

Sustainable Planning Amendment Regulation (No. 6) 2014

Explanatory notes for SL 2014 No. 236

made under the

Sustainable Planning Act 2009

General Outline

Short title

The short title of the regulation is the *Sustainable Planning Amendment Regulation (No. 6) 2014*

Authorising law

Section 26, 94A, 117, 232, 251(a), 254(1), 255A(2)(b), 255B(1)(b), 255B(2)(b), 260, 272 and 763 of the *Sustainable Planning Act 2009* (SPA).

Policy objectives and the reasons for them

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

Statutory guideline for making and amending local planning instruments

The amendment to the *Sustainable Planning Regulation 2009* (SPR) gives effect to the revised version of the statutory guideline.

Five-year review of local government infrastructure plans (LGIP)

The amendment prescribes both the ‘Statutory guideline 03/14: local government infrastructure plans’ and the ‘Statutory guideline 04/14: making and amending local planning instruments’ as the guidelines to be used by local government when undertaking a LGIP review in accordance with section 94A of SPA.

State development assessment provisions

The amendment gives effect to the revised publication date of the state development assessment provisions (SDAP). SDAP contains the matters that the Chief Executive may have regard to when assessing a development application through SARA and are endorsed by the Director-General of the Department of State Development, Infrastructure and Planning.

State Planning Policy

The Deputy Premier approved amendments to the State Planning Policy (SPP) on 1 July 2014 in accordance with section 26 of SPA. To give effect to the latest version of the SPP, and to avoid the need for regular SPR amendments, the reference in the SPR has been changed from 'State Planning Policy 2013' to 'State Planning Policy'.

Queensland Development Code amendments

The Queensland Development Code (QDC) consolidates building standards specific to Queensland in a single document and is adopted under section 13 of the *Building Act 1975*. Following amendments to the Mandatory Part 4.1: Sustainable Buildings of the QDC on 1 February 2013, the QDC reference in Schedule 7, Table 1, Item 28 of the SPR are out of date. To provide consistency with the current QDC, the amendment refers to 'P12' instead of 'P13' for end of trip facilities.

Low-risk tidal works in Gold Coast waters

A review of SARA referral triggers highlighted the duplication of assessment processes relating to low-risk operational work (tidal works) on the Gold Coast. Low-risk tidal works are considered to be works for the following:

- private single vessel pontoons, jetties and boat ramps
- drainage outlets
- stormwater outlets.

Previously, tidal works in Gold Coast waters triggered both SARA (under Schedule 7, Table 2, Item 15) and the Gold Coast Waterways Authority [GCWA] (under Schedule 7, Table 2, Item 15B) as concurrence agencies. This duplication has been removed to ensure that these low-risk applications are only assessed by the GCWA. Other tidal work applications under Schedule 7 are still required to be referred to both SARA and the GCWA.

Referral triggers and thresholds for development impacting State transport infrastructure

The SARA referral trigger for mixed use developments impacting on state transport infrastructure has been removed as a result of a review into the streamlining the SARA development assessment process.

The review of Schedule 9 threshold triggers also identified that the threshold of 5000m² TSA (total site area) for office developments has resulted in relatively small office developments that have negligible transport impacts being referred to SARA due to the land area of the subject site. The amendment removes these kinds of applications from the SARA referral process, and instead focuses on developments with a larger 'gross floor area' (GFA) as

defined by SPA. The new threshold for office developments is 12,000 m² GFA and 6000 m² GFA for different local government area categories respectively.

A new referral trigger for hardware and trade supplies better aligns the SPR with the use definitions under Queensland Planning Provisions version 3.1 (QPP). For example, a large hardware and trade supply store can be categorised under the QPP as either a 'showroom' or 'hardware and trade supplies'. However, Schedule 9 only provided for the chief executive to be a concurrence agency for development applications categorised as a 'showroom'. This amendment ensures that large hardware and trade supply developments will be referred to the State for assessment of impacts on state transport infrastructure.

Clarification of exemptions for specific State transport infrastructure projects

The objective of the amendment to Schedule 4, Table 5, Items 10, 10A, 10B and 10C of the SPR is to streamline development assessment processes for state transport infrastructure projects that have received Ministerial approval under relevant state transport legislation (e.g. *Transport Infrastructure Act 1994*).

Under Schedule 4, Table 5 of the SPR, all aspects of development for the construction of identified state transport infrastructure cannot be made assessable under a local government planning scheme, temporary local planning instrument or a preliminary approval to which section 242 of SPA applies.

The amendment ensures that identified state transport infrastructure approved under State legislation, such as the Gold Coast Rapid Transit and Moreton Bay Rail Link, is able to be delivered and maintained in the most cost effective and efficient manner by ensuring the State is not required to obtain further approvals from local government. Local governments are already consulted on these projects through Department of Transport and Main Roads (TMR) governance arrangements and/or Coordinator-General assessment processes.

To remove any doubt, the amendment clarifies that in addition to the construction of the identified infrastructure, the use is also exempt from assessment under a local planning scheme. Furthermore, the reference in Schedule 4, Table 5, Item 10A to 'all aspects of development carried out before 1 July 2015' for the Gold Coast Rapid Transit project has been removed to ensure that the ongoing use of the infrastructure is exempt.

Amendments to SARA fees

The *State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Act 2014* (Red Tape Reduction Act) repealed the *Wild Rivers Act 2005* upon commencement. The Red Tape Reduction Act specifies the amendment or removal of five development assessment triggers relating to wild river areas in Schedules 6 and 7 of the SPR. The amendment removes the fees associated with the wild river area triggers from Schedule 7A.

Since the commencement of the new SARA fee regime on 4 August 2014, the following administrative errors and fee interpretation issues in Schedule 7A have been identified:

- Fee thresholds where the lowest fee was charged for applications comprising 'up to 4 dwellings'. The intent for this fee category was for applications for small-scale residential

developments between 1-4 dwellings to pay the lowest fee. The amendment specifies that this fee applies to applications for ‘at least 1 dwelling but not more than 4 dwellings’ to better articulate the policy intent.

- The need for further clarity around the fees for aquaculture development with a resource allocation authority. The intent for this fee category was to afford a lower fee to those applicants with a resource allocation authority. However, the wording in Schedule 7A resulted in applicants paying a higher fee where they have sought a resource allocation authority. The amendment to the SPR corrects this wording to align with the original Decision Regulatory Impact Statement (RIS), which was approved by the Office of Best Practice Regulation on 12 May 2014.
- An error in Schedule 7A, Part 2, Item 32(g) (‘otherwise’) involving the fee for a material change of use for ‘certain aquaculture’ development. This fee has been changed from \$2823 to \$11 291 to align with the fee prescribed in the original Decision RIS.

Achievement of policy objectives

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

Statutory guideline for making and amending local planning instruments

Changing the date and title of the statutory guideline for making and amending local planning instruments prescribes the use of the updated version of the guideline.

Five-year review of local government infrastructure plans (LGIP)

The amendment prescribes the ‘Statutory guideline 03/14: local government infrastructure plans’ and the ‘Statutory guideline 04/14: making and amending local planning instruments’ as the guidelines to be followed when conducting a LGIP review, which will clarify the process for local government.

State development assessment provisions

The amendment gives effect to the latest version of the state development assessment provision (SDAP), which allows SARA and the development industry to use the current version of the document.

State planning policy

The amendment gives effect to the latest version of the State Planning Policy (SPP) and allows future amendments to the SPP to occur without the need to amend the regulation.

Queensland Development Code (QDC) amendments

Amending the reference to the QDC performance requirement for end of trip facilities in Schedule 7, Table 2, Item 28 ensures consistency between the SPR and the QDC Part 4.1.

Low-risk tidal works in Gold Coast waters

Amending Schedule 7, Table 2, Item 15 removes SARA as a concurrence agency for development applications for certain ‘low-risk’ operational work (tidal works) applications in Gold Coast waters. This removes assessment duplication for low-risk tidal works applications and will result in lower applications fees for some applicants.

Referral triggers and thresholds for development impacting State transport infrastructure

The amendment achieves the policy objective by removing duplicated SARA triggers, ensuring trigger thresholds are appropriate for office developments, and ensuring that applications for large 'hardware and trade supplies' stores are referred to SARA to adequately assess their impact on state transport interests.

Clarification of exemptions for specific State transport infrastructure projects

The amendment to Schedule 4, Table 5, Items 10, 10A, 10B and 10C of the SPR achieves the policy objective by providing that, in addition to their construction, all aspects of development for the identified state transport projects cannot be made assessable under a local government planning scheme, temporary local planning instrument or a preliminary approval to which section 242 of SPA applies.

Amendments to SARA fees

The amendments support achievement of the overall policy objectives by:

- removing fees for wild rivers where the triggers have been amended or deleted
- removing ambiguity in fee provisions relating to the number of domestic dwellings for which the lowest fee is charged for some triggers
- amending administrative errors in Schedule 7A for aquaculture developments.

Consistency with policy objectives of authorising law

The amending regulation is consistent with the main objects of the *Sustainable Planning Act 2009* (SPA) 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.

Benefits and costs of implementation

This package of amendments reflects the 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:

- Providing up-to-date references for state planning instruments and guidelines given effect by, or referred to in the SPR, including the statutory guideline for making and amending local planning instruments, the state development assessment provisions, and the state planning policy.
- Clarifying the procedure to be followed by local government for the review of their local government infrastructure plan, as required by section 94A of SPA.

- Eliminating unnecessary duplication between State Government development assessment processes for tidal works where the Gold Coast Waterways Authority also has jurisdiction. This will result in fewer development applications requiring assessment by SARA, saving time and resources. The development industry will also realise cost savings associated with the removal of a referral process and assessment fee.
- Ensuring that, in addition to the construction of identified state transport infrastructure, the use of this infrastructure cannot be made assessable development under a local planning scheme. This benefits both State and local government as resources, time and money will potentially be saved as a result of not having to prepare and assess development applications for infrastructure projects, such as the Gold Coast Light Rail project, which already have approval under State transport legislation. The amendment will also provide certainty for the Queensland Government and reduce risk for Public Private Partnerships contracted to operate state transport infrastructure.
- Ensuring the SARA referral triggers relating to thresholds for state transport infrastructure in Schedule 9 are appropriate and duplication with other referral triggers is removed. The amendments will reduce regulatory burden for the Queensland Government and the development industry as small scale office developments will no longer require referral to SARA for assessment of impacts on State transport interests. The amendments will also ensure that large hardware and trade supply store can be adequately assessed for their impacts upon impacts on State transport infrastructure.
- Providing a more consistent fee framework for development applications will provide greater clarity for applicants about assessment fees for development applications to be assessed by, or referred to, SARA.

Consistency with fundamental legislative principles

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

Consultation

Updated references to the Statutory Guidelines, SDAP, SPP

The Department of State Development, Infrastructure and Planning (DSDIP) has conducted internal consultation on the amendments relating to updated references to these State planning instruments and guidelines and all parties support the amendments.

Five-year review of local government infrastructure plans

DSDIP has conducted internal consultation on prescribing the ‘Statutory guideline 03/14: local government infrastructure plans’ and the ‘Statutory guideline 04/14: making and amending local planning instruments’ as the guidelines to be followed when conducting an LGIP review. All parties support the amendments.

Low-risk tidal works in Gold Coast waters

DSDIP, TMR [including Maritime Safety Queensland] and GCWA were consulted on the amendments to tidal works referral triggers in Schedule 7. All parties support the amendments.

Referral triggers and thresholds for development impacting State transport infrastructure

The amendments to referral triggers under Schedule 9 have been agreed between TMR and DSDIP following a review of how SARA triggers relating to State transport infrastructure are currently operating.

Clarification of exemptions for specific State transport infrastructure projects

Both DSDIP and TMR supported the proposed amendment.

Amendments to SARA fees

A Consultation Regulatory Impact Statement (RIS) was prepared in accordance with RIS Guidelines and released for public consultation from 3 February to 5 March 2014. Sixteen submissions were received as a result of the public consultation. These submissions, and the final fee proposal, were addressed in the Decision RIS. The Decision RIS was assessed as adequate to support the regulatory proposal by the OBPR on 12 May 2014. The proposed amendments to Schedule 7A are consistent with the Decision RIS.

No consultation on the removal of the fees for the wild rivers triggers has been undertaken as the removal of these fees is a consequence of the repeal of the *Wild Rivers Act 2005*.