

Sustainable Planning Amendment Regulation (No. 2) 2014

Explanatory notes for SL 2014 No. 47

made under the

Sustainable Planning Act 2009

General Outline

Short title

Sustainable Planning Amendment Regulation (No. 2) 2014

Authorising law

Sections 232(2) and 254(1) and 763 of the *Sustainable Planning Act 2009*.

Policy objectives and the reasons for them

The overall objective of the amendment regulation is to simplify and streamline the planning and development system under the *Sustainable Planning Act 2009* and to ensure that the State Assessment and Referral Agency (SARA) can operate as efficiently and effectively as intended.

The regulation will facilitate and streamline the efficient and timely construction of the underground busway and railway infrastructure project (the project) known as BaT along the route shown on the map called *Draft Reference Design - March 2014*. The amendment regulation will reduce duplication between local and State government development assessment processes for this project.

The regulation will also reduce duplication in referrals to the SARA relating to development within 25m of a State-controlled road and streamline SARA processes by correcting a previous drafting oversight caused through amendments to the *Sustainable Planning Regulation 2009* (SPR) in December 2013, in which referral triggers were removed from Schedule 7, however cross references to these were not removed at that time.

Further, as part of the continuous improvement of SARA, a review of the business processes and matters of interest relating to State transport infrastructure referral triggers was

undertaken by the Department of Transport and Main Roads (DTMR) and identified potential improvements to reduce the number of referrals to SARA through the removal of certain use triggers, based on thresholds (as prescribed in Schedule 9 of (SPR).

Additional amendments to the definitions of ‘railway’ and the ‘State development assessment provisions’ (SDAP) publication date in Schedule 26 of the SPR, are necessary to remove confusion, ensure consistency and align with the changes in government policy expressed through an updated version of SDAP.

Delaying commencement of the amendment regulation to 28 April 2014 is required to ensure that stakeholders are adequately informed of upcoming changes in relation to referral triggers to ensure the continued smooth operation of SARA.

Achievement of policy objectives

The amendments to the SPR support achievement of the overall policy objectives by:

- exempting all aspects of development for the construction of the underground busway and railway infrastructure project known as BaT, from development assessment against a local planning instrument; noting that the amendment will not affect any requirements for the project to obtain relevant State and Commonwealth development and environmental approvals;
- removing the requirement for development within 25m of a State-controlled road to be referred to SARA twice under Schedule 7, so that where a referral has already been made at material change of use stage, it will not be required to be referred again for building work;
- removing cross referencing to obsolete referral triggers in Schedule 7 as a consequence of referral trigger reduction amendments made in December 2013;
- removing three use referral triggers (i.e. food and drink outlet, health care services and marina), based on thresholds as prescribed in Schedule 9, that are either low risk or the potential impacts of these types of developments are adequately considered and assessed through other existing regulated means;
- aligning the definition of ‘railway’ in Schedule 26 with the definition of ‘rail transport infrastructure’ under Schedule 6 of the *Transport Infrastructure Act 1994* (TIA);
- amending the definition of SDAP to give effect to the updated version of SDAP, which is the most current and accurate version of the document.

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 the process is accountable, effective and efficient and delivers sustainable outcomes.

Inconsistency with policy objectives of other legislation

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

Alternative ways of achieving policy objectives

Three alternative policy options were considered in relation to the underground busway and railway infrastructure project known as BaT, including the use of:

- community infrastructure designation;
- priority development areas; or
- Ministerial call in powers.

However, each of these options was rejected due to time and resource implications that would adversely impact on the timely and cost effective delivery of the project.

The amendment regulation represents the most efficient and effective way to achieve the required outcome – i.e. to exempt the construction of the project from development assessment against a local planning instrument; thereby removing duplication and streamlining the delivery of the project. Similar amendments to Schedule 4 of the SPR have previously been made for the Northern Busway, Airport Link, Gold Coast Light Rail and Moreton Bay Rail Link.

The amendments in relation to referral triggers and definitions can only be given effect through the amendment regulation.

Benefits and costs of implementation

The amendment regulation reflects broader government reforms to simplify the planning and development framework and reduce regulatory burden by removing unnecessary red tape, streamlining and clarifying development assessment and referral processes, and removing inconsistencies and redundant provisions.

The regulation will have the following benefits:

- eliminates unnecessary duplication between local and State government development assessment processes for the underground busway and railway infrastructure project known as BaT and reduces the regulatory burden of assessment against a local planning instrument. This reduced regulatory burden will support the delivery schedule and produce savings for government in overall project delivery costs by providing increased certainty for the project bidding phase;
- minimises the duplication of referrals made to SARA for development within 25m of a State-controlled road without compromising development outcomes;
- streamlines and improves the overall efficiency of the SARA referral process in accordance with the objectives of SARA by removing certain unnecessary, low risk or duplicated referral triggers/use triggers based on thresholds prescribed in Schedule 9 of the SPR; and
- improves clarity across legislation and policy documents to enable more simplified interpretation and consistency in application of definitions under Schedule 26 of the SPR.

Consistency with fundamental legislative principles

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

Consultation

To identify potential improvements relating to State transport infrastructure referral triggers, DTMR undertook consultation with various local governments, industry associations, private companies and SARA. Key stakeholders included the Local Government Association of Queensland, Property Council of Australia, Urban Development Institute of Australia, Housing Industry Association, Place Design Group Saunders Havill Group, Stockland Development Pty Ltd and various individual local governments.

DTMR also consulted with Brisbane City Council and obtained support regarding the amendments to exempt the underground busway and railway infrastructure project known as BaT, from development assessment against a local planning instrument.

Consultation has not been undertaken with respect to the correction of the 'railway' definition or the removal of cross references to obsolete referral triggers as these changes are minor in nature and are required to correct an error and previous drafting oversight, rather than change the meaning or intent of the regulation. Updating the publication date for SDAP in the regulation is an administrative amendment arising from changes to SDAP. The changes to SDAP occur through a separate process in consultation with State agencies.

The Office of Best Practice Regulation (OBPR) was consulted in relation to the need to prepare a Regulatory Impact Statement (RIS) and has confirmed that a RIS is not required. OBPR confirmed that the amendment to change the definition of SDAP (to include a new publication date), is a consequential amendment and is therefore excluded from the RIS system.