the tools of regulation. It can, for example:

- alert statutory authorities of breaches of legislation, the statutory environmental duty of care, local laws or planning schemes;
- pressure local governments to instigate rate abatement schemes for landholders who implement sound management practices, obtain ESD accreditation or take out covenants;
- submit to the regulatory authorities that their regulatory tools be strengthened, amended or enforced; specifically, by making submissions on proposed planning schemes. For example, council can be asked to zone a strip of land along a river for conservation or landscape protection, thus legitimising refusal of applications for development which harms the river;
- make submissions to the regulatory authorities about development applications;
- lodge appeals against unwise development approvals by the local government, or join the local government to defend appeals by applicants who have been refused approval.

Landholders usually will take a dim view of moves by 'their' co-ordinating body to oppose their own development applications, because of the threat to profits and because the prospect of future windfall capital gain through development is widely regarded as a form of 'superannuation' for landholders. But this will not always be so: many landholders value the lifestyle attributes of their property and may even join with the co-ordinating body to preserve the character of their neighbourhood. For example, landholders within Brisbane City can sign 'high level' conservation agreements whereby they agree with a 'downzoning' of their property in the planning scheme and then can receive a reduction in rates.

Opposition by a co-ordinating body to a development application, even to the extent of fighting applications through the courts, cannot be considered as an infringement of landholders' rights, for a

landholder has no 'right' to any permit which the council has a discretion to refuse. Given the existence of a regulatory planning system, *the right to develop is separate from the right to own and manage land*. The lodging of appeals is also a legitimate activity in the community interest, because the statutory planning system depends upon the court-based system of appeals to test the integrity and consistency of local governments' administration of their schemes.

Custodial Management

The tenure and regulatory controls together lay down a broad framework within which the landholder is free to manage the resource; that is, to use and develop it. Custodial management is the responsibility of the landholder, which may be a public authority (for example, over State forest or national park). The mechanisms are *voluntary* in nature.

Six common mechanisms are:

- the *property management plan*, a personal, documentary tool which captures the landholder's intentions. The term embraces four main components: *natural resource management, enterprise* (stock/crop) *management, financial management* and *personal goals*. The term is most commonly associated with rural private land but it can apply to properties of all kinds, including public land (where it may be called a master plan, a facilities plan, a recreation plan or a capital works plan). The Queensland program to promote property management planning is called Future*profit*;
- ESD, organic or environmental *accreditation*, such as by an environmental management system, observance of ISO 14000, the Australian Land Management System or similar. While voluntary, these can potentially be linked to satisfaction of regulatory requirements or concessions on rates, rents or taxes;
- the *landcare* movement, which has grown from nothing in 1986 to an Australia-wide network of more than 4000 local groups spreading knowledge of sustainable practices and marrying nature conservation, farming and science. Originally focused on agricultural lands, it may also embrace urban lands, and has spawned programs such as *coastcare*, *bushcare* and *backyard conservation*;
- *voluntary management agreements*, between a public authority and a landholder to specify mutually desirable protective practices. These (unlike *statutory covenants*) do not run with the land and are based on contract law;
- *Land for Wildlife*, a voluntary and free registration of interest in conserving nature on one's property. Participants join a network of like-minded landholders, receive a quarterly informative newsletter and can attend field days such as those run by *NatureSearch*;
- *market* mechanisms, such as *insurance*, although to be workable some of these require such a strong statutory framework that they are more truthfully described as regulatory mechanisms.

Voluntary management agreements are one form of common law restrictive covenant, mentioned earlier. Common law covenants are enforceable by contract law but enforcement is complex. Specifically, a developer entering into a common law covenant with a purchaser may depart from the scene and have no further interest in law after all lots in an estate have been sold, leaving no simple remedies to the other party.

What Can a Co-ordinating Body Do?

The co-ordinating body can use the tools of custodial management by, for example:

- directly managing the land themselves as owner, lessee, trustee or by other kind of primary or secondary occupation;
- directly managing the land themselves by offering a contractual service to a primary passive landholder (whether public or private);
- adopting a voluntary code of practice in management of its properties.

Facilitating Management

Mechanisms for facilitating development on others' land include provision of infrastructure such as water supply, roads and tracks; offering taxation concessions for development such as tree clearing; joint venture partnerships and in-kind support for major projects. The mechanisms are *voluntary* in nature but

can lead to contractual obligations. This category differs from 'advice' in that it covers active development not simply support for landholders' ongoing management.

The co-ordinating body can facilitate management by, for example:

- advising the builders of infrastructure (usually State or local government) about suitable local projects;
- providing infrastructure itself;
- raising finance locally to fund community or property-specific development projects;
- making grants from its own funds to landholders for works, to lubricate the process of changing management practices.

Advice

Mechanisms for disseminating advice include schemes for building capacity of the local community to address land problems, training of landholders and extension services available through the EPA, NR&M and other institutions. The mechanisms are *voluntary* in nature.

The co-ordinating body can use advice as a tool by, for example:

- sponsoring open days or field days, community awareness building seminars, property management planning workshops, adult education courses or leadership development courses; publishing leaflets, best practice guidelines and information kits; holding media presentations;
- sponsoring applications for grants for landcare-type works or conservation through the Natural Heritage Trust or other sources (if these projects are for 'infrastructure' or are funded from the coordinating body's own resources then they would appear in the previous category);
- sponsoring landholders in education, farm extension or training;
- submitting to local governments that they employ environmental officers;
- publicising the Land For Wildlife scheme or any of the other tools;
- forging relationships with universities, perhaps by sponsoring postgraduate students to do research.

Tools with Mixed Characteristics

A number of tools show characteristics of more than one major category.

Duty of Care

The common law duty of care requires that every person take all reasonable and practicable steps to avoid causing foreseeable harm to another person's land or their use or enjoyment of that land. Duty of care is well established in common law in cases of injury to persons or property, but is not established for remedying harm to the environment. If the co-ordinating body holds land, it could, theoretically, use common law to halt or suspend some activity on a neighbour's property, if it can demonstrate through court proceedings that duty of care has been breached. However, this is likely to be problematic because the process will have high legal costs, and is likely to get neighbours offside. This may frustrate the co-ordinating body's work in the future. In any case, to be successful in litigation, a co-ordinating body would need to establish standing, such as by demonstrating that it is a directly-affected landholder.

This is not to discourage the co-ordinating body from exploring this option. In fact it is only by establishing sufficient case law in this area that this mechanism will become more serviceable.

State legislation (*Environmental Protection Act 1994*) extends the common law responsibility into a regulatory requirement upon everyone in Queensland, to exercise a general duty of care to prevent harm to the environment. To show that an environmental duty of care has been met, an individual must be able to show 'due diligence', that they have assessed potential risks to the environment from their activities and then have taken reasonable and practicable measures to avoid, or at least, to minimise those risks.

A second statutory form of duty of care, under the *Land Act 1994*, requires lessees, trustees and other occupiers to maintain the condition of the State land. This is a condition of the lease so is a tool of allocation.

Codes of Practice

Farmers are responsible for deciding upon strategies best suited to minimising the effects of their management on the environment. Various industry groups have developed voluntary 'codes of practice' to guide their members in discharge of this responsibility. (These should not be confused with 'codes' for development assessment under the *Integrated Planning Act 1997*).

Voluntary observance of a code of practice can help a landholder to demonstrate that some regulatory obligation (such as the general environmental duty of care) has been satisfied. Landholders are encouraged to obtain copies of these documents for guidance. Co-ordinating bodies may wish to prepare a specific code of practice for their study area.

Searchable Statutory Arrangements

Queensland legislation provides for several kinds of covenant-type instruments which run with the land and bind successive owners but are not actually registered on the title. They are recorded in 'Administrative Advices Files' in the land registry and are revealed when a property is searched. In most cases, the official register of them is kept, however, in a different department. In other words, an intending purchaser must search more than one register. The power to open such files resides in the separate legislation relating to each instrument, although there is also a general power in s.34 of the *Land Title Act 1994*. Some of the following examples are voluntary, some involuntary. They include:

- *conservation agreements*, reached between the Minister and a landholder, under the *Nature Conservation Act 1992*. Conservation agreements are purposely limited in scope to areas of high conservation value and may not be used for resource security or amenity-related values;
- *conservation covenants* which are similar instruments, but are applied compulsorily with the approval of the Governor in Council, where the land is of major interest for conservation and negotiations with the landholder have failed;
  Note: A *nature refuge* can be declared over land covered by a conservation agreement or a conservation covenant (or over State land). This action brings these properties into the protected area system;
- *heritage agreements* under the *Queensland Heritage Act 1992* in relation to places on the Heritage Register. Heritage agreements may impose positive or negative obligations;
- *contaminated land* classifications under the environmental legislation;
- a regulation giving effect to a management plan for a World Heritage Management Area or International Agreement Area, or land declared under a conservation plan to be an area of major interest or critical habitat.

The* Recreation Areas Management Act 1988 *(RAM Act)

The RAM Act was established to set up a system of recreation areas by co-ordinating and improving the management of recreation on land held by multiple owners/proprietors/managers. It covers public land and also private land where and only where landholders consent to bringing their properties into a recreation area. It was intended to focus the attention of landholders on a special and often neglected attribute of their properties. A management plan setting out objectives is prepared for each proclaimed recreation area.

The Act is administered by the Queensland Recreation Areas Management Authority which comprises the Ministers responsible for forests and nature conservation which, at the date of writing, are the one Minister (for Environment). Day to day activities of the Authority are conducted by the Queensland Recreation Areas Management Board – the chief executives of the departments administering the *Forestry Act 1959* and the *Nature Conservation Act 1992* (again, one department at this date). The Board in turn may delegate its functions and powers to other persons.

The Board's functions include the provision, co-ordination, integration and improvement of recreational planning, recreational facilities and management thereof, and the construction of works. Among many other functions, it has power to issue permits, make agreements or limit access. It can appoint officers to conduct patrol and enforcement activities. The ability of the RAM Board to hold funds in trust is critical to the workability of RAM areas.

The RAM Act has worked satisfactorily on the few occasions it has been applied – at present only Fraser, Moreton and Green Islands. The Brisbane Forest Park is administered under a multi-departmental arrangement under its own legislation which was the forerunner to the RAM Act. The strength of the RAM Act is its ability to bring together a number of resource managers under the one head of power. It thus has the potential to simplify the task of co-ordination. While the Act can in theory be applied to any category of land, with representation of other interests at 'below the board level', in practice other Ministers or agencies have not been interested in putting lands which are under their responsibility within the ambit of the RAM Act. Local governments in particular are unlikely to hand over responsibilities to a board on which they are not represented. Ministers are responsible to Parliament, not to other Ministers.

Also, the managers of State forests and national parks have been reluctant to take on new lands without access to additional funding. This has meant that the Act has limited potential to serve the current lead agencies, resulting in insufficient interest in further applying or developing it. In other words, the lack of funding and preoccupation with other priorities are more serious reasons for disregarding the Act than the lack of the powers which the Act would convey.

However, one problem is inherent in any system trying to bring separate landholders together. Such systems attempt to overcome the negative aspects of landholder sovereignty, without jettisoning the positive aspects. But the tools available to improve management are, for reasons of landholder sovereignty, mostly applied on a property-by-property basis, by negotiation between the body controlling that tool and the landholder. This means that the advantages of having a co-ordinating body active at the operational level are not always obvious.

End of *Implementing NRM Plans*
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Minor changes to the 'Facilitating Management' explanation made in July 2004