



# Allegation against the Honourable TM Mackenroth in respect of land at Elimbah East

A report from the CMC

September 2009

## The report in context

On 30 July 2009, two days after the release of the South East Queensland Regional Plan 2009–2031 (2009 SEQ plan), a newspaper article published by the *Courier-Mail* implied that the Honourable TM Mackenroth, a retired former Deputy Premier of Queensland, had improperly influenced a review process by which certain land came to be included in the urban footprint contained in the 2009 SEQ plan.

Following publication of the newspaper article, the Premier wrote to the Crime and Misconduct Commission (CMC) requesting that the allegation concerning Mr Mackenroth be investigated.

The CMC's investigation has determined that there is no evidence of official misconduct on the part of any person.

According to those officers of the Department of Infrastructure and Planning who dealt with him in respect of the matter, there was nothing unusual or untoward in their meeting with Mr Mackenroth, nor in the ultimate decision to recommend the inclusion of the land in the urban footprint. That decision was based upon technical planning, not on any representation from Mr Mackenroth.

This report details the CMC's investigation.

## Contents

|  |    |
|--|----|
| Background   | 3  |
| Elimbah East land  | 3  |
| Jurisdiction and role of the CMC                           | 4  |
| The investigation – an overview                            | 5  |
| Newspaper claims   | 5  |
| The Premier’s assertion                                    | 5  |
| Timeline of relevant events                                | 6  |
| Summary of available material                              | 8  |
| Mr Gary White  | 8  |
| Mr Evan Jones  | 10 |
| Mr Gary Lee  | 11 |
| Mr Brendan Nelson  | 12 |
| Records from the Department of Infrastructure and Planning | 12 |
| Kemp reports   | 12 |
| Local Growth Management Strategy                           | 12 |
| Council letter 16 July 2008                                | 13 |
| Submissions  | 13 |
| Background economic development study                      | 14 |
| Draft plan   | 14 |
| 2009 SEQ plan  | 14 |
| Conclusions and observations                               | 14 |

## Background

On 10 May 2008, the Queensland Government announced that a review was to be conducted of the South East Queensland Regional Plan 2005–2026 (2005 SEQ plan).<sup>1</sup>

As part of the review process, and to facilitate public comment, a draft regional plan (draft plan) was made available publicly on 13 December 2008. In part, the draft plan proposed an extension to the urban footprint of an area of some 425 hectares at Elimbah East, near Caboolture (Elimbah East land).

Ultimately, upon completion of the review, the South East Queensland Regional Plan 2009–2031 (2009 SEQ plan) was released on 28 July 2009. Consistent with the draft plan, the Elimbah East land was included in the urban footprint.

Two days later, on 30 July 2009, an article published in the *Courier-Mail* newspaper implied that the Honourable TM Mackenroth, a retired former Deputy Premier of Queensland, had improperly influenced the process by which the Elimbah East land came to be included in the urban footprint in the 2009 SEQ plan.

By letter of the same date, the Premier, the Honourable Anna Bligh MP, wrote to the CMC requesting that the allegation concerning Mr Mackenroth's role in the matter be investigated.

## Elimbah East land

The Elimbah East land is located just north of the Caboolture aerodrome. More specifically, it is a collection of small land parcels situated to the immediate eastern side of the Bruce Highway, with frontage to the highway running for approximately four kilometres to the North of Old Toorbul Point Road. The State Forest bounds the Elimbah East land to both the North and East.

A particular submission put forward during the review process proposed a 'North Moreton Industrial Park', which covers 226 hectares of the Elimbah East land. In other words, the proposed industrial park is wholly within, but not as extensive as, the expanded urban footprint over the Elimbah East land.

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<sup>1</sup> The 2009 SEQ plan covers 11 regional and city councils in South East Queensland. It directs future planning and is the pre-eminent plan for the South East Queensland region. Pursuant to the *Integrated Planning Act 1997*, the 2009 SEQ plan takes precedence over all other planning instruments.

## Jurisdiction and role of the CMC

Pursuant to the *Crime and Misconduct Act 2001* (CM Act), the CMC has primary responsibility for continuously improving the integrity of the public sector and reducing the incidence of official misconduct.<sup>2</sup>

The term ‘official misconduct’ is defined within the CM Act.<sup>3</sup> In essence, it involves conduct relating to the performance of a public servant’s duties:

- that is dishonest or lacks impartiality, or
- involves a breach of the trust placed in an officer by virtue of his/her position, or
- is a misuse of officially obtained information.

(In the case of a public servant, the conduct in question must be a criminal offence, or constitute a disciplinary breach serious enough to justify the public servant’s dismissal.)

The CMC’s jurisdiction is wide enough to apply to people such as Mr Mackenroth, who is no longer a Member of Parliament. (In this regard, for the purpose of defining ‘official misconduct’, section 14(a) of the CM Act extends the meaning of ‘conduct’ to a person ‘regardless of whether the person holds an appointment’ in a unit of public administration.)

In the case of a person who does not ‘hold an appointment’, the term ‘conduct’ means:

‘... conduct, or a conspiracy or attempt to engage in conduct, of or by the person that adversely affects, or could adversely affect, directly or indirectly, the honest and impartial performance of functions or exercise of powers of –

- (i) a unit of public administration; or
- (ii) any (other) person holding an appointment ...’

The ‘conduct’ of that person is ‘official misconduct’ when it is also a criminal offence.

The CMC does not (and does not have the capacity to) investigate every complaint that comes to its attention. However, if a complaint raises a suspicion of ‘official misconduct’, the CMC will undertake an investigation where the nature and seriousness of the alleged misconduct warrant one, and where it is in the public interest to do so.

The CMC considered that the public interest warranted an investigation in the present matter.

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<sup>2</sup> Section 4(1)(b).

<sup>3</sup> See Division 2 of Part 4 (and in particular, section 15).

## The investigation — an overview

Having examined and taken into account the Premier's letter of 30 July 2009, the CMC assessed the content of a number of newspaper articles published since 10 May 2008 concerning the Elimbah East land.

The CMC called for, and examined, all relevant records held by the Department of Infrastructure and Planning (the Department). Two key departmental officers were identified, and interviewed, as were other persons who were indirectly associated with the matter.

Having examined all relevant material, it proved unnecessary to interview Mr Mackenroth. He was, however, invited to make a statement responding to the matters published about him in the newspaper article. He declined to take up that invitation.

## Newspaper claims

According to the *Courier-Mail* article of 30 July 2009:

- The Elimbah East land was co-owned by the Indigo Group (Indigo) (a privately owned entrepreneurial entity).
- Inclusion of the Elimbah East land in the urban footprint of the 2009 SEQ plan could result in a multi-million dollar windfall for the owners.
- Moreton Bay Regional Council had opposed the inclusion of the Elimbah East land in the urban footprint of the 2009 SEQ plan for environmental and water management reasons.
- Moreton Bay and Sunshine Coast Regional Councils were concerned that the expansion of the urban footprint in the 2009 SEQ plan would threaten 'green open space between Caboolture and Caloundra'.
- Mr Mackenroth had acted as a lobbyist and adviser to Indigo.
- Mr Mackenroth had previously advocated limiting urban sprawl in South East Queensland, and had expressed concern that 'unprecedented population growth' could 'encroach on ... parks, green spaces and waterways'.

Articles published by the *Courier-Mail* on 10 December 2008 and 31 July 2009 reported that Mr Mackenroth admitted he had acted for Indigo in respect of the Elimbah East land and had met with public servants in that capacity. The articles also reported that Mr Mackenroth had strenuously denied any impropriety.

## The Premier's assertion

In referring the matter to the CMC, the Premier advised that the parcels comprising the Elimbah East land had been identified as a future growth area and had been included in the urban footprint in the draft plan. The Elimbah East land was subsequently confirmed as a regional development area in the 2009 SEQ plan – on the basis of the Department's recommendation, which was based upon legitimate planning merits.

## Timeline of relevant events

|                |  |
|----------------|--|
| June 2005      | The 2005 SEQ plan was released. The Elimbah East land was included in the regional landscape and rural production area of the South East Queensland region (Maps 2 and 3).   |
| June 2006      | Mr Derek Kemp (a planning consultant) prepared an <i>Industry and Lands Project Report</i> for the Caboolture Shire Council. The report identified the southern part of the Elimbah East land (near Pumicestone Road) as suitable for development as a regional road-freight logistics and distribution centre.            |
| April 2007     | Mr Kemp prepared a second <i>Industry and Lands Project Report</i> for the Caboolture Shire Council. He reasserted his earlier advice.   |
| 12 June 2007   | The Caboolture Shire Council adopted a Local Growth Management Strategy (the strategy). The strategy indicated that Council would undertake further investigations, but identified some land at Elimbah as suitable for development as an industrial area.   |
| 10 May 2008    | The Queensland Government announced a review of the 2005 SEQ plan.   |
| 16 July 2008   | Moreton Bay Regional Council wrote to the Department affirming the local growth management strategy of the former Caboolture Shire Council. The Council stressed it might 're-evaluate' its position when proposals for the 2009 SEQ plan became clear.  |
| August 2008    | Mr Gary White was appointed Deputy Director-General of the Department's planning division. In this role, Mr White was responsible for all regional planning in Queensland – including the review of the 2005 SEQ plan.   |
| 19 August 2008 | Having examined a copy of Mr Kemp's earlier reports to the Caboolture Shire Council, Mr Gary Lee (a departmental planning contractor) prepared a written summary of the economic data about the Elimbah East area. Mr Lee's summary was part of the technical information considered by the Department.                    |
| 25 August 2008 | Mr Mackenroth met with two Departmental officers: Mr White and Mr Evan Jones (the Department's planning consultant). During this meeting, Mr Mackenroth commented that the urban footprint in the 2005 SEQ plan was inadequate and suggested broadly that the Elimbah East land might be suitable for industrial purposes. |

- 1 September 2008 Conics (Brisbane) Pty Ltd (Conics) (a multi-disciplinary consultancy group) wrote to the Department on behalf of Indigo and the Doyle Group.
- Conics submitted that an area referred to as the 'North Moreton Industrial Park' should be included in the urban footprint of the South East Queensland regional plan.
- The proposed North Moreton Industrial Park comprised almost 226 hectares adjacent to the Bruce Highway at Elimbah East. It was within the area that the Caboolture Shire Council had earlier claimed (in the local growth management strategy on 12 June 2007) was suitable for industrial development.
- 11 September 2008 Mr Mackenroth met with Mr White and Mr Evan Jones. Mr Mackenroth repeated the views he had expressed on 25 August 2008.
- 10 December 2008 An article published in the *Courier-Mail* referred to the expansion of the urban footprint over farmland at Elimbah East. The article asserted that Mr Mackenroth had admitted acting on behalf of Indigo (in respect of the Elimbah East land).
- 13 December 2008 The draft plan was released. It proposed the inclusion of the Elimbah East land in the region's urban footprint.
- 19 March 2009 to 1 May 2009 The Department received seven submissions concerning the Elimbah East land. Other than submissions from the Moreton Bay Regional Council and Sunshine Coast Regional Council, all supported the inclusion of the Elimbah East land in the urban footprint.
- In a letter accompanying its submission, the Moreton Bay Regional Council recognised a 'need for more industrial land and commercial sites', but called for 'a full investigation', before the Elimbah East land was included in the urban footprint.
- 7 April 2009 The consultation period on the draft plan was extended to 1 May 2009.
- 8 April 2009 Mr Mackenroth and Mr Mitch Nielsen (Managing Director of Indigo) met with Mr White and the Director-General. (However, this meeting related to other issues.)
- 8 May 2009 Moreton Bay Regional Council wrote to the Minister for Infrastructure and Planning (the minister) emphasising that the Council no longer supported the expansion of the urban footprint over the Elimbah East land.
- 11 June 2009 Mr Mackenroth and Mr Nielsen met with Mr White. At this meeting, Mr Mackenroth and Mr Nielsen expressed concerns about opposition (from the Moreton Bay Regional Council and others) to the proposed inclusion of the Elimbah East land in the urban footprint.

- 28 July 2009            The 2009 SEQ plan was released indicating that the Elimbah East land had been included in the extended urban footprint.
- 30 July 2009            The *Courier-Mail* article was published inferring that Mr Mackenroth had somehow improperly influenced the decision to include the Elimbah East land in the urban footprint of the 2009 SEQ plan.
- The Premier wrote to the CMC requesting an investigation of the matter.

## Summary of available material

### Mr Gary White

Mr White is the Deputy Director-General of the Department, and is in charge of the Department's planning division. He holds tertiary qualifications in town planning and business, and has worked as a planning professional in the public sector for over 30 years.

It is Mr White's responsibility to overview all regional planning in Queensland, including South East Queensland. He is the departmental officer ultimately responsible for making regional planning recommendations to the minister and, through the minister, to the government.

Mr White took up his current role in August 2008. Although this was after Mr Mackenroth's retirement from parliament (which occurred in July 2006), given his professional background, Mr White was well aware of Mr Mackenroth, and the fact Mr Mackenroth had previously held the Cabinet portfolio with responsibility for Planning.

On the basis of the interview conducted with Mr White, the CMC ascertained:

- With one exception, the process for reviewing the 2005 SEQ plan conformed to the requirements of the *Integrated Planning Act 1997*. (The exception involved a one-month extension to the statutory time for public consultation to take account of the 2009 State General Election, which fell within the review period.)
- The Department received and assessed approximately 3500 submissions before finalising the 2009 SEQ plan, which was recommended to government on the basis of the Department's technical planning advice.
- An 'urban footprint' is an area where urban development or growth is anticipated during the life of the plan. It is a tool for managing, rather than accommodating, expected urban growth. (As reflected in many of the submissions received during the review process, the inclusion of land in an urban footprint is generally regarded as beneficial to the landowner. However, land so included is not available for development until more detailed analyses and planning is undertaken – particularly at local government authority level.)
- Mr White met with Mr Mackenroth on five occasions: at 3.00 pm on 25 August 2008, 3.00 pm on 1 September 2008, 4.30 pm on 11 September 2008, 11.00 am on 8 April 2009, and 3.00 pm on 11 June 2009. All meetings were arranged at Mr Mackenroth's request.

- The meeting of 25 August 2008 took place in Mr White's office and involved Mr White, Mr Evan Jones and Mr Mackenroth. During the meeting, Mr Mackenroth commented that the urban footprint in the 2005 SEQ plan was inadequate and suggested in broad terms that the Elimbah East land might be suitable for industrial purposes.
- Mr White's office was again the venue for the meeting of 1 September 2008, however, the meeting concerned matters other than the Elimbah East land.
- The meeting of 11 September 2008 also took place in Mr White's office and again involved Mr White, Mr Jones and Mr Mackenroth. On this occasion, Mr Mackenroth repeated the views he had expressed during the meeting on 25 August 2008.
- The meeting of 8 April 2009 took place at the Executive Building and involved Mr White, the Director-General of the Department, Mr Mackenroth, and Mr Mitch Nielsen. This meeting pertained to issues unrelated to the Elimbah East land.
- The final meeting, on 11 June 2009, occurred in Mr White's office. Present were Mr White, Mr Mackenroth, and Mr Nielsen. At this meeting, Mr Nielsen and Mr Mackenroth expressed concern about opposition (from the Moreton Bay Regional Council and others) to the inclusion of the Elimbah East land in the urban footprint – as had by then been proposed in the draft plan.
- Apart from entries scheduling the above occasions in his electronic diary, none of Mr White's meetings with Mr Mackenroth were minuted or otherwise formally recorded. According to Mr White, this was because (as with all meetings he attended with interested parties during the review process) he simply listened, was non-committal, and thus saw no need to take notes or formally record the meetings. (Mr White was aware that Mr Jones took notes at the meetings on 25 August 2008 and 11 September 2008.)
- According to Mr White, there was nothing unusual about his meetings with Mr Mackenroth in respect of the Elimbah East land. (Mr White claimed he was unaware of the potential of the Elimbah East land until Mr Mackenroth mentioned it on 25 August 2008. He told Mr Mackenroth he would 'have a look at it – nothing more'. After the meeting on 25 August 2008, Mr White and Mr Jones agreed the Elimbah East land was well located for industrial opportunities.)
- Subsequent to the meeting on 25 August 2008, Mr White ascertained from Departmental sources that the former Caboolture Shire Council had previously (in 2007) conducted an extensive analysis which had identified the Elimbah East land as suitable for industrial and other related purposes.
- The Elimbah East land was ultimately included in the urban footprint in both the draft plan and the 2009 SEQ plan. This was based on sound planning principles.
- As with all submissions received during the review process, the Department assessed the submission from the Moreton Bay Regional Council. Mr White considered there was no sound technical reason for the Council's opposition to the expansion of the urban footprint over the Elimbah East land. This was so for two reasons: Firstly, the Council was confronted with the same economic and employment issues that had faced the former council; and secondly, the only technical work the Department had received from the Council was that undertaken by the previous council (which had supported and called for an expansion of the urban footprint over the land).

- The former Caboolture Shire Council had (in its local growth management strategy of 12 June 2007) called for an extension of the urban footprint over land on both sides of the Bruce Highway at Elimbah – including the Elimbah East land. (For reasons Mr White explained to the CMC, the Department ultimately determined that the land to the western side of the Bruce Highway was not suitable for inclusion into the urban footprint.)

Mr White told the CMC that he had conducted inquiries within the Department, and that there is no basis to suspect that Mr Mackenroth met with any other officer regarding the Elimbah East land.

In the course of the interview with Mr White, the CMC canvassed the submission made to the Department by Conics. (That submission, dated 1 September 2008 proposed that the land situated at Elimbah East be included in the urban footprint of the 2009 SEQ plan.) Mr White explained:

- Conics is a multi-disciplinary consultancy group in the infrastructure and planning industry.
- On assessment, the Conics report had provided sound technical support for the views that Mr Mackenroth had expressed on 25 August 2008.

Mr White emphasised that his recommendation to the minister had been based on technical planning grounds and not as a result of Mr Mackenroth's representations. Of his meetings with Mr Mackenroth, he said:

'If I were employing someone to do the level of input that we got from those sorts of meetings, you'd question whether you were getting value for money. It was simply somebody coming to you, putting a view and leaving it at that. It's not until you had a report done in the depth, say that Conics had done, that you got some – what you felt was potential credibility into the process.

But that was happening time and time again. Somebody would walk into my office [and] would express a view. You'd say, "Okay, fine. Tell your client to put in a submission. We'll look at it as part of the process. You may have an opinion or a view yourself, but you have to put in a submission. It's that that will get you and your proposal considered as part of the process."

## Mr Evan Jones

Mr Jones is a town planner with tertiary qualifications in urban and regional studies, urban and regional planning, and urban design. He has been an Adjunct Professor of Sustainability at Murdoch University in Western Australia since 2007, and has some 30 years planning experience across four Australian states in both the public and private sectors.

Mr Jones had been engaged by the Department as a planning consultant from July to December 2008, specifically to assist in preparing the draft plan.

The review process had commenced before Mr Jones began his consultancy with the Department. While there were some initial changes to personnel, Mr Jones reported to Mr White from August to December 2008.

Mr Jones was not familiar with localities or identities in Queensland. He had not previously heard of the Elimbah East land, nor indeed, of Mr Mackenroth.

When interviewed by the CMC, Mr Jones advised that:

- He met with Mr Mackenroth on 25 August 2008 and 11 September 2008. So far as he can recall, Mr Mackenroth did not say anything regarding Elimbah East on 25 August 2008.
- The meeting on 11 September 2008 took place in Mr White's office and involved himself, Mr White, Mr Mackenroth, Mr Nielsen and Mr Peter Jones (who Mr Evan Jones understood to be another Indigo representative). While there was some discussion about the need for industrial land at North Moreton, Mr Mackenroth merely introduced and later summarised the discussion. (Conics had by then lodged a submission with the Department 'over some land at Elimbah East'.)
- He made some notes at the meetings on 25 August 2008 and 11 September 2008, but the notes were brief – particularly on 25 August 2008.
- It was routine during the review process for Mr Jones and Mr White to meet with interested parties who sought meetings. Both he and Mr White had been careful not to give any developers any idea of what they might have thought of particular proposals.
- There was technical merit in the proposal to include the Elimbah East land in the urban footprint (at least by the meeting of 11 September 2008).
- The Elimbah East land was only considered for inclusion in the urban footprint for technical planning reasons and not because of any representation Mr Mackenroth made.

## Mr Gary Lee

Mr Lee is a town planner, with tertiary qualifications in economics and urban and regional planning. He has over 30 years local and international planning experience, mainly in the Queensland public sector.

Mr Lee was engaged by the Department on a contract basis at various times between July 2008 and June 2009, to assist with specific tasks that arose during the review process. (He drafted what ultimately became the urban footprint principles for the 2009 SEQ plan, he summarised economic data on areas that could potentially have some regionally significant industrial opportunities, and he helped review the major stakeholder submissions in respect of the draft plan.)

On 19 August 2008, Mr Lee prepared a written summary of economic data on the Elimbah East area. Essentially, Mr Lee summarised economic data about the area contained in reports Mr Kemp had earlier prepared for the former Caboolture Shire Council, in June 2006 and April 2007.

Mr Lee was aware that Mr Mackenroth was a former planning minister. However, he has not communicated with Mr Mackenroth in any way since 2004 (when Mr Mackenroth had ministerial responsibility for the relevant portfolio).

## Mr Brendan Nelson

Mr Nelson is the Executive Director of the Department's planning division. He reports directly to Mr White.

Mr Nelson told the CMC he had conducted inquiries in the planning division, and that apart from Mr White and Mr Jones, he was not aware of any officer having had involvement in meetings, discussions or correspondence about the Elimbah East land.

## Records from the Department of Infrastructure and Planning

Apart from the formal Conics submission, which is contained in the Department's records, the CMC has also considered:

- *Industry and Lands Project Reports* prepared for the former Caboolture Shire Council in June 2006 and April 2007 by Mr Kemp.
- A draft Local Growth Management Strategy adopted by the former Caboolture Shire Council on 12 June 2007.
- A letter from the Moreton Bay Regional Council to the Department, dated 16 July 2008.
- Submissions received by the Department in respect of the Elimbah East land.
- A background economic development study Mr Kemp prepared for the Department in April 2009.
- A tabulated extract from the draft plan.
- The 2009 SEQ plan.
- A Departmental briefing note dated 30 July 2009.

## Kemp reports

In his first report to the Caboolture Shire Council, in June 2006, Mr Kemp considered that the southern part of the Elimbah East land (near Pumicestone Road) was suitable for development as a regional road-freight logistics and distribution centre. However, he opined that the northern part (near Rutters Road) should remain undeveloped, in order to maintain a 'greenbelt' between Caboolture and the Sunshine Coast.

Mr Kemp reasserted these opinions in his second report to the Council, in April 2007.

## Local Growth Management Strategy

The CMC considered a draft Local Growth Management Strategy (the strategy) that was adopted by Caboolture Shire Council in June 2007. (The author of the document is not identified. It appears to be an internal Council-produced publication.)

The strategy indicates that while Council would undertake further investigations, some land at Elimbah was suitable for development as an industrial area – to facilitate growth and attain a more diversified local economy.

(The strategy claimed there was a lack of suitable land in the urban footprint of the 2005 SEQ plan, and that this was undermining the Caboolture Shire's ability to address its 'existing poor level of employment self-containment'. The strategy called for the urban footprint to be extended over land at Elimbah on both sides of the Bruce Highway, including the relevant parcels of land at Elimbah East, i.e. the Elimbah East land.)

The Department's records do not indicate when the Council submitted the strategy to the Department. However, the Department wrote to the Council on 20 December 2007 indicating the Department had reviewed the strategy document.

### **Council letter 16 July 2008**

By letter of 16 July 2008, the Moreton Bay Regional Council advised the Department that the Council had met on 15 July 2008, and had determined to affirm (with some modification) the draft Local Growth Management Strategies of the former Caboolture, Pine Rivers and Redcliffe Councils. (This included the Strategy document of June 2007 in respect of the Elimbah East land.)

The Council's letter called for:

- greater recognition of the growth pressures affecting the council area
- a more equitable distribution of expected investment in state infrastructure
- improved cooperation and collaboration between state agencies and the council over infrastructure and planning.

### **Submissions**

The Department's records contained seven submissions in respect of the draft plan. These came from a number of individuals, Conics, THG<sup>4</sup>, the Moreton Bay Regional Council and the Sunshine Coast Regional Council.

The Conics submission was produced on behalf of Indigo and the Doyle Group (i.e. the co-owners of the land in question).

The THG submission was lodged on behalf of 16 individuals.

There were two council submissions received: one from the Moreton Bay Regional Council, and a joint submission from the Moreton Bay and Sunshine Coast Regional Councils.

Apart from the two council submissions, the various other submissions supported the proposal to include the Elimbah East land in the urban footprint of the 2009 SEQ plan.

In an accompanying letter dated 6 April 2009, the Moreton Bay Regional Council recognised 'a need for more industrial land and commercial sites'. However, the Council called for a 'full investigation', before the Elimbah East land was included in the urban footprint, to ensure consistency with the 'sustainable decision making framework and the espoused principles of the regional plan'.

The Council was also concerned about urban development encroaching on the Pumicestone catchment, and the reduction of the inter-urban break between Brisbane and the Sunshine Coast. (The issue of the inter-urban break between Brisbane and the Sunshine Coast was repeated in the joint submission made by Moreton Bay and Sunshine Coast Regional Councils.) The Councils called for the Elimbah East land to remain a regional landscape and rural production area.

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<sup>4</sup> Formerly known as The Helibronn Group.

Councillor Sutherland, Mayor of Moreton Bay Regional Council, wrote to the current planning minister on 8 May 2009, emphasising that the Moreton Bay Regional Council no longer supported the expansion of the urban footprint over the Elimbah East land.

### **Background economic development study**

As part of the review process, the Department engaged Mr Kemp to undertake a study into economic and employment issues throughout the South East Queensland region. (Mr Kemp had previously undertaken work for the former Caboolture Shire Council.)

In April 2009, Mr Kemp prepared a report that contained references to the Elimbah East land. However, the report considered issues at a regional level and does not appear to contain any recommendation directly relevant to the inclusion of the Elimbah East land in the urban footprint.

### **Draft plan**

According to the tabulated extract from the draft plan, the Elimbah East land was to be included in the urban footprint. The reasons given for its inclusion appear to be of a technical planning nature.

### **2009 SEQ plan**

The 2009 SEQ plan formally extends the urban footprint over the Elimbah East land.<sup>5</sup>

It reflects the fact that the land is to be a light industrial area, and that any urban development will be subject to infrastructure and servicing requirements.<sup>6</sup>

## **Conclusions and observations**

It is clear that Mr Mackenroth met with Departmental officers during the review of the 2005 SEQ plan, and he undoubtedly brought to their attention the issue of the possible inclusion of the Elimbah East land into the urban footprint. However, the notion was not a novel one.

In the 2005 SEQ plan, the land had been situated within an area earmarked for regional landscape and rural production. Subsequently, Mr Kemp, acting as consultant for the former Caboolture Shire Council, had (in June 2006 and again, in April 2007) identified development potential in the Elimbah East land. On 12 June 2007, the former Council had adopted a local growth management strategy which called for the urban footprint to be extended – to include the Elimbah East land.

According to both the Departmental officers who met with Mr Mackenroth, there was nothing unusual or untoward in the meetings, nor in the ultimate decision to recommend the inclusion of the land in the urban footprint. That decision was based upon technical planning, not on any representation from Mr Mackenroth. Indeed for his part, Mr White saw little, if any, value in Mr Mackenroth's representations.

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<sup>5</sup> State Planning Regulatory Provision Map SEQ RP10, which forms part of the 2009 SEQ plan.

<sup>6</sup> 2009 SEQ plan, page 25.

Cabinet's decision to include the Elimbah East land in the 2009 SEQ plan was consistent with the officers' recommendation.

There is no legitimate basis to challenge what the Departmental officers have had to say about the matter. Although there is minor discrepancy in their accounts (White recalls Mackenroth referring to the Elimbah East land on 25 August 2008, while Jones thinks it was not mentioned until 11 September 2008), both men reject the notion that they were influenced by anything Mr Mackenroth had to say. Importantly, the CMC's analysis of the Departmental records supports their explanation as to how, and why, the Elimbah East land was included in the urban footprint of the draft plan and ultimately, the 2009 SEQ plan.

The Department records appear to be accurate and provide a contemporaneous record of the relevant events.

During the review process, the Moreton Bay Regional Council recanted its prior conditional support for the inclusion of the Elimbah East land in the urban footprint. This means there may continue to be debate as to the competing merits of the future land use, but it falls a long way short of giving rise to a reasonable suspicion that something untoward must have occurred during the process leading to the 2009 SEQ plan.

There is no evidence of any act of official misconduct having been committed by any person.

There remains, of course, the vexed question of lobbyists seeking to promote issues to government on behalf of developers. In some cases, where there is involvement in decision-making processes by lobbyists who previously held senior government positions, there can be a perception of possible undue influence. The *Courier-Mail*, in its article of 30 July 2009, was careful not to explicitly claim any such undue influence in this case, though in the context of the then ongoing debate about the role of lobbyists, it might be thought to be implied.

The CMC's investigation has shown that the implication was not warranted. To suggest that undue influence has occurred would require more than the mere fact that a government decision was made following the involvement of a lobbyist.