

Sustainable Planning Amendment Regulation (No. 1) 2014

Explanatory Notes for SL 2014 No 38

made under the

Sustainable Planning Act 2009

General Outline

Short Title

This regulation may be cited as the *Sustainable Planning Amendment Regulation (No. 1) 2014*.

Authorising law

This regulation is made under section 232(2) and 763 of the *Sustainable Planning Act 2009*.

Policy objectives and the reasons for them

Section 226B of the *Youth Justice Act 1992* provides that a court which makes a detention order against a child may immediately suspend the order and order that the child be released into a boot camp program approved by the chief executive of the Department of Justice and Attorney-General under section 226E(1). Under section 226E(3)(a) of that Act, a boot camp program must include a one month placement at a boot camp centre.

The power for courts to divert young offenders into a boot camp program was introduced by the *Youth Justice (Boot Camp Orders) and Other Legislation Amendment Act 2012* to provide an alternative means, other than detention, of holding young offenders accountable for their actions and reducing future offending. The youth boot camp diversion program is initially being trialled for a two year period.

Section 226B(3) of the Act provides that a court may only order a child's release into a boot camp program if pre-sentence advice from the chief executive indicates an appropriate boot camp centre is available immediately on the child's release.

The effectiveness of the youth boot camp diversion program trial in providing a viable alternative to detention therefore depends directly on the availability of approved boot camp centres at the time courts are considering the sentencing options in relation to young offenders appearing before them. To prevent any

avoidable delay in providing available places in appropriate boot camp centres from hampering courts' capacity to give full effect to their diversionary power—thereby inhibiting the trial's full implementation—it is essential that boot camp centres are able to be developed in a timely, efficient and effective way.

To this end, this amendment regulation seeks to ensure planning and development restrictions do not unduly delay the operational establishment of boot camp centres. Development of boot camp centres will nevertheless still occur within ordinary development approval and compliance process.

This policy imperative arises specifically in relation to the development of a boot camp centre at Lincoln Springs Station, west of Ingham. The *Youth Justice Amendment Regulation (No. 1) 2013* has expanded eligibility to participate in a boot camp program to include children who ordinarily reside in the Townsville region. To give effect to this expansion, the boot camp centre at Lincoln Springs Station will accommodate program participants from both the Cairns and the Townsville regions. Any undue delay in the centre's development would mean young offenders from those two regions were prevented from participating in the diversion program and remained subject to being sentenced to a period of detention.

Achievement of policy objectives

The amendment regulation achieves these policy objectives by amending schedule 4 of the *Sustainable Planning Regulation 2009* to include boot camp centres in the list of development which—if they meet specified criteria regarding notice and certain impacts of the development—cannot be declared by a planning scheme, temporary local planning instrument or preliminary approval to be self-assessable development, development requiring compliance assessment, assessable development or prohibited development. This has the effect under section 231(2) of the *Sustainable Planning Act 2009* of establishing that boot camp centres are exempt development for the purposes of the integrated development assessment system, meaning under section 235 of that Act that they do not require development permits nor are required to comply with planning instruments, other than State planning regulatory provisions.

However, a boot camp centre development may still be assessable development if the chief executive of the agency in which the *Sustainable Planning Act 2009* is administered is an assessment manager for the development under schedule 3 of the *Sustainable Planning Regulation 2009*. This ensures boot camp centre developments with significant potential planning and environmental impacts are subject to appropriate scrutiny and compliance requirements.

Amendment of the *Sustainable Planning Regulation 2009* as proposed has the effect of preventing development of the Lincoln Springs Station boot camp centre from being declared either prohibited development or a type of development requiring compliance with more onerous development approval processes, minimising any potential delays to delivery of the diversion program trial at this location.

This is considered an appropriate and proportionate means of achieving the policy objective, as it expedites development of a facility essential to

implementation of the trial while ensuring its development still meets appropriate planning standards.

Consistency with policy objectives of authorising law

Under the *Sustainable Planning Act 2009*, exempt development is intended to be the 'default' category of development, with any other category of development required to be declared under one of several instruments recognised by the Act. This ensures the regulatory requirements imposed on any given development are proportionate and not unduly onerous, having regard to their potential environmental impact.

Ensuring boot camp centres are not able to be declared either prohibited development or a type of development involving unduly onerous approval processes is consistent with the policy intent of the *Sustainable Planning Act 2009*, having regard to the centres' critical importance to implementation of the diversion program trial under the *Youth Justice Act 1992* and their negligible environmental impact.

Inconsistency with policy objectives of other legislation

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

Alternative ways of achieving policy objectives

The option of maintaining the status quo—that is, not seeking to prevent boot camp centres being declared to be self-assessable development, development requiring compliance assessment, assessable development or prohibited development—was considered. This option is not considered appropriate, as it could involve the Lincoln Springs Station boot camp centre being subjected to an unduly onerous development approval process, substantially delaying its opening and implementation of the diversion program trial at this location.

Benefits and costs of implementation

The proposed amendment will support courts to give full effect to their sentencing powers under section 226B of the *Youth Justice Act 1992*. It will do this by ensuring the chief executive can make available to courts in a timely fashion the facilities they require to exercise their discretion under section 226(1) of the *Youth Justice Act 1992* to divert children convicted of offences away from detention and into the diversion program trial.

The amendment does not involve any additional costs. As noted in the explanatory notes to the *Youth Justice Amendment Regulation (No. 1) 2013*, the cost of expanding eligibility to participate in a boot camp program to include children who ordinarily reside in the Townsville region will be met from within existing resources of the Department of Justice and Attorney-General.

Consistency with fundamental legislative principles

The regulation is consistent with fundamental legislative principles.

Consultation

The Office of Best Practice Regulation in the Queensland Competition Authority was consulted, and confirmed that the amendment regulation is unlikely to have a significant adverse regulatory impact.