

Sustainable Planning Amendment Regulation (No. 1) 2017

Explanatory notes for SL 2017 No. 1

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) 2017*.

Authorising law

Section 246, 260, 763 of the *Sustainable Planning Act 2009* (SPA).

Policy objectives and the reasons for them

The objective of the *Sustainable Planning Amendment Regulation (No. 1) 2017* is to clarify assessment matters for development adjoining a Queensland heritage place.

The community has expressed concern about a number of recent, high-profile development applications and the lack of consideration given to the potential impacts of those developments on the cultural heritage significance of adjoining state heritage places. Prior to 2012, these kinds of applications would have been assessed by the state under advice referral triggers; however the former government removed these triggers in 2012.

To address the community's concern, the Deputy Premier, Minister for Infrastructure, Local Government and Planning and Minister for Trade and Investment, committed to introducing greater protection for Queensland's heritage. To achieve this protection, the Government committed to restoring protection of Queensland heritage places from development on adjoining sites.

In December 2016, provisions were introduced to the *Sustainable Planning Regulation 2009* (SPR) to make proposed development involving a material change of use adjoining a Queensland heritage place assessable development and introduced a referral trigger for material change of use applications that share a common boundary with a lot that is or contains a Queensland heritage place.

Since the commencement of the SPR amendments in December 2016, further issues with the operation of the provisions were identified including the need to:

- nominate the assessment manager and associated assessment manager fee when a local government has not made a proposed development adjoining a Queensland heritage place assessable development under its planning scheme and there is no prescribed assessment manager for the proposed development. If the assessment manager is not prescribed in the SPR the assessment manager must be determined by the Minister.
- exempt a proposed material change of use development from the effect of assessment and referral for where adjoining a Queensland heritage place or building work development from referral where on a Queensland heritage place for Priority Development Area (PDA)-related development for which the state is the assessment manager for the proposed PDA-related development under the *Economic Development Act 2012*.

Achievement of policy objectives

The amendment regulation supports the achievement of the overall policy objectives by clarifying the “adjoining a Queensland heritage place” provisions to ensure the assessment manager is the chief executive administering SPA when a proposed development is not made assessable development by local government and introduce an associated fee item, and to ensure that development that is PDA-related development is not captured as assessable development in the SPR for development adjoining a Queensland heritage place or for building work on a Queensland heritage place.

Consistency with policy objectives of authorising

The amendment regulation is consistent with the main objectives of 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 detailed review of the issue by 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 amendments reflect the government policy of ensuring the protection for Queensland’s heritage. To achieve this protection, the government committed to restoring protection of Queensland heritage places from development on adjoining sites.

The amendments to the SPR provide an overall positive impact for local government, industry, the community and state agencies. The amendments reduce the regulatory burden on these sectors through reducing unnecessary process or assessment for applicants and resourcing commitments from state agencies. There is no new regulation imposed by the proposed amendments, just clarification and removal of unnecessary assessment processes.

Consistency with fundamental legislative principles

The subordinate legislation is not inconsistent with the fundamental legislative principles of the *Legislative Standards Act 1992*.

Consultation

The amendments were developed in partnership with the Department of Environment and Heritage Protection (EHP), the agency responsible for administering the *Queensland Heritage Act 1992*, which establishes the Queensland heritage register (Queensland heritage places are the predominant category of place entered in the register) and Economic Development Queensland (EDQ) which administers the *Economic Development Act 2012*.



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6 January 2017

Ms Danae Johnston
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1 William Street
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Dear Ms Johnston

Preliminary Impact Assessment – assessment of developments adjoining Queensland heritage places

Thank you for your enquiry of 4 January 2017 seeking advice as to whether proposed amendments to the *Sustainable Planning Regulation 2009* (the SPR) are excluded from further assessment under the Queensland Guide to Better Regulation (the Guidelines).

Background

In its Preliminary Impact Assessment (PIA), submitted to the Queensland Productivity Commission (the Commission), the Department of Infrastructure, Local Government and Planning (the Department) notes that in December 2016 provisions were introduced to the SPR including:

- making proposed development, which involves a material change of use and is adjoining a Queensland heritage place, 'assessable development'
- introducing a referral trigger (for the State to assess the heritage impacts) for development which involves a material change of use and is adjoining a Queensland heritage place.

The Department notes, in the PIA provided to the Commission, that since the commencement of the SPR amendments, further issues related to development involving a material change of use adjoining a Queensland heritage place have come to light including:

- if a local government does not deem the development as 'assessable development' under its planning scheme (and so the local government is not the assessment manager for the development) then the Minister administering the *Sustainable Planning Act 2009* (SPA) is required to nominate the assessment manager. This approach is not straightforward for applicants or the State
- if the development is in a Priority Development Area (PDA) then assessment under the SPA is unnecessary as any heritage impacts are considered under the separate development assessment process for PDAs under the *Economic Development Act 2012*.

Overview of the proposal

Given the above, the Department proposes to amend the provisions in the SPR related to development involving a material change of use adjoining a Queensland heritage including:

- clarifying that when the development is not made assessable development by local government the assessment manager is the chief executive administering the SPA
- ensuring that if the development is PDA related it is not captured as assessable development in the SPR.

Assessment

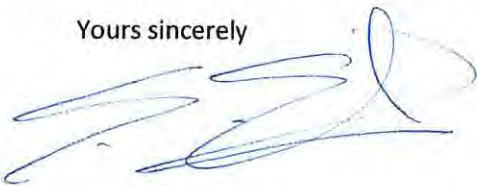
In considering the Department's proposed amendments, the Commission notes the following points provided by the Department:

- nominating the chief executive as the assessment manager in cases where the development is not deemed assessable development by local government will create more certainty for applicants and should streamline the development assessment process
- the separate development assessment process for PDAs already considers State heritage impacts.

Given the above points, the Commission considers the amendments are unlikely to result in significant adverse impacts. Therefore, further analysis under the Guidelines is not required.

Please contact Dominic O'Neill, Senior Analyst on (07) 3015 5164 if you require any additional information or guidance in relation to the above comments or the Guidelines in general.

Yours sincerely



Dr. Sonj Hall
Executive Director