

Sustainable Planning Amendment Regulation (No. 1) 2015

Explanatory notes for SL 2015 No. 14

made under the

Sustainable Planning Act 2009

General Outline

Short title

The short title of the regulation is the *Sustainable Planning Amendment Regulation (No. 1) 2015*

Authorising law

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

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.

Inclusion of the Toowoomba Second Range Crossing in Schedule 4, table 5

The objective of including the Toowoomba Second Range Crossing in Schedule 4, Table 5 is to ensure that all aspects of the development 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 exemption is provided on the basis that Toowoomba and Lockyer Valley regional councils have worked collaboratively with the State in designing the alignment of the road network (including 16km of local government roads) and developing mitigation strategies for any environmental impacts resulting from the project. Council officers are in regular contact with the project team and both councils have confirmed they support the proposed regulation amendment. The amendment will prevent duplication of the assessment process already undertaken by the State in conjunction with the affected local governments.

Update the project title and map location for the Gold Coast Rapid Transit project

The title of the project and map location has changed. The Gold Coast Rapid Transit project is now referred to as the Gold Coast Light Rail, as defined and mapped in Schedule 7A of the *Transport Operations (Passenger Transport) Regulation 2005*. The amendment updates the title of the project and map location in Schedule 4, table 5, item 10A.

Reconfiguration of a lot and clearing vegetation

SARA found there was a high degree of variability in the interpretation of Schedule 7, table 2, item 4. The trigger is intended to apply to applications where *at least one* existing individual lot in the application is 5ha or larger. In practice, applications are referred where the *cumulative total of all lots* in the application was 5ha or larger and no individual lot was 5ha or larger. The amendment rewords the trigger to clarify that an application should only be referred where it includes an existing individual lot of 5ha or larger. The intent of the amendment is to remove the incorrect referrals from the SARA process.

Amend Schedule 4 to address recommendation 7.18 of the Queensland Floods Commission of Inquiry

Recommendation 7.18 of the Queensland Floods Commission of Inquiry (QFCoI) sought to amend Schedule 4 such that works with the potential to divert or alter floodplain flow or storage characteristics were not exempt from assessment under a local government planning scheme. In examining the Department of Transport and Main Roads (DTMR) Ipswich Motorway upgrade as a case study, QFCoI found there was some confusion around the extent of the exemption afforded under the legislation to public sector entities as opposed to a private sector entity for the same project.

DTMR and the Department of Infrastructure, Local Government and Planning (DILGP) consider that implementing the recommendation as suggested by the commission would result in inefficient or inconsistent decision making processes as DTMR transport infrastructure projects often extend across a number of local government boundaries. Furthermore, the impact of transport infrastructure on flooding is already a critical design factor in all DTMR projects.

The amendment will assist local governments in referring to all relevant sections of Schedule 4 when determining which parts of development are assessable under a local government planning scheme. Table 4, item 1 for public sector entity exemptions cross references community infrastructure exemptions; ensuring readers give consideration to both items. The outcome is to reinforce that the current exemption relates to a public sector entity and community infrastructure which do not require additional assessment through the planning scheme. The exemption does not apply to private sector development which is assessable under the planning scheme.

Remove the trigger for government supported transport infrastructure from Schedule 7, table 2, item 15

Applications triggered for referral under Schedule 7, table 2, item 15 are assessed for impacts on maritime safety by Regional Harbour Masters (RHM) or their delegate within DTMR. Applications triggered under this item include applications for government supported transport infrastructure, which are infrastructure projects undertaken by, on behalf of, or under contract with DTMR. DTMR has developed a mandatory internal operational policy which requires the project managers of government supported transport infrastructure to consult with the relevant RHM about any impacts the project may either temporarily or permanently have on maritime safety matters. Any instruction issued by the RHM must be adopted by the project manager. The mandatory internal operational policy replaces the need for government supported transport infrastructure to be referred under this item. The amendment ensures applications for government supported transport infrastructure that are assessed against this mandatory internal policy are not also referred under this trigger.

Fee concessions for non-profit organisations with eligible developments

Currently SARA assesses fee concessions on the basis of an applicant's status as a non-profit organisation and the relevant part of the proposed development complying with definition of 'eligible development'.

Since the adoption of the new SARA fee structure in August 2014, there has been a significant number of requests received by the department to review how fee concessions for non-profit organisations are applied. Upon review by the department, many of these applications were agreed to have merit and were subsequently granted.

To avoid constantly amending the definition of eligible development whenever a new public benefit is identified, it is considered more efficient to assume that all developments of non-profit organisations have a public benefit. The amendment removes the concept of eligible development from the regulation.

To further streamline the process, the department has replaced the definition of non-profit organisation, with a new definition of registered non-profit organisation to align with the clear registration requirements which exist for non-profit organisations under state and federal legislation. The intent of the amendment is simplify the SARA assessment process for fee concessions.

Drafting error

Schedule 3, table 5, item 7 includes an error whereby the word 'port' is incorrectly included in the trigger and should be removed. The intent of the amendment is to clarify the trigger in the item.

Achievement of policy objectives

The amendments to the *Sustainable Planning Regulation 2009* (SPR) support the achievement of the overall policy objectives by:

Inclusion of the Toowoomba Second Range Crossing in Schedule 4, table 5

The amendment to Schedule 4, table 5 achieves the policy objective by ensuring all aspects of development for the Toowoomba Second Range Crossing 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 project can therefore be assessed, delivered and maintained in the most efficient and cost effective manner.

Update the project title and map location for the Gold Coast Rapid Transit project

The amendment updates the title of the project and map location in Schedule 4, table 5, item 10A. The amendment provides updated information to users of the SPR.

Reconfiguration of a lot and clearing vegetation

The amendment to Schedule 7, table 2, item 4 achieves the policy objective by removing applications incorrectly referred under the trigger. The amendment will result in lower application fees for some applicants and removes the departmental resourcing required to assess incorrect referrals.

Amend Schedule 4 to address recommendation 7.18 of the Queensland Floods Commission of Inquiry

The amendment to Schedule 4, Table 4, item 1 assists local governments in referring to all relevant sections of Schedule 4 when determining which parts of development are assessable under a local government planning scheme. The outcome is to reinforce that the current exemption relates to a public sector entity and community infrastructure which do not require additional assessment through the planning scheme. The exemption does not apply to private sector development which is assessable under the planning scheme. The amendment finalises the department's commitment to addressing this recommendation.

Remove the trigger for government supported transport infrastructure from Schedule 7, table 2, item 15

The intent is to amend the existing trigger so that applications for government supported transport infrastructure projects are not referred for maritime safety matters. The amendment will remove the duplication of assessment processes, as government supported transport infrastructure is already assessed through a mandatory internal operational policy.

Fee concessions for non-profit organisations

The amendment removes the concept of eligible development and replaces the definition of non-profit organisation with a new definition of registered non-profit organisation. The amendment will simplify the SARA assessment process for fee concession eligibility for non-profit organisations and broaden the types of development that qualify for fee concessions.

Drafting error

The amendment corrects the drafting error in Schedule 3, table 5, item 7 to clarify the intent of the trigger.

Consistency with policy objectives of authorising law

The amending regulation is consistent with the main objectives of the SPA that is to seek 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

The amendments pertaining to SARA triggers, the Toowoomba Second Range Crossing and government supported transport infrastructure were proposed following a complete and detailed review of each issue by each relevant state agency and DILGP. The amendments proposed are the only way of achieving the policy objectives for these matters.

Amendment pertaining to recommendation 7.18 of the Queensland Floods Commission of Inquiry

The QFCoI 2012 final report, included recommendation 7.18 which stated that the Queensland Government should consider ‘amending the *Sustainable Planning Regulation 2009* so that operational work or plumbing or drainage work (including maintenance and repair work) carried out by or on behalf of a public sector entity authorised under a state law to carry out the work is not exempt development under the *Sustainable Planning Act 2009* if the development has the potential to reduce floodplain storage’.

The State has chosen to amend the SPR in a different way to the QFCoI recommendation as:

- additional assessment under a local government planning scheme would add considerable extra cost to DTMR due to uncertainty in approvals and possible changes to design and construction
- assessment under a local government planning scheme may place a significant cost burden on local governments to resource the assessment of these projects

- assessment under each local government planning scheme impacted by the project may result in inefficient or inconsistent decision making processes within a region and across the state, as each local government would assess the works under its own scheme
- the impact of transport infrastructure on flooding is already a critical design factor in all DTMR projects; local government assessment would duplicate assessment already undertaken.

Benefits and costs of implementation

The package of amendments reflects the broader government policy of a balanced planning system that is focussed on the three core objectives of liveability, sustainability and prosperity.

The regulation will have the following benefits:

- eliminating duplication between State and local government assessment processes for the Toowoomba Second Range Crossing project. The amendment will benefit both State and local governments, as resources, time and money will potentially be saved as a result of a streamlined assessment process
- updating the project title and map location for the Gold Coast Rapid Transit project will benefit users of the SPR through correcting outdated information
- clarifying the wording in Schedule 7, table 2, item 4 will address variability in how the trigger is applied. The amendment will reduce the regulatory burden for the State and development industry as some applications will no longer require referral through SARA
- cross-referencing between items in Schedule 4 will assist local governments in referring to all relevant sections of Schedule 4 when determining which parts of development are assessable under a local government planning scheme. The outcome is to reinforce that the current exemption relates to a public sector entity and community infrastructure which do not require additional assessment through the planning scheme. The exemption does not apply to private sector development which is assessable under the planning scheme
- excluding government supported transport infrastructure from Schedule 7, table 2, item 15 will remove a duplication between SARA and DTMR's referral processes. The amendment will reduce the regulatory burden and costs for the State as applications for government supported transport infrastructure will only be subject to one referral process
- removing the concept of eligible development and replacing the definition of non-profit organisation will simplify the SARA fee concession process for non-profit organisations and assessment managers. Removing the requirement to comply with 'eligible development' reduces the regulatory burden on non-profit organisations and aims to facilitate more developments with a public benefit
- correcting the drafting error in Schedule 3, table 5, item 7 will clarify the trigger

Consistency with fundamental legislative principles

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

Consultation

Amendments relating to improving SARA operational efficiency have been developed in conjunction with the relevant state agencies.

Amendments relating to the Toowoomba Second Range Crossing, government supported transport infrastructure in Schedule 7, table 2, item 15 and the QFCoI recommendation have been developed in conjunction with DTMR.

The Office of Best Practice Regulation (OBPR) has been consulted in relation to the need for a Preliminary Impact Assessment or Regulatory Impact Statement for all matters. OBPR advised that for all matters, no further assessment was required under the Treasurer's Regulatory Impact Statement Guidelines.