

# Planning Regulation 2017

Explanatory notes for SL 2017 No. 78

made under the *Planning Act 2016*

## General Outline

### Short title

*Planning Regulation 2017*

### Authorising law

Section 284 of the *Planning Act 2016*

Section 17 of the *Acts Interpretation Act 1954*

## Policy objectives and the reasons for them

The policy objective of the *Planning Regulation 2017* (the Regulation) is to prescribe instruments and address matters provided for under the *Planning Act 2016*, and provide the mechanics for the operation and implementation of the Act. The *Planning Act 2016* will commence on 3 July 2017 and will repeal the *Sustainable Planning Act 2009*, and therefore also will repeal the *Sustainable Planning Regulation 2009*. The Regulation transitions the provisions of the repealed *Sustainable Planning Regulation 2009* and includes new matters dealt with under the *Planning Act 2016*.

The Regulation has been developed following an extensive review of State interests and ensures that matters requiring regulation or assessment are consistent with the principles for the review of state interests, as follows:

- a) State interests are managed through the most appropriate and effective planning tool for delivery
- b) the state is accountable for state issues, local issues are a local government matter
- c) state involvement in land use planning and development assessment occurs only where it is essential i.e. where a matter is of particular importance, has an unacceptable level of risk, or requires state expertise
- d) amendments align with the *Planning Act 2016*, including a performance based planning focus
- e) issues that are beyond the scope of the land use planning and development system under the *Planning Act 2016* are addressed by other means.

The objectives of the Regulation are to:

- support the operation and implementation of the *Planning Act 2016* by prescribing matters dealt with, and instruments made, under the Act
- support key government priorities including:
  - supporting quality urban design outcomes in our cities, towns and neighbourhoods
  - improving outcomes for housing supply and diversity
  - reinstating world-class coastal planning laws
  - supporting climate change objectives
- transition regulatory provisions from the State Planning Regulatory Provisions made under the repealed *Sustainable Planning Act 2009*, which are not continued as separate instruments under the *Planning Act 2016*
- transition the regulated requirements for local planning instruments, which include the mandatory provisions from the Queensland Planning Provisions made under the repealed *Sustainable Planning Act 2009*
- transition the statewide codes applying to particular development under the Queensland Planning Provisions made under the repealed *Sustainable Planning Act 2009*
- transition process provisions from the repealed *Sustainable Planning Act 2009*, relating to:
  - making and deciding a superseded planning scheme request
  - requirements for decision notices and who decision notices must be given to
  - contents for proposed call in notices given by the Minister and timeframes in which the notice must be given
  - qualifications and experience for the appointment of referees to the Development Tribunal

- requirements for an application for the registration of premises for the protection against particular nuisance action by urban encroachment
- documents and information that particular entities with responsibility under the planning framework must make publicly available
- the content of planning and development certificates
- transition prohibited development from the repealed *Sustainable Planning Act 2009*
- transition prescribed matters for the assessment of assessable development by an assessment manager or a referral agency, from the repealed *Sustainable Planning Act 2009*
- transition requirements for development for public housing which is exempt development under the *Sustainable Planning Act 2009*
- transition self-assessable development under the repealed *Sustainable Planning Regulation 2009* to accepted development, subject to compliance with particular requirements
- transition the self-assessable code for particular development in wetland protection areas in Great Barrier Reef catchments from the repealed State Planning Policy 2016
- transition and update assessment and referral matters for development on Brisbane core port land from the *Transport Infrastructure Act 1994*
- refine and improve clarity of existing triggers to better reflect the state's interests, streamline state interest outcomes and clarify the roles and responsibilities of state and local government in planning and development assessment
- restructure assessment and referral triggers for assessable development to improve legibility and ease of use
- establish the circumstances when the required fee for development applications may be waived in part or in full
- transition the compliance assessment regime for approval of requests for reconfiguring 1 lot into 2, and for material change of use on contaminated land
- transition the compliance assessment process for local government approval of plans of subdivision from the *Sustainable Planning Regulation 2009*.

The policy objectives enable the planning framework established under the *Planning Act 2016* to function as intended, by prescribing the matters relevant to the various entities tasked with roles and responsibilities under the Act, and providing process requirements for matters mentioned under the Act. The Regulation ensures the framework is transparent and that entities have accountability and certainty when carrying out their roles and responsibilities.

The Regulation also ensures that development to which compliance assessment applied under the *Sustainable Planning Regulation 2009* is transitioned to the framework under the *Planning Act 2016*, as compliance assessment is not continued as a category of assessment under the *Planning Act 2016*.

## **Achievement of policy objectives**

The policy objectives of the Regulation are achieved by:

- Prescribing instruments made by the Minister under the *Planning Act 2016*, including the Development assessment rules, the Minister's guidelines and rules and the State Planning Policy.

- Prescribing the matters applying generally to development assessment by an assessment manager or a referral agency, as assessment benchmarks or other matters the application must be assessed against, or matters the assessment must have regard to.
- Prescribing the state's development assessment requirements including categories of development and categories of assessment, assessment managers, assessment benchmarks and other assessment matters applying to the assessment of assessable development, referral agencies and matters for referral agency assessment, and required fees for development applications made or referred to the state.
- Prescribing the regulatory provisions transitioned from a number of repealed State planning regulatory provisions, for which regulation is required to continue under the *Planning Act 2016*, noting that drafting by the Office of the Queensland Parliamentary Counsel has necessitated some changes to the way these provisions are drafted, to ensure that the provisions are clear and unambiguous. However, there is no substantive change to the intent of the transitioned provisions for:
  - prescribed amount for adopted charges relevant to local government infrastructure charges
  - accepted material change of use in the Guragunbah development area
  - accepted development on off-road motorcycling facility land at Wyaralong, and requirements for particular noise sensitive place development on noise attenuation land for the off-road motorcycling facility
  - regulation of development in the SEQ development area, SEQ regional landscape and rural production area and SEQ rural living area, transitioned from the South East Queensland Regional Plan 2009-2031
  - regulation of development in Koala habitat areas transitioned from the South East Queensland Koala Conservation State Planning Regulatory Provisions.
- Prescribing the regulated requirements for local planning instruments including zone names and zone purpose statements, zone colours, use definitions and administrative definitions, to ensure that local planning instruments and local government infrastructure plans across the state are consistent in the use of these requirements, noting that drafting by the Office of the Queensland Parliamentary Counsel has necessitated some changes to the way these provisions are drafted, to ensure that the provisions are clear and unambiguous. However, there is no substantive change to the intent of these provisions.
- Prescribing private certifiers as assessment manager for building work assessable under the building assessment provisions, regardless of whether the work is located across local government boundaries.
- Prescribing requirements for development which may not be made assessable under a local planning instrument, including matters transitioned from the repealed *Sustainable Planning Act 2009*, the *Sustainable Planning Regulation 2009* and the following development from the Queensland Planning Provisions:
  - development for public housing
  - a material change of use or operational work related to cropping involving forestry for wood production
  - material change of use for a community residence.
- Prescribing requirements for the reconfiguring of 1 lot into 2 to which code assessment applies.
- Prescribing requirements applying to a material change of use for particular development on contaminated land, to ensure the development is prohibited if the contamination issues are not addressed.

- Ensuring reconfiguring a lot applications within the coastal management district that may be subject to land surrender provisions under the *Coastal Management and Protection Act 1995* are referred to the state for assessment.
- Restructuring development assessment tables, for example, schedules 3, 5, 7 and 7A from the repealed *Sustainable Planning Regulation 2009*, and prohibited development under the repealed *Sustainable Planning Act 2009* are combined into one schedule (Schedule 10) under various parts based by topic, such as Fisheries, or Heritage. This means that all the assessment matters applying to particular development are in one schedule, improving usability and legibility.
- Prescribing assessment matters for development on Brisbane core port land, transitioned from the *Transport Infrastructure Act 1994*, as these provisions were omitted by the *Planning (Consequential) and Other Legislation Amendment Act 2016*, and updating referral triggers for development on Brisbane core port land or within the port limits for consistency with those applying in other areas of the state, thereby reducing overall impact for affected development.
- Prescribing self-assessable development under the repealed Sustainable Planning Regulation 2009 as accepted development, subject to requirements, for which no development application is required provided the development complies with the requirements.
- Prescribing required fees for applications and referrals, including the government approved indexation increase for the 2017-2018 financial year.
- Prescribing that the required fee for making or referring a development application, change application or extension application may be waived in part or in full if the application or referral is made by a registered non-profit organisation.
- Prescribing process provisions transitioned from the repealed *Sustainable Planning Act 2009* in relation to:
  - making and deciding a superseded planning scheme request
  - requirements for decision notices and who decision notices must be given to
  - contents for proposed call in notices given by the Minister, timeframes for the notice to be given, and the effect of the notice on the development assessment process and appeal periods
  - qualifications and experience for the appointment of referees to the Development Tribunal
  - requirements for an application for registration or renewal of the registration of premises for protection against particular urban encroachment nuisance actions, including public consultation, and matters the Minister must assess the application for registration or renewal against
  - requirements for development applications in areas affected by the registration of premises protected against urban encroachment nuisance actions
  - requirements for requests for local government approval of plans of subdivision, and matters that the local government must assess the request against
  - documents and information that particular entities with responsibility under the planning framework must make publicly available, modified to include new matters dealt with by the *Planning Act 2016*, and requiring an increase in the range of material that must be published on websites
  - the content of planning and development certificates, modified to include new matters dealt with by the *Planning Act 2016*.

- Including a new referral trigger for the consideration of urban design matters for particular material change of use developments that meet threshold limits in certain localities, if written advice evaluating the urban design is not given with the development application. The trigger ensures that large format showroom type developments are not captured by the trigger and that developments assessed for a preliminary approval do not need to be re-referred if the development in the subsequent development application is substantially the same.

Additional information about the operation of the urban design referral trigger: The referral trigger provides the state with the opportunity to influence and advise applicants and local governments on the suitability of proposed design outcomes for significant projects across Queensland. Significant projects are those deemed to have an opportunity and role to play in contributing to the well-being and liveability of Queensland's large, urban communities through high quality urban design. A significant project is defined by the trigger and includes a range of urban land uses depending on local government area and zoning, and the primary use and gross floor area proposed.

The referral trigger allows the state to provide advice only to the local government as the assessment manager. Importantly, referral of a significant project, and payment of the associated fee, is not required where written advice evaluating the urban design for the development (particular written urban design advice) is lodged with the development application. Particular written urban design advice may only be provided by either the Office of the Queensland Government Architect or a gazetted urban design review entity convened by a local government. The establishment of a gazetted urban design review entity by a local government will provide the local government with the ability to facilitate the process of ensuring high quality urban design outcomes for significant projects within their local areas.

Referral is not required where a preliminary approval is in effect for the site, and the state has already assessed the development application for the preliminary approval under the trigger. In the event that referral of the preliminary approval application under the trigger was not required because particular written urban design advice was supplied by the applicant, the same written urban design advice may be submitted with the application for a development permit. It is not necessary for new particular written urban design advice to be obtained specifically in relation to the application for the development permit, unless the application is not consistent with the concept which was previously considered at the preliminary approval stage.

Where particular written urban design advice is provided with a development application, the advice must be directly relevant to the proposal which is the subject of the application (i.e. the particular written urban design advice submitted cannot relate to a proposal which is materially different to that forming the subject of the development application). Guidance material will be provided to assist the assessment manager in determining whether the development application lodged is materially different to the proposal for which particular written urban design advice was issued. A proposal is not considered to be materially different where any differences in the development application as lodged are a reasonably foreseeable result of the proponent acting on the particular written urban design advice.

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

The Regulation is consistent with the main objectives of the *Planning Act 2016*, which is to establish an efficient, effective, transparent, integrated, coordinated and accountable system of land use planning and development assessment and related matters that facilitates the achievement of ecological sustainability.

## **Inconsistency with policy objectives of other legislation**

The regulation is not inconsistent with the policy objectives of other legislation.

## **Benefits and costs of implementation**

The benefits and costs of implementing the Regulation are not significantly different from the benefits and costs of implementing the repealed *Sustainable Planning Regulation 2009*, which the Regulation replaces.

While the new urban design trigger has a referral fee of \$15,000, this fee can be avoided if the applicant submits written advice evaluating the urban design by the Queensland Government Architect or an entity established by a local government for this purpose. The benefit is that better urban design outcomes will be achieved, with flow on benefits to the community as a whole.

Other required fees for applications and referral of development applications have been reviewed for the Regulation to ensure the fee is consistent with the action required to assess and process the application. In some cases fees have been reduced compared to the required fee prescribed under the repealed *Sustainable Planning Regulation 2009*. None of the required fees have increased, other than by the government approved annual indexation amount for the 2017-2018 financial year.

## **Consistency with fundamental legislative principles**

The Regulation is not inconsistent with fundamental legislative principles.

## Consultation

Two rounds of public consultation were carried out for the draft Regulation. A Consultation draft was released for public consultation from 23 November 2015 to 5 February 2016, together with consultation drafts of the Development Assessment Rules and the Minister's Guidelines and Rules. Feedback was invited on the layout and structure of the draft Regulation, while the content provided a 'like for like' transition of the *Sustainable Planning Regulation 2009*, which it will replace, and included the transition of provisions from the Queensland Planning Provisions and State Planning Regulatory Provisions which are not continued under the *Planning Act 2016*.

A further Consultation draft of the Regulation was released for public consultation from 21 November 2016 to 10 February 2017, together with consultation drafts of the State Planning Policy and the State Development Assessment Provisions. The consultation involved a range of engagement methods including community and industry briefings, stakeholder workshops, meet the planner sessions, supported by information and material on the department's website. The objectives of the public consultation were to inform interested community members, peak bodies, local governments, industry groups, and community and environmental groups about the review process and outcomes, and to invite feedback on each of the instruments. 172 submissions were received, of which 98 included comment on the draft Regulation, which has informed the drafting of the Regulation.