

# Sustainable Planning Amendment Regulation (No. 2) 2015

Explanatory notes for SL 2015 No. 44

made under the

*Sustainable Planning Act 2009*

## General Outline

### Short title

The short title of the regulation is the *Sustainable Planning Amendment Regulation (No. 2) 2015*

### Authorising law

Sections 232, 254, 255A, 255B, 260, 272, 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 assessment framework 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.

#### Annual Indexation of Fees

Fees prescribed under the *Sustainable Planning Regulation 2009* (SPR) which are indexed annually are as follows:

- SARA fees prescribed under Schedule 7A
- Prescribed matters for IDAS Part 3 (Division 3 – fees)
- Court fees prescribed under Schedule 20
- Building and development committee fees prescribed under Schedule 21

Queensland Treasury advised that the government indexation rate applying for fees and charges from 1<sup>st</sup> July 2015 to 30 June 2016 will be 3.5 per cent.

Schedule 7A fees and Part 3, Division 3 fees are administered by the Department of Infrastructure, Local Government and Planning and have been rounded to the next dollar amount. This rounding policy has been a departmental business decision and Queensland Treasury has confirmed this approach is acceptable.

Schedule 20 Court fees are administered by the Department of Justice and Attorney-General (DJAG) and have been rounded to the next coinable amount using the standard rounding principle in the Principles for Fees and Charges - December 2012. This principle dictates that rounding should be to the nearest coinable amount (i.e. 5c). For the sake of clarity, amounts ending in 1, 2, 6 or 7 should be rounded down, while amounts ending in 3, 4, 8 or 9 should be rounded up.

Schedule 21 Building and development committee fees are administered by Building Codes Queensland – Department of Housing and Public Works, and have been rounded to the next coinable amount using the standard rounding principle in the Principles for Fees and Charges - December 2012.

#### Achieve consistency of thresholds between railways, and state-controlled road and public passenger transport triggers

The amendment introduces a threshold for filling and excavating for the current state-controlled road and public passenger transport triggers at Schedule 7, table 2, item 3; Schedule 7, table 3, 1A and Schedule 7, table 3, item 14 in order to achieve consistency with the existing threshold for railways (Schedule 7, table 3, item 15B).

The 50m<sup>3</sup> threshold reflects the minimum potential for filling or excavating to impact on the structural integrity of state transport infrastructure. Above this threshold, the location and depth of the filling or excavation relative to the transport infrastructure requires detailed engineering assessment to ensure structural integrity will be maintained.

#### Removal of redundant triggers

Schedule 7 contains referral triggers at table 2, item 47 and table 3, item 26, which are redundant, as the date for when applications were required to be referred under these triggers has lapsed. The amendment removes these triggers.

#### Clarification of wording in Schedule 7A, part 2, item 4

The current wording in the trigger is being inconsistently interpreted and applicants are uncertain about the fees payable. Specifically, the confusion centres on the 'otherwise' provisions at 4a(ii) and 4b(ii) of this item; and the lack of clarity that these should apply to residential development not captured by 4a(i) or 4b(i), while any non-residential development should fall under 4c. The amendments will remove ambiguity from the fee item.

#### Educational establishment thresholds in Schedule 9

An existing trigger threshold in Schedule 9 requires the referral of educational establishments where four or more additional classrooms are proposed, even if there is no increase in student numbers. For educational establishments where additional classrooms are proposed but there is no increase in student numbers, there is no impact on transport infrastructure or networks. The amendment removes the referral threshold of classrooms from column 2 and 3 of Schedule 9, item 15, so referral is only triggered through an increase in student numbers.

### State development assessment provisions

Amending the definition of the state development assessment provisions (SDAP) in Schedule 26 of the SPR gives effect to the current version of the SDAP. SDAP contains the matters the Chief Executive may have regard to when assessing a development application through SARA. The SDAP is endorsed by the Director-General of the Department of Infrastructure, Local Government and Planning.

### Narrowing the scope of allowable native vegetation clearing with a continuing exemption for government supported transport infrastructure

The community infrastructure exemption, which was introduced on 2 August 2013, allows unrestricted clearing that is expansive and applies equally to both private and public infrastructure. Projects are only required to align with the list of community infrastructure in schedule 2 of the SPR. Projects are not required to undertake the formal process of designation of land for community infrastructure as set out in Chapter 5 of SPA. The unintended outcome of the exemption has been to allow extensive vegetation clearing without environmental assessment or consultation. The amendment to Schedule 24 narrows the scope of allowable vegetation clearing for community infrastructure projects to situations where the project is designated or government supported transport infrastructure. Transitional provisions in the SPR will apply to development applications for community infrastructure:

- made before 1 September 2015 and where development approval is given after 1 September 2015
- made before 1 September 2015 and with development approval given between 2 August 2013 and 1 September 2015

The transitional provisions do not apply to vegetation clearing for community infrastructure that prior to 1 September 2015, did not require development approval.

The exemption for vegetation clearing will still apply to the construction and maintenance of government supported transport infrastructure through an exemption at Schedule 24, part 1, section 1 (11). The Department of Transport and Main Roads' (DTMR) own consultation process and environmental guidelines for government supported transport infrastructure would be duplicated by the community infrastructure designation process.

### Correct a drafting error

The amendment corrects a drafting error which currently omits code assessment from Schedule 5, part 1, table 3. The amendment will provide clarity by prescribing the applicable codes, laws, policies and matters for code assessment. The amendment also includes the reference to part 1 of Schedule 3 to assist users of the SPR in identifying the correct sections of the regulation.

## **Achievement of policy objectives**

SPR support the achievement of the overall policy objectives by:

### Annual Indexation of Fees

Queensland Treasury issued a letter to the Director-General on 17 April 2015, advising that the government indexation rate applying for fees and charges from 1 July 2015 to 30 June 2016 will be 3.5%. The amendment is required to apply the indexation rate to fees in the SPR.

### Achieve consistency of thresholds between railway, state-controlled road and public passenger transport triggers

The amendment will include a threshold of more than 50m<sup>3</sup> for filling and excavating in the triggers for state-controlled roads and passenger transport. The amendment will provide consistency with the existing threshold for railways and reduce the unnecessary referral of minor applications to the State.

### Removal of redundant triggers

The amendment removes triggers in Schedule 7, table 2, item 47 and Schedule 7, table 3, item 26. The applicable date for when applications were required to be referred under these triggers has lapsed. The amendment will prevent out of date information from being available to users of the SPR.

### Clarification of wording in Schedule 7A, part 2, item 4

The current wording in the trigger is being inconsistently interpreted and applicants are uncertain about the fees payable. The amendment to the wording of the trigger will remove this ambiguity and ensure that applicants are charged a consistent fee for similar developments throughout the State.

### Educational establishment thresholds in Schedule 9

The amendment removes the threshold for additional classrooms where there is no increase in student numbers and therefore no impact on transport infrastructure or networks. Amending the threshold criteria will reduce unnecessary referrals to the State thereby also saving time and resources for applicants.

### State Development Assessment Provisions

Amending the definition of the SDAP in Schedule 26 of the SPR gives effect to the current version of the SDAP.

### Limiting clearing of native vegetation

The policy intent for this amendment is to limit vegetation clearing permitted as exempt development, through requiring that the development is designated community infrastructure under SPA – that is, there has been a formal designation process undertaken. Transitional provisions in the SPR will enable the exemption to apply to applications for community infrastructure made before 1 September 2015 (commencement) and decided between 2 August 2013 and commencement. Transitional provisions will also apply to any applications made but not decided before commencement and where the approval is given after commencement. Community infrastructure projects lodged after 1 September 2015 will not be subject to the exemption.

The exemption will continue to apply to government supported transport infrastructure projects as DTMR's own consultation process and environmental guidelines for government supported transport infrastructure is duplicated by the community infrastructure designation process.

### Correct a drafting error

The amendment will correct the wording of Schedule 5, part 1, table 3 to include applications for code assessment. The amendment will provide clarity by prescribing the applicable codes, laws, policies and matters for code assessment. The amendment also includes the reference to part 1 of schedule 3 to assist users of the SPR in identifying the correct sections of the regulation.

## **Consistency with policy objectives of authorising law**

The amending regulation is consistent with the main objectives of the 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.

## **Alternative ways of achieving policy objectives**

The operational amendments to SARA, amendments pertaining to the SARA triggers and fees, the indexation of fees, and exemptions to clearing of vegetation were proposed following a complete and detailed review of each issue by each relevant state agency and DILGP. The amendments are the only way of achieving the policy objectives for these matters.

## 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 amendment will have the following benefits:

- applying the increase to fees in the SPR will ensure the fees are consistent with the Queensland government indexation rate of 3.5 per cent for fees and charges from 1 July 2015 to 30 June 2016
- introducing a threshold of more than 50m<sup>3</sup> for filling and excavating state-controlled road and public passenger transport triggers will provide consistency with the existing threshold for railways and reduce the unnecessary referral of minor applications to the State
- removing redundant triggers in Schedule 7, table 2, item 47 and Schedule 7, table 3, item 26 will ensure triggers in the SPR are current
- clarifying the wording in Schedule 7A, part 2, item 4 will remove ambiguity in the interpretation of this fee item and ensure that applicants are charged a consistent fee for similar developments throughout the State
- for applications for educational establishments, removing the threshold for additional classrooms where there is no increase in student numbers, will reduce unnecessary referrals to the State thereby also saving time and resources for applicants
- giving effect to the latest version of the SDAP, which allows SARA and the development industry to use the current version of the document
- narrowing the scope of allowable vegetation clearing where associated with community infrastructure, to situations where the proposed development is designated as community infrastructure and which has therefore undergone either environmental assessment or consultation. Transitional provisions in the SPR will enable the exemption to apply to applications for community infrastructure made before 1 September 2015. Community infrastructure projects lodged after 1 September 2015 will not be subject to the exemption
- government supported transport infrastructure will continue to have a vegetation clearing exemption in Schedule 24 of the SPR without being designated. The exemption prevents duplication in the assessment of these projects
- correcting a drafting error in Schedule 5, part 1, table 3 will clarify the trigger.

## Consistency with fundamental legislative principles

The subordinate legislation is not inconsistent 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. Other amendments have been developed by DILGP in conjunction with the relevant state agencies.

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.