Sustainable Planning Amendment Regulation (No. 7) 2013

Explanatory Notes for SL 2013 No. 258

made under the

Sustainable Planning Act 2009

General outline

Short title

The short title of the regulation is the *Sustainable Planning Amendment Regulation (No. 7) 2013.*

Authorising law

Sections 232(2) 232(3), 251(a), 254(1), 255A(2(b), 255C(2)(b), 260(1)(d), 282(3), 313(2)(c) and 763 of the *Sustainable Planning Act 2009*

Policy objectives and the reasons for them

The following amendments are operational and consequential in nature, reflecting broader government reforms to simplify the planning and development framework, reduce the regulatory burden on routine vegetation management activities and water management systems.

Operations and requirements under the State Assessment and Referral Agency (SARA)

On 1 July 2013, a significant policy change was implemented with the establishment of SARA, administered by the chief executive of the *Sustainable Planning Act 2009* (SPA). SARA provides a single point of contact for the state, where the chief executive of SPA coordinates, responds and/or decides development applications under state jurisdiction as the referral agency or the assessment manager.

SARA was enacted through amendments to SPA and the *Sustainable Planning Regulation 2009* (SPR), whereby the chief executive of SPA took on the development assessment jurisdiction which was formerly under other state agencies.

Further amendments to the SPR are required ensure that operations align with policy intent and administration of SARA. This includes removing superseded statutory information relating to the former model of multiple state agency jurisdictions, correcting drafting anomalies which will allow the chief executive to collect the applicable fees and clarifying certain applicable codes for development assessment.

State Development Assessment Provisions (SDAP)

The SDAP sets out the matters of interest to the state for development assessment, where the chief executive administering SPA is responsible for assessing or deciding development applications (i.e. SARA). The SDAP is a statutory instrument and is prescribed in the SPR.

The SDAP has been amended to ensure it reflects current policy. Consequently, an amendment to the SPR is required to prescribe the updated version of the SDAP that is in effect.

Amendments to reflect the single State Planning Policy

The Queensland Government has committed to repeal the existing 10 topic-based state planning policies and instead provide a single State Planning Policy to have statutory effect throughout the state.

The State Planning Policy sets out the state interests and related policies that local governments must take into account in preparing or amending local planning instruments and in development assessment; and that the state may consider in preparing and amending regional plans.

Amendments to the SPR are required to remove references to the existing topic-based state planning policies, to coincide with and enable full function of the State Planning Policy as it commences.

Reforms to the vegetation management framework

The *Vegetation Management Framework Amendment Act 2013* (VMFAA) was assented on 23 May 2013. The purpose of the VMFAA is to reduce the regulatory burden on landholders and contribute to the growth of a four pillar economy, while retaining key environmental protections under the vegetation management framework.

Amendments to affected regulations are required to reflect these legislative changes to coincide with the VMFAA that did not commence on assent, commencing on 2 December 2013. Consequently, there are amendments required to the SPR that include changing assessment trigger requirements to reduce the number of smaller scale development applications, introducing application fees for new clearing purposes and updating some existing ones to align with the assessment trigger changes, and introducing and broadening exemptions.

Operational works that take or interfere with water in a watercourse, lake or spring

Under the *Water Act 2000* (Water Act), generally a water entitlement or water permit is required to take or interfere with water in Queensland. A water entitlement means a water allocation, interim water allocation or water licence.

While the Water Act regulates the allocation of water, the physical construction of works to take or interfere with water is authorised under SPA.
The regulatory framework under the Water Act and SPA operates such that a person may be required to obtain separate approvals for taking or interfering with water and constructing the necessary works to take or interfere with the water.

For operational works that take water from a watercourse, lake or spring, such as a pump, the requirement to obtain separate development approval is an unnecessary burden that does not reflect the level of risk posed to the water resource. In addition, often the development approval merely duplicates the requirements specified on the water entitlement. Amendments to the SPR will provide that these certain operational works are exempted from requiring development approval, since it will be regulated by the water entitlement.

Assessment of state transport infrastructure, strategic airports and aviation facilities, and certain tidal works

To date, the assessment requirements for certain state matters, such as state transport infrastructure (specifically public passenger transport), strategic airports and aviation facilities), and certain tidal works for matters related to marine pollution, have been undertaken by the state government as required under the SPR.

As part of the recent Queensland planning reforms, there has been an increasing direction to empower local government with decision making powers over certain interests that are better assessed with local interests in mind.

Consequently. the State Planning Policy provides local governments with the statutory obligations for the assessment of certain state matters, including state transport infrastructure (specifically public passenger transport), strategic airports and aviation facilities, and certain tidal works for matters related to marine pollution.

Local governments are provided with the necessary statutory criteria for assessing certain development applications through the State Planning Policy.

Amendments to the SPR will remove the state as the referral agency for these matters, so there is no duplication of assessment by the local government under the State Planning Policy and the chief executive administering SPA under the SPR.

Removal of declared catchment areas (DCAs)

Declared catchment areas (DCAs) were a mechanism for controlling land use activities on those areas that may have had an adverse impact on water quality in a water storage, lake or groundwater area.

However, the DCA provisions in the Water Act duplicated the role of planning schemes, local planning policies and other SPA planning instruments. Additionally, high risk and larger developments are regulated under the *Environmental Protection Act 1994*.

Consequently, the *Land, Water and Other Legislation Amendment Act 2013* (LWOLA) removed DCAs from the Water Act. To give full effect to the LWOLA, the SPR must also be amended to remove references to DCAs.

New Statutory guideline for making and amending local planning instruments

Sections 5, 6 and 27(2) of the *Sustainable Planning Regulation 2009* prescribe the guideline for making or amending a planning scheme, planning scheme policy or priority infrastructure plan and making a temporary local planning instrument as 'Statutory guideline 01/13 Making and amending local planning instruments' (SG01/13).

The objective of SG01/13 is to make clear the process for making or amending a local planning instrument, which will give clarity to users and ensure the process is efficient for both local governments and the minister.

Achievement of policy objectives

Operations and requirements under the State Assessment and Referral Agency (SARA)

The following amendments achieve the policy objective to ensure the operations align with the policy intent of SARA by:

- inclusion of additional references in Schedule 3 to clarify circumstances pre and post the commencement of SARA;
- clarifying the assessment requirements for applicants when the chief executive is the assessment manager or referral agency. Amendments will clarify to applicants and assessing authorities which codes, laws and policies or prescribed matters may apply when assessing development applications which relate to a wild river area or for the clearing of native vegetation;
- specifying nil-fees for applications involving certain vegetation clearing and works in a coastal management district. This is consistent with the pre-SARA fee regime, but in the transition to SARA, the nil-fees were not specified in Schedule 7A;
- replacing the term 'canal' with 'artificial water ways' to correct a misinterpretation that was made during the translation of fees into Schedule 7A for the SARA arrangements. The amendments will ensure that the pre-SARA fee structure, which is based on the previously existing fees that were administered by state agencies for different types of development, is able to be applied as intended;
- clarify certain application fees, related to operational work for tidal work or waterway barrier works, to ensure that it is clear when these fees are applicable;
- correcting an unintended consequence in the SARA provisions that makes development which was once able to be made exempt from assessment, now

assessable under the SARA provisions. In summary, the provision relates to the granting of exemption certificates by the chief executive of the *Coastal Protection and Management Act 1995* (CPMA), where the chief executive (CPMA) was assessment manager or concurrence agency. The amendment is required to ensure that the equivalent of that original process can be undertaken by the chief executive of SPA so that development can be exempted, as per the original policy intent;

- amending the definition of an 'urban area' so that the chief executive administering SPA, rather than the chief executive of the *Vegetation Management Act 1999* is authorised to declare an area to be an "urban area". If an area is defined as an "urban area", clearing for an urban purpose is exempt from state assessment. This amendment is consistent with the principles behind the development assessment process under SARA with the chief executive administering SPA making these decisions.

State Development Assessment Provisions (SDAP)

The policy objective is achieved by ensuring the SPR prescribes and coincides with the amended version of the SDAP to give it effect. The amendments to the SDAP will reflect the changes to state government policy on native vegetation clearing, amongst other amendments, including:

- consequential amendments to reflect the legislative changes of the VMFAA, including the insertion of performance outcomes for the new clearing purposes of high value agriculture, irrigated high value agriculture and necessary environmental clearing;
- ensuring that offset opportunities are consistent across clearing purposes and performance outcomes. Appendix A - Vegetation offset policy, which forms part of Module 8 of the SDAP, has also been updated to reflect the changes made; and
- refining and streamlining the assessment tables and reference tables by removing duplication and unnecessary detail in Module 8;
- deletion of three state codes associated with the removal of six referral triggers under schedule 7 of the SPR and the commencement of the State Planning Policy;
- redrafting of certain provisions to ensure intended outcomes for the development are more clear;
- inclusion of criteria related to wild river areas that were unintentionally omitted from the first version of the SDAP, as carried across from the existing state government wild rivers code; and
- updates to reference documents to ensure current version are listed.

Amendments to reflect the single State Planning Policy

The policy objectives are achieved through amendments to the SPR which remove references to the existing state planning policies that will be repealed at the same time as commencement of the State Planning Policy.

Reforms to the vegetation management framework

The policy objectives are achieved by ensuring the SPR reflects current state government policy on native vegetation clearing, including:

- changing the lot size that triggers a material change of use (MCU) and reconfiguring a lot (RaL) development application from 2 hectares or greater to 5 hectares or greater;
- updating existing prescribed fees for MCU and RaL applications to reflect the amendments to the lot sizes triggered for assessment;
- introducing application fees for the new clearing purposes – high value agriculture, irrigated high value agriculture, and necessary environmental clearing;
- inclusion of new exemptions for the clearing of vegetation, such as:
  - clearing that is necessary to remediate contaminated land that is identified on the Environmental Management Register or Contaminated Land Register;
  - clearing that is necessary to carry out work to remediate abandoned mine sites in accordance with section 344A of the *Mineral Resources Act 1989*; and
  - clearing of vegetation after natural disasters and clearing for land survey works and geotechnical investigation works; and
- broadening some existing exemptions to make them consistent across additional land tenures and provide greater flexibility to land managers.

Operational works that take or interfere with water in a watercourse, lake or spring

The policy objective is to streamline regulatory approvals by making the following types of operational works no longer assessable development for the purposes of SPA (i.e. not assessable or self-assessable):

- works associated with activities that do not require an authorisation under chapter 2, part 2, division 1A of the Water Act;
- replacement pumps (like-for-like replacement);
- works associated with properly specified water entitlement (e.g. states a rate of take, or limitations on the level of interference that can occur); or
- the taking of water is managed under a resource operations licence, an interim resource operations licence or a distribution operations licence (granted under the Water Act).

Amendments to the SPR will provide that these certain operational works no longer require a development approval, since it will be regulated by the water entitlement.

Assessment of state transport infrastructure, strategic airports and aviation facilities and certain tidal work

The policy objective is to ensure that the state government does not duplicate assessments undertaken by local government under the single State Planning Policy framework.

The single State Planning Policy provides that local government has the statutory obligation for the assessment of state transport infrastructure (specifically public passenger transport), strategic airports and aviation facilities, and certain tidal work for matters related to marine pollution, as an interim measure until the local government planning scheme is updated to reflect the plan making policies of the single State Planning Policy.

Currently, the SPR 'triggers' the abovementioned transport matters by requiring assessment by the chief executive administering SPA (under the SARA arrangements). The proposed amendment will remove the abovementioned transport matters from the SPR. The single State Planning Policy will provide local government with the necessary statutory criteria for assessing development applications in this instance.

It is necessary to remove these matters in the SPR so there is no duplication of referrals to local government and the chief executive when the single State Policy takes effect.

Removal of declared catchment areas (DCAs)

Full implementation of the DCA changes introduced by the LWOLA is achieved by removing references to DCAs from schedules 7, 7A and 26 of the SPR.

New Statutory guideline for making and amending local planning instruments

Changing the date and title of SG01/13 in the *Sustainable Planning Regulation 2009* will prescribe the use of a new version of the guideline for making and amending a planning scheme, planning scheme policy, priority infrastructure plan or making a temporary local planning instrument.

Consistency with policy objectives of authorising law

The amending regulation is consistent with the main objects of the *Sustainable Planning Act 2009* that is to seek to achieve ecological sustainability, by managing the process by which development takes place, including ensuring appropriate development is considered exempt development so as to deliver efficient, effective and sustainable development outcomes.

Inconsistency with policy objectives of other legislation

The regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

This package of amendments reflects broader government reforms to simplify the planning and development framework and reduce the regulatory burden on routine vegetation management activities.

The amendments will have the following benefits:

- greater certainty to industry and government about development assessment requirements, including prescribed fees, for development applications referred to SARA;
- certain state interests in transport infrastructure will be assessed by local governments, ensuring planning assessment occurs with local interests in mind;

- regulatory burden on government and industry is reduced by:
  - removing the need to refer certain development applications to SARA for the assessment of certain vegetation clearing in line with reducing regulatory burden under the vegetation management reforms;
  - providing exemptions for the clearing of vegetation in certain circumstances, such as clearing to undertake works to remediate contaminated land or works to minimise risks posed by abandoned mine;
  - removing duplication of approvals under the SPR for certain operational works that take or interfere with water in a watercourse, lake or spring, as this is effectively regulated under the Water Act; and
  - removing duplication in the management of water quality and land use in water supply storage catchments.

There will be some new fees for a proponent where an application is made under new vegetation clearing purposes. However, this has been the subject of consultation under the VMFAA and the fees are charged according to the existing partial cost-recovery fee structure.

The amendments remove or reduce the need to make, refer or assess certain development applications relating to certain transport infrastructure matters, vegetation clearing and certain operational works that take or interfere with water. As a result, individuals, industry and government will have fewer or nil costs in progressing those particular developments.

<u>New Statutory guideline for making or amending local planning instruments</u>

The benefits of the amended SG01/13 are:
- Reflecting and aligning with the State planning policy.
- Clarifying State planning instruments and their reflection in local planning instruments.
- Empowering local governments by requiring them to develop the summary of State planning instruments including State interests and how these will be addressed or not within the proposed local planning instrument.
- Clarifying what is required for consideration as part of the state interest review.
- Ensuring that the transitional arrangements relating to structure plans for declared master planned areas are addressed and reflected.
- Streamlining the actions of local government following public notification and what it sends to the Minister.
- Removing the requirement for certified hard copies of adopted local planning instruments being sent to the chief executive and only requiring electronic copies.

Consistency with fundamental legislative principles

The subordinate legislation is consistent with the fundamental legislative principles of the *Legislative Standards Act 1992*.

Consultation

SARA. SDAP and the State Planning Policy

Consultation with state agencies and the public relating to the operation of SARA, SDAP and the single State Planning Policy have occurred since 2012. The proposed amendments address the residual operational and administrative matters which were expected to arise once SARA and the State Planning Policy came into effect.

Reforms to the vegetation management framework

Targeted consultation with key government agencies was undertaken in relation to the VMFAA. The Government also committed to undertaking targeted consultation with key stakeholders on the reforms, including with the development of self-assessable codes and SDAP requirements for the new clearing purposes.

An industry working group consisting of agricultural industry groups and natural resource management groups was subsequently established and provided feedback on the reforms. Public submissions in relation to the reforms proposed under the VMFAA were also call for during the parliamentary committee process.

Operational works that take or interfere with water in a watercourse, lake or spring

Consultation with key industry stakeholders and government agencies was undertaken Queensland Farmers' Federation (QFF), AgForce Queensland Resources Council, Australian Petroleum Production and Exploration Association, SEQ Water and Sunwater have been consulted on the proposed reforms.

These stakeholder groups are supportive of the proposed reforms. Some, such as QFF and AgForce, have noted that the proposed reforms are in line with their previous feedback encouraging a focus on reducing red tape for landholders.

Assessment of state transport infrastructure, strategic airports and aviation facilities and certain tidal work

Consultation with state agencies and the public relating to the operation of SARA and the State Planning Policy have occurred since 2012. The proposed amendments address the intent to ensure that upon the commencement of the State Planning Policy, certain matters are assessed by local governments, against state prescribed criteria, with local interests in mind.

Removal of declared catchment areas (DCAs)

The amendments are consequential amendments resulting from the removal of DCAs from the Water Act by the LWOLA.

Industry and relevant State government agencies were consulted on the removal of DCAs during the development of the LWOLA. Representation from peak industry bodies included AgForce, Australian Petroleum Producers and Exploration Association, Australian Water Association, Canegrowers, Queensland Conservation

Council, QFF, Queensland Resources Council, SunWater and Seqwater. Wider notification also occurred as part of the Parliamentary Committee Inquiry by the Agriculture, Resources and Environment Committee into the *Land, Water and Other Legislation Amendment Bill 2013.*

New Statutory guideline for making or amending local planning instruments

Operational officers of the Department of State Development, Infrastructure and Planning were consulted on the proposed changes for SG01/13. They were supportive.

De-amalgamating local government have also been informally made aware of the changes and how it effects the progression of any local planning instruments currently being progressed under the statutory guideline.

The community has not been consulted on SG01/13. The process for the community's involvement and opportunity to comment on the making or amending of a planning scheme or planning scheme policy is contained within SG01/13.