



#### ESD and its application by the Courts



LAWS5134 Environmental Law LAWS7989 Ecologically Sustainable Development Law

Judge ME Rackemann

Sunday, 25<sup>th</sup> March 2012





# Environmental Law - It's the Law

#### Judge ME Rackemann Queensland Planning and Environment Court

25<sup>th</sup> March 2012





# **Ecological Sustainability**

#### What does it mean?

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## What is 'Ecological Sustainability'?

- Ecological sustainability is that balance that integrates—
  - (a) Protection of ecological processes and natural systems at local, regional, state and wider levels; and
  - (b) Economic development; and
  - (c) Maintenance of the cultural, economic, physical and social wellbeing of people and communities.

SPA Section 8

- Chesol Pty Ltd v Logan CC [2007] QPELR 285 at [87]

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### The 'Precautionary Principle'

#### 5. What advancing Act's purpose includes

- (1) Advancing this Act's purpose includes—
  - (a) ensuring decision-making processes-

(iii) apply the precautionary principle

- (2) For subsection (1)(a)(iii), the precautionary principle is the principle that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment if there are threats of serious or irreversible environmental damage.
- Histpark Pty Ltd v Maroochy SC [2002] QPELR 134





### When do you use ESD?

- (1) If, under this Act, a function or power is conferred on an entity, that entity must—
  - (a) unless paragraph (b) or (c) applies—perform the function or exercise the power in a way that advances this Act's purpose; or
  - (b) if the entity is an assessment manager other than a local government—in assessing and deciding a matter under this Act, having regard to this Act's purpose; or
  - (c) if the entity is a referral agency other than a local government (unless the local government is acting as a referral agency under devolved or delegated powers)—in assessing and deciding a matter under this Act, having regard to this Act's purpose.
- (2) Subsection (1) does not apply to code assessment or compliance assessment under this Act.

**SPA Section 3** 

- Chesol Pty Ltd v Logan CC [2007] QPELR 285 at [93]-[96]

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#### Which development is "Sustainable"?



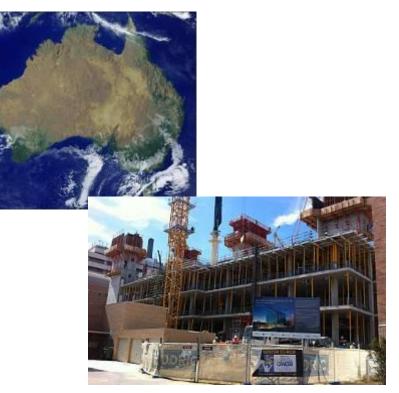
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### What is the Plane of Reference?

- National
  - State
    - Regional
      - Local
        - » Site



 Metroplex Management Pty Ltd v Brisbane CC & ORS [2010] QPELR 270

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### The Evidence Base

- How to manage experts.
  - ME Rackemann, '<u>The Management of</u> <u>Experts</u>' (2012) 21 Journal of Judicial Administration 168





## **Environmental Law**

#### Future directions in practice



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# Questions?

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