

Sustainable Planning Amendment Regulation (No. 4) 2016

Explanatory notes for SL 2016 No. 210

made under the

Sustainable Planning Act 2009

General Outline

Short title

The short title of the regulation is the *Sustainable Planning Amendment Regulation (No.4) 2016*.

Authorising law

Sections 32, 232, 246, 254, 255A, 255B, 255C, 260, 763 of the *Sustainable Planning Act 2009*.

Policy objectives and the reasons for them

The overall objective of the Sustainable Planning Amendment Regulation (No.4) 2016 (Amendment Regulation) is to create greater operational efficiency with the State Assessment and Referral Agency (SARA) by improving the clarity of referral triggers and definitions and reducing the number of low risk applications that are referred to the State for assessment.

Designated regions

South East Queensland (SEQ) is a designated region prescribed as part of Schedule 1 of the *Sustainable Planning Regulation 2009* (SPR). Noosa Shire Council was not included in the list of local governments within the South East Queensland Region following de-amalgamation with the Sunshine Coast Regional Council. The amendment updates the South East Queensland region list to include Noosa Shire Council.

Particular dams

Operational work that is the construction of a dam, or is carried out in relation to a dam if, because of the work, the dam must be failure impact assessed is assessable development in the SPR. The requirements for failure impact assessment are established under the *Water Supply (Safety and Reliability) Act 2008*.

In the interests of reducing ‘red-tape’ and ensuring that the SPR prescribes only those matters which are of interest to the state in development assessment, the amendment ensures that only

dams with a category 1 or category 2 failure impact rating need to be referred to the state for assessment. An amendment to the fee schedule assists in clarifying which fee applies.

Development adjoining a Queensland heritage place

Prior to August 2012, development applications involving material change of use (MCU) or Reconfiguration of a Lot on land adjoining a Queensland heritage place triggered referral to the state as an advice agency. These triggers were removed as a result of a broader review of advice referral triggers.

This amendment seeks to ensure the impacts of adjoining development, and whether the form, bulk and proximity of the development will have a detrimental impact on the prominence, important views from, or setting of a Queensland heritage place are assessed. A fee is associated with the amendment, which reflects the fee amounts for the existing referral trigger for development on a Queensland heritage place.

Duplication of assessment for local heritage places

A significant number of local governments identify places on the Queensland heritage register (known as Queensland heritage places) as local heritage places in their planning schemes. This can result in an unnecessary duplication when development applications for those places are assessed for heritage values by both state and local government.

The amendment to the term 'local heritage place' in the SPR ensures that a local heritage place cannot also be a Queensland heritage place. This amendment removes duplication of assessment of Queensland heritage places. If a local government planning scheme is contrary to this approach and continues to identify local heritage places that are also Queensland heritage places in its planning scheme, the SPR prevails and the contrary provisions in the planning scheme will have no effect.

Removal of Building the Education Revolution (BER) and Flying Start program exemptions

The exemptions for development under the BER were made as part of the overall government initiative to stimulate the economy following the global financial crisis and to fast-track the development of certain education facilities. The Flying Start program was part of the government preparation for the movement of Year 7 from primary schools to secondary schools. The exemptions from development assessment are no longer required as these projects have been completed and the relevant provisions have been removed.

Operational works referral trigger for tidal waters in Gold Coast waters

Certain tidal works in Gold Coast waters are excluded from requiring assessment by Marine Safety Queensland (MSQ) under Schedule 7, table 2, item 15. These works are considered to be low risk, requiring assessment by the Gold Coast Waterways Authority (GCWA) but not additional assessment by MSQ. Revetment walls (which are put in place to protect the slope of the river bank from erosion) are often required as part of these low risk works, however associated revetment works would make the excluded low risk works triggered for assessment by MSQ.

The amendment ensures that revetment walls associated with a boat ramp, jetty or private vessel pontoon; drainage outlet or stormwater outlet would not be referred to the MSQ for assessment.

In addition, the amendment ensures that tidal works undertaken by the GCWA do not require referral to MSQ for assessment. Referral of development applications for tidal works undertaken by GCWA to MSQ represents an unnecessary regulatory and administrative burden on both the State and GCWA.

Brisbane and Gold Coast Central Business Districts (CBD) exclusion for development impacting on state transport infrastructure and thresholds

In the Brisbane CBD area and the highest density area of the Gold Coast (i.e. the Surfers Paradise area) the existing built form limits potential for intersection upgrades to address transport impacts. To reflect this, development applications involving large accommodation proposals (that is, accommodation activities that trigger the threshold in Schedule 9 of the SPR) in the Brisbane CBD area and the highest density area of the Gold Coast are excluded from assessment for impacts on the state transport network. It is considered unnecessary for development of this nature and scale in these particular locations to be referred to the state for assessment.

Development impacting on state transport network and thresholds for accommodation activities

Accommodation activities, other than a hotel or residential care facility are referred to the state for assessment if the development exceeds certain thresholds in Schedule 9 of the SPR. Current criteria are not being applied as intended, resulting in incorrect referral to the state for assessment and unnecessary costs being incurred by industry. This amendment clarifies the interpretation of the accommodation activities in Schedule 9 and ensures the thresholds are correctly applied.

Excluded material change of use for state transport infrastructure triggers

In November 2015, the 'excluded material change of use' definition was included in the SPR to exclude certain material change of use applications from assessment against certain state transport infrastructure referral triggers. This amendment clarifies and refines the scope of development that may be considered an excluded material change of use. The intention is to reduce development applications that will not impact on state transport infrastructure, from assessment by the state.

State Development Assessment Provisions (SDAP)

SDAP contains the matters the Chief Executive may have regard to when assessing a development application through SARA. The amendment corrects the reference in the SPR to reflect the new version of the SDAP document made by the Chief Executive under the *Sustainable Planning Act 2009*.

Achievement of policy objectives

SPR support the achievement of the overall policy objectives by:

Designated regions

The amendment updates Schedule 1 to ensure the local governments within the SEQ region are accurate.

Particular dams

The amendment ensures the SPR will only capture dams with a category 1 or category 2 failure impact rating for assessment. There are alternative mechanisms available to allow the Department of Energy and Water Supply (DEWS) to continue to monitor dams with no failure impact rating, and as such no longer require particular dam to be triggered under the SPR.

The amendment replaces the term ‘particular dams’ in the SPR, with ‘referable dams’. ‘Particular dams’ is considered to be generic and unclear, and ‘referable dams’ is the terminology which is used under the *Water Supply (Safety and Reliability) Act 2008* to refer to dams which have been accepted as having a category 1 or category 2 failure impact rating. The amendment to the fee schedule will assist with clearly determining the applicable fee amount.

Development adjoining a Queensland heritage place

The Schedule 7 referral trigger and associated fee item capturing MCU development applications on a lot adjoining a place on the Queensland heritage register will ensure greater protection of state heritage through consideration to any impact on the cultural heritage significance of a place from adjoining development.

Duplication of assessment for Queensland heritage places

The amendment to the term ‘local heritage place’ in Schedule 3 ensures that there is no duplication of state and local government assessment of impacts of development on a Queensland heritage place. The amendment ensures that the substance of a concurrence response cannot be overturned if the local government assessment manager takes a different view about the impact a development will have on an aspect of the significance of a Queensland heritage places.

Building the Education Revolution (BER) and Flying Start program exemptions

The amendment removes redundant provisions within the SPR.

Operational works referral trigger for tidal waters in Gold Coast waters

The amendment includes ‘revetment walls’ as low risk works that does not require referral for certain tidal works in Gold Coast waters that require assessment by MSQ under Schedule 7, table 12, item 15. Tidal works undertaken by GCWA will not require referral to MSQ for assessment.

Brisbane and Gold Coast Central Business Districts (CBD) exclusion for development impacting on state transport infrastructure and thresholds

The amendment to the referral trigger in Schedule 7, table 3, item 2 and Schedule 9 ensures that development of accommodation activities within the Brisbane and Gold Coast CBDs do not require referral to the state for assessment as the transport network is at capacity. The Brisbane and Gold Coast CBD areas are mapped in the SARA Development Assessment Mapping System.

Development impacting on state transport network and thresholds for accommodation activities

The amendment ensures threshold criteria for accommodation activities in Schedule 9 is applied as intended by listing the uses that are intended to be captured within the dwellings and short-term accommodation categories.

Excluded material change of use for state transport infrastructure triggers

An amendment to the term ‘excluded material change of use’ further clarifies and refines the scope of development that may be considered an ‘excluded material change of use’. The intention is to reduce development applications that will not impact on state transport infrastructure, from assessment by the state. This amendment applies to state transport referral triggers in Schedule 7, table 3, item 1; Schedule 7, table 3, item 14 and Schedule 7, table 3, item 15A.

State Development Assessment Provisions (SDAP)

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

Consistency with policy objectives of authorising

The amendment regulation is consistent with the main objectives of the SPA, which 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 amendment regulation is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

The amendments were proposed following a complete and detailed review of each issue by each relevant state agency and the Department of Infrastructure, Local Government and Planning. The amendments are the only way to achieve 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:

- identifying Noosa Shire Council in SEQ region will ensure accuracy of the local governments that the South East Queensland Regional Plan applies to
- ensuring the dams that are of interest to the state in development assessment will be referred for assessment
- ensure that the fee schedule for referable dams is clear for applicants
- ensuring that protection of Queensland heritage places is strengthened through the assessment of material change of use development on a lot adjoining a Queensland heritage place
- ensuring there is not duplication of assessment of Queensland heritage places by state and local governments
- ensure redundant provisions for completed education programs are removed

- ensure low risk operational works development in Gold Coast waters do not require referral for an associated revetment wall and tidal works undertaken by GCWA do not require referral to MSQ
- ensure that accommodation activities in the Brisbane and Gold Coast CBDs do not require referral to the state as the transport network is at capacity and impacts to the transport network cannot be addressed by individual proposals
- replace the accommodation activities threshold criteria for development impacting on state transport infrastructure with a list of uses to ensure clarity
- ensure low risk material change of use development applications are captured within the excluded material change of use definition and do not require referral to the state for assessment
- ensuring that the latest version of the SDAP is used.

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 the regulation have been developed in conjunction with the relevant state government agencies.

The Office of Best Practice Regulation (OBPR) was consulted in relation to the need for a Preliminary Impact Assessment or Regulatory Impact Statement (RIS) for all matters. The OBPR advised that all matters are excluded from further assessment under the RIS System guidelines.