



Queensland

# **Environmental Protection and Other Legislation Amendment Regulation (No. 1) 2011**

## **Explanatory Notes for SL 2011 No. 246**

made under the

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

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## **General outline**

### **Short title**

*Environmental Protection and Other Legislation Amendment Regulation  
(No. 1) 2011.*

### **Authorising law**

Section 580 of the *Environmental Protection Act 1994* provides that a regulation may declare a quality of the environment to be an environmental value.

Section 763 of the *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 and the reasons for them**

The objective of this regulation is to amend the Environmental Protection Regulation 2008 and Sustainable Planning Regulation 2009 to provide

appropriate regulatory provisions to support the adoption of State Planning Policy 4/11: *Protecting Wetlands of High Ecological Significance in Great Barrier Reef Catchments* (SPP 4/11).

The policy objective of the wetlands SPP is to ensure development in or adjacent to wetlands of high ecological significance in Great Barrier Reef catchments is planned, designed, constructed and operated to prevent the loss or degradation of the wetlands and their environmental values, or enhances these values.

Some of the regulatory provisions required to support the wetlands SPP were introduced by the Environmental Protection and Other Legislation Amendment Regulation (No. 1) 2010 (EPOLAR 2010), which was made to support temporary State Planning Policy 1/10: *Protecting Wetlands of High Ecological Significance in Great Barrier Reef Catchments* (SPP 1/10). SPP 1/10 was replaced by a temporary SPP of the same name (SPP 1/11) to enable a more extensive period of consultation on a draft SPP. The draft SPP was endorsed by Cabinet in August 2011 and on commencement will become SPP 4/11. SPP 4/11 will replace SPP 1/11.

EPOLAR 2010 amended the Sustainable Planning Regulation 2009 to make development involving high impact earthworks in wetland protection areas in Great Barrier Reef catchments, assessable development. It also amended the Environmental Protection Regulation 2008 to introduce statements of environmental values for wetlands. The regulatory provisions introduced by the EPOLAR 2010 will need to be continued to support SPP 4/11.

Further amendments are required to the Environmental Protection Regulation 2008 and Sustainable Planning Regulation 2009 to address matters raised in public consultation that were approved by Cabinet.

More specifically, the policy objectives of this regulation are—

- to enable minor corrections to be made to the Map of referable wetlands in an efficient manner, where more accurate information becomes available;
- to make operational work that is high impact earthworks carried out for electricity infrastructure and government supported transport infrastructure, self assessable development
- introduce further exemptions to the definition of high impact earthworks.

Some submissions made during the consultation process for the wetlands SPP raised concerns about mapping inaccuracies on the Map of referable

wetlands. Sometimes the inaccuracy of the mapping is because there is a time lag between collecting data and releasing the final regulatory mapping product (i.e. development may have already occurred in some locations). There may also be some wetland boundary inaccuracies resulting from the scale at which base information is collected, which is between 1:50,000 and 1:100,000 scale. These issues occur with all biophysical mapping (e.g. the regional ecosystem mapping that underpins the *Vegetation Management Act 1999*). Some submitters raised the need for the adoption of a simple process to enable the wetland mapping to be amended to founding such cases. It is considered appropriate to adopt such a process for minor map amendments (e.g. boundary realignments, removing land or waterbodies that have been incorrectly mapped as wetlands).

Making high impact earthworks proposed to be undertaken in wetland protection areas by public transport and electricity infrastructure providers self assessable and the introduction of an associated self assessable code is proposed to minimise regulatory requirements on these infrastructure providers in recognition of their capacity to self regulate and because they operate in the public interest.

Modifying the definition of high impact earthworks is proposed recognition that natural disasters such as floods and landslides may require works to reinstate earthworks, such as laser-levelling, previously undertaken.

## **Achievement of policy objectives**

The policy objectives of this regulation are to be achieved by amending—

- (a) the Environmental Protection Regulation 2008 to—
  - establish a simplified process to enable the chief executive to make minor amendments to the map of referable wetlands
- (b) the Sustainable Planning Regulation 2009 to—
  - replace the exemption for government supported transport infrastructure with provisions to make this form of development self assessable development
  - change the level of assessment for operational work that is high impact earthworks for electricity infrastructure from assessable to self assessable development

- identify the self assessable code at Annex 2 of the wetlands SPP as an applicable code for works associated with government supported transport infrastructure or electricity infrastructure that are made self assessable by this regulation
- amend the definition of high impact earthworks to include additional exemptions for routine farm management practices and reinstating earthworks that repair damage from recent disaster events.

### **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 Assessment Statement (RAS) has been complied with. A Regulatory Impact Statement (RIS) was prepared for the Environmental Protection and Other Legislation Amendment Regulation (No. 1) 2010 supporting the temporary SPP that was endorsed by Cabinet on 29 March 2011.

As the RAS system took effect on 31 March 2010 the temporary SPP and associated regulatory amendments were exempt from application of the RAS system.

A draft wetlands protection SPP (draft SPP) was released on 10 December 2010 for public review which affected 5 additional catchments. A RAS was not required by Treasury for the release of the draft SPP as they endorsed the re-release of the RIS prepared for EPOLAR 2010 that was released for public comments together with SPP 1/10 together with an addendum to the RIS that included cost benefit analysis of the additional 5 catchments.

The regulation has already undergone an extensive external assessment process that takes into account the impacts on Queensland and regulatory best practice principles.

The proposed final SPP and regulatory amendments have been prepared after taking into account public submissions received following release of the RIS and temporary SPP in May 2010 and the draft SPP released on 10 December 2010. In addition to the submissions, direct consultation occurred with rural and urban industry groups and conservation interests. There was also direct contact with potentially affected landowners. The submissions were received from landowners, local government, rural

industry, conservation groups and government owned infrastructure providers. There were 51 submissions on the SPP 1/10 and 105 submissions on the draft SPP.

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

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

The regulation is consistent with fundamental legislative principles.

### **Benefits and costs of implementation**

A detailed statement of costs and benefits is contained the Regulatory Impact Statement on the *Environmental Protection and Other Legislation Amendment Regulation (No. 1) 2010*.

### **Consultation**

In the 12 months since SPP1/10 and the associated development assessment regime commenced, DERM has engaged with affected landholders, industry groups, and conservation groups to identify and address issues of concern.

The formal consultation process involved seeking public submissions on two occasions—following the commencement of SPP1/10 (which included the release of the RIS), and after the draft SPP was released. Letters were also sent to every landholder directly affected by the proposals (approximately 8,150) as well as publication of statutory notices. Between the RIS and SPP1/10, and the draft SPP, the period available for making submissions was over six months.

Direct consultation was also undertaken with organisations including CANEGROWERS, AgForce, the Urban Development Institute of Australia (UDIA), the World Wildlife Fund (WWF) and Queensland Conservation Council (QCC). CANEGROWERS and AgForce arranged 11 meetings with members in towns and regional cities. Additionally, approximately 480 interested individuals contacted DERM directly to discuss the initiative. These people were mostly landholders. An interdepartmental committee was established to obtain input from Queensland Government agencies.

One hundred and fifty-six submissions have been received in response to the consultation. Sixty per cent of submissions have been received from individual landholders. A submissions and issues assessment report has also been prepared and will be published on commencement of SPP 4/11

## **Notes on Provisions**

### **Part 1 Preliminary**

**Section 1** This section states the title of this Regulation which is the environmental Protection and Other Legislation Amendment Regulation (*No. 1*) 2011 (*the regulation*).

### **Part 2 - Amendment of Environmental Protection Regulation 2008**

**Section 2** This section states this part of the Regulation amends the Environmental Protection Regulation 2008.

**Section 3** This section amends section 58 to remove reference to significant coastal wetlands. Significant coastal wetlands are still protected by their inclusion on the map of referable wetlands. This section also omits definitions that are no longer required in section 58 - significant coastal wetlands, State Coastal Management Plan and referable wetland.

**Section 4** This section inserts new Chapter 8A, Miscellaneous, section 144D, to provide the chief executive (environment) with the ability to make minor amendments to the 'Map of Referable Wetlands' to remove or reduce the size of wetland protection areas where more accurate information about the extent or hydrological classification of the wetland is obtained that supports such a change, or the chief executive (environment) no longer considers the wetland is of high ecological significance.

In determining that a wetland is not of high ecological significance, the chief executive would use the Aquatic Biodiversity Assessment Mapping

Methodology (AquaBAMM). AquaBAMM is based on a large body of national and international literature and provides a comprehensive, transparent methodology for assessing the conservation values of wetlands in Queensland. Wetland environmental values in section 81A of the EP Regulation 2008 are based on the criteria used in the AquaBAMM assessments of wetlands in the GBR catchments. This assessment scored the relative ranking of wetlands of ecological significance. Information on the AquaBAMM methodology can be found on the DERM website <[www.derm.qld.gov.au](http://www.derm.qld.gov.au)>.

These provisions allow an efficient way to enable minor amendments to be made to the map of referable wetlands, and puts in place requirements for publication of the map amendments and notification of affected landholders. Map amendments of a more significant nature would have to be carried out by regulatory amendment (i.e. publishing a new base map and amending the definition of 'map of referable wetlands in the Sustainable Planning Regulation 2009, which will enable more scrutiny of such amendments.

**Section 5** This section makes a minor amendment to ensure consistency with terminology in the wetlands SPP.

**Section 6** This section amends definitions in the dictionary in schedule 12.

### **Part 3 - Amendments to the Sustainable Planning Regulation 2009**

**Section 7** This section states this part of the Regulation amends the Sustainable Planning Regulation 2009.

**Section 8** This section amends schedule 3 to make operational work self assessable development if it is high impact earthworks associated with government supported transport infrastructure or associated with electricity infrastructure.

**Section 9** This section amends schedule 5 to include the self assessable code at annex 2 of the wetlands SPP as the applicable code used to assess development made self assessable under schedule 3 for development associated with government supported transport infrastructure or associated with electricity infrastructure.

**Section 10** This section makes a minor amendment to ensure consistency with terminology in the wetlands SPP.

**Section 11** This section amends schedule 7 to ensure development associated with government supported transport infrastructure or

associated with electricity infrastructure is not triggered as assessable development.

**Section 12** This section makes a minor amendment to ensure consistency with terminology in the wetlands SPP.

**Section 13** This section amends the dictionary in schedule 26 to include definitions for government supported transport infrastructure and electricity infrastructure. This section also amends definitions of wetland protection areas and wetland to reference the definition in the Environmental Protection Regulation 2008.

This section also amends the definition of high impact earthworks to include additional exemptions for carrying out routine farm management practices in response to issues raised in submission.

The exemptions permit laser levelling that maintains existing contours of the land so routine farm management practices will not trigger assessable development.

Exemptions are also included for reinstating earthworks that repair damage from natural events such as flooding or landslides.

Amendments to this definition remove the current exemption for carrying out high impact earthworks for a transport purpose under the *Transport Infrastructure Act 1994* or the *Transport Planning and Coordination Act 1994*.

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#### ENDNOTES

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