

Planning (Contaminated Land) Amendment Regulation 2017

Explanatory notes for SL 2017 No. 201

made under the *Planning Act 2016*

General Outline

Short title

The short title of the Regulation is the *Planning (Contaminated Land) Amendment Regulation 2017*

Authorising law

Section 284 of the *Planning Act 2016*

Policy objectives and the reasons for them

The *Planning Regulation 2017* supports the operation of the *Planning Act 2016* by categorising development as prohibited, assessable or accepted development; specifying the categories of assessment required for different types of assessable development and setting out the matters (the assessment benchmarks) that an assessment manager must assess assessable development against.

The objective of the *Planning (Contaminated Land) Amendment Regulation 2017* (Amendment Regulation) is to amend the *Planning Regulation 2017* to ensure that site remediation is not required before a development application for a Material Change of Use (MCU) for development assessable under a planning scheme can be made to a local government.

The Amendment Regulation also amends the *Planning Regulation 2017* in relation to the regulatory provisions applying in koala habitat areas, to ensure the repealed South East Queensland Koala Conservation State Planning Regulatory Provisions continue to apply on a like for like basis.

The effect of the koala habitat area regulatory provisions were inadvertently changed by the *Planning and Other Legislation (South East Queensland Regional Plan and Other Matters) Amendment Regulation 2017* on 11 August 2017, by amending the definition for ‘urban activity’ and other related definitions on which the koala habitat area regulatory provisions rely. The definitions were amended for the purposes of the South East Queensland Regional

Plan 2017 (SEQRP 2017) regulatory provisions in the *Planning Regulation 2017*. The amended definition of ‘urban activity’ specifically excluded ‘residential development’ which was separately defined to provide a clearer intent for the regulation of residential development under the SEQRP 2017. This change had an unintended consequence for the regulation of development in koala habitat areas, which this amendment corrects.

Achievement of policy objectives

The objective to deliver on the purpose of the *Planning Act 2016* is achieved through the amendments to the *Planning Regulation 2017*, which—

- ensure that particular development applications for MCU on contaminated land will have the same policy effect as under the now repealed *Sustainable Planning Act 2009*, and
- reinstate the regulatory provisions that applied to development in koala habitat areas under the *Planning Regulation 2017* prior to 11 August 2017.

Consistency with policy objectives of authorising law

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

Inconsistency with policy objectives of other legislation

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

Alternative ways of achieving policy objectives

There is no alternative way to achieve the policy objectives other than the Amendment Regulation.

Benefits and costs of implementation

The benefit of implementing the Amendment Regulation is to return flexibility to the contaminated land framework to ensure that site remediation is not required before a development application for an MCU for development assessable under a planning scheme can be made to a local government.

The practical benefit of implementation is that applicants will no longer be prohibited from making a development application for an MCU on contaminated land for development assessable under a planning scheme prior to undertaking site remediation. This outcome affords applicants:

- the ability to avoid significant up-front costs associated with remediation works, and
- greater certainty by enabling a development approval for a MCU to be in place before site remediation works are required.

This means there would be two different applications related to the development, both of which are needed before the use can commence:

1. the MCU to the local government as assessment manager, which the local government assesses against the planning scheme
2. an application to the chief executive as assessment manager, where the chief executive assesses (code assessment) against a new assessment benchmark which will simply require that the contaminated land register (CLR) or environmental management register (EMR) state that the premises are suitable for the proposed use in accordance with a site suitability statement for the premises.

It is anticipated that very few applications will be made to the chief executive as it is likely that applicants will seek to have either the CLR or the EMR state that the premises are suitable for the proposed use or have the site removed from the register rather than make an application to the state.

Once the CLR or EMR states that the premises are suitable for the proposed use in accordance with a site suitability statement for the premises, the use becomes accepted development and an application is not required.

Failing to meet the regulatory requirements will be a development offence, therefore providing an avenue for enforcement proceedings.

Implementing the amendments relating to the regulation of development in koala habitat areas reinstates the provisions that applied under the *Planning Regulation 2017* from commencement, to ensure that inappropriate development will continue to be prohibited in koala habitat areas for the protection of koala populations in South East Queensland.

There are no costs to the implementation of this Amendment Regulation.

Consistency with fundamental legislative principles

The Regulation is not inconsistent with fundamental legislative principles.

Consultation

Consultation on the Amendment Regulation for the contaminated land provisions has been undertaken with the Department of the Premier and Cabinet, Queensland Treasury and the Department of Environment and Heritage Protection. No concerns were raised by any of the agencies.

Consultation on the Amendment Regulation for the urban activity provisions has been undertaken with the Department of the Premier and Cabinet and Queensland Treasury. No concerns were raised by any of the agencies.