



THE UNIVERSITY  
OF QUEENSLAND  
AUSTRALIA



# 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**



THE UNIVERSITY  
OF QUEENSLAND



# Environmental Law - It's the Law

Judge ME Rackemann  
Queensland Planning and Environment Court

25<sup>th</sup> March 2012

LAWS5134 Environmental Law  
LAWS7989 Ecologically Sustainable Development Law



# Ecological Sustainability

What does it mean?

# 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]



# 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]



# Which development is “Sustainable”?





# What is the Plane of Reference?

- National
  - State
    - Regional
      - Local
        - » Site



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



# The Evidence Base

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



# Environmental Law

## Future directions in practice



# Questions?