



Queensland

Sustainable Planning Amendment Regulation (No. 3) 2013

Explanatory Notes for SL 2013 No. 114

made under the

Sustainable Planning Act 2009

General outline

Short title

Sustainable Planning Amendment Regulation (No. 3) 2013

Authorising law

The *Sustainable Planning Act 2009*, sections 255(2)(b), 255B(2)(b), 255C(2)(b), 232(1), 232(2), 232(3) 246(1), 251, 260(1)(d)(ii), 272(1)(c)(i), 370(2)(a)(ii) and 763..

Policy objectives and the reasons for them

The *Sustainable Planning Act 2009* was amended by the *Sustainable Planning and Other Legislation Amendment Act (No. 2) 2012* (SPOLAA (No.2) 2012) on 22 November 2012, which inserted new Chapter 6 Part 1 Subdivision 2A (Chief executive assessing particular applications as assessment manager or referral agency).

Subdivision 2A provides that certain requirements and decision making rules apply when the chief executive administering SPA is prescribed as assessment manager or referral agency for particular development, under the *Sustainable Planning Regulation 2009*.

The *Sustainable Planning Act 2009* provides the head of power for the *Sustainable Planning Regulation 2009* to prescribe the following for an application:

- the assessment manager (section 246)
- an advice agency (section 250)
- a concurrence agency (section 251)
- referral agency jurisdiction (section 254)
- matters to consider when assessing development (section 255)
- a fee at relevant stages of the assessment process (sections 260, 272, 370, 379, 383)

The objective of the amendment regulation is to give effect to the Queensland Government's commitment to improve the coordination and responsiveness of the state government's involvement in the integrated development assessment processes. This is to be achieved by enabling the chief executive administering the *Sustainable Planning Act 2009* to assume the majority of the state government's assessment manager and concurrence agency responsibilities.

The chief executive administering the *Sustainable Planning Act 2009* will replace multiple state agencies with jurisdiction over certain aspects of the development under the *Sustainable Planning Regulation 2009* to become the state assessment manager and referral agency for development prescribed under the regulation. The state assessment manager and referral agency will manage matters across all State agencies and provide a coordinated state response to a development application.

The state assessment manager and referral agency will not replace the existing responsibilities of local governments either as assessment managers or concurrence agencies for development applications.

The amendment regulation is required to establish the administrative arrangements, development assessment fees and development assessment criteria, necessary to ensure the state assessment manager and referral agency operates effectively.

Administrative arrangements

The regulation changes the existing state government assessment manager and referral agency arrangements and provides that the jurisdiction of the

chief executive as the state assessment and referral agency will be the purposes of the *Sustainable Planning Act 2009*.

Amendments to schedule 6 (Assessment manager for development applications), replace specific references to the administering authority or chief executive administering an Act other than the *Sustainable Planning Act 2009*, with the chief executive administering the *Sustainable Planning Act 2009*. This provides that the chief executive administering the *Sustainable Planning Act 2009* is the assessment manager for particular development applications.

Amendments to schedule 7 (Referral agencies and their jurisdictions), replace specific references to the administering authority or chief executive administering an Act other than the *Sustainable Planning Act 2009*, with the chief executive administering the *Sustainable Planning Act 2009*. This provides that the chief executive administering the *Sustainable Planning Act 2009* is the referral agency for particular development applications.

Amendments to schedule 7, also replace specific references to the purposes and matters under an Act other than the *Sustainable Planning Act 2009*, with the purposes of the Act. This provides that the purpose of the *Sustainable Planning Act 2009* is the referral jurisdiction under which the chief executive assesses particular development applications.

Development assessment fees

The amendments insert new schedule 7a (Fees) into the *Sustainable Planning Regulation 2009* to identify the fees payable to the chief executive administering the *Sustainable Planning Act 2009*, when assessing development applications as assessment manager or referral agency.

The new schedule of fees combines the existing fees, administered by various state agencies for assessing different types of development applications, into a single schedule under the *Sustainable Planning Regulation 2009*. As part of a staged approach to the development assessment fees administered by the State Assessment and Referral Agency, new schedule 7a will be in the *Sustainable Planning Regulation 2009* until a revised fee structure is introduced in early 2014. This will provide reasonable time for the Department of State Development, Infrastructure and Planning to continue to work with other government agencies and businesses to refine the schedule of fees so it is based on a full cost recovery model.

The annual approved government indexation rate of 3.5 per cent for 1 July 2013 to 30 June 2014 has also been applied to the fees.

Development assessment criteria

The amendments provide that development applications assessed by the chief executive administering the *Sustainable Planning Act 2009* as assessment manager or referral agency, are assessed against a comprehensive set of assessment criteria: the State Development Assessment Provisions.

The State Development Assessment Provisions combine the existing state agency assessment criteria under other legislation in a single document and formalises existing agency assessment criteria. It provides applicants with transparency and clarity on how development can comply with matters of interest to the State.

Amendments to schedule 3 (Assessable development, self-assessable development and type of assessment) and schedule 5 (Applicable codes, laws and policies for particular development), replace specific references to other codes, laws and policies, with a reference to the State Development Assessment Provisions. This provides that the State Development Assessment Provisions is the matter the chief executive may have regard to when assessing particular development applications.

Declared Catchment Areas

Amendments to schedule 7, remove the referral triggers for development in a declared catchment area outside of the SEQ region in accordance with the *Land, Water and Other Legislation Amendment Act 2013* which omitted declared catchment areas from the *Water Act 2000* and *Water Regulation 2002*.

Annual fee increases

Amendments to section 40AA (Fee for assessing development application for Brisbane core port land), schedule 20 (Court fees) and schedule 21 (Building and development committee fees) apply the annual indexation rate for 1 July 2013 to 30 June 2014 to the existing fees in the SPR.

Gold Coast Light Rail

An amendment to schedule 4 (Development that can not be declared to be development of a particular type-Act, section 232(2)) extends the current exemption for the Gold Coast Light Rail project due to expire on 30 June 2013, until 30 June 2015. This provides an exemption for the project until

completion and removes risk of legal action being taken under contract provisions based on the assumption of an exemption for the development of the project.

Proclamation

A proclamation provides for the commencement of the relevant provisions of the SPOLA, specifically section 35 (Insertion of new chapter 6, pt 1, div 4, sdiv 2A) and any other uncommenced provisions concurrently with the commencement of the above regulation amendments.

Achievement of policy objectives

The regulation achieves the objective of improving the coordination and responsiveness of state government in dealing with particular development applications by providing the chief executive administering the *Sustainable Planning Act 2009* with the appropriate jurisdiction to be the single state assessment manager and referral agency to assess or decide particular development applications subject to state jurisdiction.

Consistency with policy objectives of authorising law

The regulation is consistent with the *Sustainable Planning Act 2009* which provides that a regulation may prescribe:

- development that is assessable (section 232(1));
- development that is exempt under a planning scheme, temporary local planning instrument, or preliminary approval to which section 242 applies (section 232(2));
- the assessment manager for a development application (section 246); and
- referral agencies for a development application (sections 250(a) and 251(a)).

The regulation is consistent with the objective of the *Sustainable Planning Act 2009* to manage the process by which development takes place, ensuring the process is effective and efficient.

Inconsistency with policy objectives of other legislation

The regulation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

The improvements to the coordination and responsiveness of the state government in development assessment processes sought through the establishment of a single state assessment manager and referral agency can only be addressed by providing the chief executive administering the *Sustainable Planning Act 2009* with the appropriate jurisdiction to assess and decide particular development applications. This can only be achieved by amendments to the *Sustainable Planning Regulation 2009*.

Benefits and costs of implementation

The regulation will benefit users of the development assessment system including applicants and local governments by ensuring a central point of state assessment and referral, and a coordinated and integrated response to a development application. This reduces the risk of missed state agency referrals and reduces the need for the applicant or local government to resolve conflicts between concurrence responses of multiple concurrence agencies.

Consistency with fundamental legislative principles

The Office of the Queensland Parliamentary Counsel has raised a Fundamental Legislative Principles issue relating to the State Development Assessment Provisions (which is not proposed to be tabled in parliament) under section 4 (5) (e) of the *Legislative Standards Act 1992* which requires that legislation has sufficient regard to the institution of Parliament.

Whether legislation has sufficient regard to the institution of Parliament depends on whether the subordinate legislation allows the sub-delegation of a power delegated by an Act only in appropriate cases and to appropriate persons, and if authorised by an Act. Sections 255A(2), 255B(2) and 255C(2) of the *Sustainable Planning Act 2009* authorises the SPR to prescribe matters that the chief executive may have regard to in assessing development applications. The issue that Office of the Queensland Parliamentary Counsel has raised is that the proposal to “call up” the State

Development Assessment Provisions in the *Sustainable Planning Regulation 2009*, sub-delegates this power and is therefore a breach of this Fundamental Legislative Principle.

It is the Department of State Development, Infrastructure and Planning's view that the amendment regulation does not breach this Fundamental Legislative Principle because the *Sustainable Planning Regulation 2009* is still the instrument that prescribes the matters for sections 255A, 255B and 255C of the *Sustainable Planning Act 2009*. Therefore there is no sub-delegation of this power. In addition, the State Development Assessment Provisions cannot be changed or replaced unless the *Sustainable Planning Regulation 2009* is amended to prescribe the new or amended version of the document. The State development Assessment Provisions will be a widely available public document and is required to be published on the department's website.

Consultation

The Department of State Development, Infrastructure and Planning has been working closely with state agencies and entities in the preparation of the operational arrangements to support the introduction of a single state assessment and referral agency.

The State Assessment and Referral Agency Senior Executive Group was formed mid 2012 to inform and guide the implementation team, communicate information to agencies and contribute to the formation of the State Assessment and Referral Agency business model.

The Office of Best Practice Regulation was consulted in relation to the need for a Regulatory Impact Statement.

Queensland Treasury and Trade were consulted on the appropriate indexation factor to apply to fees and charges.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of State Development, Infrastructure and Planning.

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