



Queensland

# Environmental Protection and Other Legislation Amendment Regulation (No. 1) 2010

## Explanatory Notes for SL 2010 No. 76

made under the

*Environmental Protection Act 1994*  
*Sustainable Planning Act 2009*

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### Authorising law

Section 9 of the *Environmental Protection Act 1994* provides that a regulation may declare a quality of the environment to be an environmental value.

Section 580 (4) of the *Environmental Protection Act 1994* provides that the administering authority (being the chief executive (environment)) may set fees for development applications under the *Sustainable Planning Act 2009*.

Section 232 of the *Sustainable Planning Act 2009* provides a regulation may prescribe categories of development or require code or impact assessment.

Chapter 6, part 1, subdivision 2 of *Sustainable Planning Act 2009* provides the head of power to make regulations about referral agency roles and jurisdictions. A referral agency is an advice agency or a concurrence agency.

### Policy objectives of the legislation

The object of the *Sustainable Planning Act 2009* is to seek to achieve ecological sustainability by—

- (a) managing the process by which development takes place, including ensuring the process is accountable, effective and efficient and delivers sustainable outcomes; and
- (b) managing the effects of development on the environment, including managing the use of premises; and
- (c) continuing the coordination and integration of planning at the local, regional and State levels.

The object of the *Environmental Protection Act 1994* is to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends.

The objective of the *Environmental Protection Regulation 2008* is to provide the basis for effective and efficient administration and enforcement of the object and provisions of the *Environmental Protection Act 1994*.

### **How policy objectives are to be achieved**

The policy objectives of the *Environmental Protection and Other Legislation Amendment Regulation (No. 1) 2010* (this Regulation) are to be met by amending—

- (a) the *Environmental Protection Regulation 2008* to—
  - include a statement of wetland environmental values
  - establish development assessment fees for assessment manager and concurrence roles of the chief executive (environment) for high impact earthworks in Great Barrier Reef wetland protection areas.
- (b) the *Sustainable Planning Regulation 2009* to—
  - make operational works such as high impact earthworks in Great Barrier Reef wetland protection areas assessable development
  - establish the chief executive (environment) as a concurrence agency for assessable development within Great Barrier Reef wetland protection areas
  - update the State wide advice role of the chief executive (environment) in Wetland Management Areas.

### **Consistency with the policy objectives of other legislation**

This Regulation is not inconsistent with any other legislation.

The requirement under the *Statutory Instruments Act 1992* to prepare a Regulatory Impact Statement has been complied with.

### **Consistency with authorising Act**

This Regulation is consistent with the *Sustainable Planning Act 2009* and the *Environmental Protection Act 1994*.

### **Possible alternative approach**

A statement of alternatives is contained in the Regulatory Impact Statement for the protection of wetlands of high ecological significance in Great Barrier Reef catchments.

### **Consistency with fundamental legislative principles**

The *Legislative Standards Act 1992* outlines a number of fundamental legislative principles. These principles require that the legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament. The Regulation is consistent with these and the other fundamental legislative principles, including natural justice, appropriate review and delegation of administrative power, clarity and precision of legislation, adequacy of the head of power to make subordinate legislation and consistency with its primary Act.

This Regulation does impose some restrictions on business and the community through permit requirements and other obligations. Development permits are required for specified activities that need to be managed in order to protect the environment. Restrictions and prohibitions apply to certain actions in order to protect the environment. Penalties will apply for non-compliance with the requirements of the legislation.

However any imposition of restrictions under this Regulation are fully offset by a demonstrated benefit, in that the restrictions facilitate sustainable development, and protect the environmental values of wetlands and to afford greater protection to the water quality entering the Great Barrier Reef lagoon.

## **Benefits and costs of implementation**

A detailed statement of costs and benefits is contained in the Regulatory Impact Statement for the protection of wetlands of high ecological significance in Great Barrier Reef catchments.

## **Consultation**

Public consultation was limited due to concerns that pre-emptive earthworks would occur. Preliminary consultation has been undertaken with Queensland Farmers' Federation, Agforce, Canegrowers, Urban Development Institute of Australia, Local Government Association of Queensland Inc. and the World Wildlife Fund.

The World Wildlife Fund has sought an extension of the chief executive (environment)'s concurrence role to include the Wide Bay Burnett area. Canegrowers, Agforce and Queensland Farmers' Federation consider that there may be limited impact on members given the marginal nature of many of the remaining wetland areas for production and the current extent of development constraints under the *Vegetation Management Act 1999*.

The normal process is to release a draft regulatory impact statement and draft regulation for a 28 day consultation period. However the release of a draft regulatory impact statement and draft regulation may have triggered pre-emptive work once the wetlands to be protected were identified. The regulatory impact statement is being released at the same time as the Temporary State Planning Policy: Protecting Wetlands of High Ecological Significance in Great Barrier Reef Catchments.

Submissions on the regulations will be sought during the 28 day consultation period following the release. All submissions made during the public consultation will be considered and, where appropriate, the regulations will be amended to reflect these comments.

## **Notes on provisions**

### **Section 1**

This section states the title of this regulation is the *Environmental Protection and Other Legislation Amendment Regulation (No. 1) 2010* (this Regulation).

## **Section 2**

This section states this Regulation amends the *Environmental Protection Regulation 2008*.

## **Section 3**

This section amends section 51 of the *Environmental Protection Regulation 2008* so that the new environmental values for wetlands (see section 5 below) are considered in addition to environmental values stated in Environmental Protection Policies when making an environmental management decision.

## **Section 4**

This section omits the definition of *biological integrity* and *wetland* in section 58 of the *Environmental Protection Regulation 2008*. These definitions are now defined in the dictionary (see section 7 below).

## **Section 5**

This section describes environmental values that were used to develop criteria to determine the relative conservation significance of wetlands using the Aquatic Biodiversity Assessment and Mapping Method (AquaBAMM). Natural or near natural wetlands of high to very high conservation value have been identified as being wetlands of high ecological significance for the purposes of the Temporary State Planning Policy: Protecting Wetlands of High Ecological Significance in Great Barrier Reef Catchments. Further information can be accessed on the Department of Environment and Resource Management website. Wetlands have a broader range of environmental values that are described in the Department of Environment and Resource Management's Wetland info web site however these have not been used to measure the conservation significance of wetlands.

## **Section 6**

This section prescribes application fees for development applications referred to under Part 3 of this Regulation.

## **Section 7**

This section amends the dictionary in the *Environmental Protection Regulation 2008* to define terms used in relation to development assessment fees for the assessment of high impact earthworks by the chief executive (environment) (see section 14 below).

## **Section 8**

This section states this Regulation amends the *Sustainable Planning Regulation 2009*.

## **Section 9**

This section inserts a new item 10 in schedule 3, part 1, table 4, making operational works for high impact earthworks in Great Barrier Reef wetland protection areas assessable development.

Item 10 contains 2 exclusions. The first is an exclusion for operational work for a domestic housing activity. It is not intended this work fall within the scope of regulation.

The second exclusion is for operational work that is the “natural and ordinary consequence” of certain material changes of use or reconfiguring a lot for which the chief executive (environment) was a concurrence agency under (see section 12 below).

This ensures that assessment of the operational work is not triggered twice, as the work will already have been assessed in the context of the material change of use or reconfiguring a lot application. The term “natural and ordinary consequence” is intended to convey a relationship between the material change of use or reconfiguring a lot, and the undertaking of the operational work. The term is related to the wording of the new referral triggers in schedule 7, table 2, new item 43A and table 3, new item 21A (see section 12 below), which refer to a material change of use or reconfiguring a lot “involving” operational work for high impact earthworks in a Great Barrier Reef wetland protection area.

Operational work that is not the natural and ordinary consequence of development already dealt with through a referral to the chief executive (environment) will still be assessable under this item.

## **Section 10**

This section corrects a numbering error.

## **Section 11**

This section amends schedule 6 of the *Sustainable Planning Regulation 2009* which provides a set of rules for when a particular referral agency may be the assessment manager.

## **Section 12**

This section updates the advice triggers for the chief executive (environment) under Schedule 7, table 2, item 43 and table 3 item 21 of the *Sustainable Planning Regulation 2009*, with respect to reconfiguration of a lot and material change of use in or near a wetland. The term 'wetland management area' now replaces the term 'in, or within 100m of a wetland'. The number of lots that trigger referral for advice for reconfiguration of a lot has been changed from 10 to 6 to be consistent with the draft State Coastal Plan.

New items 43A and 43B under Schedule 7, table 2 and item 21A under Schedule 7, table 3 have been inserted to establish new concurrence powers for the chief executive (environment) with respect to certain development involving high impact earthworks within Great Barrier Reef wetland protection areas.

These two new items are intended to ensure that high impact earthworks in Great Barrier Reef wetland protection areas that are the natural and ordinary consequence of an assessable material change of use or reconfiguring a lot are assessed as early in the development assessment process as possible, in order to avoid the giving of development approvals for material changes of use or reconfiguring a lot that cannot be implemented due to policy and code requirements applying for Great Barrier reef wetland protection areas.

If it appears on the basis of the information required to be submitted with a development application for a material change of use or reconfiguring a lot that the development will involve high impact earthworks in a Great Barrier Reef wetland protection area, the development application will trigger referral to the chief executive (environment). Requirements for mandatory information to be submitted with a development application, together with

the ability under the *Sustainable Planning Act 2009* to make an information request, will ensure the chief executive (environment) is provided with the information necessary to assess the works against the relevant code. Operational work for high impact earthworks in Great Barrier Reef wetland protection areas that has been assessed in this way will no longer be assessable operational work in its own right, since the assessable development trigger in schedule 3, part 1, table 4, item 10 excludes such work.

New item 43A—This trigger refers any part of the “land” subject to the reconfiguration being situated within a Great Barrier Reef wetland protection area. Under the *Sustainable Planning Act 2009* (section 13(j)), a reference to land means the land subject to the relevant development application. For development applications for reconfiguring a lot, the area of “the land” will invariably coincide with the boundaries of the lot being reconfigured.

New item 21A—This trigger refers any part of the “land” subject to the material change of use being situated within a Great Barrier Reef wetland protection area. Under the *Sustainable Planning Act 2009* section 13(j)), a reference to land means the land subject to the relevant development application. For a development application for a material change of use, this includes land for all activities forming part of the principle use, such as any land used for access, waste disposal and the like, as well as uses incidental to, or necessarily associated with, the principle use, such as administrative activities associated with a business enterprise.

### **Section 13**

This section adds any development that contains or shares a common boundary with a Great Barrier Reef wetland protection areas or wetland management area is a development for which a notification period of at least 30 business days applies.

### **Section 14**

This section amends the dictionary in the *Sustainable Planning Regulation 2009*. Note the high impact earthworks definition should be considered in conjunction with the definition of operational works under the *Sustainable Planning Act 2009*.



ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Environment and Resource Management.

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